IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4729 of 2017

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Raja Bricks a proprietary concern having its office at Mangarpar, Sherpur Danapur through its proprietor Manoj Kumar, son of Late Dev Sharan Singh, resident of Lodipur, P.O. Vyapur, P.S. Maner, District - Patna

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Commercial Taxes Officer, Danapur Circle, Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. D.V.Pathy, Adv.
For the Respondent/s : Mr. Kumar Pankaj, AC to SC-5.

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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 : 28-02-2019

Heard Mr. D.V. Pathy, learned counsel appearing for the petitioner and Mr. Kumar Pankaj, learned Assisting Counsel to Standing Counsel No.5 for the State.

The petitioner is aggrieved by the order dated 22.05.2015 passed by the Deputy Commissioner, State Taxes, Danapur Circle, Patna in exercise of power vested under Section 27 (1) of the Value Added Tax Act, 2005 which, inter alia, enables the taxing authority to make assessment of the dealer not filing return. A copy of the assessment order passed by the Deputy Commissioner, State Taxes together with the demand notice dated 22.06.2015 are impugned at Annexure 1 series.

Mr. Pathy learned counsel appearing on behalf of the petitioner in reference to the order-sheet submits that while the proceeding was initiated in exercise of such jurisdiction on 30.04.2015 and the matter was posted on 20.05.2015 with direction of issuance of notice which notice was issued bearing No.623 dated 30.04.2015 but without drawing any proceeding thereafter that an assessment order is passed ex-parte on 22.05.2015 which is followed by a demand notice issued on 22.06.2015. He submits that though the assessment order makes no reference of the date on which it was passed, the date can be gathered from the demand notice issued in Form N-VIII and records the date of the order as 22.05.2015. Drawing the attention of this Court to the order-sheet in the assessment proceeding at Annexure 1 series he submits that while notice was issued on 30.04.2015, the next date recorded in the proceeding is 01.10.2015 and thus it is not known as to on which date the proceedings were actually held in between.

Though a counter affidavit is filed and Mr. Kumar Pankaj, learned Assisting Counsel to Standing Counsel No.5 endeavours to support the issuance of the notice but then looking into the records of the proceeding, the situation is defenceless. A quasi-judicial proceeding has to pass the test of transparency and fair play and where any such proceeding is initiated, then every date on which it is taken up, has to be recorded properly as well the order passed on any such date, needs to be so mentioned therein. The order-sheet in the assessment proceeding placed at Annexure 1 series is completely absent on this discharge because there are only two dates mentioned in the order-sheet which is dated 30.04.2015 and 01.10.2015.

A copy of the notice issued pursuant to order dated 30.04.2015 is enclosed at Annexure ‘A’ to the counter affidavit and posts the matter on 20.05.2015 in tune with the order passed by the assessing authority on 30.04.2015 but the matter was neither taken up on 20.05.2015 nor there is any proceeding recorded on 22.05.2015.

In other words the assessment order was passed on 22.05.2015 without recording any proceeding in the order-sheet. As we have already observed above, the situation is defenceless for the proceeding lacks transparency and fails on the procedure required to be followed.

We accordingly quash the assessment order dated 22.05.2015 passed by the Deputy Commissioner, State Taxes together with the demand notice dated 22.06.2015 and remit the matter back to the Deputy Commissioner State Taxes for passing an order afresh and in accordance with law after due opportunity of hearing to the petitioner.

The petitioner would appear before the Deputy Commissioner, State Taxes on 11th of March 2019 at 11:00 AM and when he shall proceed to dispose of the matter in the manner stipulated above.

It goes without saying that the petitioner would be within his right to raise all issues including the issue of limitation before the

Assessing Officer which needs to be considered at the stage of disposal of the matter.

The interim order passed by this Court staying the recovery stands confirmed.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Anjula/skpathak

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	05.03.2019
Transmission Date	NA