IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14552 of 2017

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M/s Baba Project Pvt. Ltd., N.T.P.C. Contractor Colony, Kahalgaon, Bhagalpur through its Site Incharge Jitendra Kumar Sen of Jeewan Lal Sharma, Resident of Saket Puri, East of Bahadurpur, Near Bazar Samiti, P.S.- Bahadurpur District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner of Commercial Taxes, Bihar, Vikas Bhawan, Bailey Road, Patna.
2. The Principal Secretary cum Commissioner of Commercial Taxes, Bihar, Vikas Bhawan, Bailey Road, Patna.
3. The Commissioner, Commercial Taxes, Bihar, Vikas Bhawan, Bailey Road, Patna.
4. The Joint Commissioner, Commercial Taxes, (Administration) Bhagalpur Circle, Bhagalpur.
5. The Joint Commissioner, Commercial Taxes, (Appeal) Bhagalpur Circle, Bhagalpur.
6. The Deputy Commissioner, Commercial Taxes, Bhagalpur Circle, Bhagalpur.
7. The Assistant Commissioner, Commercial Taxes, Bhagalpur Circle, Bhagalpur.
8. The Branch Manager, State Bank of India, RMCC, Bariatu, Ranchi (Jharkhand).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sushmita Mishra

For the Respondent/s : Mr.Lalit Kishore, AG

Mr.Vikash Kumar, SC 11

For Respondent SBI : Mr. Satya Prakash Tripathi

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 17-10-2017

Challenge in this writ petition under Article 226 of the Constitution is made to a notice of demand dated 27.12.2016 issued by the statutory authority under Section 47 of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as `the Act'), whereby the petitioner has been directed to pay the amount of penalty assessed against the petitioner.

Records indicate that after orders were passed imposing penalty and tax vide Annexure-5 dated 05.10.2016 under Section 32(3) of the Act, petitioner preferred appeal before respondent no.5 being Appeal No. BHST 38/2016-17. When the appeal was pending and show cause was issued on 27.12.2016 the petitioner approached this Court by filing a writ petition being CWJC No. 2669 of 2017. This Court found that against imposition of penalty an appeal filed by the petitioner is already pending and, therefore, the petitioner should approach the appellate court where the matter is pending and seeks stay of the demand notice.

Now the grievance of the petitioner is that even though in pursuance of the order dated 09.05.2017 in CWJC No. 2669 of 2017 the petitioner preferred application before the appellate authority but the appellate authority without adverting to consider the same has dismissed the appeal on merit vide Annexure-10. However, the petitioner has not challenged the appellate order before this Court rightly so because the petitioner has statutory remedy of further filing a revision against the aforesaid order. But petitioner’s only contention is that without considering his application for stay the proceeding under Section 47 of the Act which is continuing and by placing reliance on certain judgments rendered by this Court has tried to make out a case by contending that special procedure for recovery under Section 47 of the Act cannot be initiated.

Shri Vikash Kumar, learned counsel for the State, objects to the maintainability of this writ petition and argues that for the present only a demand notice has been issued and once the original appeal filed against the order passed under Section 32(2) of the Act has been dismissed, the petitioner should take recourse to the remedy available of filing a revision where all issues including the proceeding initiated under Section 47 of the Act can be looked into and the petition is not maintainable.

We see much force in the objection raised by Mr. Vikash Kumar, learned counsel representing the respondents. Petitioner has statutory remedy under the Act itself and, therefore, we are not inclined to interfere into the matter.

Writ petition is dismissed with liberty to the petitioner to challenge the impugned action before the statutory appellate authority or revisional authority in accordance with law.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl./-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	18/10/2017
Transmission Date	N.A.