IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5816 of 2023

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Maharani Fuels Pvt Ltd, a company incorporated under the Companies Act, 1956 having its Head Office at A-29230, Bela Industrial Area, Musahari, Muzaffarpur, Bihar through its authorized signatory Dharmendra Kumar (Male, aged about 46 years), Son of Kishori Singh Resident of School Purantand, Vaishali, Bihar- 844123

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner of State Tax, Bihar, Patna having its Office at Vikas Bhawan, Patna.
2. Joint Commissioner of State Tax, East Circle, Muzaffarpur.
3. Asst. Commissioner of State Tax, East Circle, Muzaffarpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mrs.Manju Jha, 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 JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-07-2023

1. The above writ petition comes up under the Bihar Value Added Tax Act, 2005 (for brevity "VAT Act") and the challenge is against an assessment order passed on 08.01.2022 under Section 31 of the VAT Act. The ground raised in the writ petition is of limitation and the adjustment of Entry Tax paid in excess.

2. We have looked at the aspect of limitation as is found from the provisions under Sections 26, 31 and 32 of the VAT Act. Section 26 is with respect to self assessment of tax

which occurs on the dealer furnishing a return as on the due date. The due date as per Section 24(3) of the VAT Act is the 31st day of December of the year following the year to which such return relates, in the case of dealers specified in Clauses (1) and (2). The assessment year in the above case is 2016-17 and the due date as per Section 24(3) is 31.12.2018. Sub-section (2) of Section 26 is a *non obstante* clause which empowers the Commissioner in the interest of revenue to select any registered dealer for detailed audit of his business based on a selection model prepared for such purpose which also has an incorporated criteria as deemed fit by the Commissioner. Sub-section (3) mandates that an audit under sub-section (2) shall be conducted in the prescribed manner within a period of 36 months from the due date within the meaning of Section 24(3).

3. Admittedly, the petitioner herein was selected for audit and the audit was completed on 03.08.2018 within the limitation provided under Section 26(3). On the audit being completed under Section 31 the prescribed authority on his satisfaction is empowered to carry out an assessment or re-assessment of tax relating to escaped turnover, which proceeding to assess or reassess, shall be within four years from the expiry of the year during which the original order of

assessment or reassessment was passed and Section 31 makes applicable the provisions under Section 27. Section 27 by its third proviso mandates that a proceeding initiated under this sub-section shall be completed within a period of two years from the date of initiation. As we found, the audit was completed on 03.08.2018 and immediately thereafter on 22.09.2018 the proceeding to assess the dealer was commenced with a notice. Hence, the proceeding to assess or reassess was commenced within the four years as stipulated under Section 31.

4. Now, the question arises as to the completion of the proceedings which is by Annexure-3 order dated 08.01.2022. The third proviso mandates that the proceedings under Section 27 shall be completed within a period of two years from the date of initiation. The date of initiation of proceedings as we saw under Section 31 was 22.09.2018 and normally the same should have been completed by 21.09.2020. However, due to the pandemic situation the Hon'ble Supreme Court had saved the limitation for proceedings to be initiated under the various statutes; which equally applies to the assessee and also the department.

5. Saving of limitation was granted by the Hon'ble Supreme Court in ***Suo Motu Writ Petition (C) No. 3 of 2020,***

Cognizance for Extension of Limitation, In Re (2021) 5 SCC 452. Therein, due to the pandemic situation limitation was saved between 15.03.2020 till 28.02.2022.

6. The proceedings here were started on 22.09.2018 and till 15.03.2020 a period of one year and six months expired. Hence, there was a further period of six months available to the department from 28.02.2022 when the Hon'ble Supreme Court directed the limitation to be resumed and all actions to be taken within three months or within any larger period provided under any statute. In the present case, since there was two years provided, the balance period runs to six months from 28.02.2022. The final order was passed before that on 08.01.2022. We also have to notice that the order specifically indicates that despite repeated notice, the assessee failed to appear. The counter affidavit specifically indicates that despite ten reminders the assessee failed to appear and hence, the matter was finally determined.

7. We find absolutely no reason to interfere with the order passed especially when the assessee has not sought the appellate remedy as provided under the VAT Act. The question of limitation has been found against the assessee/petitioner. In so far as the adjustment of Entry Tax amounts, the assessee will

have to approach the Assessing Officer for such relief.

8. With the above reservation, we dismiss the writ petition.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
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