IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4810 of 2016

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KSS Petron Private Limited, A company incorporation under the Companies Act, 1956, having its registered office at C/O Shree Cement Limited-Cement Plant, Near Jasoiya More, Aurangabad, PO & PS-Aurangabad, District-Aurangabad through authorized signatory, Gangadhar Rao S., (Senior Manager), S/O- S. Vankat Rao, present resident of Mohalla- J-3, 175 Delhi Development Authority (DDA) Flats, Kalkaji, New Delhi-19.

…. …. 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. Deputy Commissioner of Commercial Taxes, Special Circle, Patna.
3. Assistant Commissioner of Commercial Taxes, Special Circle, Patna.

…. …. Respondents

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Appearance :

For the Petitioner : Mr. Prabhash Ranjan Thakur, Advocate

For the Respondents : Mr. Vikash Kumar, A.C. to P.A.A.G.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
And
HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 10-03-2016

The petitioner has challenged an order passed by the Assistant Commissioner, Commercial Taxes, Special Circle, Patna on 11th of January, 2016 under Section 25(3) and Section 32(1) (b) of the Bihar Value Added Tax Act, 2005.

The assertion of the petitioner is that the said order is *ex parte*, therefore, the petitioner has a right to invoke the extra-ordinary jurisdiction of this Court rather than availing the remedy of appeal.

A perusal of the order passed by the Assessing Officer shows that Sri Prabhash Ranjan Thakur appeared on behalf of the dealer on one date of hearing and that the notice was delivered by e-mail when the case was fixed for 4th of January, 2016. Thus, the Assessing Officer framed an opinion that there are sufficient reasons to believe that the dealer has been provided reasonable opportunity of being heard and, therefore, it was decided not to provide further opportunity and passed *ex parte* order.

The correctness of the findings recorded by the Assessing Officer can be examined by the appellate authority.

We do not find that any averment of the petitioner in the writ application would be sufficient to dispute the findings recorded by the Assessing Officer in the order impugned in the present writ application.

In view thereof, we dismiss the present writ application with a liberty to the writ petitioner to avail the alternative remedy of appeal in accordance with law.

(Hemant Gupta, J)

(Ramesh Kumar Datta, J)

Sunil/-

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