IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12412 of 2021

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M/s Royal Homeo Pharmacy, Sabji Bagh, Patna through its Proprietor Rajesh Khanna, aged about 50 years, Gender- Male Son of- Badri Prasad, Resident of- New Bus Stand, New Bangali Tola, P.S.- Jakkanpur, District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Chief Commissioner State Tax, Bihar, Patna.
2. The Chief Commissioner, State Tax, Bihar, Patna.
3. The Additional Commissioner, State Tax, East Division, Bihar, Patna.
4. The Joint Commissioner, State Tax, North Circle, Patna.
5. The Assistant Commissioner, State Taxes, Patna North Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ranjeet Kumar, Advocate
		Mr. Kundan Kumar, Advocate
		Mr. Santosh Kumar, Advocate
		Mr. Rajesh Kumar, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, S.C. 11

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

Date : 27-04-2023

The petitioner in the above writ petition has raised the ground of limitation against Annexure-1 order dated 02.03.2020 issued under Section 31 of the Bihar Value Added Tax Act, 2005 (“BVAT Act” hereafter) for the Assessment Year 2014-15. The petitioner was an assessee under the provisions of the BVAT Act. The petitioner in the writ petition contends that the petitioner’s claim for Input Tax Credit was disallowed erroneously and without even serving a notice, interest and penalty were imposed. It is also contended that there was gross illegality committed by determining tax at the rate of 5 per cent over and above the MRP, even for goods which were not taxable under the BVAT Act. The petitioner challenged the order dated 02.03.2020 passed by the Assistant Commissioner, State Taxes, Patna, North Circle which rejected the Input Tax Credit claim and imposed further tax, penalty and interest for the year 2014-15. The order was issued under Sections 24 and 31 of the BVAT Act.

2. Before us, the learned counsel raised only the contention of limitation and complete absence of jurisdiction to proceed under Section 31 of the BVAT Act. The limitation as provided under Section 31 is specifically referred to. Reliance is also placed on a Full Bench judgment of the High Court of Kerala, reported in 2014 SCC OnLine Ker 28751, Cholayil Private Limited v. Assistant Commissioner (Assessment) and a Division Bench judgment following the Full Bench decision, reported in 2018 SCC OnLine Ker 23428, Cholayil Pvt. Ltd. (Formerly Dorcas Market Makers (P) Ltd.) v. Assistant Commissioner (Assessment), Special Circle, Commercial Taxes, Thrissur and Others.

3. The learned Government Advocate, however,

asserts that the notice was issued within the limitation period under Section 31 and the proceedings were completed as provided under Section 27. The learned Government Pleader also relied on the decision of a Division Bench of this Court in 2019 SCC OnLine, Pat 3385, Kalika Cooling System v. State of Bihar and others.

4. The Full Bench and the Division Bench judgments of the Kerala High Court were with reference to the provisions under the Kerala Value Added Tax Act, 2003 ("KVAT Act" hereafter). The question raised therein was with respect to the limitation as provided under Section 25 of the KVAT Act which provided an outer limit of five years for proceeding to determine to the best of judgment the turnover of an assessee. The words '*proceed to determine'* was held to be indicating the initiation of proceedings which limitation has also to be worked out from the close of the assessment year i.e. 31st March of any assessment year.

5. In so far as the BVAT Act is concerned, Section 31 provided liberty to the Assessing Officer, also, to proceed in the matter of reassessment within four years from the expiry of the year during which the original order of assessment or reassessment was passed. It is further provided in Section 31

under the BVAT Act that the provisions of the Act shall apply to the proceedings under Section 31 as if the notice under sub-section (1) of Section 31 was issued under Section 27. Section 27 provides for completion of assessment within two years of the initiation of proceedings, which applied to Section 31 of the BVAT Act. The limitation in so far as completion of proceedings was not available in the KVAT Act. Hence the Full Bench & Division Bench of that Court found that in any case the assessment has to be completed within a reasonable period and since the statute does not provide for a period, the Courts would also not provide it.

