IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10063 of 2016

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Bajrang and Company, a Proprietorship firm having its office at Narayanpur, P.O. Ahilbara, P.S. Biraul District- Darbhanga through its partner, Vijoy Bhushan Das, Son of Late Rasbihari Das, resident of Vill.- Narayanpur, P.O. Ahilbara, P.S. Birual, 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 : Mr. D.V.Pathy, Advocate.
Mrs. Manju Jha, Advocate.

For the Respondents : Mr. Anil Kumar Sinha, G.A.-9

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)
Date: 19-07-2016

Heard learned counsel for the parties.

2. The challenge in the present writ application is to an order dated 31st of July, 2015 passed by the Assistant Commissioner of Commercial Taxes, Darbhanga Circle, Darbhanga, whereby the Entry Tax at the rate of 5 per cent of Rs. 90,000/- and also a penalty

thereon appertaining to Assessment Year 2012-13 was imposed upon the petitioner.

3. The short argument of learned counsel for the petitioner is that in terms of Section 28(1) of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as “the Act”), the proceedings for assessment cannot be initiated after the expiry of two years of the expiry of the period to which it relates. It is contended that such proceedings can be initiated for non-registration of an assessee under the Act and also under “The Bihar Tax on Entry of Goods in to Local Areas for Consumption, Use or Sale therein Act, 1993” (for short “the Entry Tax Act”). It is pointed out that though the petitioner is registered under the Act but is not so registered under the Entry Tax Act. Therefore, the provisions of Section 28(1) of the Act, which are applicable in respect of proceedings for assessment under the Entry Tax Act as well, makes the assessment beyond the period of limitation and, thus, not sustainable.

4. Learned counsel for the respondents could not controvert the argument raised by learned counsel for the petitioner.

5. Admittedly, the proceedings for assessment were initiated after the expiry of two years i.e. pertaining to Assessment Year 2012-13. Therefore, in terms of proviso to Section 28(1) of the Act, the assessment framed is beyond the period of limitation and,

thus, not sustainable.

6. Consequently, the writ application is allowed. The order dated 31st of July, 2015 passed by the Assistant Commissioner of Commercial Taxes, Darbhanga Circle, Darbhanga is set aside.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P.K.P.
N.A.F.R.

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