

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5549 of 2024

=====

M/s. Satyendra Prasad S/o. Late Chetnarayn Prasad, R/o- Vill. and Post-Asarhi P.S- Asharhi Hilsa, District Nalanda, Bihar 801302, a proprietorship firm having its office at Ashari, Yogipur, Hilsa, Bihar, 801302.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
2. The Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
4. The Secretary, Road Construction Department, Government of Bihar, Patna.
5. The Secretary, Rural Works Department, Government of Bihar, Patna.
6. The Engineer in Chief, Rural Works Department, Government of Bihar, Patna.
7. The Joint Commissioner of State Tax, Biharshariff, Patna East, Bihar.
8. The Assistant Commissioner of State Tax, Biharshariff, Patna East, Bihar.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 5550 of 2024

=====

M/s. Satyendra Prasad S/o. Late Chetnarayn Prasad R/o- Vill. and Post-Asarhi P.S- Asharhi Hilsa, District Nalanda, Bihar 801302, a proprietorship firm having its office at Ashari, Yogipur, Hilsa, Bihar, 801302.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
2. The Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
4. The Secretary, Road Construction Department, Government of Bihar, Patna.
5. The Secretary, Rural Works Department, Government of Bihar, Patna.
6. The Engineer in Chief, Rural Works Department, Government of Bihar, Patna.
7. The Joint Commissioner of State Tax, Biharshariff, Patna East, Bihar.
8. The Assistant Commissioner of State Tax, Biharshariff, Patna East, Bihar.



... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 5552 of 2024

M/s. Satyendra Prasad S/o. Late Chetnarayn Prasad, R/o- Vill. and Post-Asarhi P.S- Asharhi Hilsa, District Nalanda, Bihar 801302, a proprietorship firm having its office at Ashari, Yogipur, Hilsa, Bihar, 801302.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
2. The Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
4. The Secretary, Road Construction Department, Government of Bihar, Patna.
5. The Secretary, Rural Works Department, Government of Bihar, Patna.
6. The Engineer in Chief, Rural Works Department, Government of Bihar, Patna.
7. The Joint Commissioner of State Tax, Biharshariff, Patna East, Bihar.
8. The Assistant Commissioner of State Tax, Biharshariff, Patna East, Bihar.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 6605 of 2024

M/s. Satyendra Prasad Through Satyendra Prasad S/o. Late Chetnarayn Prasad R/o- Vill. and Post- Asarhi P.S- Asharhi Hilsa, District Nalanda, Bihar 801302, a proprietorship firm having its office at Ashari, Yogipur, Hilsa, Bihar, 801302.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
2. The Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
4. The Secretary, Road Construction Department, Government of Bihar, Patna.
5. The Secretary, Rural Works Department, Government of Bihar, Patna.
6. The Engineer in Chief, Rural Works Department, Government of Bihar,



Patna.

- 7. The Joint Commissioner of State Tax, Biharshariff, Patna East, Bihar.
- 8. The Assistant Commissioner of State Tax, Biharshariff, Patna East, Bihar.

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 6791 of 2024

M/s. Satyendra Prasad S/o. Late Chetnarayn Prasad R/o- Vill. and Post-Asarhi P.S- Asharhi Hilsa, District Nalanda, Bihar 801302, a proprietorship firm having its office at Ashari, Yogipur, Hilsa, Bihar, 801302.

... .. Petitioner/s

Versus

- 1. The State of Bihar through the Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
- 2. The Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
- 3. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
- 4. The Secretary, Road Construction Department, Government of Bihar, Patna.
- 5. The Secretary, Rural Works Department, Government of Bihar, Patna.
- 6. The Engineer in Chief, Rural Works Department, Government of Bihar, Patna.
- 7. The Joint Commissioner of State Tax, Biharshariff, Patna East, Bihar.
- 8. The Assistant Commissioner of State Tax, Biharshariff, Patna East, Bihar.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 5549 of 2024)
For the Petitioner/s : Mr.Akash Chaturvedi, Advocate
Mr.Sriram Krishna, Advocate
For the Respondent/s : Mr.Vikas Kumar, SC-11
(In Civil Writ Jurisdiction Case No. 5550 of 2024)
For the Petitioner/s : Mr.Akash Chaturvedi, Advocate
Mr.Sriram Krishna, Advocate
For the Respondent/s : Mr.Vikas Kumar, SC-11
(In Civil Writ Jurisdiction Case No. 5552 of 2024)
For the Petitioner/s : Mr.Akash Chaturvedi, Advocate
Mr.Sriram Krishna, Advocate
For the Respondent/s : Mr.Vikas Kumar, SC-11
(In Civil Writ Jurisdiction Case No. 6605 of 2024)
For the Petitioner/s : Mr.Akash Chaturvedi, Advocate
Mr.Sriram Krishna, Advocate
For the Respondent/s : Mr.Vikas Kumar, SC-11
(In Civil Writ Jurisdiction Case No. 6791 of 2024)
For the Petitioner/s : Mr.Akash Chaturvedi, Advocate



