IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7919 of 2015

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Jyoti Roadlines, a proprietorship concern having its office at Capital Hind Compound, Near Prem Choudhary Crane Service, 6th mile stone, P.O.+P.S. U.P. Border, District- Ghaziabad through its proprietor, Amar Nath Shukla, son of Late Hazari Lal Shukla, resident of H-317, Old seemapuri, P.O.+P.S. Old Seemapuri, District-Delhi.

.... Petitioner

Versus

1. The State of Bihar through Commissioner-cum-Principal Secretary, Commercial Taxes Department, Bihar having its office at Vikas Bhawan, Bailey Road, Patna.
2. Dy. Commissioner of Commercial Taxes Integrated Check Post, Karamnasha, Kaimur.
3. Asst. Commissioner of Commercial Taxes Integrated Check Post, Karamnasha, Kaimur.

.... Respondents

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Appearance :

For the Petitioner : Mr. D.V.Pathy
Mrs. Manju Jha

For the Respondents : Mr. Vikash Kumar, A.C. to PAAG

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

6 02-11-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 09.03.2015 passed by the Deputy Commissioner of Commercial Taxes, Integrated Check Post, Karmnasha, Kaimur, by which penalty has been imposed thrice the amount payable under Section 60 (4) (b) read with Section 56 (4) (b) of the Bihar Value Added Tax Act, 2005 and also for quashing the notification dated

30.10.2012 issued by the Commissioner-cum-Principal Secretary, Commercial Taxes Department, by which TIN Number of the consignee has been made mandatory to be mentioned in the e-Suvidha form D-VII.

The petitioner, which is a transporter, was carrying a consignment of goods from the consignee AFC System, Noida, U.P. for transport of office furniture and almirah to the State of Orissa which was to be supplied to the Axis Bank Ltd. in the said State. The Axis Bank is not a dealer under the sales tax law in any of the States. Therefore, the column with regard to the consignee could not be filled up and for the said reason alone, the impugned order dated 9.3.2015 was passed by the Deputy Commissioner of Commercial Taxes, Integrated Check Post, Karmnasha, Kaimur imposing penalty of Rs.1,11,832/- under Section 60 (4) (b) read with Section 56 (4) (b) of the Bihar VAT Act, 2005.

Learned counsel for the State is unable to justify the said action of respondent No.2, Deputy Commissioner of Commercial Taxes, as the consignee Axis Bank Ltd. is not engaged in the business of buying and selling. The State Government has also come up with a notification dated 7.10.2015 which, while amending the impugned notification dated 30.12.2012, states that with respect to a person, who is not a dealer, the column with regard to consignor/consignee shall be filled up by the System itself.

In view of impossibility of filling up the number of the consignee coupled with the amendment of the notification dated 30.10.2012 by the State Government itself, it is evident that the impugned order is illegal and cannot be supported. It is, accordingly, quashed.

The writ application is thus allowed. The respondents are directed to refund the amount of penalty deposited within a period of six weeks from the date of receipt/production of a copy of this order.

V.P.Sinha/-

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

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