IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16988 of 2016

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M/s. Upkar Ent Udyog Village Narayanpur Lachhwar, P.O. Lachhwar, P.S. Thawe and district Gopalganj through its proprietor Barma Prasad son of Late Ram Chandra Prasad, resident of Village Naviganj, P.S. Barharia 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 Bhawan, Bailey Road, Patna.
2.The Commercial Taxes officer, Gopalganj Circle, Gopalganj, District Gopalganj.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Ramesh Kumar Agrawal, Adv
For the Respondent/s : Mr. Vikash Kumar SC-11

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 25-07-2018

Heard parties.

Through this application the petitioner challenges the order dated 28.04.2015 as contained in Annexure-2, issued by the Commercial Taxes Officer, Gopalganj Circle, Gopalganj, by which proceeding under Section 8 of the Bihar Entry Tax Act, 1993 read with Section 28(1) of the Bihar Value Added Tax Act, 2005, has been initiated. Annexure-5 dated 28.04.2015 is notice bearing Process No. 240 for assessment which has been issued in terms of order passed by Annexure-3 in pursuance to order passed on 19.06.2015. Pursuant thereof demand of tax of Rs. 2

Lacs and penalty of Rs. 2 Lacs totalling to sum of Rs. 4 Lacs has been made to the petitioner. Challenge has been made to all the aforesaid act of the authority concerned.

It is urged on behalf of the petitioner that the relevant period of assessment is of the year 2012-13 and under Section 28(1) of the Bihar Value Added Tax Act, 2005, any assessment with regard to the concerned period should be made within two years as there is limitation of two years. It is further urged that the period comes to an end on 31.03.2015.

In such a situation, it is submitted that the notice of assessment or demand is barred by limitation as in terms of Section 28 of the Bihar Value Added Tax Act, 2005 and, thus, it would vitiate entire action of the authority concerned. Learned counsel for the petitioner has placed reliance upon a decision dated 09.08.2016 of a Division Bench of this Court rendered in CWJC No. 12541 of 2016 (Janki Eit Udyog Vs. the State of Bihar & Anr).

After considering the provisions of Section 28(1) of the Bihar Value Added Tax Act, 2005, the Division Bench has come to the conclusion that no proceeding for such assessment can be initiated except before the expiry of two years from the date/period to which it relates.

There is no dispute with regard to the fact that such period in the instant case would end on 31.03.2015 and the initiation of proceeding is of 28.04.2015 i.e. on the date beyond the period of limitation.

Accordingly, it is held that, since notice has been issued after expiry of prescribed period of limitation, the assessment made is without jurisdiction. Annexure-2 as well as entire proceeding initiated by the authority concerned on the basis of Annexure-2, being in teeth of the aforesaid decision of the Division Bench of this court, are quashed and set aside.

In the result, this writ application stands allowed.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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