IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9449 of 2024

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M/S Hi-Tech Equipment and Services, Through Lalit Mohan Sharma Proprietor, aged about 52 years, Male, Son of Late Sh. J.R. Sharma, resident of VPO Bhira, Tehsil/ District, Hamirpur Bhira (45/9), Hamirpur Himachal Pradesh-177001.

... ... Petitioner/s

Versus

1. The Union of India through Finance Secretary, New Delhi.
2. The Additional Commissioner (CGST), Ranchi.
3. The Commissioner (Audit), CGST and CX, Ranchi.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Shailendra Kumar Singh, Advocate Mr. Praveen Prabhakar, Advocate
For the Respondent/s	:	Dr. K.N. Singh, ASG Mr. Anshuman Singh, Sr. SC, CGST & CX Mr. Abhijeet Gautam, A.C. to ASG Mr. Devansh Shankar Singh, A.C. to ASG Mr. Shivaditya Dhari Sinha, A.C. to ASG

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-07-2024

The petitioner is aggrieved with the order passed at Annexure-1 dated 23.02.2024, levying Service Tax under the Finance Act, 1994.

2. Learned counsel for the petitioner argued that the petitioner, in the relevant year, i.e. Assessment Year 2016-17, was not engaged in any activity which could be deemed 'service' under the Finance Act, 1994. The petitioner having not been engaged in the supply of any service as provided under

Section 66B of the Finance Act, 1994 could not have been proceeded against. The learned Counsel also points out that the show-cause notice issued, produced as Annexure-P/2 on 22.10.2021 is barred by limitation.

3. The learned Additional Solicitor General appearing for the respondents points out that the question of limitation would not apply in the event of suppression. The petitioner had not filed any return and the petitioner was found to have been engaged in the supply of service; based on the TDS deductions made under Section 194C of the Income Tax Act. The petitioner admittedly was a works contractor and despite issuance of notice did not produce the agreements or invoices with respect to the various services he offered as a works contractor. The writ petition hence is not maintainable and the petitioner has to seek alternate remedies.

4. We have looked at the show-cause notice, produced as Annexure-P/2. The show-cause notice specifically indicates that it is based on the details collected from the returns filed under the Income Tax Act that the proceedings were initiated. The petitioner was found to have huge deduction of tax at source under Section 194C of the Income Tax Act. The specific contention of the petitioner before the Assessing Authority was

that they were providing works contract services which were exempted under Section 66D of the Finance Act, 1994. Their submission was also that they were providing service by way of site preparation, construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of road, bridges, tunnels or terminals for road transportation etc. However, none of the agreements or payment certificates were produced. The authorized representative of the petitioner only submitted two work orders along with some bills and reconciliation statements which were insufficient to find the exact nature of service in which the petitioner was engaged in. This led to the assessment order.

5. On the question of limitation, it has to be found that Section 73 of the Finance Act provides that where there is any allegation of fraud, collusion, wilful mis-statement or suppression of facts or contravention of any other provisions of the Chapter or the rules framed thereunder, then the limitation is of five years. In the present case, the Assessment Year is 2016-17 and within the five year period, notice was issued on 22.10.2021. We do not think that there is any case for invocation of the extraordinary remedy under Article 226 of the Constitution of India.

6. 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 exists 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 a breach of principles of natural justice or 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 there is failure of principles of natural justice or where the orders and proceeding are wholly without jurisdiction or when the vires of an Act is challenged. There is no such plea available to the petitioner in

the present case against the impugned order.

7. We, hence dismiss the writ petition, however, without any affirmation of the levy made since the petitioner would have the remedy of an appeal, as provided under the Finance Act.

8. With the above liberty, the writ petition stands dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	31.07.2024
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