

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5697 of 2022

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Mukesh Kumar Singh, R/o Ekderwan Masuriya, Post- Bhatha, Bhathna, P.S.-
Maker, Dist- Saran- 841215.

... .. Petitioner

Versus

1. The State of Bihar through the Commissioner cum Secretary of State Taxes, Bihar, New Secretariat, Patna.
2. The Commissioner cum Principal Secretary of Finance, Govt. of Bihar, Patna.
3. The Add. Commissioner of State Taxes (Audit), Saran Division, Chhapra.
4. The Add. Commissioner of State Taxes (Admin), Saran Division, Chhapra.
5. The Joint Commissioner of State Taxes, Saran Circle at Chhapra.
6. The Assistant Commissioner of State Tax, Saran Circle at Chhapra.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mrs. Usha Kumari, Advocate Mr. Shashi Bhushan Singh, Advocate
For the State	:	Mr. Vivek Prasad, G.P.7 Ms. Supragya, AC to G.P.7 Ms. Roona, AC to G.P.7 Mr. Sanjay Kumar, AC to G.P.7 Mrs. Manisha Singh, AC to G.P.7

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 20-06-2025

In the instant petition, the petitioner has prayed for
the following relief(s):

*“(a) To issue a writ(s), direction(s)
particularly a writ in the nature of mandamus to
the respondents to quash the impugned ex-parte
reassessment order & demand notice dt-
31.03.2021 U/s 31 of VAT Act along with notice dt-*



10.02.2022 which was passed under time barred proceeding and time barred & ex-parte audit report of 2015-16 without knowledge of petitioner and direction to the Add. C.S.T., Saran Division to refund the excess amount of Rs.32,96,871.00 for which he is only responsible.

(b) To issue writ/direction to the respondents to consider the statutory obligation to refund the excess TDS amount with interest as prescribed under section 70 of the VAT Act, whereas, it is specifically mentioned that where amount required to be mentioned that where amount required to be refunded by the prescribed authority to any person is not refunded to him within the sixty days of the amount having refundable, the prescribed authority shall pay such person simple interest at the rate of six percent.

(c) To grant any other relief (s) as the petitioner is entitled for in the facts and circumstances of the case.”

2. Brief facts of the case are that under the Bihar Value Added Tax Act, 2005 (hereinafter referred to as ‘the Act, 2005’), the system of filing of return by the Firm is under Section 26 and it relates to self-assessment of tax read with Section 24. The petitioner filed returned for the year 2015-16 on 15.12.2016. Deadline for filing of return for the year 2015-16 is 31.12.2016. Respondents have invoked Sub-Section 2 of



Section 26 while selecting the petitioner's firm for the purpose of audit and audit was conducted. They have noticed certain discrepancies and proceeded to conduct audit on 16.12.2019 (Annexure-2). Further notice was issued on 26.12.2020 for appearance of the petitioner on 13.01.2021 at 11.00 A.M. The petitioner remained absent, resultantly, the concerned Authority proceeded to pass order on 01.12.2021. Hence, the present petition.

3. Learned counsel for the petitioner submitted that Notice dated 26.12.2020 was not served in the manner known to the law. It is submitted that email is stated to have been sent, the same has not been received by the petitioner. It is further submitted that impugned action of the Respondent are contrary to Sub-Section 3 of Section 26 read with Sub-Section 3 of Section 24 of the Act, 2005 to the extent that within 36 months from the date of deadline for the year 2015-16 that is with effect from 31.12.2016 is required to be calculated, whereas the order has been passed on 31.03.2021 under Section 31 of the Act, 2005. It is also submitted that petitioner need not exhaust statutory remedy of appeal before the Appellate Authority or tribunal in the view of the fact that Respondents have no jurisdiction to pass order under Section 31 in the light of Sub-



Section 3 of Section 26 read with Sub-Section 3 of Section 24 of the Act, 2005 to the extent of jurisdiction of the concerned Authority after 31.12.2019 (the date is required to be calculated from 31.12.2016 for a period of 36 months). Hence, the impugned orders are liable to be set aside.

4. *Per contra*, leaned counsel for the Respondents resisted the aforementioned contention and submitted that Notice has been served to the petitioner through registered post under acknowledgment to that effect he had furnished original record among other registered post under acknowledgment has been sent to the petitioner Mukesh Kumar Singh. It is further submitted that reading of Sub-Section 3 of Section 26, Sub-Section 3 of Section 24 read with Section 31, 36 months is required to be calculated from the date of audit i.e., 16.12.2019. Therefore, the petitioner has not made out a case so as to interfere with the impugned action of the Respondent on the question of the fact that officials have violated Sub-Section 3 of Section 26 read with Sub-Section 3 of Section 24 of the Act, 2005.

5. Heard learned counsel for the respective parties. Undisputed facts are that the petitioner had filed return for the year 2015-16 on 15.12.2016 under the self-assessment.



Randomly, the official Respondents have taken the petitioner's return for the purpose of auditing under Sub-Section 3 of Section 24 and proceeded to audit the matter on 16.12.2019, thereafter, they proceeded to issue Notice on 26.12.2020 for the appearance of the petitioner on 13.01.2021 at 11.00 A.M. It was not served on the petitioner. On the other hand, it is evident from the original record that official Respondents have communicated notice through the registered post under acknowledgment. The next question would be whether official Respondents have violated in completing the process of audit and in passing final order under Sub-Section 26(3) read with Sub-Section 3 of Section 24 read with Section 31 or not? It is necessary to re-produce Section 26(3), 24(3) and 31, which are as follows:

“26 (3) The audit of a dealer selected under sub-section (2) shall be conducted, in the manner prescribed, within a period of thirty six months from the due date within the meaning of sub-section (3) of section 24.

