IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9166 of 2016

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M/s Girdhari Lal Sunil Kumar, a proprietorship firm at Pankaj Market, Muzaffarpur through its Proprietor, Shri Sunil Kumar, son of Late Ram Avatar Prasad Agrawal, resident of C/o-Om Prakash Srivastava, Near Jangli Mai Asthan, P.S., Town & District Muzaffarpur. .... Petitioner.

Versus

1. The State of Bihar through the Principal Secretary-cum-Commissioner, Department of Commercial Taxes, Government of Bihar, New Secretariat, Patna.
2. The Joint Commissioner of Commercial Taxes (Appeals), Tirhut Division, Muzaffarpur.
3. The Deputy Commissioner of Commercial Taxes, Muzaffarpur Circle (East), Muzaffarpur.
4. The Commercial Taxes Officer, Muzaffarpur Circle (East), Muzaffarpur.

.... Respondents.

WITH

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Versus

5. The State of Bihar through the Principal Secretary-cum-Commissioner, Department of Commercial Taxes, Government of Bihar, New Secretariat, Patna.
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7. The Deputy Commissioner of Commercial Taxes, Muzaffarpur Circle (East), Muzaffarpur.
8. The Commercial Taxes Officer, Muzaffarpur Circle (East), Muzaffarpur.

.... Respondents.

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Appearance :

(In CWJC No.9166 of 2016)

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Adv.

For the Respondent/s : Mr. Indeshwari Prasad Mandal, AC to GA7

(In CWJC No.9167 of 2016)

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Adv.

For the Respondent/s : Mr. Vinay Kirti Singh- GA-3

Mr. Sumant Kumar Sinha, AC to GA-3.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

Date: 26-05-2016

Heard learned counsel for the petitioners and the State.

Both these writ petitions are directed against the order passed by the Joint Commissioner of Commercial Taxes (Appeal), Tirhut and Saran Divisions, Muzaffarpur.

The issue is similar. An assessment was made under the provisions of the Bihar Finance Act, 1981. The assessments having been made and penalty imposed, the petitioners filed two appeals in question in the two writ petitions. The appeals were taken up and dismissed by order dated 28.01.2015. In both the cases, the writ petitions have been filed against those orders.

It appears that an inspection was conducted in the premises of a Broker and from his books of accounts names and transactions in relation to various dealers were detected. Based on the said information, assessments were made in respect of various dealers. One of the dealers approached this Court against the assessment order and the appellate order. The Division Bench of this Court, in the case of M/s Bhagwati Bhandar Vs. the State of Bihar & Ors. (C.W.J.C. No.7207 of 2009), allowed the writ petition by judgment and order dated 12.01.2011 and remanded the matter for fresh assessment in accordance with the directions as contained therein. When it came to these petitioners, the assessing authority, committing the same mistake, made the assessment order. The appeal having been filed, the appellate authority, being aware of the order of the Division Bench in related matters, ignoring the same only on the ground that the petitioners had appeared and sought time on the ground of the Lawyer not being available, dismissed the appeal without entering into the merits or granting any other opportunities.

Having considered the matter, in my view, the facts noted hereinabove are sufficient to set aside the orders in appeal for fresh hearing in accordance with law. Accordingly, the appellate orders challenged in both these writ petitions are set aside. The petitioners would appear before the appellate authority within two weeks from today and the appellate authority would fix a date and time to hear the appeal on which date and time the petitioners would appear and co-operate in disposal of the appeals without fail. In case, the petitioners once again does not co-operate, the appellate authority would be free to proceed in accordance with law. It would be in fitness of things that till disposal of the appeals no coercive steps would be taken to enforce the demands.

In view of the nature of order passed, both these writ petitions stand disposed of.

(Navaniti Prasad Singh, J.)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	26.05.2016
Transmission Date	