IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21396 of 2014

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M/s. Isolux Corsan India - C and C JV, a Joint Venture between Isolux Corsan India Engineering and Construction Pvt. Ltd. and C and C Construction Ltd. through its Deputy General, Gopal Goel. having its office at 2nd Floor, Vatika Business Park, Block 2, Sec 49, Sohna Road, Gurgaon, having its Project Office at - Vandana Sadan, Pali Road, Dehri on Sone, Dihri, Rohtash, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar. through Commissioner, Commercial Tax Department, New Secretariat, Patna.
2. Joint Commissioner (Appeal) , Magadh Division, Gaya.
3. Deputy Commissioner of Commercial Taxes, Sasaram Circle, Sasaram.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.21397 of 2014

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M/s Isolux Corsan India CandC JV, a Joint Venture between Isolux Corsan India Engineering and Construction Pvt. Ltd. and C and C Construction Ltd. through its deputy general, Gopal Goel. Having its office at 2nd Floor, Vatika Business Park, Block 2, Sec 49, Sohna Road, Gurgaon, having its Project Office at VandanaSadan, Pali Road, Dehri on Sone, Dihri, Rohtash, Bihar. 49,sohna road,gurgaon,having

.... Petitioner/s

Versus

1. The State of Bihar. through Commissioner Commercial Tax Department, New Secretariat, Patna.
2. Joint Commissioner (Appeal) , Magadh Division, Gaya.
3. Deputy Commissioner of Commercial Taxes, Sasaram Circle, Sasaram.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.21398 of 2014

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M/s. Isolux Corsan India - C and C JV, a Joint Venture between Isolux Corsan India Engineering and Construction Pvt. Ltd. and C and C Construction Ltd. through its deputy general, Gopal Goel, having its office at 2nd Floor , Vatika Business Park, Block 2, Sec 49, Sohna Road, Gurgaon, having its Project Office at- Vandana Sadan, Pali Road, Dehri on Sone, Dihri, Rohtash, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar. through Commissioner, Commercial Tax Department, New Secretariat, Patna.

2. Joint Commissioner (Appeal) , Magadh Division, Gaya.
3. Deputy Commissioner of Commercial Taxes, Sasaram Circle, Sasaram.
null null

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.21399 of 2014

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M/s. Isolux Corsan India - C and C JV, a Joint Venture between Isolux Corsan India Engineering and Construction Pvt. Ltd. and C and C Construction Ltd. through its deputy general, Gopal Goel. having its office at 2nd Floor, Vatika Business Park , Block 2, Sec 49, Sohna Road, Gurgaon, having its Project Office at - Vandana Sadan, pali Road, Dehri on Sone, Dihri, Rohtash, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar. through Commissioner, Commercial Tax Department, New Secretariat, Patna.
2. Joint Commissioner (Appeal) , Magadh Division, Gaya.
3. Deputy Commissioner of Commercial Taxes, Sasaram Circle, Sasaram.

.... Respondent/s

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Appearance :
(In CWJC No.21396 of 2014)
For the Petitioner/s : Mr.Sanjay Singh
Mr. Anurag Saurav
For the Respondent/s : Mr.Vikas Kumar, A.C. to PAAG
(In CWJC No.21397 of 2014)
For the Petitioner/s : Mr. Sanjay Singh
Mr. Anurag Saurav
For the Respondent/s : Mr.Vikas Kumar, A.C. to PAAG
(In CWJC No.21398 of 2014)
For the Petitioner/s : Mr. Sanjay Singh
Mr. Anurag Saurav
For the Respondent/s : Mr.Vikas Kumar, A.C. to PAAG
(In CWJC No.21399 of 2014)
For the Petitioner/s : Mr. Sanjay Singh
Mr. Anurag Saurav
For the Respondent/s : Mr.Vikas Kumar, A.C. to PAAG

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER
(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

5 07-04-2015 Heard learned counsel for the petitioner and learned

counsel for the State.

In all the four writ petitions, the same petitioner seeks quashing of the four different orders dated 12.11.2014 passed by the Deputy Commissioner of Commercial Taxes, Sasaram Circle, Sasaram, by which ex parte orders have been passed imposing taxes of different amounts under Section 31 (1), 31 (2) (a) and 39 (4) of the Bihar Value Added Tax Act, 2005 for the financial years 2011-12 and 2012-13 and under the aforesaid sections read with Section 8 of the Bihar Entry Tax Act, 1993 for the said financial years.

