

(2019) 02 PAT CK 0032

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1713 Of 2019

M/s Chandra Enterprises

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 21-02-2019

Acts Referred:

Bihar Value Added Tax Act, 2005 — Section 27(1), 76

Citation : (2019) 02 PAT CK 0032

Hon'ble Judges : Jyoti Saran, J;Arvind Srivastava, J

Bench : Division Bench

Advocate : Archana Sinh, Vikash Kumar

Final Decision : Allowed

Judgement

Heard Ms. Archana Sinha, learned counsel appearing for the petitioner and Mr. Vikash Kumar, learned SC-11, for the State.

The petitioner prays for issuance of writ in the nature of certiorari for quashing the assessment order dated 29.03.2018 together with the demand notice dated 30.03.2018, copies of which are enclosed impugned at Annexures-2 and 5 respectively whereby in exercise of power vested in the Assessing Authority under the provisions of Bihar Value Added Tax Act (hereinafter referred to as 'the Act') a liability of Rs. 3,84,289.00 towards taxes together with penalty of Rs. 42,750.00 has been raised in relation to the Assessment Year 2012-13.

A preliminary objection on the plea of alternative remedy was taken by Mr. Vikash Kumar, learned S.C.11, to oppose the writ petition, which has been met by Ms. Archana Sinha in reference to the order sheet placed on record by way of Annexure-4 to the supplementary affidavit and to submit that the assessment proceeding was held on 28.02.2018, when the Commercial Tax Officer directed for issuance of notice through E-mail fixing 23.03.2018, as the next date of the proceeding. It is submitted that this matter though was taken up on 23.03.2018 and adjourned to 27.03.2018 with a direction of issuance of notice under Section

27(1) of 'the Act' but this order was not signed by the Commercial Tax Officer rather on the same date, an ex-parte assessment order was passed, which again is not signed. She submits that the illegality is that though the matter was adjourned to 27.03.2018 as manifest from the order dated 23.03.2018 but the proceeding was never put up on the said date rather the next date mentioned in the order sheet is 03.08.2018 when issuance of demand notice has been directed. She returns to submit that in between this period that a serious lapse has occasioned in passing of the assessment order on 29.03.2018 even when no proceeding was held by the Assessing Authority on the said date and it is following such illegal order that the demand notice has been issued on 30.03.2018.

This Court taking note of the seriousness of the matter in its order dated 07.02.2019 required an answer from the superior authorities in the Commercial Taxes Department. When this matter is taken up today that a supplementary counter affidavit is filed on behalf of the respondent nos. 3 and 4, i.e. the Deputy Commissioner of State Taxes and the Commercial Tax Officer enclosing the order sheet in the proceeding and Mr. Vikash Kumar with reference to an order dated 08.02.2019 informs that the lapse has been admitted to recall the assessment order dated 29.03.2018.

Learned counsel, in reference to the provisions underlying Section 76 read along with Rule-48 of the Rules, submits that the authority concerned realizing the position has recalled the order.

We have taken note of the seriousness of the situation and, thus, we did expect the Commissioner, State Tax to come up with an affidavit for issuing advisory to the assessing authorities not to indulge in adventurism in their quasi judicial discharge which necessitates transparency and fair play in their action but the duty has been discharged by junior officers of the department.

The illegality in the proceeding is writ large and in the nature of the affidavit so filed by the respondents acknowledging the default, it becomes a mere completion of formality to quash the assessment order dated 29.03.2018 together with the demand notice dated 30.03.2018 impugned at Annexures-2 and 5 respectively which are accordingly quashed and set aside.

Since we have not found any default in the initiation of the proceedings, we allow the Assessing Authority to move afresh and with such words of caution, we direct that the petitioner would appear before the Assessing Authority, the Deputy Commissioner, State Taxes, the respondent no.3 on 26.02.2019 at 11.00 A.M. when he shall proceed to fix up the date of hearing on the assessment proceeding and pass appropriate orders in accordance with law after due opportunity of hearing which order be passed within one week of the appearance of the petitioner on 26.02.2019. It goes without saying that the tax/penalty amount realized by the respondents by virtue of the attachment order dated 10.01.2019 enclosed at Annexure-2 series would be subject to the outcome of

the proceedings and in case the petitioner on conclusion of the proceeding is found entitled to a refund of the said amount or a part thereof, it should be done forthwith.

With the observations and directions above, the writ petition is allowed.