

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3800 of 2019

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Ircon International Ltd. a company incorporated under the Companies Act 1956 having its office at Sone Annexe Bhawan, Bir Chand Patel Path, Patna through its Joint General Manager (Finance) Rahul Kumar, son of Shri Mahendra Mishra, resident of Flat No. 303, RKM Regency, Ram Nagri, P.O. Ashiana, P.S. Rajeev Nagar, District Patna.

... .. Petitioner

Versus

1. The State of Bihar, through Commissioner of State Taxes, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Assistant Commissioner of State Taxes, West Circle, having its office at Kautilya Bhawan, Anta Ghat, Patna.
3. Commercial Taxes Officer, West Circle, Patna.

... .. Respondents

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with
Civil Writ Jurisdiction Case No. 13258 of 2019

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Ircon International Ltd. a company incorporated under the Companies Act 1956 having its office at Sone Annexe Bhawan, Bir Chand Patel Path, Patna through its General Manager Sandeep Sinha, Son of Late Satya Deo Narayan Sinha Resident of Flat No.504, Chandra Regency, Viveka Nand Marg, P.O. and P.S. Shree Krishna Puri, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through Commissioner of State Tax, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Joint Commissioner of State Tax, Patna West Circle, Patna.
3. Asst. Commissioner of Commercial Tax, Patna West Circle, Patna.

... .. Respondents

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with
Civil Writ Jurisdiction Case No. 13286 of 2019

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Ircon International Ltd. a Company incorporated under the Companies Act 1956 having its office at Sone Annexe Bhawan, Bir Chand Patel Path, Patna through its General Manager Sandeep Sinha son of Late Satya Deo Narayan Sinha resident of Flat No. 504, Chandra Regency, Viveka Nand Marg, P.O and P.S.- Shree Krishna Puri, Distt.- Patna

... .. Petitioner

Versus

1. The State of Bihar through Commissioner of State Tax, Bihar, Patna having



its office at Vikas Bhawan, Patna

2. Joint Commissioner of State Tax Patna West Circle, Patna
3. Asst. Commissioner of Commercial Tax Patna West Circle, Patna

... .. Respondents

with
Civil Writ Jurisdiction Case No. 13854 of 2019

Ircon International Ltd. a company incorporated under the Companies Act 1956 having its office at Sone Annexe Bhawan, Bir Chand Patel Path, Patna through its General Manager Sandeep Sinha Son of Late Satya Deo Narayan Sinha, resident of Flat No 504 Chandra Regency, Viveka Nand Marg, P.O. and P.S.-Shree Krishna Puri, District-Patna

... .. Petitioner

Versus

1. The State of Bihar through Commissioner of State Tax, Bihar, Patna having its office at Vikas Bhawan, Patna
2. Joint Commissioner of State Tax Patna West Circle, Patna
3. Asst. Commissioner of Commercial Tax Patna West Circle, Patna
4. Commercial Tax Officer Patna West Circle, Patna

... .. Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 3800 of 2019)

For the Petitioner : Mr. Tarun Gulati, Sr. Advocate
Mr. D.V.Pathy, Sr. Advocate
Mr. Siddhartha Prasad, Advocate
Mr. Pramod Kandpal, Advocate
Mr. Sadashiv Tiwary, Advocate
Ms. Shivani Dewella, Advocate
Mr. Hiresk Karan, Advocate

For the State : Mr. Vikash Kumar, SC-11

(In Civil Writ Jurisdiction Case No. 13258 of 2019)

For the Petitioner : Mr. Tarun Gulati, Sr. Advocate
Mr. D.V.Pathy, Sr. Advocate
Mr. Siddhartha Prasad, Advocate
Mr. Pramod Kandpal, Advocate
Mr. Sadashiv Tiwary, Advocate
Ms. Shivani Dewella, Advocate
Mr. Hiresk Karan, Advocate

For the State : Mr. Vikash Kumar, SC-11

(In Civil Writ Jurisdiction Case No. 13286 of 2019)

