IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7095 of 2016

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Kishan Eit Udyog, a proprietorship firm having its office at Gausa, P.O. Gausa Ghat, P.S. Sadar, District- Darbhanga-846007 through its proprietor, Dilip Kumar Yadav, son of sri Amiri Lal Yadav, resident of village- Gausa, P.O. Gausa Ghat, P.S. Sadar, District- Darbhanga-846007

.... 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. Assttt. Commissioner of Commercial Taxes, Darbhanga Circle, Darbhanga

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. D.V.Pathy
For the Respondent/s : Mr. Raj Nandan Prasad- SC-9

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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 21.05.2015 passed by the Assistant Commissioner of Commercial Taxes, 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/- and penalty of Rs. 1,14,600/- has been levied against the petitioner.

Learned counsel for the petitioner submits that ex parte order has been passed without service of notice upon the petitioner.

In the counter affidavit filed on behalf of the State, it is stated that the notice was issued upon the petitioner and duly served, in support of which a copy of the notice along with service report which is written on a separate sheet of paper has been brought on the record in which the Service Peon has reported that notice was received on 5.5.2015 but refused to sign.

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 on 13.05.2015 but the petitioner did not appear.

We fail to understand how the notice dated 24.6.2015 fixing the date of hearing 13.5.2015 has been issued. In any view of the matter, the so called service of notice does not appear to be in accord with Rule 50 of the Bihar VAT Rules.

For the said reasons, the writ application is allowed. The impugned order dated 21.05.2015 and the consequential demand notice are both quashed and the matter is remanded to the Assistant Commissioner, Commercial Taxes, Darbhanga Circle, Darbhanga to proceed afresh in the matter in accordance with law.

However, it is made clear that no further notice is required to be issued to the petitioner who shall appear before the Assessing Authority on 25th May, 2016 at 11.00 A.M. along with its reply and documents whereupon the Assessing Officer shall proceed to dispose of the matter in accordance with law.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Sudhir Singh, J)

AFR/NAFR	
CAV DATE	
Uploading Date	16.5.2016
Transmission Date	