IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14632 of 2016

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M/s Mohan Bricks through its Proprietor, Smt. Mithila Jha Wife of Sri Ram Sewak Jha resident of village - Karja Patti, P.S. Kamtaul, 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 Commercial Taxes, Darbhanga Circle, Darbhanga
4. The Assistant Commissioner of Commercial Taxes, Darbhanga Circle, Darbhanga
5. The Commercial Tax Officer, Darbhanga Circle Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Krishna Chandra

For the Respondent/s : Mr. Anil Kumar Upadhyaya, S.C. 2

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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: 22-09-2016

Heard learned counsel for the parties.

2. The challenge in the present writ application is to the order dated 17th of July, 2015 and also the demand notice of the same date issued by the office of the Deputy Commissioner, Commercial Taxes, Darbhanga Circle, Darbhanga whereby the petitioner has been directed to pay a sum of Rs.2,10,300/- as entry tax for the year 2012-13.

3. The argument of the learned counsel for the petitioner is that the impugned order passed is without authority of law because such order has not been passed within two years from the end of the financial year in terms 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(1) of the Bihar Value Added

Tax Act, 2005.

4. The stand of the State in the counter affidavit is that the notice was served on the petitioner on 31.12.2014 i.e. within a period of two years and, therefore, it cannot be said that the proceedings are beyond the period of limitation.

5. We have heard learned counsel for the parties and find that the notice for assessment was not served within two years of the end of the financial year to which it relates i.e. financial year 2012-13. Notice is for calling upon the petitioner to deposit the amount of tax but such notice cannot be treated as notice of assessment as contemplated under section 28(1) of the Bihar Value Added Tax Act, 2005. It is in fact warning to deposit the amount of tax. Since the notice was not issued within two years of the end of the financial year, therefore, the impugned order dated 17th of July, 2015 is beyond the period of limitation and, thus, cannot be sustained.

6. In view thereof, the writ petition is allowed; the impugned order and the demand notice dated 17th July, 2015 are set aside.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Amin/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	
Transmission Date	