For the Petitioner : Mr. Tarun Gulati, Sr. Advocate
Mr. D.V.Pathy, Sr. Advocate
Mr. Siddhartha Prasad, Advocate
Mr. Pramod Kandpal, Advocate
Mr. Sadashiv Tiwary, Advocate
Ms. Shivani Dewella, Advocate



For the State : Mr. Hiresk Karan, Advocate
Mr. Vikash Kumar, SC-11
(In Civil Writ Jurisdiction Case No. 13854 of 2019)
For the Petitioner : Mr. Tarun Gulati, Sr. Advocate
Mr. D.V.Pathy, Sr. Advocate
Mr. Siddhartha Prasad, Advocate
Mr. Pramod Kandpal, Advocate
Mr. Sadashiv Tiwary, Advocate
Ms. Shivani Dewella, Advocate
Mr. Hiresk Karan, Advocate
For the State : Mr. Vikash Kumar, SC-11

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 25-02-2026

These four writ applications have been taken together for consideration. We would extract the prayers made in the writ applications hereunder for a ready reference:-

CWJC No. 3800 of 2019

2. In this writ application, the petitioner prays for the following reliefs:-

“(i) The respondent no.2 be directed to refund a sum of Rs. 18.52 Crores recovered pursuant to a notice under section 47 of the Bihar Value Added Tax Act, 2005 for the period 2012-13.

(ii) For granting any other relief(s) to which the petitioner is otherwise found entitled to.”

3. It is the case of the petitioner that the petitioner filed its return for the period 2012-13 giving true and fair disclosure of its turnover and paid the taxes accordingly. For the period under consideration, the petitioner was entrusted with the work of



fabrication, erection and installation of the steel structures in relation to Ganga Bridge project at Digha Ghat, Patna. For the purposes of execution of the project awarded to it, the petitioner used iron and steel structures and also incurred substantial expenses towards labour. The petitioner claimed deductions on account of labour expenses and payments made to the subcontractor and the petitioner paid tax at the rate of 5% on transfer of property in goods in the nature of iron and steel.

4. The audit raised an objection *inter alia* that the petitioner has claimed expenditure on account of labour and has paid tax at the rate of 5 percent on iron and steel, whereas the same are taxable at the rate of 13.5 percent. The petitioner was served with a notice dated 17.02.2018 issued by respondent no.3 for the period 2012-13.

5. It is the case of the petitioner that the respondent no.3 held that the iron and steel transferred in the execution of the works contract is fabricated iron and steel structure and is not covered by Section 14(1)(d) of the Central Sales Tax (in short 'CST') Act. The respondent accordingly brought the same to tax at the rate of 13.5 percent and also charged interest on the tax computed.



6. Aggrieved by the order of assessment, the petitioner filed an application for revision before the respondent no.1 along with petition for stay of demand and also filed an application for early hearing of the revision. During pendency of the revision and the stay application, the respondent no.2 attached the bank account of the petitioner maintained with the Central Bank of India, Buddh Marg Branch to recover the whole of the amount in dispute raised in pursuance of an order of assessment.

7. Aggrieved by the recovery, the petitioner filed a writ petition vide CWJC No. 17239 of 2018 before this Court on the grounds *inter alia* that the action of respondent no.2 in the issue of notice under Section 47 of the Act to recover the whole of the amount in dispute in the facts of the case is illegal. This Court, after hearing the parties, held that petitioner should file an appeal before the appellate authority and pay a sum equal to 20 percent of the amount in dispute. This Court directed that the notice of recovery in Section 47 of the Act shall be kept in abeyance until consideration of the stay application. In compliance with the order of this Court, the petitioner paid a sum of Rs. 5.83 Crores and also filed an appeal before learned Joint Commissioner of Commercial Taxes (Appeal), West Division, Patna, along with the petition for stay.



