(2024) 09 PAT CK 1123

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.25179 of 2019

Anisur Rahman APPELLANT

Vs

State of Bihar And Others RESPONDENT

Date of Decision : 27-09-2024

Acts Referred:
Constitution Of India, 1950 — Article 226

Citation : (2024) 09 PAT CK 1123

Hon'ble Judges : K. Vinod Chandran, CJ;Partha Sarthy, J

Bench : Division Bench

Advocate : Manoj Kumar Singh, Sushil Kumar, Anshuman Singh, Devansh Shankar Singh

Final Decision : Dismissed

Judgement

K. Vinod Chandran, CJ

1. 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.