For the Respondent/s : Mr.Sriram Krishna, Advocate
Mr.Vikas Kumar, SC-11

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 12-09-2024

The identical petitioner, in the above writ petitions, is concerned with the assessments in the Financial Year 2018-2019 for the various months being November-2018 in (CWJC No.5549 of 2024), January-2019 (CWJC NO. 6791 of 2024), February-2019 (CWJC No. 6605 of 2024) March-2019 (CWJC No. 5552 of 2024) and June-2019 in the Financial Year 2019-2020 (CWJC No. 5550 of 2024). The petitioner's contention is that the petitioner had quoted the rates for the tender as is applicable under the Bihar Value Added Tax Act, 2005 (for brevity 'Bihar VAT Act'), but, the petitioner has been mulcted with liability to pay tax at a rate applicable under the Bihar Goods and Services Tax Act, 2017 (for brevity 'BGST Act') where there is an escalation from 4% to 12%. In fact, the tax liability is on the Rural Works Department, which is the awarder and the petitioner cannot be mulcted with the liability; is the forcefull contention.

2. Learned Counsel for the petitioner relied on Annexure-P/1 judgment in ***CWJC No. 1452 of 2019*** (M/s. Jai



Bhawani Construction vs. the Union of India and Others and analogous cases). Clause 35 of the Standard Bidding Documents (for brevity 'SBD') as extracted in the writ petition also was relied on along with Section 76 of the VAT Act.

3. Annexure-P/1 judgment was in a batch of cases where the petitioners had participated in the tender process, prior to coming into force of the Goods and Services Tax Act (for brevity 'GST' Act), when Bihar VAT Act was in force. On the GST regime coming into force they were mulcted with the liability to pay under the BGST Act for the works carried out after its implementation. The Government had provided a mechanism by which the said escalation in tax liability was taken care of; as liability on the awarder of the works contract.

4. The said judgment has no application to the present case since here the tendering process was after the GST Act came into force and agreements were executed on 12.07.2018 whereas the GST Act came into force with effect from 01.07.2017. Clause 35 of the SBD specifically provides that all rates shall be inclusive of taxes and levies payable under the respective statutes. Hence, the petitioner had bid under the tender with open eyes fully aware of the tax liability under the GST Act. The petitioner cannot wriggle out of the liability and



claim that the tax liability; is either on the awarder or that the petitioner has no liability to pay tax on the works contract carried out of the principal; which is the Rural Works Department. The rates quoted is inclusive of all taxes and levies and this ought to have been reckoned when the bid was made.

5. Reliance on Section 76 of the BGST Act is of no consequence. Section 76 only applies in cases where even when taxability is not existing, if any amounts are collected by way of tax, the said amount has to be paid over to the Government. It does not necessarily follow that if the person who has the liability to pay tax; who is also entitled to collect tax from the ultimate beneficiaries, and does not collect it, he has no liability to pay it to the Government. The petitioner is a works contractor who carried out the work on behalf of the awarder, the Rural Works Department. The liability to tax is of the Rural Works Department and the petitioner as works contractor has the liability to pay, but has the right to collect it from the Rural Works Department. It is hence, the tender document specifically provides that the rates tendered shall be inclusive of all the taxes and liabilities. Merely because the petitioner, the awardee had not factored the tax liability would not either absolve the said liability of the awardee nor would it enable further collection



from the awarder, in excess of the tendered rates.

6. A similar matter had come up before this Court which was answered by this very Division Bench in CWJC No. 10122 of 2023 (*JMC Construction Private Ltd. vs. The Union of India and Others*). We extract Paragraph Nos. 3 and 4 of the aforesaid judgment:

3. The tabular form itself indicates that the submission of bid itself was after 01.07.2017 i.e., on 20.11.2017 and 21.11.2017. The agreements of the two contracts were executed on 21.02.2018 and 19.05.2018. In such circumstances, there cannot be any claim for the differential rate to be reimbursed, since at the time of the bid and the execution of the agreement, the rates applicable were as per the Goods and Services Tax Act.

4. The learned Counsel had a further contention that Clause 42 of the agreement permitted service tax to be reimbursed and that the agreements indicated only the taxes as per the earlier enactments. The tax rates as per the earlier enactment is obviously a mistake since the Goods and Services Tax Act had come into effect from 01.07.2017. As far as Clause 42.1 is concerned, it specifies that the rate quoted by the contractor would be deemed to be inclusive of all taxes, except services tax of Central and State Government. If the services tax leviable is exempted insofar as works carried out for the State and Central Government, necessarily the exemption would be applicable to the petitioner. However, insofar as the other taxes and levies, specifically on the goods employed in the works contract; there can be no such exemption. The rates quoted include the taxes and hence only the balance amounts after deduction of tax at source would be payable to the petitioner.

7. We follow the principle in the aforesaid judgment



and the reasoning detailed by us above. Based on the facts arising in the instant cases, of the bid itself & the agreement having been executed after 01.07.2017; in fact long after, we reject the writ petitions.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	18.09.2024
Transmission Date	

