IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5501 of 2019

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M/S Ram Deo Babu Udyog, Haveli Kharagpur, Munger through its Proprietor namely Rajesh Bhagat Gupta, aged about 49 years, Male, Son of Ram Deo Sah, Resident of House No. 63/18, Patel Chowk, Haveli Kharagpur, P.S. Kharagpur, 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. Kumar Pankaj, AC to SC5

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 18-04-2019

Heard Mr. Jyoti Ranjan Jha, learned counsel for the petitioner and Mr. Kumar Pankaj, learned AC to SC-5 for the State.

The petitioner is aggrieved by the order of assessment passed by the Assistant Commissioner of Commercial Taxes, Munger Circle, Munger in purported exercise of power vested in him under section 31 of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as 'the Act') and the Rules framed thereunder. The petitioner also questions the consequential demand notice dated 28.3.2018 raising a demand of Rs.3,39,944/-. Copies of the orders are impugned at Annexures 3 and 4 respectively to the writ petition.

While it is the submission of Mr. Jyoti Ranjan Jha, learned counsel for the petitioner that the order is ex-parte and without due opportunity of hearing and proper representation to the petitioner, Mr. Kumar Pankaj, learned AC to SC-5, has opposed the plea to submit that even if the notice was not physically served on the petitioner but the provisions underlying Rule 50(1)(d) which allows a service of notice through electronic mail service, is satisfied. Learned counsel in support has produced the file relating to the proceedings in question to support the service of notice through electronic mail.

Mr. Jha while accepting the default on the part of the petitioner in not checking on the e-mail submits that in similar circumstances existing, a Co-ordinate Bench while considering the similar issues arising from C.W.J.C.No. 11798/2017 (**Aariket Traders v. the State of Bihar & anr.**), C.W.J.C.No. 17606/2016 (**M/s Kohinoor Boot House v. the State of Bihar & ors**.) and C.W.J.C.No. 7971/2018 (**M/s Freezer Point v. the State of Bihar & ors.**) and while following the principle of substantial justice, has remitted the matter before the Assessing Authority for its disposal afresh with opportunity of hearing to the petitioner.

We have heard learned counsel for the parties and have perused the records. While the records of the proceeding do indicate a service of notice to the petitioner by e-mail, there is no physical service of notice on the petitioner as provided under the Rules. May be the petitioner has his reasons for not checking his e-mail which is a valid form of service but then, unless it is established that the petitioner was deliberately avoiding service, a simple case of a casual default may not be sufficient to shut the doors for such assessee and for proceeding ex-parte.

Section 31 of ‘the Act’ has a purpose behind when it allows the assessee to present his case before any such order is passed and obviously an ex-parte order passed is an exception to the legislative intent as well as the object behind the principle of due representation. May be, where an assessee continues to default on a notice, the Assessing Authority has valid reasons to proceed ex-parte but a casual default of the present kind may not be sufficient enough to deny the assessee such right of representation.

In such circumstances and following the principles of substantial justice as well as the past precedence set by this Court vide the orders referred to above, we remit the matter to the Assessing Authority i.e. respondent no.4, Assistant Commissioner of

Commercial Taxes, Munger Circle, Munger to consider the matter afresh and for its disposal in accordance with law with due opportunity of hearing to the petitioner who shall present himself before the Assessing Authority on 30th April, 2019, at 11 A.M. with all supporting papers in response to the issues that has been taken note of by the Assessing Authority while passing the assessment order which issues will be treated as a notice by the petitioner to file his response thereto.

Be it noted that any failure on the part of the petitioner to present himself on the date as pointed above would permit the Assessing Authority to proceed in accordance with law.

As a result of the discussion above, the assessment order dated 30.3.2018 passed by the Assistant Commissioner of Commercial Taxes, Munger Circle, Munger together with the demand notice dated 28.3.2018, impugned at Annexures 3 and 4 respectively, are quashed and set aside.

The writ petition is allowed with the directions above.

(Jyoti Saran, J)

(Anjani Kumar Sharan, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.04.2019
Transmission Date	NA