IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6570 of 2017

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1. M/s Irshad Khan, a proprietorship firm having its place of business at Tarwan, Siwan Sadar, Siwan through its proprietor namely Irshad Khan, S/o Md. Ali Khan resident of Village & P.O. Tarwan, Siwan Sadar, Siwan.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-cum-Commissioner of Commercial Taxes, Bihar Patna having it's office at Vikas Bhawan, Patna.
2. The Commercial Taxes Officer, Siwan Circle, Siwan.
3. The Union of India through the Secretary, Ministry of Railways, Govt. of India, New Delhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
For the Respondent/s : Mr. Vikash Kumar- SC-11
For Respondent No.3 Mr. Anil Kr. Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 04-08-2017

In this writ petition filed under Articles 226 and 227 of the Constitution, challenge is made to an order dated 11.3.2017 passed by the respondent Commercial Taxes Officer, Siwan raising a demand and contending that by a non-speaking order and without granting proper opportunity to the petitioner, proceedings have been finalized under Section 32 of the Bihar Value Added Tax Act and on the basis of certain information provided by the Headquarters of the Commercial Tax Office, certain amount is said to have been used by the petitioner for purchasing of stone chips from outside the State of

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Bihar and using it within the State without payment of duty. Primarily contending that the petitioner was not heard and in total violation of the principles of natural justice the impugned action is taken, the writ petition in question was filed.

Respondents have filed a detailed counter affidavit which goes to show that a show cause notice was issued to the petitioner, he was heard and after hearing the petitioner it was found that the petitioner brought into the area certain stone chips after purchasing it from outside the State and did not disclose the same by filing proper return and, therefore, the impugned action is taken. Respondents have also brought on record the calculation and particulars of the amount of purchase done by the petitioner and brought into the State. They also contend that all these materials were brought to the notice of the petitioner, the petitioner was granted opportunity to show cause, he filed the show cause and thereafter the action was taken.

Keeping in view the nature of dispute involved in the matter, as is detailed hereinabove, and considering the fact that against the order impugned, statutory remedy of appeal is available to the petitioner under the Value Added Tax Act, it is not appropriate for this Court to enter into the dispute in question in this petition under Articles 226 and 227 of the Constitution when the

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petitioner can very well agitate all these issues by taking recourse to the statutory remedy of appeal.

Accordingly, granting liberty to the petitioner to take recourse to the statutory remedy of appeal before the appellate authority, the petition is disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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