IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11636 of 2024

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Subodh Kumar Son of Akhileshwar Lal Das Resident of Village- Betauna, Benipatti, Police Station- Benipatti, District- Madhubani.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. The Chairman, Central Board of Indirect Taxes and Custom, Government of India, New Delhi.
3. The Chief Commissioner, Custom, Central Excise and Service Tax (Now Central Goods and Service Tax), Central Revenue Building (Annexe), Birchand Patel Path, Patna.
4. The Assistant Commissioner, CGST and Central Excise, CCO, Ranchi Zone, Central Revenue Building (Annexe), Birchand Patel Path, Patna.
5. The Assistant Commissioner, CGST and CX Division, Darbhanga.
6. The Superintendent CGST, Madhubani Range, Madhubani.
7. The Chief Engineer, Bihar State Education Infrastructure Development Corporation Limited, Patna.
8. The Principal Secretary, Planning and Development Department, Government of Bihar, Patna.
9. The Executive Engineer, Local Area Engineering Organization, Works Division-1, Madhubani.
10. The Engineer in Chief, Building Construction Department, Government of Bihar, Patna.
11. The Executive Engineer, Building Construction Department, Madhubani.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Narendra Kumar, Advocate
For the Respondent/s	:	Dr. K. N. Singh, Additional Solicitor General
		Mr. Anshuman Singh, Sr. SC, CGST & CX
		Mr. Devansh Shankar Singh, Advocate,

Mr. Harsh Anil Singh, Advocate
Mr. Prabhat Kumar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE NANI TAGIA

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-08-2024

The petitioner is aggrieved with Annexure-4 order passed under the Finance Act, 1994 for the year 2015-16. The show-cause notice for the said year was issued on 22.01.2021 and the limitation on grounds 'inter-alia' of suppression of facts leading to evasion, is 5 years under Section 73 (1). The show-cause notice issued on 22.01.2021 is within the 5 year period from the due date of filing returns, which is 25.10.2015 and 25.04.2016, for the two half yearly returns as per Section 7 of the Service Tax Rules, 1994.

2. The petitioner's contention is that the petitioner is a person who has done only government contracts in the period which is exempted from the purview of the Finance Act, 1994. The petitioner has a remedy by way of an appeal under the Finance Act, 1994. The question of exemption is a mixed question of law and fact; the exemption flowing from a notification issued by the Central Government and the facts to be ascertained, being the exact contracts which were carried out by the assessee. In such circumstances, it is only proper that the assessee shall approach the appellate authority, which liberty is conceded with just exceptions.

3. There is no observation on merits and the writ petition would stand dismissed only on refusing to exercise the discretion under Article 226 in such matters, where an efficacious alternate remedy is available.

(K. Vinod Chandran, CJ)

(Nani Tagia, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	08.08.2024.
Transmission Date	