IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6116 of 2018

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M/s Balmukund Cement & Roofings Limited, a company registered under Indian Companies Act, 1956 having its registered office at 702, Luv Kush Tower, Exhibition Road, Patna, through its Director Pradip Kumar Sahewal Son of Laxmi Chand Sahewal, 705, Surya Vihar Apartment, Exhibition Road, Patna, Bihar - 800001.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Commercial Taxes, Government of Bihar.
2. The Deputy Commissioner of Commercial Taxes, Muzaffarpur West Circle, Muzaffarpur.
3. Assistant Commissioner of Commercial Taxes, Muzaffarpur West Circle, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrigank Mauli, Advocate
Mr. Prince Kumar Mishra, Advocate
Mr. Sanket, Advocate

For the State : Mr. Vikash Kumar- SC-11

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

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 03-04-2018 Having heard learned counsel for the parties, we find that an ex-parte order of assessment has been passed vide Annexure-P/6 dated 26.5.2015 imposing duty under the Value Added Tax Act for the year 2010-11. However, a perusal of the material available on record goes to show that the plant and machinery was only brought to the area in question for establishment of a factory but due to various problems and other reasons beyond the control of the petitioner, the entire plant and

machinery was shifted from Bihar and the factory was not established. It was shifted to other States like, West Bengal and prima facie the contention of the petitioner is that the notices were not served on the petitioner seems to be correct.

However, Sri Vikas Kumar argues that now in view of the stand taken vide Annexure-7, the petitioner has remedy of appeal and, therefore, indulgence into the matter directly to the petitioner under Section 226 of the Constitution of India is not called for. However, we are satisfied prima facie that the impugned order was passed in the year 2015 without serving proper notice to the petitioner, notice was sent to the petitioner in the State of Bihar after shifting of the establishment keeping in view all these facts, it is a fit case where the matter should be remanded back to the Assessing Officer to reconsider the entire matter and fresh order passed with regard to the liability of the petitioner for the year in question i.e. 2008-11.

Accordingly, we allow the writ petition in part and quashed the order of assessment vide Annexure-P/6 dated 26.5.2015 and direct the petitioner to appear before the Assessing Officer along with certified copy of the order and all relevant documents on 25th April, 2018 and thereafter the Assessing Officer shall proceed in accordance with law and decide the assessment proceeding preferably within a period of sixty days thereafter.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

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