8. The petitioner has given narration of the submissions made before the Joint Commissioner of Commercial Taxes (Appeal). It, however, appears that the Joint Commissioner (Appeal) directed the petitioner to pay a sum equal to 50 percent of the amount in dispute as a condition for grant of ad-interim stay during the pendency of the appeal. The petitioner filed a revision application before respondent no.1 and also filed an application for early hearing of the revision. It is his grievance that respondent no. 2 proceeded to recover the whole of the amount in dispute and recovered a sum of Rs. 27.38 Crores by attachment of the bank account of the petitioner maintained with the Central Bank of India, Buddh Marg Branch.

9. The petitioner is aggrieved by the disallowance of claim on account of labour expenses as according to him, the entire claim was made on the basis of receipts from the Railways under such head and the petitioner had received payment from Indian Railways under three different categories, one being of labour and the other being supply of material. The petitioner also claims that reading of the definition of iron and steel in Section 14 of the CST Act would make it abundantly clear that all steel structures are iron and steel.



10. A counter-affidavit has been filed on behalf of respondent Assistant Commissioner of State Taxes, West Circle, Patna. It is the stand of the respondent that the contention of the petitioner is not correct. The Assessing Officer allowed 30 percent of the gross turnover (GTO) under deduction claimed under supply of labour and services (as per notification S.O. 242 dated 28 September 2016) and the remaining amount has been rejected as petitioner did not submit proper documents such as bill of supply, appended schedules along with the running account bill, copy of agreement to the subcontractor, proof of payment and the bifurcation of the payment being made to subcontractor at the time of hearing. The respondent further contended that the dealer has paid tax on iron steel structures at the rate of 5 percent in terms of Schedule IV of the Bihar Value Added Tax Act, 2005 but after looking at the detail being provided by the dealer, such as running account bill and contract order, it would be clear that the transfer of property is in the form of structure of steel, which is independently a form of goods. Steel structure does not come under the provision of Schedule IV of the Bihar VAT Act, 2005, therefore, it is unscheduled goods on which chargeability of tax is at the rate of 13.5 percent.



11. A supplementary affidavit has been filed on behalf of the petitioner through its Joint General Manager (Finance). In paragraph '2' and '3' of the said supplementary affidavit, the petitioner has made the following statements:-

“2. That the petitioner has filed the present writ application for a direction to the respondent no.2 to refund a sum of Rs. 18.52 Crores recovered in pursuance of a notice under Section 47 of the Act.

3. That the petitioner states that the respondent no.2 while proceeding to make a hasty recovery did not take into consideration the fact that a sum of Rs. 60 lakhs, Rs. 1.40 lakhs and Rs. 24.71 lakhs totalling 2 Crores for the period 2005-06, 2006-07 and 2011-12 being an amount of excess tax paid in pursuance of an order of assessment. The petitioner may mention here that it has filed three separate writ petition for the said three years before this Hon'ble Court.”

12. Having gone through the entire pleadings on the record, we are of the considered opinion that the result of this case is directly dependent upon the decisions of this Court in CWJC No. 3600 of 2020, CWJC No.11625 of 2019 and CWJC No. 1716 of 2023 which involve common questions.

13. In view of the dismissal of those three writ applications, this writ application is liable to be dismissed and we do so accordingly.



CWJC No. 13258 of 2019, CWJC 13286 of 2019 and

CWJC 13854 of 2019

14. It appears that in the supplementary affidavit filed by the petitioner in CWJC No. 3800 of 2019, the petitioner is referring to these three writ applications.

15. In CWJC No. 13258 of 2019, the petitioner prays for the following reliefs:-

“(i) The respondent no. 3 be directed to refund a sum of Rs. 60 Lacs for the period 2005-06 with interest under section 68 of the Bihar Value Added Tax Act, 2005 (hereinafter called the Act).

(ii) For granting any other relief (s) to which the petitioner is otherwise found entitled to.”

