IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4986 of 2019

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M/s Alstom Bharat Forge Power Pvt. Ltd presently known as GE Power Systems India Pvt. Ltd., Registered Office at A-18, 1st Floor, Okhla Industrial Area, Phase-II, New Delhi, South Delhi India having its Branch Office at Nabhinagar, Aurangabad, Bihar through its Authorized Representative Jaikishan Sandey, Aged about 33 years (M), Son of Parmeshwar Prasad Sandey, Resident of 347 New Bus Stand Ke Piche, Ward No. 21, P.O. and P.S.- Janjgir, District- Janjgir Champa (Chhatisgarh).

... ... Petitioner/s

Versus

1. The State of Bihar Through the Secretary, Commercial Taxes, Govt. of Bihar
2. Commissioner of Commercial Taxes Patna, Bihar.
3. Deputy Commissioner of Commercial Taxes, Aurangabad, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Alok Yadav with Mr. Brisketu Sharan Pandey and Mr. Prince Kumar Mishra, Advocates
For the Respondent/s	:	Mr. Vivek Prasad (GP 7)

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 28-03-2019

Heard Mr. Alok Yadav, learned counsel appearing for the petitioner and Mr. Vivek Prasad, learned Govt. Pleader No. 7 appearing for the State.

In the nature of the order that we propose to pass, we do not deem it necessary to delve into the merits of the case. However, for the purpose of disposal of the matter, we need to take note of the grievances raised by the petitioner and which is directed towards an order dated 28.02.2019 passed by the

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Special Commissioner, State Taxes, Patna, whereby revision of the petitioner has been partially disallowed. A copy of the order is impugned at Annexure-P/1.

We say that the revisional order partially allows the relief to the petitioner because of the four assessment orders so passed by the assessing authority for assessment year(s) 2014-15, 2015-16, 2016-17 and 2017-18 (1^{st} Quarter), which raised issues relatable to production of the documents i.e. Form C, Form E-I, Form E-II and the Bill of Export towards High Sea Sales made by the petitioner for the purpose of exemption that while the Special Commissioner has accepted the explanation of the petitioner insofar as the assessment years 2016-17 and 2017-18 is concerned for exemption at the circle level, but insofar as the assessment order for the assessment years 2014-15 and 2015-16 is concerned, it has been disallowed because in the opinion of the Special Commissioner, in view of the cut off date fixed by this Court while disposing of the writ petition bearing C.W.J.C. Nos. 3576 of 2017 heard analogous with C.W.J.C. No. 3661 of 2017 for production of such documents i.e. 6^{th} of March, 2018, had long lapsed and whereafter the petitioner was estopped from making any plea for production of these forms. A copy of the order passed by this Court in the earlier round of

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litigation, as taken note of above, is at Annexure-P/3.

It is appreciating the arguments advanced on behalf of the petitioner regarding denial of reasonable opportunity for production of the forms in question that liberty was granted by a co-ordinate Bench to the petitioner for production of the documents until 06.03.2018 for availing of the benefit. The operative portion of the order passed by this Court in the earlier round of litigation reads as under :

> *"Taking into account all aspect of the matter, we are of the considered view that it is a fit case where instead of relegating the petitioner to take recourse to the statutory alternative remedy interest of justice would be met if it is remitted to the Assessing Officer with a direction to proceed with the assessment afresh in accordance with law. In view of the above we allow both the writ petitions, quash the orders passed by the Assessing Officer and issue the following directions :-*
>
> *(1) Petitioner shall appear before the Assessing Officer along with a certified copy of this order on 6th of March, 2018, produce all relevant documents and materials in support of their contention and thereafter the Assessing Officer shall proceed with the assessment and conclude the proceeding in accordance with law after affording opportunity to the petitioner, with a reasonable period of time.*

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(2) It is made clear that it shall be incumbent upon the petitioners to produce all relevant documents in support of their contention on 6th of March, 2018 itself and thereafter it would be in the discretion of the Assessing Officer to permit production of any further document or evidence if required during the pendency of the proceedings."

Be it noted that the issue at that stage related to the assessment years 2014-15 and 2015-16.

