IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9698 of 2015

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1. M/s Bhagwati Coke Industries Pvt. Ltd., a Company incorporated having its Office at Industrial Estate ,P.S. Aurangabad, District Aurangabad through one of its Director Shyam Kishore Prasad son of late Deo Nandan Prasad, Resident of Urmila Villa, Mohalla Surya Mandir Surya Mandir Road, P.O., P.S. & Town & District- Aurangabad

.... Petitioner/s

Versus

1. The State of Bihar through the Principle Secretary cum Commissioner of Commercial Taxes, Bihar, Patna.
2. The Principle Secretary cum Commissioner of Commercial Taxes, Bihar, Patna
3. The Joint Commissioner of Commmercial Taxes (Appeal), Magadh Division, Gaya
4. The Deputy Commissioner of Commercial Taxes (Audit), Gaya Division, Gaya

.... Respondent/s

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Appearance :

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

For the Respondent/s : Mr. Anil Kumar Sinha- G.A.9
Mr. Pawan Kumar, A.C. to G.A.9

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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)

5 27-11-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the appellate order dated 12.09.2014 passed by the Joint Commissioner of Commercial Taxes (Appeals), Magadh Division, Gaya in Appeal Case No.AB/STA-(Audit) 05/11-12 for the period 2007-08, by which the appeal of the petitioner has been rejected.

The sole ground pressed by the petitioner before us is that the order has been passed in complete violation of the principles of natural justice as the petitioner was not given proper opportunity of being heard. Apart from the same, learned counsel for the petitioner further submits that there has been complete non-application of mind on behalf of the appellate authority as the written submissions/documents filed by the petitioner were not taken into consideration while passing the order.

It is submitted by learned counsel for the petitioner that the appeal after being filed by the petitioner was first taken up on 26.04.2012 and thereafter notices were issued to the parties fixing the date as 24.5.2012 and the matter continued to get adjourned thereafter. It is also submitted that on most of the dates fixed, the case could not be taken up and only on the next date and on another date much later the order could be passed. Subsequently, the case was fixed on 25.07.2012, on which date the petitioner filed its attendance although it had already filed the written submissions and documents on 24.05.2012 itself, yet the order sheet wrongly recorded that no evidence has been produced by the Advocate of the appellant which is on the face of it false as no proceedings took place on 25.7.2012 and the order in the said order sheet was in fact recorded later on 02.07.2014. Again on 23.07.2013 and 07.05.2015, which were the dates fixed, no order was passed and the matter was to be put up for hearing on 09.09.2014. On 09.09.2014, it is recorded that none had appeared for the petitioner and the matter had been fixed for orders on 12.09.2014, on which date the impugned order was passed.

It is submitted by learned counsel for the petitioner that in view of the manner in which the appeal was conducted, it was not possible for the petitioner to appear on the dates fixed as the notice of hearing of the matter was never served upon the petitioner.

In the supplementary counter affidavit filed on behalf of the respondents, it is stated that the notice was issued to the petitioner vide process No.114 dated 12.04.2014 as well as process No.563 dated 23.08.2014 which was sent to the petitioner by post. It is, however, admitted by learned counsel for the State that the same has been sent by ordinary post and not by registered post, which is required by law even under Rule 50 of the Bihar Value Added Tax Rules, 2005.

Thus, in the aforesaid circumstances, it is evident that no proper opportunity of hearing was provided to the petitioner and the impugned order has been passed ex parte in violation of the principles of natural justice.

On a perusal of the impugned order, this Court is also in agreement with the submissions of learned counsel for the petitioner that there is no consideration of the stand of the petitioner or the materials produced by it in the said case and thus the order also suffers from non-application of mind to the materials on the record.

The writ application is, accordingly allowed. The impugned order dated 12.09.2014 is quashed and the matter is remanded to the appellate authority to consider the same afresh in accordance with law.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Sudhir Singh, J)

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