16. In CWJC No. 13286 of 2019, the petitioner prays for the following reliefs:-

“(i) The respondent no. 3 be directed to refund a sum of Rs. 1.40 Lacs for the period 2006-07 with interest under section 68 of the Bihar Value Added Tax Act, 2005 (hereinafter called the Act).

(ii) For granting any other relief (s) to which the petitioner is otherwise found entitled to.”

17. In CWJC No. 13854 of 2019, the petitioner prays for the following reliefs:-

“(i) The respondent no. 3 be directed to refund a sum of Rs. 24,71,032 for the period 2011-12 with interest thereon under section 68 of the Bihar Value Added Tax Act, 2005 (hereinafter called the Act).

(ii) For granting any other relief (s) to which the petitioner is otherwise found entitled to.”



18. We have taken CWJC No. 13258 of 2019 to notice the facts involved in these three writ applications. It is the case of the petitioner that the petitioner filed its return for the period 2005–06, made true and fair disclosure therein and also paid the taxes accordingly. The petitioner claimed that for the purposes of execution of works contract, it has made payment to subcontractors and has deducted tax at source on payments made to them to the extent of material used in the usual course of the works contract. The petitioner has filed deduction of taxes at source and has filed the monthly and quarterly return in the prescribed form and in the prescribed manner. The CAG, however, raised an objection that the petitioner has deducted tax at source at lower rates on payments made to subcontractors and was required to pay the difference between the tax deductible and tax deducted. Accordingly, a notice was issued to the petitioner under Section 33 of the Act. The audit had raised a common and consolidated objection for the period 2005-06 and 2006-07.

19. It is stated that in course of hearing, the petitioner appeared through its Advocate before respondent no.3 and filed details of payments made to the subcontractors and also deduction of tax at source thereon together with the monthly and quarterly returns in the prescribed form. The grievance of the petitioner is



that the respondent no.2 rejected the petition of the petitioner on the solitary ground that the Advocate did not file his Vakalatnama. The respondent proceeded to pass an ex-parte order of penalty. It is stated that respondent no.2 imposed penalty under Section 41(6) of the Act and passed a single order and demand notice for the period 2005-06 and 2006-07.

20. It is stated that being aggrieved by the order, the petitioner filed a revision before respondent no.1 on the grounds *inter alia* that no notice under Section 41(6) of the Act was issued prior to imposition of the penalty thereunder and the proceedings were initiated only on the observations/objections of the CAG and that tax at source was deducted only on the material comprised in the execution of the works contract supplied by the subcontractor. It is stated that the petitioner also filed a stay application but upon hearing, the respondent no.1 directed the petitioner to pay a sum of Rs. 2 Crores as a condition for stay of the balance amount of penalty. Thereafter, the petitioner deposited a sum of Rs. 2 Crores for the period 2005-06 (Rs. 60 lakhs for the period 2005-06 and Rs. 1.40 lakhs for the period 2006-07). Thereafter, respondent no.1 passed final order setting aside the order imposing penalty under Section 41(6) of the Act. The respondent no.2, however, did not pass any order in pursuance of the order in revision passed by



respondent no.1. The petitioner, after a long wait, thereafter filed a consolidated application for refund of an amount of Rs. 2 Crores in prescribed form and in the prescribed manner. The petitioner approached respondent no.2 and also respondent no.3 time without numbers but no order whatsoever was passed on the refund application.

21. The counter-affidavit filed on behalf of respondent nos. 2 and 3 is on the record. It is the case of the respondents that before fresh order could be passed, the petitioner filed a refund application before the Circle In-charge demanding a refund of Rs. 60 lakhs. The refund application was not filed before the competent authority i.e. the Additional Commissioner of State Taxes (under VAT: Joint Commissioner of Commercial Taxes), Administration, Patna West Division, the refund application was premature as the same had been filed before the fresh order was passed by the respondent authorities.

