IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7009 of 2016

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Raj Kumar Hoiyani, a proprietorship firm having its office at Harhachcha, P.O. Harhachcha, P.S. Baheri, District - Darbhanga - 847101 through its proprietor, Raj Kumar Hoiyani son of Late Udha Ram resident of Village - Raj Kumar Ganj, P.O. Lalbagh, P.S. Town, District - Darbhanga.

.... Petitioner/s

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, Darbhanga Circle, Darbhanga.
3. Commercial Taxes Officer, Darbhanga Circle, Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.V.Pathy

For the Respondent/s : Mr. Anil Kumar Sinha- GA9

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 04-05-2016

Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 11.06.2015 passed by the Commercial Taxes Officer, Darbhanga Circle, Darbhanga for the period 2013-14 under the provisions of Section 8 of the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1993 read with Section 28 of the Bihar Value Added Tax Act, by which Entry Tax of Rs. 90,000/- has been assessed and penalty of 01,17,100/- has been levied against the petitioner.

The main submission of learned counsel for the petitioner is that the impugned order has been passed without service of notice upon the petitioner.

In the counter affidavit filed on behalf of the State, a copy of the notice dated 5.6.2015 has been brought on the record by which the date of hearing was fixed on 11.6.2015. It is further stated in the counter affidavit that a second copy of the notice dated 24.6.2015 was issued to the petitioner fixing the date of hearing 11.06.2015 but the petitioner did not appear and the ex parte order was passed.

So far as the service of notice is concerned, there is nothing on the record to show that the notice dated 5.6.2015 was ever served upon the petitioner. So far as the second notice is concerned, it would be irrelevant to issue a notice on 24th June, 2015 fixing the date of hearing on 11.06.2015.

For the aforesaid reasons, the writ application is allowed. The impugned order dated 11.06.2015 and the consequential demand notice are both quashed and the matter is remanded to the Commercial Taxes Officer, Darbhanga Circle, Darbhanga to proceed afresh in the matter in accordance with law.

However, no further notice is required to be issued to the petitioner who shall appear before the Commercial Taxes Officer, Darbhanga Circle, Darbhanga on 25th May, 2016 at 11.00 A.M. along with its reply and documents whereupon the Assessing Officer shall proceed to decide the matter in accordance with law.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Sudhir Singh, J)

AFR/NAFR	
CAV DATE	
Uploading Date	16/05/2016
Transmission Date	