IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15693 of 2016

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M/s ASHOK INT, Village Manikpur, P.O. Manikpur, P.S. and District Gopalganj through its Proprietor Lal Babu Prasad, son of Sri Ramchandra Choudhary, Resident of Village-Manikpur, P.O.-Manikpur, P.S. and District – Gopalganj.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner-cum-Principal Secretary, Commercial Taxes Department, Bihar having its Office at Vikash Bhawan, Bailey Road, Patna.
2. The Commercial Taxes Officer, Gopalganj Circle, Gopalganj, District-Gopalganj.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Ramesh Kumar Agrawal, Advocate.
Mr. Shive Kumar, Advocate.

For the Respondent/s : Mr. Dr. Anil Kr. Upadhyaya, SC-2.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)
Date: 17-11-2016

Heard learned counsel for the parties.

2. The challenge in the present writ application is to an order passed on 7th of July, 2015 under Section 28(1) of the Bihar Value Added Tax Act, 2005 (for short "the Act") read with Section 8 of the Bihar Tax on Entry of Goods in to Local Areas for Consumption, Use or Sale Therein Act, 1993.

3. The challenge to the said order is on the ground that the proceedings have been initiated against the petitioner under Section 28 of the Act after the expiry of two years. Therefore, same is

not maintainable in terms of the provisions contained in Section 28 of the Act itself.

4. A perusal of the record shows that for the Assessment Year 2012-13, a proceeding was initiated on 30th of April, 2015 i.e. after the expiry of two years of the end of the financial year 2012-13.

5. Section 28(1) of the Act provides that no proceedings for such assessment shall be initiated after the expiry of two years from the period for which it relates. Thus, any proceedings for the Assessment Year 2012-13 could have been initiated only up to 31st of March, 2015 and not thereafter.

6. In the counter affidavit, the stand of the respondents is that the proceedings were in fact initiated vide notice dated 4th of March, 2015. However, we do not find that the notice dated 4th of March, 2015 is a notice for assessment under Section 28 of the Act. In fact, that it is a notice for payment of the Entry Tax for the Assessment Years 2012-13 and 2013-14. Though it mentions that if the tax is not deposited by 25th of March, 2015, the proceedings under Section 28 of the Act shall be initiated but that does not mean that vide the said notice proceedings have been initiated under Section 28 of the Act. At best the assertions made in the notice can be read as a warning to initiate proceedings under Section 28 of the

Act but it cannot be said that the proceedings under Section 28 of the Act has been initiated by issuing notice on 4th of March, 2015.

7. Since the proceedings have been initiated in the month of April, 2015, the same is clearly beyond the period of limitation prescribed under the Act.

8. Consequently, the writ application is allowed and the order dated 7th of July, 2015 is quashed.

(Hemant Gupta, ACJ)

Mishra/-

(Vikash Jain, J)

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	19.11.2016
Transmission Date	