IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6679 of 2018

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M/s Yashraj Electricals & Electronics, a Proprietary Concern, having its Place of Business at Fancy Market, Sasaram through its Proprietor, Ravish Kumar Son of Sri Sitaram Singh, Resident of Mohalla Parsun Nagar, Mico, P.S. Sasaram, District-Rohtas ... Petitioner

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, Sasaram Circle, Sasaram
3. The Deputy Commissioner of Commercial Taxes-Audit, Gaya
4. The Assistant Commissioner of Commercial Taxes, Sasaram Circle, Sasaram.
5. The Commercial Taxes Officer, Sasaram Circle, Sasaram ... Respondents

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Appearance :

For the Petitioner : Mr. S.D. Sanjay, Sr. Adv. with
M/s Alok Kumar Agrawal & Vipula Kanoria, Advs.

For the Respondents : Mr. Vikash Kumar, SC XI

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

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 11-04-2018 Challenging the order passed by the Assessing Officer in a proceeding under Section 31 of the Bihar Value Added Tax, 2005, for the assessment year 2012-13, as contained in Annexure 2, dated 30th December, 2017, this writ petition has been filed.

Having heard learned counsel for the parties, we find that for the assessment year, in question, within the time stipulated returns were filed by the petitioner and it is a case of the petitioner that along with the returns all relevant documents, account books and materials were available, nothing was done.

The assessment was finalized under the self assessment scheme and on account of certain audit objection, after about two and half years, on 04.10.2016, the proceedings were initiated for re-assessment. Even though cognizance of the matter as is evident from Anenxure 2 for re-opening of the assessment was taken on 04.10.2016, but, after recording the order sheet issuing notice to the petitioner, the proceedings were fixed for 04.11.2016, nothing was done and it was only on 11.09.2016 the proceedings commenced. It is the case of the petitioner that he has already paid the taxes, the returns were filed along with all relevant documents and as self assessment was finalized, it was not necessary for the petitioner to appear before the Assessing Officer.

Grievance of the petitioner is that now an ex parte order of assessment has been passed and without adverting to consider the documents already filed, the impugned order has been passed.

Even though Mr. Vikash Kumar, learned counsel for the State, refuting the aforesaid contents, argues that notice was issued to the petitioner after re-opening of the matter and initiating the proceedings under Section 31 of the Bihar Value Added Tax, 2005. It was incumbent upon the petitioner to appear in pursuance of the notice and place all materials in the proceedings and this having not been done. Thus, the petitioner move the Court under Article 226 of the Constitution of India for the statutory remedy available to the petitioner.

Having heard the learned counsel for the parties that for the assessment year 2012-13 the matter has been re-opened in the year 2016 based on the audit objection and the provisions to Section 31 of the Bihar Value Added Tax, 2005. The petitioner has made specific averment to say that all taxes, dues and documents in support of the case of the petitioner are on record, but, the have not been taken into account before passing the impugned order.

Be that as it may, once the petitioner had filed the return and the self assessment was completed, if the Department re-opens the matter on the basis of audit objection and if the petitioner under bonafide belief that it is not necessary to contest the proceeding under Section 31 of the Bihar Value Added Tax, 2005, the interest of justice would require that one liberty should be granted to the petitioner to seek indulgence to the matter.

This being the requirement of justice, Annexure 2, dated 30th December, 2017, is **quashed**. We **allow** the petition and direct that the petitioner should appear before the competent authority, who has passed the impugned order, Annexure 2, dated 30th December, 2017, along with the certified copy of this order and all the relevant documents and materials on 1st May, 2018, and, thereafter, the authority shall consider the same and pass the order in accordance with law.

All coercive step is stayed. The attachment of the Bank's account shall be released. The amount already released after attachment of the Bank account shall not be refunded and its refund shall be on final order to be passed in the proceeding to be held in pursuance to the remand.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Shamshad/-

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