IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3342 of 2020

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M/s Alectra Construction Ltd. Ward No. -3, New Colony, Dharampur, Dist-Samastipur through its director Sri Dhananjay Kumar aged about 39 years, Gender male, S/o Sri Anil Kumar Singh.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of state taxes, Bihar, new secretariat, Patna.
2. The Commissioner of Finance, Govt. of Bihar, Patna.
3. The Add. Commissioner of state taxes (Admin.) Darbhanga Division.
4. The Joint Commissioner of state taxes, Samastipur Circle, Samastipur.
5. The Deputy Commissioner of state taxes, Samastipur Circle, Samastipur.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Rakesh Kumar Singh, Advocate
For the Respondent/s : Mr.Vikash Kumar, SC 11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

4 11-01-2021 Petitioner has prayed for the following relief(s):-

"a) To issue a writ(s), direction(s) particularly a writ in the nature of mandamus to the respondents to refunds the excess amount of Rs. 29,03,594.00 Only/ for the assessment year 2007-08 U/s 68 of the VAT Act, along with statutory interest in pursuant of section 70 of the VAT Act, 2005.

b) To issue writ/direction to the respondents to consider the statutory obligation to refund the excess TDS amount with interest as prescribed under section 70 of the VAT Act, whereas, it is specifically mentioned that where amount required to mentioned that where amount required to be refunded by the prescribed authority to any person is not refunded to him within the sixty days of the amount having refundable, the prescribed authority shall pay such person simple interest at the rate of six percent.

c) To issue further direction(s) to the respondents to refund the excess amount because the return filed by the petitioner for the assessment year 2007-08 has become time barred as the provision contained in section 25 and section 26 of the VAT of the VAT Act read with rule 21 of the VAT rule.

d) Or any other relief(s) as the petitioner is entitled for in the facts and circumstances of the case."

Averments made by the learned counsel for the petitioner are not seriously disputed by the respondent-State, but there is dispute with regard to factum of the filing of return by the petitioner. Also, there is dispute with regard to documents based on which the return, if any, was filed.

On the other hand, learned counsel for the petitioner contends that the action of the respondents is barred by period of limitation prescribed under the law.

After the matter was heard for some time, learned counsel for the parties pray for disposal of the present petition on the following mutually agreeable terms:-

(i) The petitioner shall appear before the appropriate authority authorized under Section 73(A) of the Value Added Tax Act, 2005, on or before 25.01.2021 at 10:30 A.M.;

(ii) The appropriate authority shall consider and decide the issue, subject matter of the present petition, which petitioner shall be informing on the next date of hearing;

(iii) Such decision shall positively be taken in accordance with law within a period of two months thereafter;

(iv) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(v) We have not expressed any opinion on merits and all issues are left open;

(vi) If necessary, proceedings during the time of current Pandemic [Covid-19] would be conducted through digital mode;

(vii) Liberty reserved to the petitioner to challenge the order, if so required and desired;

(viii) Additionally, if the amount of refund is found refundable, the authorized officer shall direct the competent authority to disburse the amount forthwith to the petitioner positively within the statutory period.

The instant petition sands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, also stands disposed of.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

sujit/-

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