## IN THE HIGH COURT OF JUDICATURE AT PATNA

**Miscellaneous Appeal No.876 of 2012**

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Bharat Commercial Company, a partnership firm having its office at Puja Bajar, Moti Jheel, P.O. Head Office, Muzaffarpur P.S. Town Thana District-Muzaffarpur through its partner Ashok Kumar S/o Late Sudha Ranjan resident of Sahu Pokhar, Sahu Road P.O. Ramna P.S. Town Thana District Muzaffarpur.

.... .... Appellants

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, Bihar having its office at Vikas Bhawan, Bailey Road, Patna
2. Dy. Commissioner of Commercial Taxes, Muzaffarpur Circle, Muzaffarpur.

.... .... Respondents

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**Appearance :**

For the Appellants : Mr. D. V. Pathy, Advocate

For the Respondents : Mr. Vikash Kumar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA**
**And**
**HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)**

**Date: 10-03-2016**

The present appeal under Section 79 of Bihar Value Added Tax Act, 2005 is directed against an order passed by the Commercial Taxes Tribunal, Bihar, Patna on 27.08.2012 whereby an application for restoration of appeal dismissed in default on 25.11.2010, was not restored.

The learned Tribunal has recorded following findings while declining the application for restoration:-

(i) That none has put appearance on behalf of appellant from 05.11.2009 to 25.11.2010.

(ii) That there is no signature of the applicant on the application for restoration or the same is supported by affidavit.

(iii) That, there is no affidavit to the effect that the counsel, who was engaged by the appellant, was not well and could not appear because of his old age.

We have heard learned counsel for the parties and find that the following substantial question of law arises for consideration:-

*Whether the Tribunal is justified in law in not restoring the appeal on account of mistakes of the counsel of the appellant?*

Though, the reasons given by the Tribunal cannot be said to be unjustified but the fact remains that the appellant is not aware of the technicalities that the application requires his signatures and the affidavit. It is his counsel who was required to advice his client while filing an application for restoration of an appeal. The counsel was required to complete the formalities. The appellant cannot be penalized for the acts of his counsel with dismissal of his appeal.

Therefore, in the interest of justice, we deem it proper to set aside the order passed by the Tribunal on 27.08.2012 and remit the matter to the Tribunal for fresh decision in accordance with law on merits.

The Miscellaneous Appeal thus stands allowed.

**(Hemant Gupta, J)**

**(Ramesh Kumar Datta, J)**

BKS/-

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