

VAT not applicable on inter-state sale of goods

The Hon'ble Patna High Court in *PCM Cement Concrete Pvt. Ltd. v. The Union of India [Civil Writ No. 10444 of 2012 dated July 28, 2023]* held that VAT was wrongly collected by the Indian Railways by misunderstanding the transaction as intra-state sale. The Indian Railways is liable to refund the illegal tax collected and can further claim the refund from the Bihar Value Added Tax Department.

Facts:

M/s. PCM Cement Concrete Pvt. Ltd. ("**the Petitioner**") entered into agreement with the East Central Railway ("**the Indian Railways**") to manufacture pre-stressed concrete slabs and transport to the nearest Railway station.

The Indian Railways withheld the advance to the extent of value added tax purportedly under the provisions of Section 40 and 41 of the Bihar Value Added Tax Act, 2005 ("**the Bihar VAT Act**"), on the ground that the transaction is an intra-state transaction.

The Petitioner contented that the said amounts were illegally deducted, since the VAT Act has absolutely no applicability since the manufacture and supply of the goods by the Petitioner to the Railways was an inter-state sale and thus the Bihar VAT Act is not applicable.

The Petitioner filed writ before the Hon'ble Patna High Court seeking refund of VAT illegally withheld from the State of Bihar.

Issue:

Whether the recipient is liable to refund the illegal tax collected from the supplier by misinterpreting the intra-state sale as inter-state in VAT regime?

Held:

The Hon'ble Patna High Court in ***Civil Writ No. 10444 of 2012***, held as under:

- Observed that, the Petitioner manufacture and supply the pre-stressed concrete bridge slabs and load them in a railway wagon which is then transported to the site in the State of Bihar for installation by the Railways.
- Noted that, where the movement of goods independently takes place after the contract of sale would not make the transaction an inter-state sale.
- Noted that, the contention of Indian Railways that the transaction is a works contract is wrong. Thus, the Indian Railways is bound to refund the illegal tax deduction made from the bills to the Petitioner. However, the Indian Railways could definitely apply for refund from the Bihar Value Added Tax Department.

(Author can be reached at info@a2ztaxcorp.com)

DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose and for the reader's personal non-commercial use. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon. Further, no portion of our article or newsletter should be used for any purpose(s) unless authorized in writing and we reserve a legal right for any infringement on usage of our article or newsletter without prior permission.