IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14459 of 2023

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M/S Compucom Software Limited located at -IT 14-15 EPIP Sitapura, Jaipur, Rajasthan, Pin-302022 through its Manager Vineet Kumar, aged about 50 years, male, son of Rajvir Sharma, resident of -Jaipur, P.S.-Pratapnagar, Dist-Jaipur (Rajasthan).

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Educational Department, Government of Bihar, Patna.
2. The Secretary, Educational Department, Government of Bihar, Patna.
3. The Bihar State Educational Infrastructure Development Corporation Limited, through the Managing Director, Shiksha Bhawan, Bihar Rashtrabhasha Parishad Campus, Acharaya Shivpujan Sahai Path, Saidpur, Patna, Bihar-800004.
4. The Managing Director, The Bihar State Educational Infrastructure Development Corporation Limited at Shiksha Bhawan, Bihar Rashtrabhasha Parishad Campus, Acharaya Shivpujan Sahai Path, Saidpur, Patna, Bihar-800004.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gaurav Prakash, Advocate
For the Respondent/s	:	Smt. Binita Singh, SC- 28
For the BSEIDC	:	Mr. Girijesh Kumar, Advocate

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

Date : 28-02-2024

Heard the parties.

2. The petitioner a registered Private Limited Company was engaged by the Bihar State Education Infrastructure Development Corporation Limited (hereinafter referred to as 'the BSEIDC') under agreement dated 29.06.2012 for supply, installation and maintenance of IT infrastructure in the Schools across Rural and Urban areas of the State. The petitioner has filed the present writ petition under Article 226 of

the Constitution of India seeking a direction upon the respondents, especially respondent nos. 3 and 4 for reimbursement/payment of GST, Service Tax and Cess charged on bills raised by the petitioner to the respondents in implementation of ICT @ School Project in 336 Government Schools in Bihar (Zone-2 and Zone-4) on the ground that the same was covered under negative list of Section 66D(1) of the Finance Act, 1994 and hence was not taxable as Service Tax. The petitioner further sought a direction to the respondent nos. 3 and 4 to refund an amount of Rs.95,08,521/- paid as additional liability in form of the Service Tax, GST and other Cess charges along with interest.

3. Learned counsel for the petitioner submits that emerging as a successful bidder for supply, installation and maintenance of IT infrastructure in the Government Schools in Zone-2 and Zone 4 of the State, Letter of Intent was issued and final agreement was executed with stipulation that all the payments were subject to the terms and conditions of the agreement, including Tender document and Letter of Intent(s). The respondent Corporation was liable to make payment according to payment terms, as contained in Clause 5a (iii) of Section 4 of the tender document, which provided that all the payments will be subjected to tax as applicable at the prevailing

rate and TDS, as per applicable rules will be deducted.

4. It is the case of the petitioner that the petitioner's project was not liable for service tax, as the service provider was contained in the negative list of Section 66D of the Finance Act, 1994. However, the Government of India, later on, omitted Section 66D(1) by Finance Bill, 2016 and incorporated w.e.f. 14.05.2016, specifying that education services are not covered under Section 66D(1) of the Finance Act, 1994.

5. Admittedly the petitioner's agreement with the respondent was executed on 29.06.2012 and for the first time the petitioner raised the bills and invoices on BSEIDC on 19.10.2019 and onwards, as it appears from the representations, which are marked as Annexure-P/8 Series. There is no correspondence on the part of the respondents showing any admission of the aforesaid claim of the petitioner and prima facie there is an unexplained huge delay and laches on the part of the petitioner.

6. Time without number, the Apex Court has held that mere filing of successive representations would not come to the rescue of an indolent person. The aggrieved person has to approach the court expeditiously and within a reasonable time. Mere representations do not extend the period of limitation. If it is found that the writ petitioner is guilty of delay and laches, as

held by the Hon'ble Supreme Court in the case of **Surjeet Singh Sahni Vs. State of U.P. and Others, (2022) 15 SCC 536**, the High Court should dismiss the writ petition at the threshold and not dispose of the writ petition by relegating the writ petitioner to file a representation and/or directing the authority to decide the representation.

7. It is also well settled that a person cannot be allowed to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, when his claim/remedy is already barred under the statute or common law.

8. It would be worth mentioning here that there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. But, normally the Court would not exercise discretion where there is *per se* money claims particularly arising out of contractual obligations, except in exceptional circumstances:[vide **Joshi Technologies International Inc. v. Union of India & Ors, (2015) 7 SCC 728**].

9. In the aforesaid facts, such belated claim of the petitioner in relation to exemption of service tax for supply of hardware and infrastructure provided in the Schools way back in the year 2012-13 cannot be entertained.

10. The writ petition stands dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.03.2024
Transmission Date	NA