IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5530 of 2018

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Parvez Boot House Through Its Proprietor Parvez Akhtar son of Abdul Hafiz, resident of Near Old Thana, Village- Dumraon, Police Station- Dumraon, District- Buxar.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Commercial Taxes, Bihar, Patna.
2. The Joint Commissioner, Sale Taxes Appeal Patna, West Division, Bihar.
3. The Assistant Commissioner, Commercial Taxes, Buxar Circle, Buxar.
4. The Sales Tax Officer, Buxar.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Md. Najmul Hodda

For the Respondent/s : Mr.Lalit Kishore- Ag

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

4 03-02-2020 Heard learned counsel for the petitioner and learned counsel for the respondents.

The petitioner has prayed for the following reliefs:-

> "I. For issuance of writ of certiorari or any other appropriate order, orders, direction for quashing the ex-parte order dated 30.05. 2015 passed by the Respondent Assistant Commissioner, Sales Tax, Buxar without providing any opportunity of hearing most arbitrarily directing the issuance of demand letter against the petitioner for realization of Rs. 6,50,916.00 by way of Additional Taxes

under Section 33 of the value Added Tax for the year 2011-12.

II. For issuance of a writ order and direction for quashing the ex-parte order passed by the respondent Joint Commissioner, Sales Tax (Appeal), West Division, Patna most arbitrarily dismissing the appeal filed by the petitioner against the ex-parte order passed by the Assistant Commissioner, Sales Tax, Buxar for realization of Rs. 6,56,916.00 against the petitioner, behind the back of the petitioner without considering the materials on record and merits of the case on a quite erroneous presumption that the petitioner has concealed and avoided the payment of appropriate taxes.

III. For issuance of an appropriate writ order and direction for grant of ad-interim stay of the orders passed by the Assistant Commissioner as well as the Joint Commissioner during the pendency of this writ petition.

IV. For grant of any other appropriate relief or reliefs for which the petitioner may be entitled, deemed fit and proper in the facts and circumstances of the case."

The challenge before this Court is to the order dated 18.12.2017 passed by the Joint Commissioner, Commercial Taxes (Appeal), Patna, West Division, Bihar in Appeal Case No.

ST/BX-06/16-17, on the ground that the same being Penal in nature, entailing civil consequences, and passed without compliance of the principles of the natural justice. From the order-sheet annexed as Annexure-4, we do find such plea to be borne out from the record.

It seems that post 11th January, 2017, the matter was adjourned and taken up on five occasions, but not on the dates specified in the order from which the matter was adjourned but not taken up. There is nothing on record to establish intimation of preponement / postponement of the matter. Also, there is nothing on record from which it could be inferred as to why the matter was not taken up on the dates fixed in terms of previous order.

Sri Vikash Kumar invites our attention about applicability of Rule 50 of Bihar Value Added Tax Rule which according to him are essential in deciding the issue. We do not find any merit in the submissions made by the learned counsel for the respondent about applicability of Rule 50 of Bihar Value Added Tax Rule, mores so in view of the attending facts and circumstances of the case, which stands repealed.

It is the petitioner's grievance that post 11th January, 2017, he was never ever informed about the matter being adjourned or posted on the dates specified therein. Also no intimation of postponement was issued or served upon the petitioner. As such, the order stands vitiated on account of violation of principles of natural justice and as such is set aside and quashed in the following terms:-

(a) The parties are directed to appear before the Joint Commissioner, Commercial Taxes (Appeal), Patna, West Division, Bihar on 02.03.2020 at 10:30 a.m. and place on record a copy of the present order.

(b) the authority shall consider and decide the appeal afresh on its own merit in accordance with law, and

(c) liberty is reserved to the parties to place the additional material on the next date of hearing and liberty is also reserved to assail the order, if so required, in accordance with law.

The writ petition stands disposed of in the aforesaid terms.

(Sanjay Karol, CJ)

(Mohit Kumar Shah, J)

Tiwary/-

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