(2016) 03 PAT CK 0153

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 19154 of 2015

M/s. S & P Infrastructure Developers Pvt. Ltd. APPELLANT

Vs

State of Bihar RESPONDENT

Date of Decision : 03-03-2016

Acts Referred:

Bihar Value Added Tax Act, 2005 — Section 41
Bihar Value Added Tax Rules, 2005 — Rule 29
Constitution of India, 1950 — Article 226

Citation : (2016) 4 PLJR 149

Hon'ble Judges : Mr. Ramesh Kumar Datta and Mr. Sudhir Singh, JJ.

Bench : Division Bench

Advocate : Mr. Gautam Kumar Kejriwal & Ms. Aishwarya Riti, Advocates, for the Petitioners; Mr. A.B. Mathur, CGC, for the UOI; Mr. Bijoy Kumar Sinha, AC to AAG - IX, for the State; Mr. J.P. Karn (Sr. Advocate.), for the Acct. General (Audit)

Final Decision : Allowed

Judgement

Mr. Ramesh Kumar Datta, J. (Oral)—Heard learned counsel for the petitioner and learned counsels for the State, Accountant General, Bihar and for the Union of India.

2. The petitioner seeks a direction upon the respondents to refund a sum of Rs. 22,10,423/- being the excess amount deducted from the sixth and seventh running account bills of the petitioner for execution of work pertaining to an agreement dated 4.3.2014 and further restraining them from making deduction of sales tax under the Bihar VAT Act, 2005 from the gross amount of running account bills and to do so strictly in accordance with Section 41 of the Bihar VAT Act read with Rule 29 of the Bihar Vat Rules, 2005 and for consequential reliefs.

3. So far as the issue raised by learned counsel for the petitioner in the present matter is concerned, the same is squarely covered by the directions of this Court in the order dated 7.7.2015 passed in CWJC No. 9870/2012 (M/s. Debashree Constructions (India) Pvt. Ltd. v. Ircon International Limited & ors. and its

analogous cases. It has been clearly held by this Court in the said order that it is the obligation of the authorities to comply with the provisions of the Bihar VAT Act and the Rules and if the Act and the Rules provide that deduction shall not be made with regard to certain items, it is not permissible for the person making the deduction of tax at source to continue to make deduction of the entire amount from the bills without giving the benefit as provided under the Rules which is couched in the form of injunction and violation of the same is legally impermissible. The deducting authorities were, accordingly, directed to strictly comply with the provisions of Section 41 of the Bihar VAT Act and Rule 29 of the Bihar VAT Rules in the matter of making deduction and wherever the details were provided to them by the petitioner-contractor or were available to them then they were obliged not to make deduction with regard to the heads mentioned therein and the TDS was to be deducted with respect to the remaining part of the bills.

4. In view of the aforesaid directions of this Court it is not open to any person deducting tax at source under the Bihar VAT Act to do so otherwise than directed and doing so would be a clear attempt to override the direction of this Court.

5. In the present matter the stand has been taken by the authorities of the National Highways Division that till the running bill No. 5 they had been making deductions at source in terms of the provisions of Section 41 of the Act read with Rule 29 but on account of the directions issued by the Accountant General, Bihar they were compelled to make deductions from the gross bills.

6. The stand of the Accountant General is that they have done so on the basis of the circular issued by the Department and also the decision of this Court in the case of Abdul Majeed Khan v. The State of Bihar & Ors., 2010(3) PLJR 782.

7. In M/s. Debashree Constructions (India) Pvt. Ltd. case this Court has already taken into account the above decision of a Division Bench of this Court and no where the said decision laid down that deductions are to be made from the gross value of the bills ; rather while holding the provisions of Section 41 and Rule 29 of the Bihar VAT Act and the Rules as intra vires, this Court was at pains to point out that sufficient provisions have been made so that no deductions are made beyond the powers of State Legislature to levy tax on such works contractors, relying specifically on the provisions regarding not making any deductions with regard to such payment or any part thereof which relates to such transfer of property or goods-whether as goods or in some other form-involving execution of the works contract as also where transaction in question is covered by Section 15 of the Central Sales Tax Act or Section 6 of the Act and it is only in the latter cases that the certificates of the Deputy Commissioner, Commercial Taxes or the Assistant Commissioner, Commercial Taxes or the Commercial Taxes Officer are required ; but not where payment does not relate to transfer of property in any goods, whether as goods or in some other form involved in the execution of the work. Thus, it is clear that no certificate is required for not making deductions with regard to such part of the transaction as does not involve any transfer of

property and there is no question of deduction on account of payment of labour charge and the person making deduction is obliged not to make deduction with respect to the part of the amount which does not relate to transfer of property, service charge, etc. enumerated in detail in Rule 29 of the Rules.

8. In the aforesaid view of the matter, the writ application is allowed. The impugned letter dated 18.2.2015 of the Accountant General (Audit), Bihar, in so far as it directs the deduction on the gross amount of the bill, is quashed.

9. The respondents are further directed not to make any deduction contrary to the provisions of Section 41 and Rule 29 of the Rules as have been explained by this Court in M/s. Debashree Constructions case (supra). Any excess amount deducted by the respondents shall be refunded to the petitioner within a period of four weeks from the date of receipt/production of a copy of this order.