IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3299 of 2023

M/s Setia Enterprises GSTIN- 10CJUPS2923R1ZG, through its Proprietor Shubham Setia, Male, Aged about 38 Years, C/o- Satish Setia, Resident of Muhalla- 501, Hari Tower, ST. Paul School, Budha Colony, Patna, P.O.- G.P.O., Patna, P.S.- Budha Colony, District- Patna (Bihar) Pin- 800001, Having its Principal Place of Business at- C/o- Satish Setia, Flat No.- 3.W, Manikung Apartment, Road No.- 21, S.K. Nagar, P.S.- Budha Colony, Patna, District- Patna, Bihar Pin- 800001.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-Cum-Commissioner, Department of State Taxes, Government of Bihar, Patna Pin- 800001.
2. The Assistant Comissioner, State Taxes Patna Central Circle, Patna, District- Patna, Bihar, PIN- 800001.

... ... Respondent/s

Appearance :
For the Petitioner/s : Mr. Harendra Singh, Advocate
For the Respondent/s : Mr. Vivek Prasad (GP- 7)

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-04-2023

The petitioner is registered under the Good and Services Tax Act, 2017 as evident from Annexure-1 produced along with the writ petition. It is the contention of the petitioner that during the pandemic period, the petitioner was served with Annexure-2, assessment order dated 10.01.2021 for the financial year 2019-20. Two other orders are produced as Annexure-3 Series, one dated

01.12.2021 and the other dated 22.02.2022 for the assessment years 2020-21, pursuant to which demand notices were issued for attachment of bank account and recovery of the amounts demanded. As per Annexures 2 to 4, a demand totalling Rs. 24,38,166.66 is made by the second respondent, which according to the learned counsel for the petitioner is illegal and in excess of the tax liablity that could be determined on the petitioner assessee.

2. The petitioners counsel before us also asserted that he has paid the entire tax due and there can be no further demand raised against him. The learned State Counsel pointed out that there was a clear mismatch in the returns of the petitioner who was a contractor and hence, an assessment was made reconciling the mismatch, which resulted in a demand in excess of the return filed. It is also pointed out that the petitioner has not filed an appeal as provided under Section 107(4) of the Bihar General Sales Tax Act, 1947, and has filed the above writ petition challenging the assessment orders.

3. The counter affidavit indicates that the petitioner's contention is frivolous. The petitioner has filed returns in form GSTR-3B for the years 2019-20 and 2020-2021 showing its turnover and tax liability lower than that detected in GSTR-1, GSTR-2A and GST-07, which are the returns filed by the

contractee departments. Hence, the assessment was made only on non-disclosure of various contracts carried on by the assessee in the subject year. Noticing these discrepancies, the DCST, Patna, Central Center issued notice in form GST DRC-01 to the petitioner for showing cause as to why tax, interest and penalty should not be imposed on the suppressed turnover and the underpaid tax demanded and recovered. There was no response to the notices issued on account of which the aforesaid demands were created. The petitioner also did not file statutory appeal from the assessment orders passed. The appellate remedy is now hopelessly time barred and the petitioner cannot be permitted to invoke writ jurisdiction when by his own default, the petitioner had not attempted to avail of the appellate remedy.

4. We agree with the learned State counsel since the averments in the writ petition in paragraph 6, 7 and 8 are specifically with respect to the assessment made by the Assessment Officer and the petitioner’s objection item wise on the various aspects dealt with by the Assessment Officer. We have to also observe that if the contention of the petitioner was that he had paid taxes in accordance with the demand as per the assessment orders, then it would have been incumbent upon him to produce the receipts of payment to substantiate the contention. If the

contention is of demand made in excess of the tax assessed, definitely there would be discrepancy in the demand notices issued and the taxable liability computed in the assessment orders; which ground has not at all been raised by the petitioner. We are of the opinion that the attempt of the petitioner is to challenge the assessment orders by this grossly belated writ petition, when the petitioner has failed to invoke the appellate remedy.

5. The saving of limitation by the Hon'ble Supreme Court due to the pandemic was only up to 28.02.2022 and there is considerable time elapsed after the said date within which time at least the petitioner ought to have approached the Appellate Authority.

6. We find no reason to invoke the extraordinary remedy under Article 226 and dismiss the writ petition *in limine*.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

sharun/aditya

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	25.04.2023
Transmission Date	N/A