IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9709 of 2022

==

M/s Lalit Agency registered office at Pitambar Babu Lane, Behind L.I.C. Divisional Office, beside North Point School, Ramna, Muzaffarpur, Bihar duly represented through its Authorized Signatory, Mr. Yashun Banka.

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner, Commercial Taxes, Government of Bihar, Patna.
2. Joint Commissioner, Commercial Tax, East Circle Muzaffarpur.
3. Deputy Commissioner, Commercial Tax, East Circle, Muzaffarpur.
4. Assistant Commissioner, Commercial Tax, East Circle, Muzaffarpur.
5. Joint Commissioner of Commercial Tax (Audit), Tirhut Division, Muzaffarpur.
6. Additional Commissioner (Audit) Tirhut Division, Muzaffarpur.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Anurag Saurav, Advocate Mr. Abhinav Alok, Advocate Mr. Priyajeet Pandey, Advocate Mr. Prity Kumari, Advocate Mr. Sharda Raje Singh, Advocate
For the Respondent/s	:	Mr. Vivek Prasad (GP-7)

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-07-2024

The petitioner is aggrieved with an assessment order issued under the Bihar VAT Act, 2005 and the consequent demand raised. The petitioner has not availed the appellate remedy and the contention raised is with respect to the claim of Input Tax Credit which, according to the petitioner, the Audit

Department had raised but subsequently dropped by imposing a penalty of Rs.5000/-, confining it to the non-filing of annual returns in a proper manner. The Assessing Officer is said to have initiated proceedings and imposed tax as well as penalty.

2. It is trite that audit objection does not regulate the Assessing Officer, who is the statutory authority to carry out assessment.

3. The further contention of the petitioner is that under the proviso to Rule 50, if notice is issued by way of electronic mode and there is no response, then the same has to be affixed on the business premises of the petitioner. The petitioner contends that the petitioner did not receive the e-mail, hence, there is clear violation of principles of natural justice.

4. The proviso to Rule 50 is extracted hereunder:-

> (1) Notices under the Act or these rules may be served by any of the following methods, namely -
>
> (a) by delivering or tendering a copy of the notice to the addressee or any adult male member or his family residing with him or to his manager, if any, declared under section 22; or
>
> (b) by post or by speed post; or
>
> (c) by such courier services as are approved by the Commissioner or the Joint Commissioner (Administration) incharge of the concerned division; or
>
> (d) by fax or by electronic mail service.
>
> *Provided that if upon an attempt having been made to serve any such notice by any of the above mentioned methods, the authority under whose orders the notice was issued is satisfied that the addressee is keeping out of the way for the purpose of avoiding service, or that for any other reason the*

> *notice cannot be served by any of the above mentioned methods, the said authority shall order the service of the notice by affixing a copy thereof on some conspicuous part of the addressee's office or the building in which his office is locate or where he normally resides, or upon some conspicuous part or any place or business, office or residence last notified by him and such service shall be as if it has been served on the addressee personally or by publication of such notice in any daily newspaper.*

5. The proviso specifically requires such affixture only on the Assessing Officer being satisfied that either the assessee is evading notice or that the service is not possible. The order sheet for the year 2016-17 is produced as Annexure-P8. The translation of the same is handed over across the Bar. It is seen that a number of e-mails were sent and it has also been recorded that many dates for notice were served via e-mail, hence, clearly the assessee failed to respond to the e-mails. We do not think that the proviso requires affixture, if the assessee voluntary fails to appear before the Assessing Officer, after receipt of notice.

6. We find absolutely no reason to interfere with the assessment or demand based on the contention of violation of principles of natural justice. However, we notice that the order impugned was on 31.03.2022 and the writ petition was filed within a reasonable time. In the above circumstances, we are of the opinion that the assessee could avail the appellate

remedy. If the assessee files an appeal within 2 months from the date of uploading of this judgment, the appellate authority would consider the appeal on merits without reference to the delay occasioned. The writ petition stands disposed off without any observation on the merits of the assessment.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

sharun/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.07.2024
Transmission Date	