IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9028 of 2023

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Sri Balaji Enterprises and Hanumant Infra JV (A Joint Venture Firm - Established in the Year 2017), Head Office at A-307, Kaushlya Estate, Dak Bunglow Road, Patna Bihar appearing throgh its Authorised Signatory Subodh Kumar Singh, Son of Sri Jeet Narayan Singh, Resident of Village - Sirkohiyan, P.O. - Jaintpur, P. S. Saraiya, District - Muzaffarpur, PIN-843123, at present residing at Mithila Colony, P.O.- Ramji Chak, P.S Digha, District - Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Building Construction Department, Government of Bihar, Patna.
2. The Chief Engineer (South), Building Construction Department, Bihar, Patna.
3. The Superintending Engineer, Building Construction Department, Works Circle, Ara.
4. The Executive Engineer, Building Construction Department, Works Division, Buxar.
5. The Deputy Secretary, (CFMS In-charge), Finance Department, Bihar, Patna.
6. The Principal Commissioner, Central Goods and Services Tax Central Excise, GST Bhawan, Central Revenue Building, Birchand Patel Path, Patna-1.
7. The Superintendent, 3rd Floor, GST Bhawan, Anti Evasion Branch, CGST Head Quarters, Central Revenue Building, Birchand Patel Pat, Patna-1.
8. The State of Bihar, through Principal Secretary, State Tax Department, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Harendra Kumar, Advocate
For the UIO	:	Dr.K. N. Singh, ASG
		Mr. Anshuman Singh, Sr. SC, CGST& CX
For the State	:	Mr. P.K. Shahi, AG
		Mr. Vivek Kumar, AC to AG

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date : 09-02-2024

Read order dated 08.09.2023:

1. The dispute is insofar as the deducted *amounts of tax under the CGST and SGST Act having not been paid to the Tax Department by the awarder.*

2. The petitioner is the contractor and the 4th respondent is the awarder (The Executive Engineer, BCD,Works Division, Buxar). The 4th respondent submits that deductions were made but, however, the payments could not be made to the 6th respondent (the Principal Commissioner, CG & STCE), since the Buxar Building Division was not provided any GST number. When the GST number was provided there was no way by which the backlog could be cleared.

3. The learned counsel for the 4th respondent submits that it was only due to the technical glitch that the aforesaid non remittance occurred.

4. The petitioner submits that in the meanwhile he has remitted the tax on a demand made by the 6th respondent but there was no penalty or interest remitted.

5. As of now the petitioner apprehends a demand for penalty and interest from the tax authority, which according to the petitioner has to be satisfied by the 4th respondent even as per Section 76 of the Act.

6. Learned counsel for the 6th respondent submits that the counter affidavit of the 4th respondent has not been receivedby him. A copy of the counter affidavit shall be served on the learned counsel for the respondents today itself.

7. We direct the 6th respondent to file an affidavit clearly indicating whether there is any proposal to initiate a proceeding for penalty or interest from the petitioner and whether in the facts and circumstances of the case there could be such proceedings initiated against the 4th respondent, who is responsible for the failure. The 6th respondent shall also explain as to why there was delay in giving GST number to the 4th respondent.

8. In the context of the petitioner having paid up the amounts definitely the 4th respondent should refund the deducted amounts to the petitioner which shall be done within a period of one month from today. The interest liability of the 4th respondent will be decided later.

2. As of now Mr. P.K. Shahi, learned AG submits on instruction that the money has been refunded. The petitioner also admits that the money has been refunded and his claim as of now is only for interest. We had also directed the 6th respondent to file an affidavit regarding any proposal for penalty or interest for non remittance of TDS. However, the learned counsel for the 6th respondent submits that the liability of interest of penalty would arise only if the State GST Department proceeds against the petitioner.

3. We notice that it was the Building Construction Department which awarded a work to the petitioner, deducted the tax due at source on payments against invoice raised by the petitioner but did not remit the TDS to the State GST Department. As of now the petitioner on being served with a notice of demand regarding tax due on the payments received as

against the invoices of the works contract, remitted an amount of Rs. 38,39,870/- on 29.03.2023. As of now the said amounts have been refunded to the petitioner. The refund is admitted but however, the date is not forthcoming. In any event, what remains is only the interest which would be due to the petitioner. The Building Construction Department shall pay interest at the rate of 5 per cent from 29.03.2023 upto the date of refund on the averments implemented.

4. The GST Department, at this stage shall not take any further proceedings of penalty or interest as against the petitioner and if at all any such proceedings are to be taken, the same will have to be taken against the Building Construction Department who has failed to remit the tax on the due date.

5. The writ petition stands allowed with the above observations.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Ravi/Adnan

AFR/NAFR	
CAV DATE	
Uploading Date	16.02.2024
Transmission Date	