IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17830 of 2015

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M/s Tinku Bricks through its Proprietor, Arun Kumar Mahto son of Sri Baidyanath Mahto resident of village + P.S. Raj Nagar, District - Madhubani

.... 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 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, A.C. 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)

3 22-01-2016 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 19.06.2015 for the period 2014-15 passed by the Respondent-authorities of the Commercial Taxes Department by which entry tax as also penalty under Section 28 of the Bihar VAT Act have been levied and the consequential demand notice dated 02.07.2015.

The stand of the petitioner is that the

Respondent-authority has passed the order of assessment without service of notice and grant of proper opportunity of being heard to the petitioner.

Despite several adjournments having been granted in the batch of cases from time to time from the month of August, 2015 onwards including this case when added to the said analogous list of cases, no counter affidavit has been filed assailing the said fact and bringing on record any document to show actual service of notice. In this case also a cyclostyled order passed in hundreds of cases, imposing exactly the same amount of tax and penalty, has been passed in the same manner but while there may be some justification because barring a few of these brick kilns, they have gone for compounding to the same extent, but there cannot be any justification for passing order in each case that the notices were issued and after service they are on the record. It is completely unacceptable to make any such statement with regard to the notice as each notice will have its own course and while some may be served at the first instance, others may not have been served at the proper place to the proper person under the provisions of the Act and the Rules. Thus, putting the same in cyclostyled manner shows non-application of mind and no reliance can be placed on any such statement made on such cyclostyled order-sheet.

In the aforesaid circumstances, in the absence of any reply to the said allegations by filing counter affidavit, it has to be held that the order has been passed in violation of the principles of natural justice.

The writ application is, accordingly, allowed. The impugned order dated 19.06.2015 and the consequential demand notice dated 02.07.2015 are both quashed and the matter is remanded to the assessing authority 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 and the petitioner shall appear before the assessing authority on 22nd February, 2016 at 11.00 A.M. along with his show cause, who shall thereafter proceed to pass orders expeditiously in the matter in accordance with law.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Sudhir Singh, J)

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