IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16290 of 2017

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M/s H. N. S. Ent Udyog, Village-Sahadigari, P.S. & Block-Vijaypur and District Gopalganj through its Proprietor Mrs. Meena Shahi Wife of Shri Virendra Pratap Shahi, Resident of Village-Nautan, P.O.-Bariyarpur, Pin Code-274001, P.S.-Kotwali Deoria and District Deoria (U.P).

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner-Cum-Principal Secretary, Commercial Taxes Department, Bihar having its Ofice 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, 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: 25-06-2018

Challenging the order of assessment, Annexure-3 dated 21.11.2015 assessing Value Added Tax from the period 2012-13 by initiating proceedings under Section 8 of the Entry Tax Act read with 28(1) of the Bihar Value Added Tax Act, 2005 vide show cause notice, Annexure 2 dated 13.5.2015, this writ petition has been filed for quashing the proceedings solely on the ground that under Section 28(1) of the Bihar Value Added Tax Act, 2005, a notice for re-opening assessment cannot be issued after a period of two years. In this regard, reliance has been placed on a series of judgments rendered by this Court under similar circumstances in the case reported in the case of Ranjan Bricks Center & Ors. Vs. The State of Bihar, 2016 (2) P.L.J.R. 310 wherein it has been held by this Court after considering the provision of Section 28(1) and the 1st 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 2012-13 and the period in question has to be counted with effect from 1.4.2013. Admittedly, the proceedings were re-opened vide show cause, Annexure 2 dated 13.5.2015 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 Center (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)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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