IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20014 of 2016

==

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

==

Appearance :
For the Petitioner/s : Mr.Jayanta Ray Chaudhury,
Mr. Binay Kumar &
Mr. Alok Kumar, Advocates
For the Respondent/s : Mr.Anil Kr. Sinha- GA1
Mr. Pawan Kumar, AC to GA 1

==

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 by filing this writ petition under Article 226 of the Constitution of India prays for issuance of a writ in the nature of *certiorari* for quashing the order dated 04.06.2015 passed by the Commercial Tax Officer, Danapur Circle, Danapur (respondent no. 3) in purported exercise of powers vested in him under section 31(2) read with Section 33 of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as 'the Act'), whereby he has levied the tax of Rs. 6,87,916.92 and imposed a penalty, three times thereto, to the tune of Rs. 20,63,748.54. The order also levies interest of Rs. 3,92,112.22, thus creating a total liability of Rs. 31,43,776.94. The exercise undertaken relates to the period 2011-12. Copies of the assessment order is impugned at Annexure-1 to the writ petition and the demand notice issued pursuant thereto dated 05.06.2015 is impugned at Anexure-2.

The ground raised by Mr. Jayant Roy Choudhary, learned counsel appearing for the petitioner to question the assessment order is that even while the exercise is on an audit objection raised by the Comptroller and Auditor General, thus, purportedly under section 33 of the Act, but the tenor of the order passed by the authority impugned herein reflects an exercise under Section 31 which is impermissible for such an exercise is in relation to an assessment made on the basis of a departmental audit objection. The second ground raised by Mr. Choudhary to question the order is that the notice has not been served in the manner prescribed under Rule 50 of the Rules framed under the Act. The third ground raised by Mr. Choudhary is that even if the reassessment proceeding was initiated on an audit objection by the Comptroller and Auditor

General, but the provisions underlying Rule 25 which allows an assessee to file reply within one month of the service of notice was not followed. In reference to the counter affidavit filed by the State in which it has been mentioned that notice was served through Electronic Mail (e-mail), he submits that even if the stand of the State is accepted that the notice was received on 18.05.2015, but in the hurriedness to please the Comptroller and Auditor General that the Assessing Authority did not even wait for the mandatory time allowed under proviso to Rule 25(3) to file his reply, rather has proceeded to pass the order on 04.06.2015 and issued a demand notice thereafter on 05.06.2015, which again is before the lapse of the statutory period allowed under the Rules for filing the reply.

Mr. Pawan Kumar, learned A.C. to G.A. 1, in reference to the counter affidavit filed in the case, has submitted that though notice was validly served on the petitioner in the manner prescribed under Rule 50 of the Rules, which allows the service of notice through e-mail, the petitioner failed to respond thereto and, thus, the assessing authority has proceeded with the matter.

It is under the orders of this Court that the records of the proceeding have been produced, but learned Counsel for the State is not in a position to salvage the situation for the respondent insofar as violation of the period allowed to an assessee under proviso to Rule 25(3) is concerned for the records itself speak that while notice was deemed served through e-mail to the petitioner on 18.05.2015, the assessment order is dated 04.06.2015 and the demand notice follows the order on 05.06.2015, which are much before the statutory period allowed under the statute to an assessee to file his reply.

In such view of the matter, we do not, at this stage, intend to examine the other contentions advanced by Mr. Choudhary to contest the order on merit and we reserve this liberty for the petitioner to raise when the matter comes up afresh before the assessing authority on remand by this Court.

Since the assessment order passed on 04.06.2015 together with the demand notice dated 05.06.2015 are in violation to the proviso to Rule 25(3) which allows an assessee a month time to file his reply to the notice but have been passed before the expiry of such period calculated from the electronic service sent on 18.05.2015, the assessment order dated 04.06.2015 passed by the Commercial Tax Officer for the period 2010-11 together with the demand notice dated 05.06.2015 impugned at Annexure-1 & 2 respectively to the writ petition, are quashed and set aside.

The matter is remanded to the Commercial Tax Officer, Danapur Circle, Danapur (respondent no. 3) for moving afresh but in accordance with law and it goes without saying that the petitioner while filing his reply to the show cause would be at liberty to raise all issues as raised in this writ petition in addition to any other issue which he seeks to raise for questioning the proceeding.

The petitioner would appear before the Commercial Tax Officer, Danapur Circle, Danapur (respondent no. 3) on 27th March, 2019 when the respondent no. 2 shall proceed to dispose of the matter in the manner stipulated above.

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