IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25179 of 2019

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Md. Anisur Rahman Son of Abdul Aziz, Resident of Village- Barharwa, Post- Parmanandpur, Police Station- Dumra, District- Sitamarhi.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Engineer-in-Chief-Cum-Deputy Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Chief Engineer, North Bihar Upbhag, Road Construction Department, Darbhanga.
4. The Superintending Engineer, Road Construction Department, Darbhanga Division, Darbhanga.
5. The Executive Engineer, Road Construction Department, Road Division, Sitamarhi, District- Sitamarhi.
6. The Assistant Commissioner, CGST and CX, Darbhanga Division, District- Darbhanga.
7. The Government of India through Ministry of Finance Department of Revenue, New Delhi.
8. The Executive Engineer, N.H. Division, No., Muzaffarpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Manoj Kumar Singh, Advocate
For the Respondent/s	:	Mr. Sushil Kumar, GP-22
		Mr. Anshuman Singh, Sr. SC. CGST & CX
		Mr. Devansh Shankar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-09-2024

The petitioner has filed the above writ petition claiming the benefit of Annexure-2; Notification no. 12 of 2012-Service Tax dated 17.03.2012. The petitioner is a Class-1 contractor and he is said to have completed several works of construction and maintenance against which notices were issued for levy of service tax. It is also claimed that the Finance Act, 1994 also provided that no service tax shall be levied with respect to management, maintenance or repair of roads during the period on and from the 16th day of June 2005 to the 26th day of July 2009 (both days inclusive).

2. The notices produced are by the Central Goods and Services Tax Department after the implementation of the Central Goods and Services Tax Act regime which permits further action as per the existing law, prior to the enforcement of the Goods and Services Tax Act on 01.07.2017. The petitioner has only produced the notices for recovery and not produced the order itself.

3. The counter affidavit of the respondent indicates a show-cause notice having been issued as per Annexure-A dated 06.06.2011 and an order-in-original passed by Annexure-B dated 21.06.2012, long before the Goods and Services Tax Act regime came into force. The challenge herein is against the recovery of the demand raised as per the order passed in 2012. The petitioner admittedly has not filed any appeal from Annexure-B.

4. It is also not clear as to how the notification at

Annexure-2 or the exemption granted under the Finance Act, 1994 is applicable to the petitioner since there is no averment regarding the specific contract work undertaken by the petitioner, which in any event, has to be substantiated on facts, by production of sufficient documents before the forums entrusted with such factual adjudication; being the Assessing Officer, Appellate Authority and the Tribunal. There can be no invocation of the extra-ordinary remedy under Article 226 of the Constitution of India; especially at this belated stage.

5. In the present case, as we already noticed, the notices for recovery alone are challenged. The order of assessment has become final and there is no question of any interference to the recovery at this stage.

6. We find absolutely no reason to entertain the writ petition and dismiss the same.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

aditya/-

AFR/NAFR	
CAV DATE	
Uploading Date	03.10.2024.
Transmission Date	