IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8898 of 2016

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Ranjit Buildcon Ltd., a Company incorporated under the Companies Act, 1956 having its office at Ranjit House, Opposite Sun Residency, B/H Bhagwat Bunglow , R/H Side Road of the Goga Maharaj Mandir , Thaltej, PO+PS- Thaltej, District Ahmedabad through its authorized Signatory Shri Mahesh Patel Sono of Shri Narrottamdas Patel Resident of 203, Samathya, Heights , Near Jodhpurgam, Po+PS- Satellite, District Ahmadebad-380015

.... Petitioner/s

Versus

1. State of Bihar through the Commissioner of Commercial Taxes, Bihar Patna having its Office at Vikas Bhawan, Bailey Road, Patna.
2. Assistant Commissioner of Commercial Taxes, Special Circle, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.V.Pathy, Advocate.
Mrs. Manju Jha, Advocate.

For the Respondent/s : Mr. Pawan Kumar, AC to GA-9

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)
Date: 27-07-2016

The challenge in the present writ petition is to an order dated 30.11.2015 passed by the Assistant Commissioner of Commercial Taxes, Patna Special Circle, Patna under Section 31(1) of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as the 'Act') and also consequent demand raised on 05.12.2015.

Learned counsel for the petitioner vehemently argued that an order has been passed in exercise of the provisions of Section 31 of the Act without satisfying the pre-condition thereof and, therefore, this Court should intervene in the matter and not relegate the petitioner to the alternative statutory remedy of appeal. It is contended that the petitioner has purchased goods from the registered dealer within the State and paid taxes on it, but for non-payment of taxes by the selling registered dealer within the State, the petitioner cannot be made liable to pay taxes again.

In support of the arguments, he relies upon the judgment of this Court passed in CWJC No. 7436 of 2015 [Unitech Wireless (Tamilnadu) Pvt. Limited vs. The State of Bihar & Ors.] decided on 11.08.2015 and that also of the Supreme Court in the case of Chhugamal Rajpal vs S.P.Chaliha & Ors., 79 ITR 603 (SC).

We have heard learned counsel for the petitioner and find that the petitioner cannot be permitted to by-pass the statutory alternative remedy of appeal. We may notice that the impugned order was passed by the Assessing Officer on 30.11.2015 and in terms of Section 72 of the Act, an appeal can be filed within 45 days, but the present writ petition has been filed on 17.05.2016 after the period of limitation of filing an appeal has come to an end. It is a clear attempt to by-pass the statutory remedy after the expiry of limitation period.

Not only the Statute contemplates appeal but also contemplates revision; and further, appeal to the High Court. All questions of law and fact, can be raised by the petitioner in an appeal. The High Court will intervene at an appropriate stage when there is finding of fact recorded to enable the this Court to decide the questions of law, but after an order of assessment has been passed and without availing the other statutory remedies, the invocation of jurisdiction of this Court is not justified.

We do not find any reason to interfere in the assessment order passed by ignoring the statutory remedy of appeal available to the petitioner.

In view thereof, the present writ petition is dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	01.08.2016
Transmission Date	