(2017) 01 JH CK 0239

In the Jharkhand High Court

Case No : 144 of 2017

Sayeed Mirdaha APPELLANT

Vs

The State of Bihar (Now Jharkhand) RESPONDENT

Date of Decision : 16-01-2017

Acts Referred:

Citation : (2017) 01 JH CK 0239

Hon'ble Judges : D.N. Patel, Ratnaker Bhengra

Bench : DIVISION BENCH

Advocate : A.R. Choudhary, Amrita Sinha, Rajesh Kumar

Judgement

1. This writ petition has been preferred challenging the order dated 9th September, 2014 (Annexure 4 to the memo of the writ petition)passed by the Deputy Commissioner, Commercial Taxes, Gumla Circle, Gumla as well as Notice of Demand dated 9th September, 2014 (Annexure 5 to the memo of the writ petition) as well as Certificate Proceeding being Certificate Case No. 20 of 2014-15 (Annexure 3 to the memo of the writ petition) mainly on the ground that no Notice of hearing has ever been given and ex-parte order dated 9th September, 2014 (Annexure 4 to the memo of the petition) has been passed by the Deputy Commissioner, Commercial Taxes, Gumla Circle, Gumla on the basis of deemed service of Notice much after conclusion of assessment proceedings without initiating any proceedings for reassessment. No Notice has ever been received by this petitioner and ex-parte order has been passed vide order dated 9th September, 2014 (Annexure 4 to the memo of the writ petition) and therefore, consequential orders, i.e. Notice of Demand dated 9th September, 2014 (Annexure 5 to the memo of the writ petition) as well as Certificate Proceeding being Certificate Case No. 20 of 2014-15 (Annexure 3 to the memo of the writ petition) also deserve to be quashed and set aside. Demand Notice dated 9th September, 2014 deserves to be quashed and set aside because liability has been decided without giving any opportunity of being heard.

2. Having heard counsel appearing for both sides and looking to the facts and

circumstances of the case, it appears that order dated 9th September, 2014 (Annexure 4 to the memo of the writ petition) has been passed without Notice being served upon the petitioners. On the contrary, Notice has been served upon the guarantors of the petitioners. Such type of service of Notice is no Notice in the eye of law, especially when tax liability is to be imposed upon the petitioners. The minimum requirement is that Notice of hearing should be served upon the Assessee before passing such order against the assessee. The Deputy Commissioner, Commercial Taxes, Gumla Circle, Gumla has lost sight of this fact. We fail to understand as to why the officer was in such a hurry. It ought to be kept in mind that whenever any liability of tax was to be imposed all care should be taken that Notice should be served upon the Assessee. Thereafter, Assessee should be heard and thereafter, order should be passed. This minimum requirement has not been fulfilled in this case as a result of which work load of this court has unnecessarily been increased and therefore, such type of matters should be remanded.

3. We, therefore, quash and set aside the order dated 9th September, 2014 (Annexure 4 to the memo of the writ petition) to the extent it relates to the period 2007-08 passed by the Deputy Commissioner, Commercial Taxes, Gumla Circle, Gumla as well as Notice of Demand dated 9th September, 2014 (Annexure 5 to the memo of the writ petition) to the extent it relates to the period 2007-08 and the Certificate Proceeding being Certificate Case No. 20 of 2014-15 (Annexure 3 to the memo of the writ petition) to the extent it relates to the period 2007-08 initiated by the Sub- Divisional Magistrate-cum-Certificate Officer, Gumla and we, hereby, remand the matter to the Dy. Commissioner, Commercial Taxes, Gumla Circle, Gumla who will decide afresh the tax liability of the petitioners. The order shall be passed by the said officer after giving adequate opportunity of being heard to the petitioners and the petitioners shall remain present before the said officer on 13th February, 2017 between 11 a.m. to 1 p.m. and thereafter, the officer can give a date as per his convenience.

4. The petitioners are at liberty to raise all the issues before the aforesaid officer. The decision will be taken by the Dy Commissioner, Commercial Taxes, Gumla Circle, Gumla in accordance with law on the basis of evidences on record and without being influenced by the order passed by the said authority on 9th September, 2014 and other proceedings which are quashed by this court. Independent decision shall be taken with respect to reassessment.

5. The petitioners are at liberty to file any evidence before the aforesaid authority, who is going to decide the tax liability of the petitioners.

6. This petition is allowed and disposed of with the aforesaid direction. Petition allowed.

