IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10338 of 2016

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Krishna Int Udyog, a Partnership firm having its office at Lalpur Patania, P.O. Biroul, P.S. Biroul, District- Darbhanga through its partner, Dayanand Choudhary, Son of Late Surya Narain Choudhary, resident of Lalpur Patania, P.O. Biroul, P.S. Biroul, 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, Muzaffarpur West Circle, Muzaffarpur.
3. Assistant Commissioner of Commercial Taxes, Darbhanga Circle, Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D.V.Pathy, Advocate. Smt. Manju Jha, Advocate.
For the State	:	Mr. Ajay Kumar Rastogi, AAG-10 Mr. Naman Nayak, AC to AAG-10

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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: 30-08-2016

The challenge in the present writ petition is to an order dated 08.08.2015 imposing tax and penalty of Rs. 2,20,000/- in a proceeding under Section 28(1) of the Bihar value Added Tax Act, 2005 (hereinafter referred to as the 'Act').

The sole argument of the learned counsel for the petitioner is that such notice was issued on 18.04.2015 i.e., after the expiry of more than two years and, therefore, such proceedings for assessment are beyond the period of limitation prescribed under Section 28 of the Act.

In the counter affidavit, there is assertions that notice dated

31.12.2014 was served upon the petitioner. Section 28 of the Act contemplates that the proceeding for re-assessment can be initiated by the assessing officer, if the prescribed authority finds that reasonable grounds exist to believe that any dealer has been liable to pay tax under this Act, has willfully failed to furnish any particulars or information required where the prescribed authority can initiate proceedings after granting reasonable opportunity of being heard. The proceedings can be initiated before the expiry of two years from the expiry of period to which it relates.

We have gone through the notice and find that such notice is not a notice for assessment, but a notice for payment of entry tax. As per averments made in the counter affidavit, the notice was issued on 18.04.2015 i.e., after the expiry of more than two years of the period to which the assessment pertains i.e., 2012-13, the said period comes to an end on 31.03.2015. Since, the notice has been issued for assessment after expiry of the prescribed period of limitation; therefore, the assessment made is without jurisdiction and, thus, is set aside. The writ application is allowed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	07.09.2016
Transmission Date	