IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4897 of 2016

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M/s Shyamnandan Roy through its Proprietor, Shyam Nandan Roy, Son of Late Nand Kishore Roy, Resident of Village - Balbhadarpur, P.S. - Laheria Sarai, 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 Assistant Commissioner of Commercial Taxes, Darbhanga Circle, Darbhanga.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Krishna Chandra
For the Respondent/s : Mr. Vikash Kumar, AC to PAAG

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER
(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

4 07-04-2016 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the ex parte order dated 23.06.3015 and the Demand Notice dated 23.06.2015 issued from the office of the Deputy Commissioner, Commercial Taxes, Darbhanga Circle, Darbhanga by which it has been directed to pay Entry Tax of Rs. 65,000/- and penalty of Rs. 1,17,900/- under the provisions of the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein

Act, 1993 read with Section 28 of the Bihar Value Added Tax Act for the period 2014-15.

The stand of the petitioner is that the impugned order has been passed in violation of the principles of natural justice as no notice was ever served upon the petitioner and no opportunity of hearing was given to it.

In the counter affidavit filed on behalf of the State, it is stated that notice fixing the date of hearing 22.5.2015 was issued to the petitioner but the petitioner did not appear. A copy of the notice has been annexed as Annexure-A.

From perusal of the notice, it appears that the Service Peon has simply reported that the notice was affixed on 19.5.2015 and accordingly, the notice has been served on the said date. The fact remains that there is nothing in the service report to show that there was any refusal on the part of the petitioner or its authorized Officer or agent to receive the notice and mere fixation of notice without anything more is not in accordance with the procedure prescribed for service of notice under Rule 50 of the Bihar Value Added Tax Rules. Thus, it has to be held that there is no proper service of notice upon the petitioner.

In the aforesaid circumstances, the writ application is allowed. The impugned order dated 23.06.2015 and the Demand Notice dated 23.06.2015 are both quashed and the matter is remanded to the Assistant Commissioner, Commercial Taxes, Darbhanga Circle, Darbhanga to proceed afresh in the matter in accordance with law after giving proper opportunity of hearing to the petitioner.

It is made clear that no further notice of the proceedings shall be required to be issued to the petitioner and the petitioner shall appear before the said Officer on 28th April, 2016 at 11.00 A.M. along with its reply/written statement and other documents in support of its case. The Assistant Commissioner shall thereafter proceed to decide the matter in accordance with law.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Sudhir Singh, J)

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