IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19002 of 2017

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Bishnu Kant Jha, s/o late Rajbanshi Jha, Prop- Raj Bricks Centre, Village-Ladha, PS-Kamtaul, Dist-Darbhanga

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner cum Secretary of Commercial Tax, Vikash Bhavan, Bailey Road, Patna
2. The Joint Commissioner of Commercial Tax (Administration) Darbhanga Division, Darbhanga
3. The Deputy Commissioner of Commercial Tax Darbhanga, Circle-Darbhanga
4. The Assistant Commissioner of Commercial Tax Darbhanga, Cicle-Darbhanga

... ... Respondent/s

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

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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 Petitioner has prayed for following reliefs :-

"(i) To issue writ of certiorari to quash the order passed by respondent Assistant Commissioner of Commercial Tax, Darbhanga, by order dated 10.06.2015 as well notice of demand dated 13.06.2015 which served to the assessee on 06.10.2017 as the order has been passed without issuing notice cum show cause under Section 28 VAT r/ w Entry Tax.

(ii) To further hold and declare that the respondent assessee officer has no reason to believe that the petitioner was liable to pay tax under the Act but had wilfully fails to apply for grant of certificate of registration, or fail to furnish information as prescribed under Section 19.

(iii) To hold and declare that the order passed by the respondent is illegal and without authority of law as no notice or show cause has been issued nor opportunity of hearing has been provided to the petitioner therefore the order is bad and without jurisdiction."

Before us, it could not be disputed that the averments made in paragraph no. 2 of the impugned order dated 10.06.2015, passed by the respondent Assistant Commissioner of Commercial Taxes, Darbhanga with regard to the service upon the writ petitioner is not substantiated by any material on record.

It is the petitioner's grievance that not only the said averment is factually incorrect but also not borne out from the record that the petitioner was never ever afforded adequate opportunity to defend in the proceedings initiated against him.

Be that as it may, since the order impugned is in the nature of ex-parte proceedings, without recording anything on merits, on the ground of violation of principles of natural justice, we quash and set aside the impugned order dated 10.06.2015 passed by Assistant Commissioner of Commercial Tax, Darbhanga with the matter being remanded back to the authority below for consideration afresh on the following mutually agreed terms :-

(a) Petitioner shall appear before the appropriate authority and shall make himself available in the office of Deputy Commissioner, Commercial Tax, Darbhanga, at present Joint Commissioner, State Taxes, Darbhanga on 02.03.2020 at 10:30 a.m. and apprise the authority of passing of the instant order by placing a copy of the same on record.

(b) The authority shall commence the proceedings and decide the matter on merits afresh affording opportunity of hearing and granting liberty to all the parties to place adequate materials on record.

Since the proceeding pertains to the year 2014-15, the matter shall be decided on merits within a period of three months. The petitioner undertakes not to take any unnecessary adjournments.

The instant petition stands disposed of in the aforesaid mutually agreed terms.

(Sanjay Karol, CJ)

(Mohit Kumar Shah, J)

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