IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9612 of 2018

Birla Corporation Ltd. and Regional Office at 301-303 Ashiana Towers, Exhibition Road, Patna - 800003 through its Dy. General Manager,Accounts and Taxation Kamlesh Chandra Chourasia, son of Late Sharda Prasad Chourasia, resident of 1453, Kidwai Nagar, P.O. Allahpur, P.S. George Town Allahabad.

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Dy. Commissioner of Commercial Taxes, Special Circle, Patna.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 9613 of 2018

Birla Corporation Ltd. and Regional Office at 301-303 Ashiana Towers, Exhibition Road Patna - 800003 through its Dy. General Manager, Accounts and Taxation Kamlesh Chandra Chourasia, son of Late Sharda Prasad Chourasia resident of 1453, Kidwai Nagar, P.O. Allahpur, P.S. George Town Allahabad.

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Dy. Commissioner of Commercial Taxes, Special Circle, Patna.

... ... Respondent/s

Appearance :
(In Civil Writ Jurisdiction Case No. 9612 of 2018)
For the Petitioner/s : Mr. D.V.Pathy, Advocate
For the Respondent/s : Mr. Vikash Kumar, SC-11
(In Civil Writ Jurisdiction Case No. 9613 of 2018)
For the Petitioner/s : Mr. D.V.Pathy, Advocate
For the Respondent/s : Mr. Vikash Kumar, SC-11

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-02-2024

The identical petitioner in the writ petitions challenges the order of reassessment passed in the years 2005-06 and 2006-07, as barred by limitation under Section 31 of the Bihar Value Added Tax Act, 2005 (for brevity, the VAT Act), which reassessment order was passed in the year 2018.

2. We have to first deal with the facts arising in the individual cases. For the assessment year 2005-06, the impugned notice dated 23.03.2018 issued by the Department for reassessment is produced as Annexure-6. The petitioner had filed its return for the period 2004-06 on the due date, and as per the VAT Act, there is a self-assessment made unless it is taken up for reassessment within the limitation period provided under the statute.

3. The petitioner was issued with a show-cause notice within the limitation period, based on an objection raised on audit. The petitioner replied to the same and produced the books of accounts before the Assessing Officer. The Assessing Officer, respondent no. 2, after perusal of the records, found that there is true and fair disclosure of the purchases and sales in the books of accounts. The audit objection was found to be not sustainable and an order was passed, produced as Annexure-1.

4. Again for the very same year, a notice was issued

at Annexure-2, which was also responded to by production of the books of accounts and an objection. The Assessing Officer passed an order of reassessment on 31.12.2009, by Annexure-3 making additions. An appeal was filed wherein the assessment order was set aside with a direction to consider the records *de novo* as is produced at Annexure-4. Again, the Assessing Officer passed an order produced as Annexure-5 dated 16.03.2017, accepting the returns filed by the petitioner. It is after this that the impugned notice was issued, produced as Annexure-6, which was dated 23.03.2018, long after the limitation period.

5. Section 26 provides for a self-assessment of tax, which is deemed on the returns being filed. This does not preclude the Department from making a reassessment, which can be as per Section 31. Section 31 provides that the prescribed authority shall, in such manner as may be prescribed, proceed to assess or reassess, as the case may be, the tax payable by such dealer within four years from the expiry of the year during which the original order of assessment or reassessment was passed. The assessment, as was noticed, with respect to a dealer, who has filed a return occurs automatically under Section 26 with power conferred on the prescribed authority to reassess it. Insofar as a dealer, who has not filed a return, the prescribed

authority has a power to make an assessment, which would be the original assessment, and then also proceed for reassessment on any of the ingredients under Section 31 arising.

6. In the assessment year 2005-06, as we noticed earlier, there was a self-assessment under Section 26 and twice reassessment was attempted, once on the basis of audit objection and the other on finding some defect in the returns. The first notice for reassessment was closed by the Assessing Officer himself. The second attempt to reassesses also was closed after a fresh consideration as directed in an appeal filed. Hence, insofar as the petitioner is concerned, there is no reassessment carried out and the limitation has to relate back to the original assessment, which is the self-assessment made under Section 26, in which event, the reassessment now attempted as per Annexure-6 is grossly delayed.

7. In the next writ petition, C.W.J.C. No. 9613 of 2018 concerned with assessment year 2006-07, the impugned order is also dated 23.03.2018. In the said assessment year also a proper return was filed within the due time, leading to a self-assessment under Section 26. A notice was issued as seen from Annexure-1 dated 22.06.2009, which was properly responded to by an objection and production of books of

accounts. A reassessment was made by Annexure-2, dated 28.02.2012. An appeal was filed, which was allowed as per Annexure-3, and on the remand made in the appeal, the Assessing Officer accepted the returns filed by the petitioner, as is seen from Annexure-4 dated 16.03.2017. The impugned notice was issued subsequent to that, after the period of limitation.

8. The interpretation of the provisions under Sections 26 and 31, we made above for the assessment year 2005-06, squarely applies to the present year also.

9. We find absolutely no reason to permit the Department to proceed with the assessment.

10. We are quite conscious of the fact that the challenge in the writ petition is only against a show-cause notice issued. However, it has to be noticed that the show-cause notice is totally without jurisdiction since the limitation prescribed as per the Statute has expired.

11. We also notice the contours of the jurisdiction under Article 226 of the Constitution of India to interfere with appellable orders laid down by the Hon’ble Supreme Court in **State of H.P & Ors. v. Gujarat Ambuja Cement Limited & Anr.; (2005) 6 SCC 499**. It has been held that if an assessee

approaches the High Court without availing the alternate remedy, it should be ensured that the assessee has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction. While reiterating that Article 226 of the Constitution confers very wide powers on the High Court, it was clarified that nonetheless the remedy of writ is an absolutely discretionary remedy. The High Court, hence, can always refuse the exercise of discretion if there is an adequate and effective remedy elsewhere. The High Court can exercise the power only if it comes to the conclusion, that there has been breach of principles of natural justice or that due procedure required for the decision has not been adopted. The High Court would also interfere if it comes to a conclusion that there is infringement of fundamental rights or where the orders and proceeding are wholly without jurisdiction or when the vires of an Act is challenged and when there is a clear abuse of process of law.

12. Going by the aforesaid declaration, Article 226 can definitely be invoked by the assessee, since the re-assessment notice is after the limitation period. The writ petitions, hence, are allowed, and the Assessing Officer-respondent no.2 in both the writ petitions is

restrained from proceeding against the assessee based on the impugned show-cause notices.

(K. Vinod Chandran, CJ)

Rajiv Roy, J: I agree

(Rajiv Roy, J)

Aditya Ranjan/-

AFR/NAFR	
CAV DATE	25.01.2024.
Uploading Date	06.02.2024.
Transmission Date	