IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7971 of 2018

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M/s. Freezer Point, a Proprietary concern, having its place of business at Kuber Complex, At P.O. & P.S. Bhabua, District Kaimur through its Proprietor, Anil Kumar Singh, Son of Sri Ram Navami Singh, Resident of Village Madhurna, P.O. Hata, P.S. Chainpur, Dist- Bhabua (Kaimur).

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner of Commercial Taxes, Government of Bihar, Vikash Bhavan, Bailey Road, Patna.
2. The Deputy Commissioner of Commercial Taxes In-charge, Bhabua Circle, Bhabua.
3. The Deputy Commissioner of Commercial Taxes- Audit, Gaya.
4. The Commercial Taxes Officer, Bhabua Circle, Bhabua.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok Kr. Agrawal, Advocate
Ms. Priya Gupta, Advocate
Ms. Parul Prasad, Advocate

For the Respondent/s : Mr. Vikash Kumar- SC 11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-04-2018

Seeking quashing of the order of assessment passed on 12.6.2017 by the Assessing Officer, namely the Deputy Commissioner, Commercial Taxes, Bhabua, this petition has been filed under Article 226 of the Constitution. For the financial year 2013-14, the petitioner's establishment has been assessed for payment of Bihar Value Added Tax and interest and penalty, total amounting to Rs.22,16,659/-.

Inter alia contending that the assessment under the Bihar Value Added Tax Act, 2005 has been ordered ex parte without granting opportunity to the petitioner, this writ petition has been filed and it is argued that as the principles of natural justice have been violated in holding the proceedings for assessment, the petitioner has a right to challenge the same in a writ petition and is not required to assail the order of assessment by taking recourse to the statutory remedy of appeal provided. Learned Counsel for the petitioner argued it is a fit case where the assessment order should be quashed and further invites our attention to the proceedings before the Assessing Officer, as is filed vide Annexure 2, and points out that notice was issued to the petitioner and on 8.9.2016 ex parte proceedings were ordered and it was directed that the order is being passed but the order was passed, in fact, on 2.6.2017 and between 8.9.2016 to 12.6.2017 no opportunity was given to the petitioner to give their say.

Shri Vikas Kumar, learned counsel appearing for the respondents, refuted the aforesaid contention and argued that once it is an admitted position that notice was issued to the petitioner on 8.9.2016 and in spite of telephonic communication they did not appear before the Assessing Officer, no indulgence is called for by this Court especially when the petitioner has a statutory remedy of appeal, a second appeal and revision before the statutory authority.

We have heard learned counsel for the parties at length and find that notice for appearance was given to the petitioner and the matter was listed on 8.9.2016. Even though the order-sheet indicates that the notice has been served and in spite of telephonic communication being made, the assess is not present, the order further indicates that the assessment order is being passed on the same date i.e. 8.9.2016,but, surprisingly, for a period of 9 months nothing is done and the order of assessment is passed on 12.6.2017. It is a case where the proceedings were to be held on 8.9.2016. The order-sheet indicates that the order has been passed, but the order seems to have been passed on 12.6.2017. If the matter could be kept pending for 9 months before the Assessing Officer, the Officer should have well issued a fresh notice to the assessee to give his say.

In view of the above, we find that it is a fit case where the matter be remanded back to the Assessing Officer for conducting the assessment proceedings afresh in accordance with law.

Accordingly, we allow this appeal, quash the order of assessment dated 12.6.2017 and direct the petitioner, appellant herein, to appear before the Assessing Officer along with all relevant materials and documents available, on 23rd of May, 2018 and thereafter the Assessing Officer to proceed in the matter in accordance with law.

In the meanwhile, all coercive steps taken, including attachment of bank account shall stand quashed and the bank account of the petitioner shall be released and all coercive steps kept in abeyance till finalization of the assessment by the Assessing Officer.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	02.05.2018
Transmission Date	