The matter on remand was considered by the Assessing Authority who vide order passed on 14.03.2018 disallowed the claims advanced by the petitioner for computation of tax on the basis of the reflection shown in the returns as per Form C, Form E-I, Form E-II insofar as inter-state sales is concerned and the Bill of Export insofar as High Sea Sales is concerned because as per the Assessing Authority the computation of the liability had been made to the extent the forms in question were produced by the petitioner for each of the two assessment years while for the remaining transactions, the general rate of tax has been applied.

That orders passed for the respective assessment years 2014-15 and 2015-16 are each dated 14.03.2018 and are enclosed at Annexure- P/4 and P/5 of the writ petition.

In between this period, two more assessment orders

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came to be passed for the period 2016-17 and 2017-18 wherein similar disallowance had been passed.

The petitioner feeling aggrieved by such orders moved before the Special Commissioner by filing a revision application giving rise to Revision Case Nos. CC(S) 431-434 of 2017-18 which related to the assessment years 2014-15, 2015-16, 2016-17 and 2017-18, which applications have been disposed in the manner explained above.

The contention which is being advanced by Mr. Yadav, learned counsel for the petitioner to contest the order of the Commissioner is that while in the same plea advanced by the petitioner in respect of assessment years 2016-17 and 2017-18 the Commissioner was persuaded to allow the matter to be examined by the Assessing Officer for the production of the relevant forms i.e. Form C, Form E-I, Form E-II and the Bill of Export of the High Sea Sales for the period 2016-17 & 2017-18, but insofar as the period 2014-15 and 2015-16 are concerned, the prayer of the petitioner has been disallowed taking recourse to the timeline fixed by this Court of 6th of March, 2018. He submits that these are forms which are to be provided by the respective recipient of the goods after obtaining them from the respective Commercial Taxes Departments across the country

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and over which the petitioner has no control save and except making request to the recipient of the goods to make available the documents and which causes such kind of delay.

The position as it stands is that the petitioner has yet not been able to produce the forms which yet is awaited for the period in question. In case the petitioner would have obtained the forms in question, perhaps, we would have remitted the matter to the Commissioner for reexamining the issue but the position is that even as of date there has been no change in the circumstances in between the orders passed by the Assessing Authority and the order impugned passed by the Special Commissioner because petitioner is yet to receive these forms from the respective recipient of the goods.

We are aware of the opinion expressed by the Courts on the issue of production of Form C, Form E-I, Form E-II and Bill of Export towards High Sea Sales etc. which are not within the control of the assessee who has to obtain it from the recipient of the goods, stationed in different States.

Learned counsel for the petitioner has made reference to the judgments of the Supreme Court to espouse the case of the petitioner and to justify the delay in submission of forms since reported in ***(2009) 14 SCC 309*** (***Ambika Steels Ltd.***

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Vs. State of U.P.) and ***(2005) 6 SCC 499*** (***State of H.P. Vs. Gujarat Ambuja Cement Ltd.).*** We do appreciate the predicament raised by the petitioner, but the fact remains that unless and until such time that the petitioner is able to produce the forms in question he cannot be allowed the benefits so claimed. We thus, for the present, do not express any opinion on the *inter-parte* merits but definitely would allow the petitioner to move the statutory forum of appeal as provided under section 73 of the Bihar Value Added Tax Act, 2005 before the Commercial Taxes Tribunal and while taking notice of the provisions underlying section 75 of the Act which enables the petitioner in case of present kind to produce additional evidence, we would allow the petitioner to lead such evidence before the Tribunal to question the orders so passed for the assessment years 2014-15 and 2015-16.

It goes without saying that any such revision petition filed by the petitioner within 30 days from today, if accompanied with a petition for condonation of delay, shall be considered on its merits and disposed in accordance with law without the Tribunal getting influenced by the timeline fixed by this Court on earlier occasion which itself granted liberty to the petitioner to pray for further time in case he has not been able to

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procure those documents within the time so fixed.

The petitioner would be at liberty to pray for interim relief which prayer would be considered and disposed of by the Tribunal in accordance with law.

The writ petition is allowed with the liberty/directions above.

(Jyoti Saran, J)

(Arvind Srivastava, J)

mcv/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.04.2019
Transmission Date	NA

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