IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17547 of 2018

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Zillion Infraprojects Private Ltd. A Company incorporated under the Companies Act 1956 having its office at BTPS, Campus, District- Begusarai through its authorized signatory Mukesh Chand Sharma, Son of Shri Ramesh Chand Sharma, Resident of House No.2287, Sarai Burf Khana, Dr. H.C. Sen Marg, Kauria Pul, P.O.- Delhi GPO, PS- Chandani Chowk, Delhi- 110006.

... ... Petitioner

Versus

1. The State Of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Commercial Taxes Officer, Special Circle, Patna.
3. Commercial Taxes Officer, Begusarai Circle, Patna.

... ... Respondents

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Appearance :

For the Petitioner	:	Mr. D.V.Pathy, Advocate
For the State	:	Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 10-04-2023

Heard learned counsel for the petitioner and learned counsel for the State.

2. The brief factual matrix leading to filing of the instant writ petition is that the petitioner is engaged in the business of execution of works contract awarded to it by Bharat Heavy Electricals Limited (for brevity 'BHEL'). Based on an Audit Report, the Assessing Officer found a mismatch in the return filed by the petitioner for the Financial year 2011-12, with the return filed by the BHEL. The Assessing Officer, therefore, held that the amount of difference is a turnover which has escaped assessment. The Assessing Officer (Respondent No.2) has, thus, raised a tax demand of Rupees 2,25,40,103/- under Section 32 of the Bihar Value Added Tax Act, 2005 (‘Act’ for brevity) and, accordingly, imposed a total penalty of Rupees 6,76,20,311.00/- under Section 32 of the Act.

3. Petitioner, thereafter, moved the Appellate Authority under Section 72 of the Act. The Joint Commissioner Commercial Taxes (Appeal) Central Division, Patna, vide order dated 10-06-2013, has held that the imposed penalty under Section 32 (1)(b) suffers from several legal lacuna, and that it could not be confirmed. He, however, went on to record that the petitioner had received an amount of Rupees 32,49,02,393.00/- , but he filed a return at the special circle, showing Gross Turn Over (GTO) of Rupees 23,92,58,299.00/-. A differential amount was, thus, arrived at Rupees 8,56,44,094.00/-. He directed the Assessing Officer at special circle, Patna (Respondent No.2) to inform the Assessing Officer at Begusarai Circle (Respondent No 3) for initiation of appropriate proceedings as per law.

4. The learned counsel for the petitioner submits that for initiating and completing appropriate proceedings, pursuant to this order dated 10/06/2013 (Annexure-3), passed by the Joint Commissioner, Commercial Taxes (Appeal) Central Division, Patna, the proviso to Section 37 stipulates a period of one year. The order of Appellate Authority was dispatched by Respondent No. 2 on 10-06-2013 itself to the Respondent No.3 and, therefore, was required to be given effect to within a period of one year from the year during which the order dated 10-06-2013 was passed by the appellate authority. It is, thus, submitted that the consequential order dated 26/03/2017, passed beyond the said period by the Respondent No.3, is unsustainable and contrary to the statutory prescription contained in Section 37.

5. The submission of the petitioner's counsel, however, has to be viewed keeping in background the provisions contained in Section 37 of the Act; 1st proviso of which, reads as follows:

> ***"37. Time limit for completion of proceeding of assessment of tax.-***
> *…………..Provided that a proceeding for re-assessment in pursuance of or as a result of*

an order on appeal, revision or review shall be initiated and completed before the expiry of one year from the expiry of the year during which such order was communicated to the assessing authority:"

6. The proviso clearly specifies a time frame, but the time frame is with reference to the year, during which, such order was communicated to the Assessing Authority. It is, therefore, required to be seen when the order was communicated to the Respondent No.3. Dispatch, therefore, is not relevant as per the Statute. What is relevant is the date of communication. From Annexure-4 of the writ petition, it is apparent that the order of the Appellate Authority dated 10/06/2013, was communicated in the office of Respondent No. 3, on 04/03/2017, which fact has been acknowledged by the petitioner in paragraph 15 of the writ petition . The time frame of one year, as stipulated in the above noted proviso, therefore, has to be calculated, and observed with reference to 04/03/2017, and not with reference to any earlier date, much less the date of dispatch, as submitted by the petitioner's counsel. The impugned order of the Assessing Officer (Respondent No.3) has been passed on 26/07/2023, i.e., just 22 days after it was communicated to him on 04/03/2017.

7. This Court, thus, does not find any infirmity in exercise of power and jurisdiction by Respondent No.3. The same does not suffer from any delay so as to violate Section 37 of the Act.

8**.** No other grounds having been urged. The writ petition is found to be devoid of merit. The petitioner shall be left to the appellate remedy and if an appeal is filed in a month, definitely the period between the filing of the writ petition, being 30.08.2018 and the disposal, can be ignored for computing the period of limitation. With the above just exception, the writ petition stands dismissed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

shyambihari/-

AFR/~~NAFR~~	AFR
CAV DATE	N/A
Uploading Date	13.04.2023
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