IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4342 of 2023

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Welkin Telecom Infra Pvt. Ltd., A Company incorporated under the Companies Act, 1956 having its Head Office at 45, Sai, Buland Sadan, 70 Feet Bypass Road, Road No. 5, Budhijivi Colony, Patna- 800002 through its Director Pradeep Kumar Agarwal (Male) (aged about 52 years) son of Sri Devra Agarwal, Flat No. 4A, Maruti Sadan, 12 Dover Park, Ballygunge Circular Road, Kolkata, West Bengal- 700019.

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner of State Tax, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Asst. Commissioner of State Tax, Special Circle, Patna, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D.V.Pathy, Sr. Advocate
For the Respondent/s	:	Mr. Vikash Kumar, S.C.-11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

13 09-01-2024 We were not inclined to continue with the writ petition especially since the agreement produced based on which Section 33 of Bihar Goods and Services Tax Rules, 2017 was relied on, was an agreement which expired on 31.03.2012. The assessment year for which the impugned order dated 19.12.2022 is passed, is 2017-18.

2. We as of now do not find any way to rely on the agreement which expired in the year 2012 itself for the assessment year 2017-18.

3. Learned Counsel, however, submitted that there was subsequent renewal which unfortunately has not been pleaded in the writ petition.

4. Definitely, the petitioner could establish that before the Appellate Authority. Admittedly, there is an appealing remedy under section 107 of the BGST Act. The order was passed on 19.12.2022 and the petitioner has approached this Court on 23.03.2023 within the period for filing an appeal though slightly delayed. We are of the opinion that the petitioner having invoked the jurisdiction under Article 226 within the time provided within which a delayed can be filed under the Bihar Goods and Services Act, the petitioner can avail such remedy even now.

5. Learned Counsel also sought for permission to withdraw the writ petition so as to avail the appellate remedy.

6. The writ petition hence stands dismissed making it clear that what we have said about the agreement and its expiry is based on the records produced in the writ petition and if it is otherwise established, the Appellate Authority would decide the case in accordance with the evidence produced and in accordance with law.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

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