IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5492 of 2019

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M/s Ganesh Traders, Munger, through its Proprietor namely Chinta Devi, aged about 69 Years, Female, wife of late Kedar Prasad Keshri (Ex Proprietor of M/S Ganesh Traders), Resident of Kaura Maidan, Shadipur, P.S.- Kotwali Distt.- Munger.

... ... Petitioner

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar Patna having its Office at Vikash Bhawan, Patna.
2. The Commissioner of Commercial Taxes, Bihar Patna having its Office at Vikash Bhawan, Patna.
3. The Joint Commissioner, of Commercial Taxes, (Audit) Bhagalpur Division, Bhagalpur.
4. The Assistant Commissioner of Commercial Taxes, Circle Munger.

... ... Respondents

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Appearance :
For the Petitioner/s : Mr. Jyoti Ranjan Jha, Adv.
For the Respondent/s : Mr. Vikash Kumar, SC 11

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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 : 15-04-2019

Heard Mr. Jyoti Ranjan Jha, learned Counsel appearing for the petitioner and Mr. Vikash Kumar, learned SC 11 for the State.

In the nature of the order that we propose to pass we do not deem it necessary to deal with the merits of the case. Suffice it to say that the petitioner is aggrieved by the order of assessment dated 30.03.2018 passed by the Commercial Taxes Officer, Munger Circle, Munger in purported exercise of power vested under Section 31 of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as 'the Act') together with the demand notice dated 22.12.2018 impugned at Annexures 3 and 4 respectively to the writ petition and reasons therefor is present at Annexure-1 to the writ petition which informs that the proprietor of the petitioner Kedar Prasad Keshri had already deceased on 06.10.2017 and thus the order of assessment was passed ex parte in his absence.

Mr. Jha, learned Counsel for the petitioner submits that the application for certificate of registration under Section 19 of 'the Act' was filed by the husband of the petitioner and accordingly a certificate was issued in his name on 26.02.2005 bearing Taxpayer Identification No. 10560654035.

Mr. Jha, learned Counsel in reference to the notice at Annexure-2 submits that the notice in this regard was issued on 04.12.2017 i.e. two months after the death of the proprietor of the petitioner firm.

Mr. Vikash Kumar, learned SC 11 appearing for the State has invited attention of this Court to the provisions underlying Section 64(2) of 'the Act' to submit that the default, if any, is attributable to the petitioner because she should have passed information about the death of the proprietor as maintained with the Department and ought to have been taken consequential steps for amendment of the registration as well. He submits that no sooner a return is filed by firm, a liability is admitted and which on being assessed under the provisions of 'the Act', may increase. He submits that in case such liability is detected in addition to those admitted and by which time, the assessee dies then the liability is to be borne by the legal representative/heir of the deceased. Learned counsel however does not dispute the legal position that no order of assessment could have been passed again the deceased proprietor of the firm.

Having heard learned Counsel for the parties and bearing note of the statutory prescription available where the Assessing Authority is well within its jurisdiction to proceed against the legal representative/heir of the deceased assessee under 'the Act' as well bearing note of the fact that undisputedly the order was passed in absence of the proprietor of the firm who had deceased much even prior to issuance of notice, even if we accept the objection of Mr. Vikash Kumar, learned SC 11 regarding default on the part of the petitioner to inform the Department about the death, nonetheless it would not cure the defect nor provide sanctity to the order impugned before this Court.

Accordingly the assessment order at Annexure-3 together with the demand notice at Annexure-4 are quashed and set aside. The matter is remitted to the Commercial Taxes Officer, Munger Circle, Munger for proceeding afresh but strictly in accordance with the provisions of Section 64 of ‘the Act’. The petitioner shall register her appearance either by herself or through her representative on or before 06th May, 2019 at 11:00 a.m and when he shall proceed to dispose of the matter in accordance with law and as per stipulations above.

The writ petition is allowed with the directions above.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Archana/
Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.04.2019
Transmission Date	NA