(2009) 03 PAT CK 0121

In the Patna High Court

Case No : CWJC No. 3183 of 2009

M/s Su-Kam Power System Ltd. APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 23-03-2009

Acts Referred:

Citation : (2009) 2 PLJR 842

Hon'ble Judges : J.B. Koshy, C.J;Ravi Ranjan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. According to the petitioner, it carries the business of manufacturing UPS in different names, such as, UPS-Sonik, which is off line UPS 600VA/12VDC, UPS Falcon off line UPS 800VA/12VDS, UPS Cosmic off line UPS 800VA/12VDC etc. According to the petitioner, what is manufactured by it are not inverters and without any reasonable justification, for the year 2007-2008, the products manufactured by the petitioner are being treated as inverters and thereby the petitioner is being charged tax at the rate of 12.5% instead of 4%, which is illegal. It is also submitted that the assessment order is based on perverse finding of facts.

2. We are of the view that in sales tax, statutory appeal and second appeal are provided and when there is already an efficacious alternative remedy of appeal is available to the petitioner; it is not justifiable for the petitioner to approach this Court by filing the writ petition making a prayer to stay the assessment order. What is the nature of products manufactured by the petitioner has to be considered by the appellate authority and it is a disputed question of fact, which cannot be gone into in writ jurisdiction, and therefore this Court cannot interfere with the assessment orders. It is also noticed that the assessment order was passed one year back.

3. In the above circumstances, it is appropriate for the petitioner to approach the

appellate forum with a delay condonation petition, if so advised, for staying the operation of the assessment order in question. We are not inclined to interfere with the assessment order in writ proceedings. The writ petition stands dismissed with the above observations.