IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10428 of 2018

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Baba Dharmraj Bricks Udyog, Pokhraini, Madhubani Through Its Partner Sonu Kumar Choudhary S/o Sri Mani Shankar Choudhary, resident of Village- Dighal Bank, P.S.- Dighal Bank, District- Kishanganj.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Government of Bihar, Patna.
2. The Principal Secretary, Commercial Taxes Department, Govt. of Bihar, Patna.
3. The Deputy Commissioner, Commercial Taxes, Madhubani Circle, Madhubani.
4. The Assistant Commissioner of Commercial Taxes, Madhubani Circle, Madhubani.
5. The Branch Manager, Corporation Bank, Darbhanga.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajeev Lochan, Adv

For the Respondent/s : Mr.Vikash Kumar -SC11

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

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

5 06-03-2020 Petitioner has prayed for following reliefs:-

"(I) For issuance of an appropriate writ in the nature of certiorari, quashing and setting aside the letter no. 684 dated 12.03.2018 along with notice of demand issued under section-47 of the Bihar Value Added Tax Act, 2005 by the Deputy Commissioner, Commercial Taxes I/C, Madhubani Circle, Madhubani to the Branch Manager, Corporation Bank, Darbhanga whereby the Branch Manager has been requested to arrange an amount of Rs.6,00,000/- from the account of the petitioner and sent the same through Bank Draft in the name of Assistant Commissioner, Commercial Taxes, Madhubani Circle, Madhubani in terms of notice of demand under section-47 of the Bihar Value Added Tax Act, 2005 bearing no.685 dated 12.03.2018.

(II). For issuance of an appropriate writ in the nature of certiorari quashing and setting aside the notice of demand bearing no. 967 dated 18.01.2018, issued under section-39 of the Bihar Value Added Tax Act, 2005 from the office of the Deputy Commissioner of Commercial Taxes, Madhubani Circle, Madhubani whereby direction has been issued to furnish the proof of payment of assessed dues amounting to Rs.6,00,000/-, failing which the same shall be realized through special mode of recovery under section-47 of the Bihar Value Added Tax Act, 2005.

(III). For issuance of an appropriate writ in the nature of certiorari, quashing and setting aside the ex-parte order dated 05.08.2015 passed in Case No.:- 28(1) 105/2015-16 wehreby an amount of Rs.6,00,000/- (Rs.3,00,000/- as entry tax & Rs.3,00,000/- as penalty) has been illegally assessed & demanded for the period 2012-13 to 2014-15 for running brick kiln on mere assumption & presumption.

(IV) For issuance of appropriate writ in the nature of mandamus, commanding and directing the respondent authorties to make fresh calculation after affording opportunity to the petitioner and not to act upon mere conjecture and surmises, as essential element of taxing jurisprudence has been grossly violated in adopting the improper procedure by the respondent authorities."

The Assessing Officer in the impugned order dated 05.08.2015, passed under the provisions of Section 28(1) of the Bihar Value Added Tax Act read with Section 8 of the Bihar Tax On Entry of Goods into Local Areas for Consumption, Use or Sale therein, Act, 1993, has determined the tax in relation to three assessment year i.e. 2012-13, 2013-14 and 2014-15.

We notice that prior to the passing of the said order, no notice of hearing was given to the petitioner, specifically with regard to, each of the financial year. Order dated 28.04.2015 passed by the Deputy Commissioner, Commercial

Taxes, proceeding with the order dated 05.08.2015 also reveals that they were passed *ex-parte* and there is no positive recording therein of issuance of any notice or service upon the petitioner. Also the order appears to be passed on the basis of presumption of the Assessing Officer. The order does not reveal any reason, cogent or otherwise of the appreciation of materials available on record, produced by the parties.

The order entails civil consequence, on the ground of violation of principles of natural justice. The order dated 05.08.2015 passed by Deputy Commissioner, Commercial Taxes, as also all consequential orders pursuant thereto are quashed and set aside, with direction to the parties to appear before the concerned officer on 24.03.2020 in his office at 10:30 a.m, wherein, the Assessing Officer shall carry out the assessment proceedings in accordance with law.

Since it is clarified that no separate notice of hearing would be required to be issued to the petitioner, however, the materials required to be examined to the initiation of the proceedings, and any other materials, be supplied to him.

Petitioner undertakes to appear on 24.03.2020 in the Office of the concerned officer at 10:30 a.m, and to fully co-operate and file response, if any, to the material, so supplied to him, positively within one week thereafter.

We hope and believe that if the petitioner appears before the concerned authority, and files his representation, the same shall be dealt with in accordance with law, expeditiously and positively within a period of two months from the date of receipt thereof.

The present writ petition stands disposed off.

(Sanjay Karol, CJ)

(S. Kumar, J)

mdrashid/-

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