IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13360 of 2014

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M/s Vindhyabasini Rice Mills Cluster Private Limited, a Company incorporated under the provisions of the Companies Act having its Registered Office at Village Jakhini, P.O. Penarh, District Rohtas through its Managing Director, Sunil Kumar Singh son of Shri Bharat Singh, Resident of Nokha, P.O. P.S. Penarh, District Rohtas

.... Petitioner

Versus

1. The State of Bihar through the Secretary cum Commissioner of Commercial Taxes, Bihar, Patna
2. The Deputy Commissioner of Commercial Taxes, Sasaram Circle, Sasaram
3. The Assistant Commissioner of Commercial Taxes, Sasaram Circle, Sasaram

.... Respondents

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Appearance :

For the Petitioner/s : Mr. S.D.Sanjay, Sr. Advocate with Mr. Alok Kumar Agrawal, Advocate

For the State : Mr. Vikas Kumar, AC to PAAG

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

10 08-01-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the ex parte order dated 18.6.2014 of the Assistant Commissioner, Commercial Taxes, Sasaram Circle, Sasaram passed under Section 8 of the Bihar Entry Tax Act, 1993 read with Sections 28 and 33 of the Bihar Value Added Tax Act, 2005.

Learned counsel for the petitioner submits that on the very first date when a prayer for time was made on the ground that the Advocate for the petitioner had gone to his village for the marriage of his son, the same was rejected and the impugned order had been passed. It is submitted that there was no such urgency in the matter as the proceedings had just been initiated and it was not a case where the matter was becoming time barred. It is further submitted that under Rule 25 of the Bihar VAT Rules in the case of assessment on audit objections it is clearly provided that no order shall be passed without serving upon the dealer concerned a notice requiring him within one month from the date of date of its service to reply to the objection raised by the Comptroller & Auditor General, whereas in the present matter the notice itself was dated 5.6.2014 fixing 18.6.2014 and thus the prayer for adjournment was not unreasonable rather the rejection of the same and passing of final order is an unreasonable act on the part of the respondent Assessing Officer.

Learned counsel for the State is unable to justify the action of the Assistant Commissioner in passing an order on the date fixed without giving reasonable opportunity to the petitioner to meet the audit objection.

In the aforesaid view of the matter, the writ application is allowed. The impugned order dated 18.6.2014 is quashed and the matter is remanded to the Assistant Commissioner, Commercial Taxes, Sasaram Circle, Sasaram to pass a fresh order in accordance with law after giving a reasonable opportunity to the petitioner.

(Ramesh Kumar Datta, J)

spal/-

(Vikash Jain, J)

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