IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5066 of 2016

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M/s Deepak Bricks through its Mahesh Kumar Athwani, Son of Late Bakarimal, resident of Village/ Mohalla- Raj Kumar 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

with

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Civil Writ Jurisdiction Case No. 5582 of 2016

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M/s Deepak Bricks through Mahesh Kumar Athwani, Son of Late Bakarimal, resident of village/Mohalla- Raj Kumar 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

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Appearance :
For the Petitioner/s : Mr. Krishna Chandra
For the Respondent/s : Mr. Purnendu Singh GP-27

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

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 17-05-2016

Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the ex parte order dated 31.07.2015 and the demand Note dated 31.07.2015 issued from the Office of the Deputy Commissioner, Commercial Taxes, Darbhanga Circle, Darbhanga by which he has assessed Entry Tax of Rs. 90,000/- and imposed penalty of Rs. 1,21,700/- upon the petitioner for the year 2013-14 under Section 8 of the Bihar on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1993 read with Section 28(1) of the Bihar Value Added Tax Act, 2005.

The stand of learned counsel for the petitioner is that the business of brick kiln was being carried on by his brother Deepak Kumar Athwani under proper licence who died on 19.02.2015. It is submitted that he had paid all the dues as the brick kiln was being operated under the compounding scheme of the State Government under the Bihar Value Added Tax Act.

It is further submitted that the impugned order has been passed without compliance of the principles of natural justice as upon receipt of notice of the proceedings the petitioner had prayed for time on 11th July, 2015 for one month but the next date was fixed on 22.07.2015 itself on which date again the petitioner had to pray for time as on account of the death of the proprietor he was unable to get necessary papers. However, the assessing authority proceeded to pass the final order on 31.7.2015 which is in gross violation of the principles of natural justice in the facts and circumstances of the case, as the petitioner being stranger to the business which had been closed down under the intimation to the Mines Department, was not in a position to pursue the case within such very short time granted.

It is further submitted that there cannot be any personal liability of the petitioner in the matter and he cannot be saddled with the liability of his deceased brother particularly keeping in view that the business was closed down upon the death of the brother who was the sole proprietor of the firm.

Learned counsel for the State, on the other hand, submits that the petitioner may not be personally liable but the estate of the deceased is certainly liable and the proceedings can be taken and it was for the petitioner to have informed the authorities under the provisions of the Act with regard to the death of his brother.

On a consideration of the submissions of learned counsels for the parties, we are of the view that considering the fact that the sole proprietor of the business in question was dead, it was incumbent upon the assessing authority to have granted sufficient time to the legal representative of the deceased so that he could have pursued the case in proper manner after obtaining relevant papers, etc. as it is not the case of the petitioner that he had run the business.

In the aforesaid circumstances, the impugned order suffers from violation of the principles of natural justice as proper opportunity of hearing was not given to the petitioner.

In the above circumstances, the writ application is allowed. The impugned order dated 31.07.2015 and the consequential demand Note dated 31.07.2015 are both quashed and the matter is remanded to the Assistant Commissioner, Commercial Taxes, Darbhanga Circle, Darbhanga to proceed afresh in accordance with law.

It is however, made clear that no fresh notice shall be required to be issued to the petitioner who shall appear before the Assistant Commissioner, Commercial Taxes, Darbhanga Circle, Darbhanga as representative of the deceased proprietor on 1st July, 2016 at 11.00 A.M. along with his written reply/statements and necessary documents whereafter the respondent No.4 shall proceed to pass fresh order in accordance with law.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

S.Pandey/-

AFR/NAFR	
CAV DATE	
Uploading Date	22.06.2016
Transmission Date	