IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22416 of 2014

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M/s Gayatri Auto, a Partnership Firm, having its place of business at P.O. + P.S.-Town and District-Lakhisarai, through one of its partner Shri Rajesh Kumar Son of Late Ram Naresh Singh, Resident of At P.O. P.S.-Town and District-Lakhisarai.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner of Commercial Taxes, Vikash Bhavan, Bailey Road, Patna.
2. The Joint Commissioner of Commercial Taxes (Audit), Bhagalpur Division, Bhagalpur.
3. The Assistant Commissioner of Commercial Taxes, Audit, Bhagalapur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.D.Sanjay, Sr. Advocate
Mr. Anubhuti Modi

For the Respondent/s : Mr. Vikash Kumar, 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)

7 03-08-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner has come to this Court for quashing the ex-parte order dated 28.4.2011 passed by the Assistant Commissioner of Commercial Taxes (Audit), Bhagalpur by which he has imposed three times penalty under Section 31(2)(A) of the Bihar VAT Act against the petitioner.

Two issues have been raised by learned counsel for the petitioner for assailing the said order, the first is that no notice was issued to the petitioner under Section 31 of the Act after 27.4.2010 when the representative of the petitioner had appeared before the audit authorities at the stage when the proceedings under Section 31 of the Act were initiated. There was thus non-compliance of the principles of natural justice and it is submitted that for the first time the petitioner learnt about the impugned order when it was communicated to it through its circle incharge.

In support of the same learned counsel relies upon the order-sheet of the case which shows that after the case was transferred by the Joint Commissioner of Commercial Taxes (Audit) to the Assistant Commissioner of Commercial Taxes by order dated 25.2.2011 notice was issued to the petitioner and thereafter by the order dated 10.3.2011 and again by the order dated 7.4.2011 but there is nothing to show that the same was actually served upon the petitioner.

In the counter affidavit filed on behalf of the State also no material has been brought on the record to show that there was actual service of notice under Section 31 of the Act to the petitioner.

The other issue raised by learned counsel for the petitioner is that after the audit team had given its report, it was incumbent upon the Joint Commissioner of Commercial Taxes (Audit), Bhagalpur to have referred the matter to the Circle Incharge of Lakhisarai district where the petitioner is assesse for the re-assessment under Section 31 of the Act but the same was not done and the order has been passed by the Assistant Commissioner of Commercial Taxes (Audit).

With regard to the second objection, learned counsel for the State submits that the same has been done in accordance with the provisions as prevailing at the relevant time. It is however, pointed out by learned counsel for the State that under the powers conferred by Section 93(1) of the Bihar VAT Act, 2005, Rule 22 has been amended by order dated 25.10.2011 and it is laid down therein that all proceedings with respect to a dealer pending for disposal as on the date of coming into force of such amendments shall be disposed of in accordance with the procedure laid down in Sub-Rules (7) and (8) of the said Rules.

The amendment rules have come into force after the passing of the impugned order. However, it is evident that there has been non-compliance of the principles of natural justice, hence, the order dated 28.4.2011 cannot be allowed to stand. It is, accordingly, quashed.

The matter is remanded to the competent authority which in terms of Rule 22(10) would be the Circle In-charge. Let the proceedings under Section 31 be now taken up before the competent authority under the amended rules.

At this stage, learned counsel for the petitioner submits that a copy of the audit report may also be given to the petitioner as it has not yet received the same. Let the same be done within a period of two weeks from the date of receipt/production of a copy of this order.

It is made clear that the petitioner shall co-operate in the disposal of the proceedings under Section 31 of the Act.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

S.Pandey/-

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