IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18877 of 2016

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M/s. Raj Kumar Singh, Raja Construction Pvt. Ltd. Having its registered office at Bali Pakar, Paliganj, Patna- 801110 through its authorized representative Raj Kumar, Son of Premdhari Singh, aged about 41 Years Resident of 2nd Floor, R.B. Market, Ramnagari More, Ashiana-Digha Road, Police Station-Rajiv Nagar, District-Patna-800025

... ... Petitioner/s

Versus

1. The State Of Bihar
2. The Deputy Commissioner of Commercial Taxes, Danapur Circle, Danapur
3. The Commercial Tax Officer, Danapur Circle, Danapur

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Jayanta Ray Chaudhury

For the Respondent/s : Mr.Anil Kr. Sinha- Ga1

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 05-03-2019

The petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the order dated 07.06.2010, passed by the Commercial Tax Officer, Danapur Circle, Danapur (respondent no. 3) in purported exercise of powers vested in him under section 33 of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as 'the Act'), whereby the prescribed authority has disallowed the claim of the dealer of Rs. 47,63,925/- relatable to the period 2006-07 and has levied additional tax of Rs. 5,95,491/-, a copy of the order is impugned at Annexure-2 to the writ petition which is followed by a Demand Notice bearing no. 5151 dated 07.09.2010, a copy of which is placed on record vide Annexure-R/3 to the counter affidavit.

The issue raised by Mr. Jayant Roy Choudhary, learned counsel appearing for the petitioner, for questioning the assessment order and the consequential demand notice is, that it is *ex parte* and without service of notice on the petitioner in the manner prescribed under Rule 50 of the Bihar Value Added Tax Rules framed under 'the Act'.

It is taking notice of the submissions so advanced that counsel for the State was directed to produce records and which has since been produced and Mr. Pawan Kumar, learned A.C. to G.A. 1 fairly accepts non service of notice in the manner prescribed on the petitioner. In the admitted circumstances transpiring, for the present, we would speak no further on the inter-party merits for this is the sole ground on which the assessment order and demand notice are being questioned and which ground goes uncontested.

In such uncontested view of the matter, the assessment order dated 07.06.2010 relatable to the period 2006-07 passed by the prescribed authority, impugned at Annexure-2, together with the demand notice dated 07.09.2010, brought on record vide Annexure-R/3 to the counter affidavit, are quashed and set aside.

The matter is remitted back to the Commercial Tax Officer, Danapur Circle, Danapur (respondent no. 3) for passing a fresh order but in accordance with law after due opportunity of hearing to the petitioner.

The petitioner would appear before the Commercial Tax Officer, Danapur Circle, Danapur (respondent No. 3) together with a copy of this order and his response to the objection on 25th March, 2019 when the Commercial Tax Officer, Danapur Circle, Danapur (respondent no. 3) shall proceed to dispose of the matter in the manner stipulated above. The petitioner would be at liberty to raise all issues as raised herein during course of hearing by filing his reply to the notice.

That the notice is placed on record of the proceedings, it shall be deemed to be validly served and petitioner would file his reply to the same when he appears before the respondent no. 3 on 25th March, 2019.

The writ petition is allowed with the above observations/directions.

Let the records so produced be returned to Mr. Pawan Kumar, learned A.C. to G.A. 1 for its transmission to the department.

(Jyoti Saran, J)

(Arvind Srivastava, J)

mcv/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.03.2019
Transmission Date	NA