IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4811 of 2015

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1. M/s Shanti Construction, Jai Prakash Nagar, Karma Road, PO.: & PS.: Aurangabad, District Aurangabad through its Partner Ashu Abhinaw, Son of Sri Bishwanath Prasad, resident of Jai Prakash Nagar, Karma Road, PO.: & P.S.: Aurangabad, District Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-cum-Commissioner of Commercial Taxes, Vikash Bhawan, Bailey Road, Patna
2. The Deputy Commissioner of Commercial Taxes, Aurangabad Circle, Aurangabad
3. The State Bank of India, Aurangabad Branch, Aurangabad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.D. Sanjay
Mr. P.K. Mishra
Ms. Ruchi Mihanka

For the State : Mr. Sandeep Kumar- G.A.8

For State Bank of India : Mr. Rakesh Kumar Singh

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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 15-05-2015 Heard learned counsel for the petitioner and learned Government Advocate No.8 for the State.

The petitioner prays for quashing of the order dated 9.8.2014 passed by the Deputy Commissioner of Commercial Taxes, Aurangabad Circle, Aurangabad, by which the petitioner has been assessed to tax liability to the tune of 7,79,993.60 and three times penalty thereon to the tune of Rs.23,39,980.80 as also interest of Rs.3,27,590/-.

The main grievance of the petitioner is that on account of non-service of proper notice, the aforesaid tax has been imposed for the period 2011-12 only on the basis of a report made by the office of the Comptroller and Auditor General.

In the counter affidavit filed on behalf of the State, a reference is made to certain service reports and signatures at the back or front of the same showing that they have been received by some one.

Learned counsel for the petitioner submits that the same cannot be considered as valid service and nothing can be made out from the said receipt as to whether it has been received by a person authorized or either by the petitioner or a partner and any other person and only the name of one Munna Kumar appears as having received the notice on 28.7.2014, whereas according to him there is no such Munna Kumar working in the office of the petitioner, for which learned counsel for the petitioner submits that, if required, he may file a specific affidavit in that regard.

Learned counsel for the petitioner has also taken us to Rule 50 of the Bihar Value Added Tax Rules, 2005, which provides for various modes of service of notices.

From a consideration of the Rules, we find that the notices ought to be served upon the dealer or in the case of partnership firm either upon a partner or Manager or as per subrule (3) upon any other person or other person on behalf of the dealer.

It is evident that such reference to other person must be a person who is authorized by the dealer to receive such notice and not any and every man in the office.

Considering the facts that various modes of service of notices are provided, it is for the respondent authorities to ensure that the service of notice is made through one of those valid modes and in case they have any suspicion with regard to the service report, it is best for them to ensure that the service of notice is made through valid modes; one of which is that the authority, on being satisfied that the addressee is keeping out of the way for the purpose of avoiding service of notice or that for any other reason the notice cannot be served, shall direct the service of notice by affixing a copy thereof on some conspicuous part of the addressee’s office or the building in which the office is located or where he normally resides, or upon some conspicuous part of any place of business, office or residence last notified by him and such service shall be treated as if it has been served on the addressee personally or it can be done by publication of such notice in any daily news paper.

In the light of the aforesaid discussions, the order dated

9.8.2014 is quashed and the matter is remanded to the Deputy Commissioner, Commercial Taxes, Aurangabad Circle, Aurangabad to re-hear the matter and decide the same after giving an opportunity of hearing to the petitioner for which purpose the petitioner shall present himself in the office of the Deputy Commissioner, Commercial Taxes on 01.06.2015 at 11 A.M. along with his written reply and documents and proceed to decide the matter in accordance with law.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Anjana Mishra, J)

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