IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12541 of 2016

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Janki Eit Udyog, a Partnership firm, having its registered office at Ganj Raghauli, P.O. Madho Patti, P.S. Kamtaul, District- Darbhanga-847306 through its Partner, Manoj Jha, son of Shri. Anil Kumar Jha, resident of Diwani Takiya, Kathalwari, P.O.- Lalbagh, P.S.- Lalit Narayan Mishra University, District- Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Bailey Road, Patna.
2. Commercial Taxes Officer, Darbhanga Circle, Darbhanga.

.... Respondent/s

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Appearance :

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

For the Respondent/s : Mr. Vivek Prasad, GP 7
Mr. Ranjan Kumar, AC to GP 7

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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: 09-08-2016

The challenge in the present writ petition is to an order dated 30.06.2015 imposing tax and penalty of Rs. 2,08,600/- in a proceeding under Section 28(1) of the Bihar value Added Tax Act, 2005 (hereinafter referred to as the ‘Act’).

The sole argument of the learned counsel for the petitioner is that such notice was issued on 30.04.2015 i.e., after the expiry of more than two years and, therefore, such proceedings for assessment are beyond the period of limitation prescribed under Section 28 of the Act.

In the counter affidavit, there is assertions that notice dated 31.12.2014 was served upon the petitioner. Section 28 of the Act contemplates that the proceeding for re-assessment can be initiated by the assessing officer, if the prescribed authority finds that reasonable grounds exist to believe that any dealer has been liable to pay tax under this Act, has willfully failed to furnish any particulars or information required where the prescribed authority can initiate proceedings after granting reasonable opportunity of being heard. The proceedings can be initiated before the expiry of two years from the expiry of period to which it relates. Section 28 reads as under:

> "28. Assessment of tax of dealers evading registration.-(1) If upon information which has come into his possession, the prescribed authority is satisfied that reasonable grounds exist to believe that any dealer has been liable to pay tax under this Act in respect of any period, and has nevertheless willfully failed to apply for grant of certificate of registration, or, having so applied, failed to furnish any particulars or information required for the purposes of section 19, the prescribed authority shall, after giving the dealer a reasonable opportunity of being heard, assess, to the best of its judgment, the amount of tax due, if any, from the dealer in respect of such period and all subsequent periods; and the prescribed authority may, direct that the dealer shall pay, by way of penalty, in addition to the amount of tax so assessed, a sum of one hundred rupees for every day of the period during which the dealer failed to apply for registration or failed to furnish any particulars or information required for the purposes of section 19 or an amount equal to the amount of tax assessed, whichever is higher:
>
> Provided that no proceeding for such assessment shall be initiated except before the expiry of two years from the expiry of the period to which it relates:

> Provided further that a proceeding initiated under this sub-section shall be completed within a period of four years from the date of initiation.
>
> (2) Any assessment made, interest levied or penalty imposed under this section shall be without prejudice to any action which is, or may be, taken under section 81."

We have gone through the notice and find that such notice is not a notice for assessment, but a notice for payment of entry tax. As per averments made in the counter affidavit, the notice was issued on 30.04.2015 i.e., after the expiry of more than two years of the period to which the assessment pertains i.e., 2012-13, the said period comes to an end on 31.03.2015.

Since, the notice has been issued for assessment after expiry of the prescribed period of limitation; therefore, the assessment made is without jurisdiction and, thus, is set aside. The writ application is allowed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

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