IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13685 of 2016

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M/s Maa Vaishnavi Int Udyog through its Proprietor, Sri Radha Krishna Mahto, Son of Baidyanath Mahto, resident of Village + P.S. Baheri, District- Darbhanga

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Bihar.
2. The Principal Secretary, Commercial Taxes Department, Government of Bihar, Patna.
3. The Deputy Commissioner, Commercial Taxes, Darbhanga Circle, Darbhanga
4. The Commercial Tax Officer, Darbhanga Circle, Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Krishna Chandra, Advocate.
Mr. Pratik Kumar Sinha, Advocate.

For the Respondent/s : Mr. Pawan Kumar, A.C. to G.A. 9

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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: 23-08-2016

Counter affidavit filed on behalf of the State is taken on record.

2. Heard learned counsel for the parties.

3. The challenge in the present writ application is to an order dated 22nd of June, 2015 whereby, a sum of Rs. 2,67,250/- was demanded from the petitioner towards the balance amount of Value Added Tax.

4. The stand of the petitioner is that such demand was raised without serving any notice upon the petitioner, as required

under Section 31(1) of the Bihar Value Added Tax Act, 2005 (for short “the Act”) for the Assessment Year 2014-15.

5. In the counter affidavit filed, the State relies upon notice dated 9th of June, 2015 (Annexure-E) issued to the petitioner with date of hearing as 18th of June, 2015. Said notice is said to be issued to the petitioner under ordinary post.

6. To support that the notice has been sent under ordinary post, a photo copy of the Dispatch Register has been attached which shows that Notice Nos. 1477, 1478 and 1479 were addressed to the petitioner and sent under post with Postal Stamp of Rs. 5/- each.

7. A perusal of the record shows that the demand notice pursuant to order dated 22nd of June, 2015 was served upon the petitioner vide Registered A.D. Post on 30th of July, 2015. If a demand notice can be sent under Registered Post then the question is that why not a notice for framing assessment under Section 31(1) of the Act can be issued under Registered Post.

8. We have serious reservation about the manner of serving notice by way of ordinary post when proceedings under Section 31 have adverse consequences upon a person. We find that there is no proof of issuance of notice to the petitioner. Therefore, we find it difficult to return a finding that notice was served upon the petitioner.

9. In view thereof, the writ application is allowed, impugned order dated 22nd of June, 2015, the Demand Notice dated 30th of July, 2015 are set aside and the matter is remanded back to the Assessing Officer to proceed afresh with the matter in accordance with law. It is made clear that no fresh notice is required to be issued to the petitioner and that petitioner shall present himself before the Assessing Officer concerned on 6th of September, 2016 at 11:00 A.M. with a reply and relevant documents whereupon the concerned Assessing Officer shall proceed to dispose of the matter in accordance with law.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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