IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13020 of 2016

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Moni Bricks, a proprietary concern, having its office at village Dedhua Bardha, P.O.+P.S. Sikti, District Araria through its proprietor Ram Nath Jha son of Shambhu Nath Jha, resident of Dedhua Bardha, P.O.+P.S. Sikti, District Araria

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Bailey Road, Patna
2. Dy. Commissioner of Commercial Taxes Officer, Farbsiganj Circle, Farbisganj

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.V. Pathy, Advocate
Mrs. Manju Jha, Advocate

For the Respondent/s : DR. Anil Kr. Upadhyaya, S.C.-2

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 11-08-2016

The challenge in the present writ petition is to an order of assessment under Section 28 of the Bihar Value Added Tax Act, 2005 dated 28.07.2015 for the period 2013-14. By the aforesaid order, a sum of Rs. Four lacs was demanded from the petitioner as tax and penalty.

Learned counsel for the petitioner submits that notice for assessment was not served upon the petitioner. The notice is dated 24.07.2015 but the date has been written as 29.07.2015 after encircling the earlier date.

On the other hand, Dr. Anil Kumar Upadhyaya, learned counsel for the respondents, pointed out that the notice was issued for 24.07.2015. Since the same was not received, it was ordered to be

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awaited for 28.07.2015. The notice was purportedly delivered on 26.07.2015. Since, none appeared on 28.07.2015, the order of assessment was passed. Therefore, it can not be said that notice is not served upon the petitioner.

We find that there appears to be some mistake, may be inadvertently, in serving notice upon the petitioner. The question as to who changed the date to 29.07.2015 is disputed. It cannot be said that such date is changed by the respondents. On the other hand, there is change of date. Therefore, mistake in the date of hearing is made out. Thus, such order of assessment can be said to have been passed without giving proper notice to the petitioner. Therefore, we deem it appropriate to set aside the order of assessment dated 28.07.2015, and direct the assessing officer to pass a fresh order.

The petitioner is directed to appear before the assessing officer on 22.08.2016. The assessing officer shall proceed with the assessment in accordance with law thereafter.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Narendra/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	20.08.2016
Transmission Date	