IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16928 of 2015

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M/s Maa Vaishnavi Int Udyog through its Proprietor, Sri Radha Krishna Mahto son of Baidyanath Mahto resident of Village + P.S. - Baheri, District - Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Commercial Taxes Department, Bihar.
2. The Principal Secretary, Commercial Taxes Department, Government of Bihar, Patna.
3. The Deputy Commissioner of Commercial Taxes, Darbhanga Circle, Darbhanga.
4. The Assistant Commissioner of Commercial Taxes, Darbhanga Circle, Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Krishna Chandra

For the Respondent/s : Mr. Vikash Kumar, A.C. to PAAG

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

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

2 22-01-2016 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 22.06.2015 and the Demand Notice dated 22.07.2015 for the period 2014-15 passed by the respondent No.3, the Deputy Commissioner of Commercial Taxes, Darbhanga Circle, Darbhanga by which entry tax and penalty have been imposed under the provisions of Bihar Tax On Entry of Goods into Local Area for Consumption, Use or Sale therein Act, 1993 and Section 28 of the Bihar VAT Act.

The stand of the petitioner is that the impugned order has been passed without proper service of notice and grant of proper opportunity of being heard to the petitioner.

Although a copy of the counter affidavit has been served upon learned counsel for the petitioner but the same has not been filed in the Registry. In the counter affidavit filed on behalf of the respondents a bald statement has been made that the notices had been issued to the petitioner but on the assigned date none appeared on behalf of the petitioner and therefore ex parte order has been passed without enclosing any document showing the service of notice upon the petitioner. The same cannot be accepted particularly in view of the fact that in all matters identical orders have been passed stating that the notices had been issued and after service they are on the record. If that was so, then the said document ought to have been filed along with the counter affidavit.

In the above circumstances, the writ application is allowed. The impugned order dated 22.06.2015 and the consequential demand notice are both quashed and the matter is remanded to the assessing authority to proceed afresh in accordance with law.

It is, however, made clear that no further notice shall be required to be issued to the petitioner who shall appear before the assessing authority on 22nd February, 2016 at 11.00 A.M. along with his show cause. The assessing authority shall thereafter proceed to pass order expeditiously in the matter in accordance with law.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Sudhir Singh, J)

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