IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17015 of 2015

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Chaudhary Eit Udyog , a Proprietorship concern having its office at Village- Mahmadpur Bouri , P.O. Naudega, P.S. Biraul , District - Darbhanga through its properietor , Nilam Devi , wife of Sri Vimlesh Chaudhary , Resident of Village - Pokhraon , P.S. Biraul , District -Darbhanga.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes , Bihar , Patna having its office at Vikash Bhawan, Bailey Road , Patna.
2. Dy. Commissioner of Commercial Taxes , West Circle , Muzaffarpur .
3. Assistant Commissioner of Commercial Taxes , Darbhanga Circle , Darbhanga.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. D.V.Pathy with Ms. Manju Jha, Advocates

For the Respondent/s : Mr. R.N. Prasad, S.C. 9

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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)

2 25-01-2016 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 17.8.2015 and the Demand Note dated 20.8.2015 for the period 2013-14 passed by the Respondent No.3, the Assistant Commissioner of Commercial Taxes, Darbhanga Circle, Darbhanga by which entry tax and penalty have been imposed under the provisions of Bihar Tax on Entry of Goods into Local Area for Consumption, Use or Sale therein Act, 1993 and

Section 28 of the Bihar VAT Act.

The stand of the petitioner is that the impugned order has been passed without proper service of notice and grant of proper opportunity of being heard to the petitioner.

Although a copy of the counter affidavit has been served upon learned counsel for the petitioner but the same has not been filed in the Registry. In the counter affidavit filed on behalf of the respondents there is no specific denial to paragraph-8 of the writ petition and no document has been filed showing the service of notice upon the petitioner. The same cannot be accepted particularly in view of the fact that in all matters identical orders have been passed stating that the notices had been issued and after service they are on the record. If that was so, then the said document ought to have been filed along with the counter affidavit.

In the above circumstances, the writ application is allowed. The impugned order dated 17.8.2015 and the consequential demand notice dated 20.8.2015 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 dispose of the matter in accordance with law expeditiously.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

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