IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17635 of 2017

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M/s Rupesh Int Udyog, Madhopur, P.O.- Batho, P.S.- Bahera, District- Darbhanga, through its proprietor Phool Babu Ray, son of Sri Ganesh Prasad Ray, resident of Village- Madhopur, P.O.- Batho, P.S.- Bahera, District- Darbhanga. ... ... Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Mines & Geology Department, Government of Bihar, Patna.
2. The Mines Commissioner-cum- Principal Secretary, Mines & Geology Department, Government of Bihar, Patna.
3. The Commissioner of Commercial Taxes, Bihar, Patna.
4. The Deputy Commissioner Commercial Taxes, Darbhanga Circle, Darbhanga.
5. The District Mining Officer, Darbhanga.
6. The Circle Officer, Benipur, District- Darbhanga. ... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 17830 of 2017

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M/s Rupesh Int Udyog, Madhopur, P.O.- Batho, P.S.- Bahera, District- Darbhanga, through its proprietor Phool Babu Ray, son of Sri Ganesh Prasad Ray, resident of Village- Madhopur, P.O.- Batho, P.S.- Bahera, District- Darbhanga. ... ... Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Mines & Geology Department, Government of Bihar, Patna.
2. The Mines Commissioner-cum- Principal Secretary, Mines & Geology Department, Government of Bihar, Patna.
3. The Commissioner of Commercial Taxes, Bihar, Patna.
4. The Deputy Commissioner Commercial Taxes, Darbhanga Circle, Darbhanga.
5. The District Mining Officer, Darbhanga. ... ... Respondent/s

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Appearance :
(In Civil Writ Jurisdiction Case No. 17635 of 2017)
For the Petitioner/s : Mr. Manish Kumar No 13, Advocate
Mr. Rohit Kumar, Advocate
For the Respondent/s : Mr. Vikash Kumar - SC-11
(In Civil Writ Jurisdiction Case No. 17830 of 2017)
For the Petitioner/s : Mr. Manish Kumar No 13, Advocate
Mr. Rohit Kumar, Advocate
For the Respondent/s : Mr. Lalit Kishore - AG

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-07-2018

Having heard learned counsel for the parties, we find that in both these cases, on account of non-payment of tax, the penalty action has been taken and the penalty imposed. The penalty imposed in CWJC No.17635 of 2017 is to the tune of Rs.2,40,000/- and in CWJC No.17830 of 2017 it is to the tune of Rs.2,10,800/-.

It is the case of the petitioner that *ex parte* orders have been passed without notice to the petitioner. However, on going through the records of CWJC No.17635 of 2017, we find that notices were issued to the petitioner directing them to appear before the authority on 20th of January 2015 and when they did not appear on 12.02.2015, the *ex parte* order was passed and it is only when the demand notice was issued on 04.10.2017 that this writ petition was filed.

Similarly, in CWJC No.17830 of 2017, notices were issued to the petitioner for deposit of the duty and when they did not appear and deposit the duty, *ex parte* order was passed for the year 2013-14 on 22.07.2015 and when the demand notice was raised on 04.10.2017, this writ petition has been filed.

The question as to whether *ex parte* proceedings were held in accordance to law itself is a disputed question of fact inasmuch as it is the case of the respondents that despite of notice and service of notice when the petitioner did not appear, *ex parte* proceedings were held.

Considering the fact that all these issues can be sorted out by the appellate authority and as the petitioner has only challenged the assessment order without taking recourse to the statutory remedy of appeal, we direct that on the petitioner filing a certified copy of this order along with a detailed memorandum of appeal within a period of 30 days from the date of receipt of a receipt/production of this order and depositing 10% of the tax/penalty payable, the appellate authority shall proceed to decide the appeal on merits and shall not reject it on the ground of delay and non-deposit of mandatory pre-deposit of demand raised for cognizance of the appeal.

Till the decision, on the petitioner depositing 10% of the demand raised, no coercive steps shall be taken.

With the aforesaid, the writ petitions stand disposed of.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.07.2018
Transmission Date	