IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3926 of 2023

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M/s Limra Associates and Sons, through the proprietor Tabassum Haider, R/o Near Mirzagalib Teachers Training College, H/No.- A/13 Indrapuri Samanpura, Raja Bazar, Patna- 800023.

... ... Petitioner/s

Versus

The State of Bihar through Deputy Commissioner of State Tax, Central Circle, Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Daya Shankar Prasad Sinha, Advocate
For the Respondent/s : Mr. Vivek Prasad, GP-7

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

Date : 11-04-2023

The above writ petition is filed challenging the demand notice issued, produced as Annexure-1. The order based on which the demand has been issued is impugned. The claim of the petitioner projected in the writ petition is for allowing input tax credit after setting aside the order dated 16.03.2023. Obviously, the impugned order dated 16.03.2020 preceded the demand.

There can be no challenge against the assessment order under Article 226 of the Constitution of India except on well established grounds of failure of principles of natural justice, the proceeding being wholly without jurisdiction, the vires of the Act itself being under challenge or even in cases of abuse of process of law as has been held in *State of H.P. v. Gujarat Ambuja Cement Ltd. reported in (2005)6 SCC 499*.

Obviously, the writ petition is filed since no appeal was maintainable at that point of time. The order is of March 2020 and writ petition is filed in the year 2023. Section 107(4) of the Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as the ‘Act’) provides an appeal to be filed under the Act within three months and if delay is occasioned within a further period of one month.

It is trite that if an appeal is filed, delayed beyond the one month provided under the Statute, it is not maintainable since Section 5 of the Limitation Act has no application. The attempt of the petitioner is to make a grossly delayed challenge under Article 226 since there could be no appeal filed at this distance of time; which was due to the default solely of the petitioner/assessee.

The writ petition hence is not maintainable and the same is dismissed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

Aditya/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	13.04.2023.
Transmission Date	