IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16721 of 2016

Rajrikh Singh Son of Late Ambika Singh resident of village - Mahaicha, P.O. Mirganj, P.S. Uchakagaon and District Gopalganj

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner - Cum - Principal Secretary, Commercial Taxes Department, Bihar having its Office at Vikash Bhawn, Bailey Road, Patna
2. The Commercial Taxes officer, Gopalganj Circle, Gopalganj, District Gopalganj

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ramesh Kumar Agrawal, Advocate
For the Respondent/s	:	Mr. Anil Kr. Sinha- GA-1

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 19-07-2018

Challenging the proceedings initiated for assessment of tax payable by the petitioner under the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or

Sale Therein Act, 1993 and contending that for the Assessment Year 2012-13 initiation of proceedings by issuing notice Annexure-5 on 28.04.2015 is beyond the statutory period prescribed under Section 28(1) of the Bihar Value Added Tax Act, 2005, this petition has been filed under Article 226 of the Constitution of India for quashing the proceedings and the consequential assessment done on the ground that it is unsustainable and in support thereof, reliance is placed on an order passed by us recently on 25.06.2018 in C.W.J.C. No. 16290 of 2017.

Records indicate that for the Assessment Year 2012-13 proceedings were initiated for the first time by issuing the notice on 28.04.2015, as is evident from the note-sheet (Annexure-2) and the petitioner by notice dated 28.04.2015 was directed to appear on 22.05.2015 and finally the impugned order of assessment was passed after 19th of June, 2015, as is evident from Annexure-2.

Series of judgments are available with regard to reopening of assessment after a period of two years, as contemplated under Section 28(1) of the Bihar Value Added Tax Act and in the case of **Ranjan Bricks Centre & Ors. Vs. The State of Bihar- 2016 (2) PLJR 310** it has been held by a coordinate Bench of this Court after considering the provisions of Section 28(1) and the first proviso thereto that no proceeding for assessment shall be initiated after expiry of two years from the period for which the tax is to be recovered.

Even though learned counsel for the respondents raised a preliminary objection to say that the petitioner has a right to challenge the action by resorting to the statutory alternative remedy but considering the fact that the issue in question pertains to jurisdiction of the Revenue to re-assess and the same can be decided on the basis of material available on record and the same stands covered by a judgment rendered by a Co-ordinate Bench of this Court, we are not inclined to accept the aforesaid objection. The objection raised stands rejected.

In this case, admittedly, the period for which the proceedings have been initiated under Section 28(1) is the financial year 2012-13 and the period in question has to be counted with effect from 1.4.2013. Admittedly, the proceedings were reopened vide show-cause Annexure-5 dated 28.04.2015 and as this was after a period of two years and the same being not permissible in view of the law laid down in the case of **Ranjan Bricks Centre** (supra), we have no hesitation in quashing the proceedings and the show cause notice and the consequential action of assessment Annexure-3.

Accordingly, the application is allowed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

P.K.P./-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	28.07.2018
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