(2006) 08 PAT CK 0057

In the Patna High Court

Case No : CWJC No. 5283 of 2006

M/s Kumar Bhandar APPELLANT

Vs

The State of Bihar and Another RESPONDENT

Date of Decision : 25-08-2006

Acts Referred:

Citation : (2006) 4 PLJR 307

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

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Mr.Y.V. Giri, counsel for the petitioner and Mr. Rajnandan Prasad, J. C. to the Advocate General representing the State. The petitioner, a propriety firm is a wholesale dealer in kerosene oil. It receives its supplies of korosene oil from I.B.P. Company Limited and according to its case pays sales tax on its purchase from the aforesaid company. It is aggrieved by and seeks to challenge an ex parte order of assessment for the period 2002-03 levying a charge of sales tax, interest and penalty amounting to Rs. 23,62,648/-against it. It is stated on behalf of the petitioner that the order was passed not only behind its back but without any service of notice to it. It is further stated that on all the transactions covered by the assessment order safes tax was paid at the first point and the petitioner also had the necessary Form IXC issued by the I.B.P. Company Limited as evidence of payment of tax. Had it been allowed an opportunity, it would have produced before the assessing authority the declaration in Form IXC issued by the I.B.P. Company Limited and that would have been the end of the matter.

2. From the counter affidavit it appears that the taxes along with interest and penalty have been imposed mainly on the ground of non-production of Form IXC by the petitioner. In the counter affidavit it is stated that despite issuance of notice the petitioner did not appear on the date fixed and in that circumstance the assessing authority proceeded in the matter ex parte. Though it is stated that a notice was issued, it is not said that it was also duly received by the

petitioner; neither is there any annexure to the counter affidavit in support of the averment that the notice was in tact issued, much less to show, that it was received by the petitioner.

3. In those circumstances we are satisfied that the matter needs to be heard afresh by the assessing authority after the impugned order is set aside. The impugned order dated 22.9.2005 is accordingly set aside and the matter is remitted back to the Deputy Commissioner, Sates Tax, Muzaffarpur Circle, Mazaffarpur. In order to facilitate an early disposal of the proceeding the petitioner is directed to appear before the Deputy Commissioner, along with a copy of this order, within three weeks from today. It is expected that the Deputy Commissioner shall pass a final order in the proceeding, after giving the petitioner an opportunity of hearing, within two months from the date of his appearance. In the result, this writ petition is allowed.