# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Civil Writ Jurisdiction Case No.3157 of 2020**

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M/s Milith Karv Engineering and Trading Pvt Ltd. having its Local Office at Harnout, Biharshsriff, Dist.- Nalanda through its authorized Representative and Signatory Shri Shyam Lal Khanelwal S/o Late Sri Jagdish Prasad, age about 50 years Gender- Male.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner of Finance, State of Bihar, Patna.
3. The Commissioner of State Tax, New Secretariat.
4. The Deputy Commissioner, Patliputra Circle, Patna.
5. The Deputy Commissioner of State Tax, North Circle, Patna.
6. The Asst. Commissioner, Biharsharif Circle, Patna.
7. The Joint Commissioner Taxes, Administration, East Division, Patna.
8. The Deputy Commissioner, Biharshariff Nalanda.
9. The Joint Commissioner, Commercial Taxes Patna.

... ... Respondent/s

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with

**Civil Writ Jurisdiction Case No. 19380 of 2019**

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M/s Milith Karv Engineering and Trading Pvt. Ltd. having its Local Office at Harnout, Biharshariff, Dist- Nalanda through its authorized Representative and Signatory Shri Shyam Lal Khanelwal s/o Late Sri Jagdish Prasad, age about 50 years Gender- Male.

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Versus

1. The State of Bihar.
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7. The Joint Commissioner Taxes, Administration, East Division, Patna.
8. The Deputy Commissioner, Biharshariff Nalanda.
9. The Joint Commissioner, Commercial Taxes Patna.

... ... Respondent/s

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**Appearance :**
(In Civil Writ Jurisdiction Case No. 3157 of 2020)
For the Petitioner/s : Mr.Rakesh Kumar Singh, Advocate

For the Respondent/s : Mr.Vikash Kumar, SC 11
(In Civil Writ Jurisdiction Case No. 19380 of 2019)
For the Petitioner/s : Mr.Rakesh Kumar Singh, 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 : 29-07-2024**

The above writ petitions relate to the assessment years 2006-07 and 2007-08 and seeks for refund of the amounts deposited as tax for the said years.

2. Admittedly, the petitioner had moved for refund, based on the tax deduction made at source, by Annexure-5 in the year 2013, produced in both the writ petitions for the separate years. For convenience, we refer to the documents from CWJC No. 3157 of 2020 for the assessment year 2007-08; which documents are similar in the other writ petition i.e. CWJC No. 19380 of 2019 for the assessment year 2006-07.

3. By Annexue-6, there was a query by the Department itself as to whether the delayed refund could be considered. The petitioner approached this Court with a writ petition in which Annexure-11 directed the petitioner to respond to the notice issued by the Tax Authorities with copies of documents which are in the possession of the petitioner within two weeks. The matter was posted to 27.01.2015 for the State

to file a counter affidavit indicating the payment of the refund granted. Annexure-12 order was passed and the matter was disposed of as per Annexure-14. It was noticed that based on the earlier order, the Deputy Commissioner of Commercial Taxes has merely stated that the assessments were time barred; while not touching upon the refund. The petitioner having produced the certificate of deduction of tax at source in Form C-II, it was held that the respondents were obliged to verify the same and allow the refund, if possible.

4. Noticing Rule 43 of the Bihar Value Added Tax Rules, 2005, the Joint Commissioner of Commercial Taxes was directed to consider the claim of the petitioner and dispose of the same. By Annexure-17, the claim of the petitioner was considered and the same was disposed of by granting certain amounts as refund.

5. The petitioner being aggrieved by the order passed, filed two MJCs alleging contempt of directions of this Court. This Court found that the Joint Commissioner of Commercial Taxes, as per his wisdom and the amount found admissible for refund, has complied with the directions issued by this Court. If the petitioner is not satisfied, the petitioner has to challenge the quantum of refund appropriately; was the finding. The petitioner

has again filed above writ petitions seeking refund.

6. It is trite that in consideration of the facts and figures regarding a refund, this Court would not invoke Article 226 of the Constitution of India.Whether tax was deducted at source and the certificates were issued by the awarder, are all issues to be considered by the tax authorities based on documents. If the petitioner is aggrieved with Annexure-17 order, the petitioner has a remedy under Section 73A of the Bihar Value Added Tax Act, by way of a revision before the Commissioner.

7. We are not inclined to invoke the extra ordinary remedy under Article 226 and we dismiss the writ petitions, leaving the assessee to invoke the revisional remedy with just exceptions, including limitation.

8. Writ petitions stand dismissed.

**(K. Vinod Chandran, CJ)**

**( Partha Sarthy, J)**

Sujit/-

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | |
| **Uploading Date** | 31.07.2024 |
| **Transmission Date** | |