IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8977 of 2016

Puja Bricks, through proprietor, Mukesh Kumar, age about 30 years, son of Late Raja Prasad, having its registered business situated at Village- Teliapar, P.S.- Punpun Kewra, District- Patna

.... Petitioner

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Bailey Road, Patna
2. The Deputy Commissioner of Commercial Taxes, South Circle, Patna
3. The Assistant Commissioner of Commissioner Taxes, South Circle, Patna

.... Respondents

with

Civil Writ Jurisdiction Case No. 9017 of 2016

Puja Bricks, through Proprietor, Mukesh Kumar, age about 30 years, Son of late Raja Prasad, having its registered business situated at Village - Teliapar, P.S. Punpun Kewra, District Patna

.... Petitioner

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Bailey Road, Patna
2. The Deputy Commissioner of Commercial Taxes, South Circle, Patna
3. The Assistant Commissioner of Commercial Taxes, South Circle, Patna

.... Respondents

with

Civil Writ Jurisdiction Case No. 9788 of 2016

Puja Bricks, through proprietor, Mukesh Kumar, age about 30 years, Son of late Raja Prasad, having its registered business situated at Village- Teliapar, P.S.- Punpun Kewra, District-Patna

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Bailey Road, Patna
2. The Deputy Commissioner of Commercial Taxes, South Circle, Patna .
3. The Assistant Commissioner of Commercial Taxes, South Circle, Patna.

.... Respondents

Appearance :
For the Petitioner : Mr. Prabhash Ranjan Thakur, 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

This order shall dispose of the three writ applications pertaining to Assessment year 2012-13 (Writ Petition No. 9788 of 2016), Assessment Year 2013-14 (Writ Petition No. 8977 of 2016) and Assessment Year 2014-15 (Writ Petition No. 9017 of 2016). Since the issue raised in all the three writ applications are common, the same are being decided vide the common order.

2. The impugned order in all the three writ applications pertaining to all the three Assessment Years is to an order dated 20th of June, 2015 wherein, the petitioner has been made liable to pay an amount of Value Added Tax on account of non-filing its return and on account of not availing the benefit of compounding scheme in terms of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as "the Act").

3. A perusal of the impugned orders shows that the notice is purported to have been sent to be served upon the petitioner under Section 31 of the Act in Form N-v. Since the notice was not received back undelivered, therefore, it was deemed to be served

under Section 50(4) of the Act. Thereafter, keeping in view the installed capacity of the brick-kiln, the value of tax was imposed taking into account the estimated production of the bricks.

4. Argument of learned counsel for the petitioner is that the proceedings have been initiated against the petitioner under Section 31 of the Act, whereas it is Section 27 of the Act under which the proceedings could have been initiated. Since the proceedings have not been initiated under Section 27 of the Act, the order passed is without jurisdiction. It is also contended that notice was not served on the petitioner inasmuch as in one case, the notice is purported to have been sent to the petitioner two months prior to the date of notice.

5. On the other hand, learned counsel for the Revenue submitted that the order of assessment is appealable in terms of Section 72 of the Act. All questions can be raised by the petitioner in an appeal against the orders of assessment. It is also contended that the assessment or re-assessment under Section 31 of the Act is to be finalized after serving a notice in terms of Section 27 of the Act. Therefore, the substantive provision is Section 31 of the Act. It is only the procedural part of serving a notice which is prescribed under Section 27 of the Act. In any case, the competent authority is the same both under Section 27 and Section 31 of the Act. Therefore, mere wrong mentioning of the provision will not render the order of

assessment as the order without jurisdiction.

6. After hearing learned counsel for the parties, we do not find any merit in the writ applications.

7. All the assessment orders contained an assertion that notice was sent under post but not received back undelivered, therefore, the notices were deemed to have been served. Whether particular notice was sent or not sent or sent wrongly is a question of fact which can be raised by the petitioner in an appeal against an order of assessment before the competent authority. We will not examine the question of serving of notice upon the petitioner in a writ petition under Article 226 of the Constitution of India when disputed question of fact arises for consideration.

8. A perusal of Section 31 of the Act shows that the proceedings of assessment or re-assessment can be resorted to after serving a notice under Section 27 of the Act. Therefore, *prima facie* it appears that the substantive provision for framing of assessment or re-assessment is Section 31 of the Act. Still further, it is well settled that mentioning of a wrong provision in the order, though it is not a case of mentioning of wrong provision, will not negate the order passed, provided the authority passing the order has jurisdiction to pass the same.

9. Since the order under challenge in all the three writ

applications is an order of assessment which is an appealable order in terms of Section 72 of the Act, therefore, we refrain ourselves from entertaining the writ applications and dismiss the writ applications with liberty to the petitioner to avail the remedy of appeal.

10. The writ applications stand disposed of.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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