IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17135 of 2015

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Bikram Enterprises, a Proprietorship concern having its office at Village-Gahumi Bishanpur Kalyan, P.O. Sara Mohanpur, Dist- Darbhanga through its proprietor, Suresh Kumar, Son of Late Shivnandan Yadav, resident of Balha, P.O.- Bhuskoul, P.S. Keoti, District- Darbhanga, Bihar.

.... 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, West Circle, Darbhanga.
3. Assistant Commissioner of Commercial Taxes, Darbhanga Circle, Darbhanga.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. D.V.Pathy
Mrs. Manju Jha
For the Respondent/s : Mr. AC to GA-10

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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)

4 22-01-2016 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 22.7.2015 for the period 2014-15 by which entry tax has been levied and also penalty under Section 28(1) of the Bihar VAT Act.

The stand of the petitioner is that the Respondent No. 3 has passed the order of assessment without proper service of notice and grant of proper opportunity of being heard to the petitioner.

In the counter affidavit there is no reply to para-8 of the writ petition and a bald stand has been taken in reply to para-9 of the writ petition that the notices under Section 8 of the Bihar Taxes on Entry of Goods into Local Areas for Consumption, Use or Sale therein Tax Act 1993 read with Section 28 of the Bihar Value Added Tax Act, 2005 fixing the date of hearing 20.6.2015 on which date the petitioner did not appear and thereafter the ex parte order was passed. Nothing specific has been brought on the record to show that, as a matter of fact, service of notice was made upon the petitioner. Even the impugned order mentions simply that the notice was issued which after service is available on the record but no such details of the same are to be found in the counter affidavit.

In the aforesaid circumstances, the writ application is allowed. The impugned order dated 22.7.2015 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 fresh notice shall be required to be issued to the petitioner and the petitioner shall appear before the assessing authority on 15th February, 2016 at 11.00 A.M. along with his show cause who shall thereafter dispose of the matter in accordance with law expeditiously.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

S.Pandey/-

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