22. It is the case of the respondents that the respondent no.3 was under obligation to pass fresh penalty order before the expiry of the year following the year during which the *suo moto* revision order was passed by the Commissioner (respondent no.1). It is contended that Section 37 of the Bihar VAT Act does not prescribe any limitation and whatever limitation has been



prescribed under Section 37 is applicable to tax assessment proceeding and not to penalty proceedings. Referring to the questions of law framed in paragraph '2' of the writ petition, it is submitted that the petitioner is not correct in contending that the order passed by respondent no.1 has become final in view of the time limited prescribed under Section 37 of the Act.

23. It is evident that an identical counter-affidavit has been filed by respondent nos.2 and 3 in CWJC No. 13286 of 2019 also.

24. In CWJC No. 13854 of 2019, the petitioner claims that the petitioner has filed its return for the period 2011-12 and made true and fair disclosure therein and paid taxes accordingly. The petitioner claimed output tax of Rs. 5,22,49,261/- and input tax credit of Rs. 5,47,20,294/-. The petitioner claimed carry forward of unadjusted input tax credit amounting to Rs. 24,71,032/-.

25. It is stated that the petitioner also filed its return for the period 2012-13 but in the said return, the petitioner had not carried forward input tax credit of the year preceding amounting to Rs. 24,71,032/-. It is submitted that the return filed by the petitioner for the period 2011-12 was not selected either for scrutiny or audit, therefore, the return is deemed to be assessed.



However, the audit objections were raised and respondent no.4 initiated reassessment proceedings for the period 2012-13. The respondent no.4 passed an order of assessment under Section 31 of the Act on the basis of the objections. It is the submission of the petitioner that the petitioner had not carried forward the unadjusted input tax credit for the period 2011-12 in its return for the period 2012-13. According to the petitioner, the unadjusted input tax credit constitutes excess payments of tax and is thus refundable.

26. The petitioner filed an application for refund of the excess input tax credit for the period 2011-12 in the prescribed form and in the prescribed manner and thereafter approached respondent nos. 2 and 3 time without members but in vain.

27. A counter-affidavit has been filed in this case on behalf of respondent nos.2 and 3. It is the contention of the respondents that the petitioner claimed the differential amount of Rs. 24,71,032/- as an unadjusted input tax credit but the same was not shown as brought forward input tax credit in the return filed for the year 2012-13. It is submitted that the petitioner is not entitled to the claim refund because of the reasons mentioned in the statements. Even if it were entitled to the claim refund for 2011-12, the same could not have been made because an assessed tax amount of Rs. 33,46,03,529.89/- is due from the petitioner for



the year 2013-14. According to Sections 68 to 70 of the Bihar VAT Act, a refund (for a particular year) cannot be made to a dealer who owes money to the department (in respect of other years).

28. It is further contended that the petitioner has not filed the Tax Audit Report (TAR) for the year, which is a precondition for refund of input tax credit as mandated in the first proviso to Section 16(1). Moreover, the input tax credit was carried forward by the petitioner during 2012-13, which implies that the petitioner was not entitled to input tax refund as per the proviso to Section 16(1A). It is stated that in part III of its annual return for 2011-12, the petitioner has shown to have made intra-state purchases to the tune of Rs. 97,51,31,710.96/- (corresponding input tax Rs. 4,87,56,584.54/-) only but has claimed input tax credit on Rs. 1,12,42,24,444.7/- (corresponding input tax Rs. 5,47,20,294.9/-). As per VATMIS also, the intra-state purchases of the petitioner were Rs. 97,51,31,710.96/- only. Thus, the claim of the petitioner is false and contradictory.

29. We have noticed that in all these three writ applications, respondents have filed detailed counter-affidavits and given the reasons for denying the claim of the petitioner. Copies of the counter-affidavits were served on learned counsel for the petitioner several years ago but the petitioner has not mustered



courage to deny the averments made in the counter-affidavits. The respondents have gone to the extent of saying that the claims are false, still the petitioner has not come out with its denial.

30. In the circumstances, we are of the considered opinion that these writ applications have no merit and are dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

SUSHMA2/Rishi

AFR/NAFR	
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