IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10998 of 2014

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M/s Knorr- Bremse India Private limited having registered office at 14/6, Mathura Raod Faridabad, Haryana 121003 through its authorized signatory Ajay Gupta.

... ... Petitioner/s

Versus

1. The Union of India through the General Manager Eastern railway Kolkata.
2. The Dy. Chief Mechanical Engineer (Wagon) , Eastern Railway, At and P.O. Jamalpur, Distt. Munger.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Nand Kishore Singh, Advocate
For the Railways	:	Mr. Anshuman Singh, CGC
For the State	:	Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-01-2024

The petitioner was awarded a work under Annexure-2, which work commenced with an agreement on 28.05.2011. The work awarded to the petitioner was retro fitment of Bogie Mounted Brake System (BMBS) in 200 numbers of Air Break Wagons as per the work schedule. The Railways while paying the invoices raised, deducted 4% tax and paid it over to the Government as liability under the Bihar Value Added Tax Act, 2005 (for brevity, the Act).

2. The petitioner, who was not a dealer registered within the State of Bihar and who had its unit at

Faridabad in Haryana, claimed that the contract was for supply of goods and there was no question of deduction as mandated for a works contract. It was also contended that even if it is a works contract, the goods having been supplied inter-state and tax paid under the Central Sales Tax Act, there is no further liability. It is argued that the inter-state supply of the goods of the petitioner is exempted under Section 6 of the VAT Act.

3. The learned Government Advocate, however, points out that Section 41 speaks of deduction to be made from works contract and Clause (b) and (c) of Section 41 of the Act specifically speaks of the manner in which deductions can be saved, insofar as works contracts executed within the State. No such certificate has been obtained by the petitioner.

4. The learned Central Government Counsel appearing for the Railways submits that the work commenced and continued for two years between 26.11.2011 and 21.09.2012. When the deductions were made while clearing the invoices submitted by the petitioner, the petitioner never raised an objection with respect to the tax deduction. At this distance of time there could be no claim raised for the tax deducted to be refunded. In any event, the Railways have paid up the amounts to the Government.

5. The learned counsel for the petitioner in reply submits that Section 41 has no application since it is subject to Section 6 and when there is no tax liability; being an inter-state transaction, there is no need for obtaining a certificate under the proviso to Section 41. The learned counsel would also rely on a judgment of Division Bench of this Court in **C.W.J.C. No. 10444 of 2012** titled as **PCM Cement Concrete Pvt. Ltd. Vs. The UOI and Ors.** dated 28.07.2023. The aforesaid decision followed the decision of another Division Bench exhibited as Annexure-6 in the writ petition; **M/s Pandit Electrical vs. The UOI; (2011) 2 PLJR 444.**

6. **Pandit Electrical and PCM Cement Concrete Pvt. Ltd.** (both supra) were in identical circumstances. In the first of these cases, the petitioner's company was supplying goods to the East Central Railways after paying 4% CST and the challenge was against the deduction of 4% tax of the contract amount under Section 41 of the Act. The question was whether on inter-state supply of goods, there would be a tax leviable under the State Act which was answered in favour of the assessee and against the revenue as is the established position.

7. In **PCM Cement Concrete Pvt. Ltd.**

(supra) also the contract was for manufacture and supply of goods. The decisions of the Hon'ble Supreme Court in State of **A.P. v. National Thermal Power Corpn. Ltd.; (2002) 5 SCC 203** and **Hyderabad Engg. Industries v. State of A.P.; (2011) 4 SCC 705** were noticed and relied on. In all the cited decisions there was only supply of goods and in the later case, decided by the Division Bench of this Court, pre-stressed concrete slabs and RCC ballast retainers of precise and particular specification was manufactured and supplied to the Railways. The contract itself was for the supply inter-state; the obligation of the contractor restricted to the manufacture and supply to the Railway wagon/road vehicle at the nearest Railway station/siding etc; with the contract including stacking and loading into such Railway wagon/vehicle for transportation inter-state.

8. The facts in the present case are quite distinct and different. As we notice from Annexure-1 produced in the writ petition, the contract is a works contract. A brief synopsis of the contract is produced as Annexure-A by the Railways. The description of work is as follows:-

> Supply, Dismantling, Installation Testing & Commissioning of Bogie Mounted Brake System as per RDSO Spec.No.WD-23-BMBS-2008 or latest 02-ABR-02 Rev. of latest 04-ABR-02 or latest, RDSO's Instruction Bulletin No.

RDSO/2011/WD/WMI-03 (As per list of material Annexure-A)

9. The labour cost is also specified in the contract, which makes it a works contract. The contract is not a mere supply of goods as sought to be asserted by the petitioner.

10. In the circumstance of our finding that it is a works contract, Section 41 squarely applies. The proviso to Section 41 makes every person responsible for making any payment in discharge of a liability in respect of transfer of property of goods, whether in goods or in some other form in the execution of a works contract to deduct an amount at the rate specified by the State Government. This enables the deduction by the awarder from the bills paid to the contractor. The 3rd proviso to Section 41 specifically requires a dealer to produce a certificate issued by the Deputy Commissioner, Commercial Taxes or the Assistant Commissioner, Commercial Taxes or the Commercial Taxes Officer, In-charge of the concerned Circle; where the dealer has no further liability to pay tax in terms of the provisions of either Section 15 of the CST Act or Section 6 of the VAT Act. Definitely Section 41 insofar as the deduction is concerned, is subject to Section 6; but, for absolving the awarder from deducting tax, a certificate has to be produced as has been provided under Clause (b) or Clause (c) of the 3rd

proviso of Section 41. There can be no escape from such deduction, if a certificate is not produced and it is also pertinent that the contractor, the petitioner herein never objected to the deduction, when the same was made from the invoices raised on the awarder.

11. The petitioner having not complied with the provisions of the Act there is no question of a refund at this point of time. We have already held that the decisions relied on, of two Division Benches of this Court, are not applicable to the facts of the case. We reject the writ petition leaving the parties to suffer their respective costs.

12. The writ petition stands dismissed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

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CAV DATE	
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