6. The Division Bench of this Court; as was held by the High Court of Kerala, also found that the words "*proceed to assess or reassess after serving on the dealer a notice in the form and in the manner prescribed"* as found in Section 31 indicates only the initiation of proceedings within the limitation period of four years from the expiry of the year during which the original order of assessment or reassessment was passed. As far as completion of such proceedings, Section 31 also made applicable Section 27 which required the proceedings to be completed within a further period of two years from the initiation of proceedings.

7. In the present case, the relevant assessment year admittedly was the year 2014-15. The notice issued for reassessment is seen from Annexure-A produced along with the counter affidavit filed by the department on 28.07.2021. Annexure-A is dated 29.11.2019 and is a notice of hearing under Section 31 of the BVAT Act on grounds of incomplete returns for the year 2014-15 having been knowingly furnished and goods at higher price than shown in the Books of Accounts having been actually sold. The same was received by the assessee as is clear from the Mail Delivery Report produced along with Annexure-A. The order which is produced as Annexure-1 in the writ petition is dated 02.03.2020. Hence, for the Assessment Year 2014-15 the time for initiation of proceedings for reassessment expires only on 31.12.2019, on the expiry of the year in which the original assessment was completed. The notice has been issued on 29.11.2019 well within the limitation period for initiation of proceedings. The Assessing Officer is then obliged to complete the assessment within two years, as provided under Section 27. The assessment was completed on 02.03.2020, as is seen from Annexure-1; again within the limitation period. Faced with the above situation, learned counsel for the petitioner argued that the

proviso to Rule 50 requires a satisfaction to be recorded of the Assessing Officer regarding the service of notice. It is also argued that the first notice received is on January 14, 2020 produced as Annexure-3 to the counter affidavit. We, however, notice that the proviso to Section 50 only requires a satisfaction of the assessee having purposefully evaded the service of notice, if the notice has not been served on the assessee. In the present case, the notice has been served on the assessee by e-mail which is a mode of service under the Bihar Value Added Taxes Rules, which is the electronic mail service specified in clause (d) of Rule 50. There is also a Mail Delivery Report produced by the department along with the counter affidavit which acknowledges the delivery in the e-mail of the assessee, which e-mail Id has been provided to the department by the assessee. In fact, there are reminders issued by the Assessing Officer which is seen from Annexure-C and Annexure-3 produced along with the counter affidavit.

8. We find no reason to entertain the writ petition and there is no ground of limitation which could be successfully urged so as to vitiate the jurisdiction exercised by the Assessing Officer under Section 31 of the BVAT Act.

9. Learned counsel for the petitioner then sought

for liberty to file an appeal. We have not considered the Assessment Order on merits, which in any event is not permissible in a writ petition under Article 226 of the Constitution of India, especially when there are efficacious alternate remedies available. The order was passed on 02.03.2020. The saving of limitation was granted by the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020, In Re: Cognizance For Extension of Limitation. Therein, due to the pandemic situation limitation was saved between 15.03.2020 till 28.02.2022. It was also directed that an appeal could be filed within ninety days from 01.03.2022. Hence, an appeal could have been filed on or before 29.05.2022, or within 16.05.2022, if we reckon the time expired before the order of the Supreme Court. The writ petition was filed during the period when the limitation was saved by the Hon'ble Supreme Court. The benefit granted by the Supreme Court was up to 28.02.2022 when and after which the writ petition was pending before us. The writ petition has been dismissed only on today. Hence, the petitioner would be entitled to approach the Appellate Authority under the BVAT Act within a period of two months from the date of receipt of the certified copy of this judgment. All contentions are left open except, the ground raised of limitation, which stands against the assessee as found in this judgment.

10. The writ petition would hence stand dismissed, however, with the above liberty.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

P.K.P./Anushka

AFR/NAFR	AFR
CAV DATE	
Uploading Date	02.05.2023
Transmission Date	