IN THE HIGH COURT OF JUDICATURE AT PATNA

Tax Cases No.34 of 1990

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The Commissioner of Commercial Taxes, Bihar, Patna.

.... Petitioner

Versus

M/S Radhey Shayam Sohan Kumar, Saraiyaganj, Muzaffarpur.

.... Opposite Party

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Appearance :

For the Petitioner : M/S. Vikash Kumar, Sriram Krishna and Rewati Kant Raman, Advocates.

For the Opposite Party : None present.

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

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 03-04-2017

The question referred to us for consideration in this proceeding under Section 48(2) of the Bihar Finance Act in the year 1990 is as under:-

> "Whether on the facts and in the circumstances of the case the Revisional Order dated 03.08.1989, passed by the Tribunal is arbitrary, without jurisdiction and bad in law, particularly due to the violation of the provisions of Regulation 25 of the Bihar Commercial Taxes Tribunal Regulations, 1979, as also the principles of

natural justice?

The matter is pending since 1990 and in spite of notice none is appearing for the respondent assessee. Even though after hearing Sri Vikash Kumar learned counsel appearing for the petitioner to some extent, we prima-facie feel that the proceeding in the present case can be said to have been taken by the Tribunal in violation of the provisions of Regulation 25 of the Bihar Commercial Taxes Tribunal Regulation, 1979 but from the supplementary affidavit filed by the Department, we find that the firm M/S. Radhe Shyam Sohan Kumar with Registration No. MZ-148(R), which used to deal in Vanaspati and Mustard Oil, is no more in existence, the firm has been dissolved, its registration has been cancelled. That being so, the answer of the reference would now be an exercise of futility and even we accept the contention of Sri Vikash Kumar and answer the reference in favour of the revenue the matter will have to be remand back to the Tribunal for fresh consideration, once the overwhelming evidence is available on the record and the contention of the Department itself is that the firm is no more in existence, then the proceeding on remand can not be conducted before the Tribunal. In the facts and circumstances of the case and taking note of the fact that since last several years, the firm is no more in existence, we dispose of the matter without interfering with the order of assessment of Tribunal on merit leaving the legal question open to be answered or considered in an appropriate case in future if required.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

U.K./-

AFR/NAFR	NAFR
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