IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12761 of 2014

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M/s Allied Construction Company, a Partnership Firm, having its place of business at RPS more, P.S. Saguna More, District Patna through one of its Partner Shri Rajeev Modi son of Saligram Modi resident of 48/3, Garihat Road, P.S.- Garihat, District- Kolkata.

.... Petitioner

Versus

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

.... Respondents

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Appearance :

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

For the State : Mr. Lalit Kishore, PAAG with 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)

12 08-01-2015 Heard learned counsel for the petitioner and learned Principal AAG for the State.

The writ application has been filed for quashing the ex parte order dated 23.6.2014 passed by the Commercial Taxes Officer, Patna Central Circle, Patna in exercise of power under Section 31 of the Bihar Value Added Tax Act, 2005 by which he has imposed tax to the tune of Rs.25,48,521.26 and has further imposed three times penalty to the tune of Rs.1,01,94,085.04.

Several arguments have been made by learned counsel for the petitioner in support of his stand including the fact that there has not been compliance of the principles of natural justice as no notice has been issued to the petitioner in accordance with the procedure prescribed under the Rules and the petitioner has not been given proper opportunity. It is pointed out that time having been sought on exceptional ground of the son of the appearing counsel having been hospitalized yet the same was not granted. Learned counsel also submits that the impugned order does not show any application of mind nor records any reason for passing the order on a review which is an essential requirement under Rule 48 of the Bihar Value Added Tax Rules.

Learned Principal AAG fairly concedes that the order suffers from several infirmities and the power of review ought to have been exercised by the Assessing Officer in accordance with the Act and the Rules.

In view of the facts and circumstances of the case as also the grounds raised and accepted by learned Principal AAG, the writ application is allowed. The impugned order dated 23.6.2014 passed by the Commercial Taxes Officer, Patna Central Circle, is quashed and the matter is remanded to him for a fresh consideration in accordance with law. We hereby clarify that notices under Section 31 of the Act must clearly specify the gist of accusations as provided under Rule 20 of the Rules. The petitioner shall co-operate with the respondent authority in disposal of the case.

(Ramesh Kumar Datta, J)

(Vikash Jain, J)

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