IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15403 of 2015

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M/s A2Z Maintenance and Engineering Services Ltd. @ M/s A2Z Infra Engineering through its Account Officer Mr. Shishir Kumar, having its Registered Office at 0-116, First Floor, Shopping Mall, DLF City, Phase-I, Gurgaon-122002, (Haryana) and Regional Office at - Dev Sidhi Palaza, Kankarbagh, Patna-800001.

.... Petitioner

Versus

1. The State of Bihar through Commissioner, Commercial Tax Department, New Secretariat, Patna.
2. Assistant Commissioner of Commercial Taxes, Commercial Tax Department, Special Circle, Patna.
3. M/s North Bihar Power Distribution Company Limited through its Managing Director, Viduthe Bhawan, Bailey Road, Patna.
4. M/s N.H.P.C. Limited (Formerly known as National Hydroelectric Power Corporation Ltd.) through its Managing Director, Vidhute Bhawan, Bailey Road, Patna-800001.

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Anurag Saurav, Advocate.
For the Respondent-State: Mr. (PAG).
For the Respondent(NHPC): Mr. Rajeshwar Prasad, Advocate.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 07-03-2018

Inter alia contending that respondent no. 4 be commanded to issue Declaratory Form, i.e., C-Form to the petitioner as per the provision of Section 8(4) of the Central Sales Tax Act, 1956 for the sale in question in pursuance to the agreement, this Writ Petition has been filed on notice being issued to respondents no. 3 and 4. They appeared and filed counter affidavit and raised a preliminary objection with regard to maintainability of this Writ Petition.

Learned counsel representing the respondent no. 4 brings to our notice an order earlier passed on 19.01.2016 in CWJC No. 5847/2015 between the same parties wherein, according to the learned counsel for the respondent no. 4, the Writ Petition filed by the petitioner on identical issue has been dismissed and, therefore, it is stated that merely because the present Writ Application has been filed for subsequent assessment of the financial year, this Writ Application is not maintainable.

Even though learned counsel for the petitioner vehemently opposed the preliminary objection, we find that earlier when an assessment order was passed on 02.02.1995 for an earlier assessment year under the provisions of Section 31 of the Bihar VAT Act, 2005, in CWJC No. 5847/2015, on 19.01.2016 a co-ordinate bench of this Court considered the issue in question and, in that case, the assessment order was primarily challenged on account of the fact that the petitioner is not liable to pay the tax and he has been imposed with the liability only because the respondent no. 4 did not issue Form-C certificate as required under the provisions of the Central Sales Tax Act, 1956.

In the earlier Writ Petition, i.e., CWJC No. 5847/2015 it was the case of the respondent no. 4, who is the respondent no. 4 in the present petition also, that for the same agreement due to which the present cause of action accrues, Clause 8.5 contemplates the provision, i.e., at the first instance, it would be the petitioner himself who shall pay the tax and thereafter he shall claim for refund of the tax paid from the Member Director or the employer, namely, respondent no. 4, and it is stated that this contention of the petitioner was rejected and it was held by this Court that Form-C cannot be issued. The petitioner is bound by the provisions of Clause 8.5 of the Agreement and the similar prayer was for issuance of Form-C certificate has been rejected and the petitioner was relegated to challenge the assessment order by filing an appeal under the statutory provision. In this case also even though the assessment order is not made, the petitioner wants issuance of Form-C certificate and mandamus to that regard against respondents no. 3 and 4 and under Clause 8.5 of the Agreement entered into between the parties.

We find that the agreement as indicated hereinabove took place and there is a specific condition on the agreement for payment of tax, as the mandamus sought for is contrary to Clause 8.5 of the Agreement, we are of the considered view that on the grounds and reasons already rejected by this Court on 19.01.2016 in CWJC No. 5847/2015 between the same parties. This petition is not maintainable.

Granting liberty to the petitioner to challenge the order afresh in accordance with law before the statutory appellate authority, the petition stands dismissed upholding the preliminary objection raised by the respondent no. 4.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12.03.2018
Transmission Date	N/A