IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3779 of 2017

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1. Uday Shankar Prasad, Son of Late Prayag Narain, resident of H.No. 27, Udantpuri Garhpar, Biharsharif, P.O. Biharsharif, P.S. Biharsharif, Dist.-Nalanda Bihar, PIN-803101.

.... Petitioner/s

Versus

1. The Commissioner, Central Excise And Service Tax , Patna having his Office at 3rd Floor, Central Revenue (Annex.) Building, Bir Chand Patel path, Patna, Bihar, Pin-800001.
2. The Deputy Commissioner, central Excise and Service Tax, Division-II, Patna having his office at Central Revenue (Annex) Building, Bir Chand Patel Path, Patna, Bihar, PIN-800001.
3. The Additional Commissioner, Central Excise and Service Tax, Tax Headquarters, Patna having his Office at Central Revenue(Annex.)Building, Bir Chand Patel Path, Patna, Bihar, PIN-800001.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sandeep Kumar,
Mr. Alok Kumar,
Mr. Abhi Sarkar,
Mr. Asif Kalim, Advocates

For the Respondent/s : Mr. Satya PrakashTripathy, Sr.SC, Central Excise
Mr. Satya Vrat, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 16-05-2017

Challenging the act of the respondents in recovering service tax from the petitioner it is contended that without notice to the petitioner, without hearing him and without granting him proper opportunity, the action has been taken and the original order imposing the tax liability dated 31.3.2013 was never served on the petitioner. As a consequence thereof, petitioner was not aware on what ground tax liability has been imposed and his right to file the appeal is taken away as the limitation for filing the appeal is already over if the order was passed on 31.3.2013 and challenging the action of the respondents in attaching the bank account of the petitioner and recovering the amount of tax, this writ petition has been filed.

On notice being issued, the respondents have filed a detailed counter affidavit and refute the contentions by pointing out that the order of imposition of tax liability was passed on 31.3.2013 after notice to the petitioner, granting him opportunity of hearing and it was the petitioner who did not avail of the opportunity and did not participate in the proceedings held.

Learned counsel for the petitioner points out that the notice was sent on an address on which it could not be served on the petitioner and, therefore, entire action has been taken behind the back of the petitioner.

Notwithstanding the rival contentions of the parties, the fact remains that against the order dated 31.3.2013, the petitioner has a right to file an appeal before the Commissioner, Appeals, and the petitioner can very well raise all these grounds in the appeal by contending that he acquired the knowledge and got a copy of the order only when the counter affidavit in this writ petition was served along with a copy of the impugned order and it would be for the appellate authority to consider all these aspects of the matter and determine the date when the copy of the impugned order was served on the petitioner and thereafter calculate the limitation and take a decision in accordance with law.

At this stage, in this writ petition, indulgence into the matter, when serious disputed questions of facts with regard to issuance of the impugned order and its service on the petitioner are involved, is not called for.

The questions with regard to issuance of the notice, its service and allied issues are left open to be considered by the appellate authority. The appellate authority may examine all these aspects of the matter at the first instance and pass an appropriate order in accordance with law within a period of 60 days of the filing of the appeal along with a certified copy of this order and if there is still any grievance subsisting, petitioner shall have, after availing of the remedies available, the liberty to approach this Court after the appellate authority takes a decision on the matter,.

With the aforesaid liberty, this petition is disposed of.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	23.5.2017
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