IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.727 of 2015

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Calcutta Fabricators, a partnership firm having its registered office at 334, Parnasree Pally, Kolkata-700060 and works at Raipore, P.O.Raipore, P.S. Maheshtala, District-24 Parganas (South), West Bengal through its authorized signatory, Gopal Mukherjee, son of Late Prafulla Kumar Mukherjee, resident of Bhadreshwar, P.O.Bhadreshwar, P.S. Bhadreshwar, Distt. Hooghly (West Bengal).

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes having its office at Vikas Bhawan, Bailey Road, Patna.
2. Dy. Commissioner of Commercial Taxes, Gaya Circle, Gaya.
3. Commercial Taxes Officer, Integrated Check Post, Dobhi, Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.V.Pathy

For the Respondent/s : Mr. Vikash Kumar

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

2 15-01-2015 Heard learned counsel for the petitioner and learned counsel for the State.

Learned counsel for the petitioner submits that the penalty has been wrongly imposed upon the petitioner under Section 60 (4) (b) read with Section 56 (4) (b) of the Bihar Value Added Tax Act, 2005 by the respondents for the sole reason that e-suvida did not contain TIN number of the consignee, whereas the e-suvidha is generated from the website of the Department and if the mentioning of the TIN number was a mandatory requirement, the e-suvidha ought not to have been generated but rejected.

It is further submitted that the petitioner has supplied corrected e-suvidha to the officer concerned, but the same was ignored and merely on such technicality and partial fault on the part of the Department and the software being used by it, the petitioner has been imposed penalty of Rs.4.46 Lacs.

It is also submitted by learned counsel for the petitioner that the goods seized were being transported from the State of West Bengal to Haryana, that is inter-State sale, for supply to the Indian Army and the respondents have already directed to auction the same and fixed the date today (15.01.2015).

It is, however, admitted by learned counsel for the petitioner that aggrieved by the order dated 6.8.2014 of the Commercial Tax Officer, Integrated Check Post, Dobhi, the petitioner has filed a revision application before the Commissioner of Commercial Taxes, which is pending and direction may be issued to the Commissioner to dispose of the same.

On a consideration of the facts and circumstances of the case, particularly considering the fact that the seized goods were meant for supply to the Indian Army and they are not goods of perishable nature, in our view, the authorities at least should have awaited the disposal of the revision application filed by the petitioner.

In the said circumstances, the impugned notice dated 30.12.2014 (Annexure-6) is quashed. The respondents are directed to release the truck along with the goods therein forthwith upon the petitioner producing the bank guarantee for the amount of penalty imposed. The Commissioner, Commercial Taxes is also directed to dispose of the revision application of the petitioner within a period of two months from the date of receipt/production of a copy of this order.

The writ application is accordingly disposed of with the above observations and directions.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Vikash Jain, J)

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