IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7140 of 2021

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Exicom Tele-systems Ltd. a company incorporated under the Companies Act 1956 having its office at House no. 21 South Chitragupta Nagar, Po.- Lohia Nagar Patna through its Dy. Manager Manoj Kumar (Male aged about 43 years), son of son of Shri Chander Pal resident of House No. 2078, Sector 22 P.S. Saran Faridabad - 121005, Haryana ... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner of State Tax, Bihar, Patna having its office at Vikas Bhawan, Patna
2. Dy. Commissioner of State Tax Special Circle, Patna
3. Commercial Tax Officer, Special Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D. V. Pathy, Advocate Mr. Abhinav Ashok, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC 11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-04-2023

The petitioner has filed the writ petition against the order of assessment without approaching the appellate authority under the Bihar Value Added Tax Act, 2005.

The petitioner has a contention that the battery supplied is part of service and is not a supply of goods. It is open to the petitioner to raise the argument before the appellate authority and we find absolutely no reason to invoke the extra ordinary jurisdiction under Article 226 of the Constitution of India to interfere with the order of assessment, especially, going by the decision in **State of H.P. and Others vs. Gujarat**

Ambuja Cement Ltd. and Another, (2005) 6 SCC 499.

Learned counsel for the petitioner then submits that limitation would stand against a statutory challenge. To get over limitation there cannot be a resort to Article 226 of the Constitution of India. The order, passed with due notice, is dated 23.12.2020. The demand dated 29.12.2020 was also duly served. The writ petition was registered on 10.03.2021. The ground of lack of jurisdiction could very well have been agitated before the appellate authority.

Leaving the question raised open, we reject the writ petition but reserving the right of the petitioner to approach the appellate authority and claim the benefit of Section 14 of the Limitation Act. An appeal, if desired, shall be filed within a period of two weeks from the date of issuance of a certified copy of this judgment.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

shivank/Sunil

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.04.2023.
Transmission Date	NA