24 (3) Every registered dealer shall furnish to the prescribed authority, on or before the due date, a true and complete return in respect of every financial year in the form and manner prescribed.

Explanation: In this sub-section, “due date” means —

(a) the 31st day of December of the year following the year to which such return relates in the case of the following classes of dealers:

(i) a company within the meaning of



the Companies Act,1956, or

(ii) a person, other than a company, whose accounts are required, under this Act or under any other law, to be audited or where the report of an accountant is required to be furnished under section 54;

(b) the 31st day of July of the year following the year to which such return relates, in any other cases.

31. Assessment or Re-assessment of Tax of escaped turnover. - *(1) If the prescribed authority is satisfied, either on the basis of audit conducted under sub-section (3) of section 26 or otherwise, that reasonable grounds exist to believe that, in respect of any assessment under this Act or under the Bihar Finance Act, 1981, (Bihar 5 of 1981) as it stood before its repeal by section 94, during any period, any sale or purchases of goods liable to tax under this Act or the said Act, for any reason, has been under-assessed or has escaped assessment, or has been assessed to tax at a lower rate, or any deduction there from has been wrongly made, or an input tax credit has incorrectly been claimed, the prescribed authority shall, in such manner as may be prescribed and after serving on the dealer a notice in the form and in the manner prescribed, proceed to assess or re-assess, as the case may be, the tax payable by such dealer within four years from the expiry of the year during which the original order of assessment or re-assessment was passed, in a case where the dealer has concealed, omitted or failed to disclose full and correct particulars of such sale or purchase or input tax credit, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice under this sub-section was a notice under section 27:*

Provided that the amount of tax shall be assessed or re-assessed after allowing such deductions as were allowable during the said period and at the rates at which it would have been assessed had the turnover not escaped assessment.



(2) (a) The prescribed authority shall, in a case where the dealer has concealed, omitted or failed to disclose full and correct particulars of such sale or purchase or input tax credit, direct that the dealer shall, besides the amount of interest payable under sub-section (10) of section 24, pay by way of penalty a sum equal to three times the amount of tax which is or may be assessed on the turnover of sale or purchase which escaped assessment.

(b) The penalty imposed under clause (a) shall be in addition to the amount of tax, which is or may be assessed on the turnover of sale or purchase which escaped assessment.

(c) No order shall be passed under this sub-section without giving the dealer a reasonable opportunity of being heard.

(3) Any assessment or re-assessment made and any penalty imposed under this Section shall be without prejudice to any action, which is or may be taken under Section 81.”

6. Reading of Sub-Section 3 of Section 26 of the Act, 2005, it is evident that time limit stipulated is for a period of 36 months from the due date within the meaning of Sub-Section 3 of Section 24 of the Act, 2005. Sub-Section 3 of Section 24 due date has been dealt under the heading of explanation and it is consisting of two dates, which are required to be taken note of for the purpose of due date namely 31st December of the year and 31st July of the year. In the present case, having regard to the fact that return has been filed on 15.12.2016 and the deadline being 31.12.2016 for the year



2015-16, 36 months is required to be calculated from 31st December, 2016 and it would be up to 31st December, 2019. No doubt, auditing has been taken while invoking Sub-Section 3 of Section 26 on 16.12.2019. However, the order has been passed on 31.03.2021. It is to be noted that under Sub-Section 26(3) there is no time limit stipulated independently for auditing, issuance of notice and its completion insofar as passing final order. In the absence of such time limit stipulation, one cannot draw inference that 36 months is required to be taken note of from the date of audit. In the present case, audit is being taken on 16.12.2019 with reference to filing of return on 15.12.2016 for the year 2015-16. Therefore, the contention of the Respondent cannot be accepted that 36 months is required to be calculated from the date of audit and not from the date of deadline (due date) for the concerned year.

7. Learned counsel for the Respondents submitted that petitioner has statutory remedy of appeal before the Appellate Authority and further Second Appeal. The same cannot be examined in the present case for the reasons that official Respondents, who have initiated & completed proceeding (impugned action) are beyond the time limit stipulated under Sub-Section 3 of Section 26 of Act, 2005 read



with Sub-Section 3 of Section 24 of the Act, 2005. At this stage, it is necessary to take note of Hon'ble Supreme Court decision in the case of ***Tamil Nadu Cements Corporation Limited Versus Micro and Small Enterprises Facilitation Council and Another*** reported in ***(2025) 4 Supreme Court Cases 1 : 2025 SCC OnLine SC 127*** in which the Hon'ble Supreme Court has laid down the principles for entertaining Writ petition in the absence of exhausting statutory remedy and they are four in number i.e. *“(a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.”*

8. The present case would fall under clause-(c) to the extent that petitioner in not exhausting statutory remedy and the fact that the official Respondents have no jurisdiction beyond 31.12.2019 with reference to date of filing of return on 15.12.2016 for the year 2015-2016. In such circumstances, the aforementioned decision of the Hon'ble Supreme Court aptly applicable to the case in hand insofar as objection raised by the State Respondents to the extent that the petitioner has statutory remedy before the Appellate Authority and further Section



Appeal. Accordingly, the aforementioned contention of the Respondents stands rejected.

9. In view of these facts and circumstances, the petitioner has made out a case so as to interfere with the impugned action of the Respondents. Accordingly, the impugned order & demand notice dated 31.03.2021 along with Notice dated 10.02.2022 stands set aside. The petitioner is at liberty to approach the concerned authority to seek consequential benefits, if any. The concerned authority is hereby directed to redress the consequential benefit in accordance with law, within a period of 03 (Three) months.

10. Writ petition stands allowed.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

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AFR/NAFR	A.F.R.
CAV DATE	N.A
Uploading Date	24.06.2025
Transmission Date	N.A

