IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16459 of 2015

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Solvate Laboratories Pvt. Ltd., Mehta Colony, Opp. Excise Office, Sandalpur Raod, Kumharar, Patna through its Director, Yogendra Kumar, Son of Late Bindeshwari Singh, resident of Sheikhpura Bagicha, P.O.- B.V. College, P.S.- Shashtri Nagar, District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner, Department of Commercial Taxes, Government of Bihar, Patna.
2. The Deputy Commissioner, Commercial Taxes, Integrates Check Post Karmnasha, Bhabhua (Kaimur), Bihar.
3. The Commercial Tax Assistant Commissioner, Integrated Check Post, Karmnasha, Kaimur (Bihar).

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar
For the State : MrVikash Kumar, AC to PAAG

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

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 05-07-2016

Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 10.05.2015 passed by the Assistant Commissioner, Commercial Taxes, Integrated Check Post, Karmnasha, Bhabhua (Kaimur) in Case No. 142/2015-16, so far as the petitioner is concerned and also for quashing of the demand notice.

The petitioner along with other such registered dealers was transporting goods, from Dehradun to Patna in the case of the petitioner, and others from different places to Patna. The authorities of the Integrated Check Post, Karmnasha, Bhabhua (Kaimur) seized the truck and thereafter the impugned order of penalty was passed.

Learned counsel for the petitioner submits that the impugned order dated 10.05.2015 is illegal and beyond the jurisdiction of the Respondent No.3, Assistant Commissioner, Commercial Taxes as he has virtually made an assessment which is the function of the Assessing Officer. It is submitted that the case of the petitioner is squarely covered by the decision dated 11.02.2016 of this Court passed in CWJC No. 19210/2015(Pashupati Road Carrier Private Ltd. Vs. The State of Bihar & Anr.).

On a consideration of the order passed, we are of the view that the Respondent No. 3 has committed the same error as the Commercial Taxes Officer, Karmnasha Check Post had committed in the case of Pashupati Road Carrier Pvt. Ltd. (supra) and performed function not assigned to an Officer posted at the Integrated Check Post. The decision of this Court including the observations made therein regarding the duty of such Officer in the case of transport of goods which pass through the check post which does not include acting like an assessing officer, such action being beyond the purview of their powers under Section 60(4)(b) read with Section 56(4)(b) of the Bihar VAT Act and in case of any suspicion reporting the same to the Assessing Officer, since it is not in dispute that the petitioner is a registered dealer in the State and as a matter of fact, all the consignees were registered dealers which is evident from their Tin Nos. mentioned in the impugned order itself.

In the above circumstances, the impugned order dated 10.5.2015 and the consequential demand notice is quashed in terms of the order dated 11.02.2016 passed by this Court in the case of Pashupati Road Carrier (supra).

The writ application is, accordingly, allowed.

Since the impugned order itself has been quashed, it is evident that the respondent-authorities have no right to retain the amounts, if any, deposited by the petitioner/concerned parties. They are therefore, directed to refund the amount to the petitioner within a period of four weeks from the date of receipt/production of a copy of this order.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Sudhir Singh, J)

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	19.09.2016
Transmission Date	