Learned counsel for the petitioner has sought to raise before us in all the cases similar issues of not giving reasonable opportunity to the petitioner to be heard and thus the order having been passed in violation of the principles of natural justice as also the provisions of the Bihar Value Added Tax Act and Rules.

The facts of the case as are relevant for the decision of the matters may be briefly stated that with respect to the aforesaid years, the Joint Commissioner of Commercial Taxes (Appeals) passed orders of remand on 19.11.2013. Upon the remand of the matters, the Deputy Commissioner, Commercial Taxes issued notice on 18.12.2013 fixing the date as 28.12.2013.

It is not in dispute that the notices were duly served but it is evident from the order sheets of the case brought on the record by learned counsel for the respondents that the matter was not taken up on 28.12.2013 and on 31.10.2014 without recording anything it was stated that no action has been taken and fresh notices were directed to be issued fixing the date as 5.11.2014.

The stand of the respondents is that the notices were duly served on 03.11.2014 by affixing the notice at the office/site of the petitioner, whereas the stand of the petitioners is that the notices were received by them through peon on 6.11.2014 and, therefore, there was no occasion for them to have appeared on 5.11.2014 and they appeared in the office of the Deputy Commissioner of Commercial Taxes on 8.11.2014 producing their explanation and documents but without considering the same ex parte orders have been passed on 12.11.2014.

In support of his stand, learned counsel for the petitioner relies upon Rule 50 of the Bihar Value Added Rules, 2005 which provides that notices have to be served in various manner, including by delivering or tendering a copy of the notice to the addressee or any adult member of his family or by post or by speed post or by courier services approved by the Commissioner or Joint Commissioner Incharge or by fax or by electronic mail service and if upon attempts having been made to serve such notice by any of the above methods, the authority under whose orders the notice was issued is satisfied that the addressee is keeping out of the way for the purpose of avoiding service, he may direct the service of notice by affixing a copy of the same on a conspicuous part of the addressee's office/residence or building in which the office is located or where he normally resides.

It is, thus, submitted by learned counsel for the petitioner that the Rules do not provide at the first instance for affixation of notice without there having been made attempt to serve the same as provided in the main part of the Rules. Thus, according to learned counsel the order is contrary to the provisions of the statutory Rules and should be set aside.

Learned counsel for the State, on the other hand, has sought to defend the action of the respondents by referring to the notices of the proceedings having been served earlier in December, 2013 itself and thereafter as per the provisions of Rule 50 (5) of the Rules it was for the petitioner to have made enquiry of different dates fixed and to have been vigilant in the proceedings which the petitioner has not done.

Learned counsel has also sought to rely upon Rule 20 of the said Rules which provides for giving of notices 48 hours to 15 days in the case of such proceedings.

In our view so far as applicability of Rule 20 is concerned, the same is not at all in issue before us. The main question is as to whether the petitioner had been duly served with a notice and the proceedings were being conducted regularly so as to make the petitioner liable under the provisions of Rule 50 (5) of the Rules.

It is evident from the order-sheet itself that the case was not taken up either on 28.12.2013 or on any succeeding date immediately thereafter and it is clear that the entire matter was put in the cold-storage for more than ten months before the Assessing Officer woke up and decided to issue a fresh notice.

In our view it would be in the nature of fresh notice which must correspond with the main provision of Rule 50 regarding proper service of notice by delivering or tendering a copy of the same to the petitioner and only upon the satisfaction of the Assessing Officer that the petitioner was deliberately avoiding service and appearance, the question of affixation of notice could have arisen after recording such satisfaction, but there is nothing in the order sheet to show any such satisfaction regarding proper service of notice on 03.11.2014 itself. Therefore it has to be held that there was no proper service of notice on 03.11.2014 and the fact of the petitioner having been served notice on 6.11.2014 must be accepted.

In the said circumstances, it was not open to the Assessing Officer to have passed ex parte orders as he has done in the present matters.

In the light of the aforesaid discussions, we find that the orders are not only hit by the principles of natural justice but also they are not in compliance of Rule 50 of the Rules. Thus, all the four writ applications are allowed and the impugned orders dated 12.11.2014 are quashed remanding the matters to the Deputy Commissioner of Commercial Taxes, Sasaram to decide the same afresh after giving an opportunity to the petitioner to be heard. The petitioner shall not be required to serve any further notice and shall be obliged to appear before the Deputy Commissioner, Sasaram Circle on 20th April at 11 A.M. along with all the relevant documents and explanations as they may be advised and the Deputy Commissioner, Commercial Taxes, shall thereafter proceed and decide the matters in accordance with law.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Anjana Mishra, J)

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