
(2006) 09 PAT CK 0017
In the Patna High Court
Case No : CWJC No. 13158 of 2005

Harihar Prasad Kapildeo Prasad APPELLANT
Vs
The State of Bihar and Others RESPONDENT

Date of Decision : 01-09-2006

Acts Referred:

Bihar Finance Act, 1981 — Section 17(3)

Citation : (2008) 2 PLJR 710

Hon'ble Judges : S.K. Katriar, J;Aftab Alam, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Mr. Sandeep Kumar, Counsel for. the petitioner and Mr. Rajnandan Prasad, Junior Counsel to the Advocate General representing the State. The petitioner is a wholesale Kerosene dealer. He seeks to challenge an ex parte order of assessment dated 21.9.2004 passed by the Assistant Commissioner, Commercial Taxes, Danapur Circle, Danapur u/s 17(3) of the Bihar Finance Act, 1981. The order coming under challenge relates to the assessment period 2001-02 and it creates a demand of Rs. 2,39,339.91 against the petitioner. Mr. Sandeep Kumar submitted that on kerosene oil sales tax was paid at the first instance of sale and had the petitioner been given an opportunity to represent its case, it would have satisfied the Assistant Commissioner by production of Form IXC that due taxes were paid to the Oil Company on all purchases of kerosene oil made by him.

2. Needless to say that according to the petitioner no notice was ever served upon him and the impugned order was passed behind his back without any notice or an opportunity of hearing.

3. From the counter affidavit it appears that service of notice was effected by pasting it on the business premises of the petitioner.

4. In the facts and circumstances of the case, we are satisfied that the service of

notice was not valid and the Assistant Commissioner was in error in proceeding with the matter ex parte. We accordingly set aside the impugned order and direct the Assistant Commissioner to pass a fresh order in this matter after giving the petitioner an opportunity to produce the books of accounts and other relevant materials.

5. In order to facilitate an early disposal of the matter the petitioner is directed to appear before the Assistant Commissioner, Commercial Taxes, Danapur Circle, Danapur with a copy of this order within one month from today. It is expected that the Officer will pass a final order within two months from the date of the petitioner's first appearance. In the result, this writ petition is allowed but with no order as to cost.