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IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3455 of 2015

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M/s. Noor Mohammad, a Proprietorship Firm, having its Place of business at Padmol, P.S.- Mainatand, District - West Champaran (Betiah), through its Proprietor, Noor Mohammad. Son of Guddar Gaddi. Resident of Padmol, P.S.- Mainatand, District - West Champaran (Betiah).

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary cum Commissioner of Commercial Taxes, Government of Bihar, Vikash Bhavan, Bailey Road, Patna.
2. The Joint Commissioner of Commercial Taxes (Appeal), Tirhut and Saran Division, Muzaffarpur at Muzaffarpur.
3. The Commercial Taxes Officer, Bettiah Circle, Bettiah, District - West Champaran.

.... Respondents

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Appearance :
For the Petitioner/s : Mr. Alok Kumar Agrawal, Advocate
For the Respondent/s : Mr. Piyush Lall, AC to PAAG

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER
(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

3 20-08-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 18.1.2012 passed by the Commercial Taxes Officer, Bettiah Circle, Bettiah by which a demand of Entry Tax for the period 2011-12 for a sum of Rs.4,28,953.28 and a penalty of Rs.12,84,860/- have been raised and imposed and for further quashing the order dated 29.8.2014 passed by the Joint Commissioner, Commercial Taxes (Appeal) by which the said order has been affirmed and for consequential relief.

The short facts relevant to the decision of the matter are that a notice dated 29.12.2011 was issued to the petitioner stating that as per the letter dated 28.9.2011 received from the Joint Commissioner (Administration), Tirhut Division, Muzaffarpur the petitioner had purchased 3829.94 tons of coal from M/s. Tata Steal Limited, Bokaro and for verification of the same the petitioner was directed under Section 56(1) of the Bihar Value Added Tax Act to be present on 18.1.2012 along with his books of accounts and other evidences in detail as also evidence regarding payment of Entry Tax with respect to the same. The petitioner claims to have appeared with all the books of accounts at about 3 P.M. on 18.1.2012 and was informed by the Commercial Taxes Officer that the order had already been passed. Aggrieved by the same the petitioner filed an appeal before the Joint Commissioner, Commercial Taxes (Appeal), who by his order dated 29.8.2014 upheld the impugned order dated 18.1.2012 of the Commercial Taxes Officer.

Learned counsel for the petitioner submits that the petitioner had only been served a notice under Section 56(1) of the VAT Act and thereafter straightaway the Commercial Taxes Officer had proceeded and passed the order dated 18.1.2012 without providing proper opportunity of hearing to the petitioner. It is also submitted that no power has been vested under Section 56(1) of the Act in case of non-production of the necessary documents in detail or failure to satisfy the authority concerned, to straightaway pass an order imposing tax and penalty upon the petitioner. The said Section merely states that the dealer shall comply with the requirements of the notice.

Learned counsel for the State is unable to show before us any provision under which straightaway an order imposing tax and penalty can be passed although he sought to rely upon Section 56(4)(b) of the Bihar VAT Act read with Section 8 of the Bihar Entry Tax Act.

The said sub-Section merely refers to goods not properly accounted for in the books of accounts, registers and other documents of the dealer which can be seized by the authority concerned and on failure of the dealer or person-in-charge of the goods to produce any evidence or to satisfy the said authority regarding proper accounting of goods, impose a penalty thereon. It does not relate to any notice under Section 56(1) of the Act.

Thus, the respondents have failed to satisfy this Court as to under what provision of law the impugned order has been passed and therefore the same is without jurisdiction. Apart from the same this Court is satisfied that the petitioner has not been given any reasonable opportunity of hearing in the matter.

For the aforesaid reasons, the writ application is allowed and both the impugned order dated 29.8.2014 passed by the Joint Commissioner, Commercial Taxes (Appeal) and the order dated 18.1.2012 of the Commercial Taxes Officer, Bettiah Circle, Bettiah are quashed. The respondents shall have liberty to proceed afresh in the matter after giving due opportunity of hearing to the petitioner and in accordance with the requirements of law.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

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