IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11564 of 2017

M/s Gunj Bricks Udyog, a Proprietorship Firm having its office at Village- Jhethasari, P.S.- Govindpur, District- Nawada, through its Proprietor Bal Govind Prasad, S/o Dipak Prasad, resident of Village- Thali Bazar, P.O.- Sughari, P.S.- Govindpur, District- Nawada, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Department of Commercial Taxes, Government of Bihar, Patna
2. The Commissioner of Commercial Taxes, Department of Commercial Taxes, Government of Bihar Patna.
3. The Assistant Commissioner of Commercial Taxes, Nawada Circle, District- Nawada.
4. The Commercial Tax Officer, Nawada Circle, District - Nawada.

... ... Respondent/s

with

Civil Writ Jurisdiction Case No. 12069 of 2017

M/s Gunj Bricks Udyog, a Proprietorship Firm having its office at Village- Jhethasari, P.S.- Govindpur, District- Nawada, through its Proprietor Bal Govind Prasad, S/o Dipak Prasad, resident of Village- Thali Bazar, P.O.- Sughari, P.S.- Govindpur, District- Nawada, Bihar.

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Versus

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2. The Commissioner of Commercial Taxes, Department of Commercial Taxes, Government of Bihar, Patna.
3. The Assistant Commissioner of Commercial Taxes, Nawada Circle, District- Nawada.
4. The Commercial Tax Officer, Nawada Circle, District- Nawada.

... ... Respondent/s

Appearance :
For the Petitioner/s : Mr.Raj Kishore Prasad, Advocate
For the Respondent/s : Mr.Vikash Kumar-SC-11

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-02-2020

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. Petitioner in C.W.J.C. No. 11564 of 2017 has prayed for the following reliefs:-

> "i) To issue an appropriate writ/order/direction in the nature of a writ of certiorari for quashing the order dated 10.06.2015 passed by the respondent Commercial Taxes Officer as also the consequential Demand Notice issued vide Notice No. 713 dated 10.06.2015 (as contained in Annexure-2 & 3 respectively), which is an ex parte order of assessment passed under the provisions of the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1993 (hereinafter referred to as the 'Entry Tax Act') read with Section 28(1) of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as the 'VAT Act'), imposing Entry Tax of Rs. 67,500/- and Penalty of Rs. 67,500/- for the assessment year 2012-13.
>
> ii) To issue an appropriate writ/order/direction in the nature of a writ of mandamus directing the respondent authorities not to take any coercive steps against the petitioner for realization of the amount of tax demanded by the aforesaid Demand Notice dated 10.06.2015, as the petitioner has not been granted any opportunity of hearing before passing the impugned

order imposing VAT for the assessment year 2012-13.

3. Petitioner in C.W.J.C. No. 12069 of 2017 has prayed for the following reliefs:-

> "i) To issue an appropriate writ/order/direction in the nature of a writ of certiorari for quashing the order dated 05.06.2015 passed by the respondent Commercial Taxes Officer as also the consequential Demand Notice issued vide Notice No. 712 dated 10.06.2015 (as contained in Annexure-3 & 4 respectively), which is an ex parte order of assessment passed under Section 27(1) of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as the 'VAT Act'), imposing VAT of Rs. 2,98,125/- for the assessment year 2012-13.
> ii) To issue an appropriate writ/order/direction in the nature of a writ of mandamus directing the respondent authorities not to take any coercive steps against the petitioner for realization of the amount of tax demanded by the aforesaid Demand Notice dated 10.06.2015, as the petitioner has not been granted any opportunity of hearing before passing the impugned order imposing VAT for the assessment year 2012-13.

4. Only for the reason that petitioner was not heard prior to the passing of the impugned order, and that the notice to show cause was also issued with respect to another year,

unrelated with the proceedings, subject matter of the year in question, and that the order entails penal consequences, inasmuch as liability, pecuniary in nature, stands fastened, and other consequential actions to be taken pursuant thereto, we quash and set aside the impugned order dated 10.06.2015 passed by the respondent Commercial Taxes Officer as also the consequential Demand Notice issued vide Notice No. 713 dated 10.06.2015, as contained in Annexure-2 & 3 respectively (in C.W.J.C. No. 11564 of 2017) and the order dated 05.06.2015 passed by the respondent Commercial Taxes Officer as also the consequential Demand Notice issued vide Notice No. 712 dated 10.06.2015, as contained in Annexure-3 & 4 respectively (in C.W.J.C. No. 12069 of 2017), with direction to the petitioner to appear before the Assessing Authority on 23.03.2020 at 10:30 A.M. when the entire material shall be supplied to the petitioner, and the petitioner shall, within four weeks, positively file his response, and thereafter hearing all the parties, the Assessing Authority shall pass appropriate order, in accordance with law.

5. We direct the petitioner to fully cooperate and not take any unnecessary adjournment. We clarify that we have not adjudicated the lis on merits and all issues, including the

applicability of the ratio laid down by a coordinate Bench of this Court vide order dated 19.01.2016 passed in C.W.J.C. No. 1162 of 2016, titled as Shivam Int. Udyog Vs. The State of Bihar & Ors. and order dated 25.01.2016 passed in C.W.J.C. No. 17285 of 2015, titled as India Int. Udyog Vs. The State of Bihar & Ors. are left open to be determined by the Assessing Authority.

6. Both the petitions stand disposed off in the aforesaid terms.

(Sanjay Karol, CJ)

(S. Kumar, J)

P.K.P./-Utkarsh

AFR/NAFR	
CAV DATE	
Uploading Date	26.02.2020
Transmission Date	