IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6112 of 2016

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M/s N. M. Food Product having its locally registered office at Purani Bazar, Tarapur, Munger through its authorized signatory Pawan Kumar Maurya S/o Sri Paras Nath Maurya resident of House No. 414, village - Rehuwa Mansoor, Tehsil - Mahsi, District - Bahraich (U.P.).

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Cum Commissioner Department of Commercial Taxes, New Secretariat, Bailey Road, Patna.
2. The Principal Secretary Cum Commissioner, Department of Commercial Taxes, New Secretariat Bailey Road, Patna.
3. The Deputy Commissioner of Commercial Taxes, Munger Circle, Munger.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Gautam Kumar Kejriwal
For the Respondent/s : Mr. Kumar Alok S.C.8

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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 17-05-2016 Heard learned counsel for the petitioner and learned counsel for the State.

Twice opportunities were granted to learned Standing Counsel No.8 for filing the counter affidavit but today it is submitted by him that there is absolutely no response from the respondents in the matter.

The writ application has been filed for quashing the order dated 29.12.2015 passed by the Deputy Commissioner of Commercial Taxes, Munger Circle, Munger for the period 2014-

15, by which he has created a liability of the petitioner equal to almost 95% of the actual turnover which is admitted by the petitioner.

The petitioner has been settled the sand ghat at Munger Group-1 for the period 2015-2019 on the basis of the tenders invited by the Mines and Geology Department, Government of Bihar. After the settlement, the Deputy Commissioner, Commercial Taxes, Munger demanded VAT at the rate of 10% instead of prescribed 5% from the petitioner, on the basis of Circular dated 06.02.2014 issued by the Principal Secretary-cum-Commissioner, Department of Commercial Taxes, Government of Bihar. The said Circular dated 06.02.2014 was quashed by this Court vide order dated 11.01.2016 passed in C.W.J.C. No. 1761 of 2015. While the said proceedings were before this Court, a notice was issued to the petitioner on 05.08.2015, by which the petitioner was directed to give an explanation on three points, namely, (i) whether the return filed by the petitioner with the Mining Department is in accordance with the return filed or not; (ii) whether the return filed by the petitioner includes loading charges collected by the petitioner from the purchaser for loading the sand on the Truck/Tractor or not; and (iii) whether the miscellaneous charges collected at the sand ghat is included in the return filed or not.

The petitioner replied to the said notice stating that the figures shown in the return are the same as that being filed with the Mining Department. It was further stated that the petitioner restricted its activity to selling the sand from the pit head and did not undertake the task of loading of sand on the vehicles of the purchasers and, lastly, it was also stated that no miscellaneous charges were collected by it for selling sand, rather there was a clear stand of the petitioner that many people were engaged in loading of sand over the vehicles of the purchasers, who were fixed by themselves as per negotiation and the matter was between people engaged in loading of sand and the purchasers. Similarly the incidental charges were borne by the purchasers from their end and the petitioner was not concerned with it. However, the said explanation of the petitioner was rejected. The assessing officer relied upon certain statements given by anonymous persons. In the course of making enquiry, it was found that an amount of Rs.250/- was collected for loading by the petitioner and another Rs.250/- for miscellaneous expenses as stated by the vehicle owners and the drivers, for which no receipt was given by it.

Learned counsel for the petitioner submits that the order has been passed without any iota of evidence on the record and merely relying upon an enquiry report and without stating specific names the addition had been made, which is in gross violation of the principles of natural justice. It is further submitted that if any such enquiry has been made and anonymous persons had come forward to make the statement, the petitioner ought to have been afforded an opportunity to cross-examine them. It is contended that otherwise in all matters, the assessing officer can fix any figure and increase the turnover to any extent without any iota of evidence.

It is urged by learned counsel for the petitioner that merely because the petitioner had approached this Court against the Circular of the Commissioner which was initially stayed by this Court, and ultimately, the said Circular has been quashed, that the present order has been passed.

Learned Standing Counsel No.8 appearing for the State is unable to support such action of the respondent No.3 and he submits that no specific names have come up in the inquiry and the petitioner was not afforded an opportunity to cross-examine them.

On a consideration of the facts and circumstances of the case, we are in agreement with the submissions of learned counsel for the petitioner that the impugned order suffers from violation of the principles of natural justice, as the assessing officer could not have relied upon the statement of anonymous persons without giving an opportunity to the petitioner to controvert the same.

The writ application is, accordingly, allowed. The impugned order dated 29.12.2015 and the consequential demand notice dated 30.12.2015 are both quashed. It shall be open to the respondent No.3 to proceed afresh in the matter in accordance with law.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Sudhir Singh, J)

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