IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11228 of 2018

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Santosh Singh S/o- Jai Bansh Singh, Prop- M/s S.S. Enterprises, Jai Hind Cinema More, Dehri, P.S.- Dehri, District- Rohtas, Residing at- Sakhara, P.S.- Dehri, District- Rohtas, Bihar, PIN- 821305.

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner cum Secretary of Commercial Tax, Vikash Bhavan, Baily Road, Patna.
2. The Joint Commissioner Administration of Commercial Tax, Gaya Division, District- Gaya.
3. The Joint Commissioner of Commercial Taxes Audit, Gaya Division, District- Gaya.
4. The Assistant Commissioner of Commercial Tax, Sasaram Circle, Rohtas, Bihar.
5. The Commercial Tax Officer, Sasaram Circle, Rohtas.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Krishna Mohan Mishra, Advocate
For the Respondent/s : Mr.Vikash Kumar, SC 11

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

Date : 17-12-2020

Petitioner has prayed for the following relief(s):-

"i. To issue writ of certiorari or any other writ to quash the order passed by respondent Commercial Tax Officer, Sasaram Circle, Sasaram by order dated 22.12.2017 (for the period 2012-13) as well as notice of demand dated 22.12.2017, as the assessing officer has passed ex-party order without serving notice to the petitioner and has created a demand of Rs. 44,13,617.72 against the admitted tax of Rs. 634,934.

ii. To hold and declare that the proceeding initiated under section 31 of the Value Added Tax Act, 2005 and order passed therein is bad and illegal as the copy of audit report has not been served nor notice as prescribed u/r 22(9) has been served to the petitioner before passing ex-party order.

iii. To further hold and declare that the respondent Assessing Officer has no reason to believe within the meaning of Act that the petitioner was liable to pay tax under the Act, as assessed therefore, initiation of proceeding for reassessment is itself bad and illegal.

iv. To hold and declare that audit carried out by the auditor u/s 26 r/w rule 22(6) is also bad as the auditor also had not served notice as prescribed under the act and rules.

v. To issue any other writ/writs, direction/directions, order/orders as your honour deemed fit and proper."

Undisputedly, prior to passing of the impugned order dated 22.12.2017 and issuance of demand notice dated 22.12.2017, no opportunity of hearing was ever afforded to the petitioner, nor was he ever noticed. The impugned order entails civil consequences.

As such, on this short ground alone, the impugned order dated 22.12.2017 and issuance of demand notice dated 22.12.2017 passed by Commercial Tax Officer, Sasaram Circle, Sasaram are quashed and set aside with the matter being remanded to the authority concerned.

Mr. Vikash Kumar, learned counsel for the State, states that the authority concerned shall consider and dispose of the matter on or before 31.03.2021 and the petitioner be directed to appear before the concerned authority on 05.01.2021 along with a copy of this order.

Ordered accordingly.

Equally, liberty is reserved to the petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law.

We are hopeful that as and when petitioner appears before the concerned authority, the matter shall be dealt with, in accordance with law and with reasonable dispatch.

Needless to add, while considering matter, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties.

Liberty reserved to the petitioner to approach the Court, if the need so arises subsequently on the same and subsequent cause of action.

We have not expressed any opinion on merits. All issues are left open.

The proceedings, during the time of current Pandemic- Covid-19 shall be conducted through digital mode, unless the parties otherwise mutually agree to meet in person i.e. physical mode.

The petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, also stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

sujit/-

AFR/NAFR	
CAV DATE	
Uploading Date	21.12.2020
Transmission Date	