

(2024) 01 PAT CK 0096

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1735 Of 2024

M/S Frontier Agrotech Private Limited

APPELLANT

Vs

Joint Commissioner Of State Tax

RESPONDENT

Date of Decision : 31-01-2024

Acts Referred:

Constitution Of India, 1950 — Article 226

Bihar Goods and Services Tax Act, 2017 — Section 67(1)

Citation : (2024) 01 PAT CK 0096

Hon'ble Judges : K. Vinod Chandran, CJ;Rajiv Roy, J

Bench : Division Bench

Advocate : Prabhat Ranjan Singh, Kumar Vishalaksh, Vikash Kumar

Final Decision : Dismissed

Judgement

1. The petitioner engaged in the distribution of pesticides, insecticides and other similar items is before this Court challenging the assessment orders passed for the years 2018-2019 to 2022-2023 and for the period April, 2023 to July, 2023; produced in seriatim as Annexures 1 to 6. The petitioner invokes the remedy under Article 226 of the Constitution of India despite the availability of statutory remedy of appeal; which, it is the trite principle, cannot be done, as has been reiterated in State of H.P & Ors. v. Gujarat Ambuja Cement Limited & Anr.; (2005) 6 SCC 499.

2. We notice the contours of the jurisdiction under Article 226 of the Constitution of India to interfere with appellable orders laid down by the Hon'ble Supreme Court in State of H.P & Ors. v. Gujarat Ambuja Cement Limited & Anr.; (2005) 6 SCC 499. It has been held that if an assessee approaches the High Court without availing the alternate remedy, it should be ensured that the assessee has made out a strong case or that there exists good grounds to invoke the extraordinary jurisdiction. While reiterating that Article 226 of the Constitution confers very wide powers on the High Court, it was clarified that nonetheless the remedy of writ is an absolutely discretionary remedy. The High Court, hence, can always

refuse the exercise of discretion if there is an adequate and effective remedy elsewhere. The High Court can exercise the power only if it comes to the conclusion that there has been a breach of principles of natural justice or due procedure required for the decision has not been adopted. The High Court would also interfere if it comes to a conclusion that there is infringement of fundamental rights or where the orders and proceeding are wholly without jurisdiction or when the vires of an Act is challenged and when there is a clear abuse of process of law. There is no such plea made by the petitioner in the present case against the impugned orders.

3. We see from the grounds that the assessment orders passed have been challenged as without jurisdiction and in violation of principles of natural justice; but bland assertions made without any substantiation thereof. The petitioner has also made averments against the inspection conducted alleging that the reasons to believe in the authorization of 12.08.2023 are mere reproduction of the provisions of Section 67(1) of the Bihar Goods and Services Tax Act, 2017 (for brevity 'BGST Act'). Immediately, it is to be noticed that the authorization for inspection through produced as Annexure-7, it has not been challenged in the relief portion.

4. As for the other grounds, it has been contended that the assessment has been made on various grounds of reversal of Input Tax Credit of purchase returns having not been effected, there being no legal grounds for demand, computation of demand having not been properly substantiated, mismatch of outward supply figures in the return for outward supplies vis-a-vis figures in the e-way bill, utilization of Input Tax Credit on account of GSTR-2A/GSTR-3B mismatch and the penalty imposed on failure to furnish consumption details; all of which are matters which could be challenged in appeal.

5. We cannot but observe that six assessment orders have been challenged in one single writ petition; when every assessment order gives rise to a separate cause of action. There is no lack of jurisdiction alleged on the Assessing Officer to proceed for assessment nor is it specifically pleaded that in the course of assessment the Assessing Officer has travelled beyond his jurisdiction. As we noticed, the lack of jurisdiction and the absence of compliance with principles of natural justice have been merely raised but not substantiated. Basically, the petitioner challenges the order of assessment on multifarious reasons which have been extracted in a table given to us across the Bar which again speaks of reduced output liability on credit notes, mismatch of outward supplies in GSTR-1 vis-a-vis e-way bill, excess ITC utilization, penalty for failure to furnish consumption details of fertilizers and so on and so forth.

6. We find no reason to invoke the extraordinary jurisdiction under Article 226 to interfere with the assessment orders passed at this stage.

7. The learned counsel submits that the writ petition has been filed within the time provided for appeal; which alone cannot be a reason to bypass the appellate

remedy and invoke the extraordinary jurisdiction. We see that the orders for Assessment Years 2018-2019 to 2022-2023 (Annexure 1 to 5) were passed on 31.10.2023. With respect to the said orders, the appeal time stands expired today. The petitioner has still a month's time to file an appeal with an application for condonation of delay. With respect to Annexure-6 order, which is for the period April 2023 to July, 2023, the order was passed on 30.11.2023, which can be challenged within one month without a delay condonation application and even within a month thereafter, with proper explanation for the delay.

8. The writ petition having been filed within the period provided for appeal, we deem it fit to direct the Appellate Authority to consider the appeal filed against Annexures 1 to 5, on merits, if it is filed within five weeks from today. In so far as the other order, (Annexure-6) is concerned, the petitioner has still one month time to file an appeal, as provided under the 'BGST Act' and then again a further month, with application to condone delay.

9. We do not think that there need be any directions issued with respect to the appeal against Annexure-6.

10. With the above liberty reserved, the writ petition would stand dismissed.