IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9745 of 2022

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Kumar Saheb Son of Ram Chandra Singh, resident of Kopi, Kopi @ Narkothi, Muzaffarpur, Bihar, 843321.

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner-Cum-Secretary-Cum-Principal Secretary, Commercial Taxes Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
2. The Joint Commissioner of State Tax, Muzaffarpur-East (Tirhut), Muzaffarpur- Bihar.
3. The Additional Commissioner (Appeal) BGST. Commercial Tax Department/BGST- State of Bihar, Muzaffarpur, Bihar.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Rajeev Ranjan, Advocate
For the Respondent/s : Mr. Vikash Kumar (SC-11)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-04-2024

The appellant in this case is an assessee who failed to file his returns for the year 2017-18 and 2018-19. In the year 2019-20, the appellant filed a return but the same was not accepted since his registration was as a SEZ Developer. The petitioner contends that he had never applied as an SEZ Developer and in such circumstances, the petitioner’s return could not be filed. He seeks for cancellation of his present registration and his registration applied retrospectively as an ordinary assessee so as to enable him to file the returns for the year 2019-20. The Department not only canceled his registration but also issued an order of assessment. The order of assessment was challenged in appeal but despite the deposit having been made, as is evident from the acknowledgment in the portal of the Department, the appeal is not been considered.

2. We heard learned counsel for the petitioner Sri Rajeev Ranjan and learned Government Advocate Sri Vikas Kumar.

3. The petitioner's registration certificate is produced as Annexure-1 which is applicable from 2017-18. Admittedly, the petitioner did not file any returns in the year 2017-18 and 2018-19. The petitioner's contention is that he had no business transaction; which would not absolve him from the liability to file a return; which in that circumstance would have been a nil return. The petitioner contends that it was later through the effort of an Advocate that the petitioner's registration was found to be as a SEZ Developer. The petitioner contended that he never applied as SEZ Developer and when the GST regime came in, he was automatically shifted to that regime, from the VAT regime and by some mistake, he was shown as a SEZ Developer.

4. We are not convinced with the arguments addressed by the learned counsel for the petitioner and hence directed the State to produce the application filed before the authorities. A supplementary affidavit dated 08.12.2023 has been filed, producing the application as Annexure-J. Annexure-J indicates that the petitioner has indicated the reason to obtain the registration as SEZ Developer to the specific query as to whether he was applying for registration as an SEZ unit, he has answered 'No' and under the query whether application is for registration as SEZ Developer, he has answered 'Yes'. The petitioners counsel contends that there is nothing entered on the other pages and on the next page where he has to select the name of an SEZ. The application itself indicates that the petitioner has made such an application on-line based on which the registration was made. It is also a default on the part of the petitioner for having not filed nil returns for the year 2017-18 and 2018-19.

5. As far as registration is concerned, it has been canceled, as is seen from the records of the case. He was issued with a show-cause notice at Annexure-9 dated 17.07.2021 for not having filed returns for a continuous period of six months and his registration was canceled as per Annexure-10 dated 31.07.2021. The petitioner has not filed an appeal from the same nor has he approached the Government which had come out with an Amnesty Scheme by Circular No. 3 of 2023, by which the registered dealers, whose registrations were canceled were permitted to restore their registration on payment of all dues between 31.03.2023 to 31.08.2023. The petitioner did not avail of such remedy also.

6. The assessment order is at Annexure-11 which is passed on 28.10.2021. An appeal is said to have been filed on 13.04.2022 which is evident from Annexure-12. The petitioner relies on the amount of pre-deposit as shown in the provisional acknowledgment which is Rs.93,268/-. The petitioner's contention is that provisional acknowledgment itself indicates 10% remittance. We are not convinced, since it could also be the requirement, going by the total demand raised. In such circumstances, the petitioner could produce evidence before the Appellate Authority regarding remittance of fees and agitate the cause in the appeal. There is absolutely no reason to invoke the extra ordinary jurisdiction under Article 226.

7. We dismiss the writ petition but leave the contentions to be urged in the appeal, if the appeal is properly instituted. The writ petition stands dismissed with the above liberty.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

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CAV DATE	
Uploading Date	08.04.2024
Transmission Date	