IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5114 of 2016

==

M/s Sidhumal through its Prorprietr, Sidhumal son of Late Dhanumal resident of Village - Rajkumar Ganj, P.S. - Town, 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

==

Appearance :
For the Petitioner/s : Mr. Krishna Chandra
For the Respondent/s : Mr. A.K. Sinha, G.A.9
Mr. Pawan Kumar, A.C. to G.A.9

==

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

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

4 12-04-2016 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 23.06.2015 and demand notice dated 23.06.2015 issued from the office of the Deputy Commissioner, Commercial Taxes, Darbhanga Circle, Darbhanga, by which the petitioner has been directed to pay Entry Tax of Rs.90,000/- and penalty of Rs. 1,17,900/- for the period 2012-13.

It is submitted by learned counsel for the petitioner that the order and the proceedings is without the authority of law, as the same has been passed under Section 8 of the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1993 and Section 28 (1) of the Bihar Value Added Tax Act, 2005 beyond the period of two years from the end of the financial year to which it relates.

In the counter affidavit filed on behalf of the respondents, it is stated that it was noticed that the petitioner had not paid the entry tax on import of coal used in different financial years 2012-13, 2013-14 and 2014-15 and accordingly vide process No.P/136, the petitioner was requested to ensure payment of entry tax amount on coal or if already paid then produce evidence in support thereof on 27.01.2014.

It is further stated that despite receiving the said communication, the petitioner neither appeared before the authority nor produced any chit of paper regarding purchase of coal. It is also stated that notice dated 16.04.2015 was issued to the petitioner under Section 8 of the Entry Tax Act read with Section 28 (1) of the Bihar VAT Act and even after receipt of the said notice on 21.05.2015, the petitioner did not appear and, therefore, the ex parte order has been passed.

It is evident from the so called Process No. P/136 that it merely refers to the fact that on the use of coal, the possible amount of entry tax would be Rs.75,000/- for the period 2012-13, apart from other two years but the same does not amount to initiation of proceedings. The proviso to Section 28 (1) of the Bihar VAT Act clearly states that no proceedings for such assessment shall be initiated after the expiry of two years from the period for which it relates. Thus, the proceedings for the period 2012-13 had to be initiated on or before 31.03.2015, whereas the notice vide Process No.1315 dated 16.04.2015 was issued to the petitioner which was received by the petitioner on 21.05.2015. The proceedings under Section 8 of the Entry Tax Act and Section 28 (1) of the Bihar VAT Act were, thus, clearly beyond the period permitted for initiation of such proceedings and they accordingly are contrary to law and are patently illegal.

For the aforesaid reasons, the impugned order dated 23.06.2015 and demand notice dated 23.06.2015 are both quashed.

The writ application is, accordingly, allowed.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Sudhir Singh, J)

U			