IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18330 of 2015

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Jupex India, a Partnership Concern having its office at 21, Amartalla Street, P.O. + P.S. Bada Bazar, Kolkata - 700001 through its Partner, Binay Kumar Son of Late Kedar Prasad resident of 79, N.D. Bose Lane, P.O. + P.S. Kone Nagar, District - Hooghly (West Bengali

.... Petitioner/s

Versus

1. State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Bailey Road, Patna
2. Deputy Commissioner of Commercial Taxes, Integrated Check Post, Dobhi (Gaya
3. Commercial Taxes officer Integrated Check Post, Dobhi (Gaya)

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.18331 of 2015

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R.K.Exports, a Partnership Concern having its office at 12, Byasack Street, P.O. + P.S. Bada Bazar, Kolkata 700007 through its Partner, R.K. Singh Son of Late Pritam Singh resident of 388, Ravindra Sarini, P.O. + P.S. Bada Bazar Kolkata 700007

.... Petitioner/s

Versus

1. State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Bailey Road, Patna
2. Deputy Commissioner of Commercial Taxes, Integrated Check Post, Dobhi (Gaya)
3. Commercial Taxes officer Integrated Check Post, Dobhi (Gaya)

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.18332 of 2015

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R.K.Exports, a Partnership Concern having its office at 12, Byasack Street, P.O. + P.S. Bada Bazar, Kolkata 700007 through its Partner, R.K. Singh Son of Late Pritam Singh resident of 388, Ravindra Sarini, P.O. + P.S. Bada Bazar Kolkata 700007

.... Petitioner/s

Versus

1. State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Bailey Road, Patna
2. Deputy Commissioner of Commercial Taxes, Integrated Check Post, Dobhi (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, AC 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)

5 04-01-2016 Heard learned counsel for the petitioners and learned counsel for the State.

Learned counsel for the petitioners submits that so far as the consignment in question is concerned there is no way that the petitioner can take the consignment to the State of Delhi since it has been discovered that the Consignee's Tin No. has been cancelled subsequent to the preparation of the invoices and the only effect of taking the goods to Delhi would be their seizure and further imposition of penalty by the authorities of the Sales Tax Department of Delhi. Hence, in any case, irrespective of the order that may be passed, ultimately, the consignment would have to be sent to the place of origin.

On a consideration of the facts and circumstances, we are also of the view that the only matter to be considered would be as to whether the respondent-authorities were justified in imposing the order of penalty in the exceptional facts and circumstances as has been alleged by the petitioners.

In the said circumstances, the interim order dated 27.11.2015 passed by us is modified to the extent that upon furnishing Bank Guarantee of the amount of penalty by the petitioner, the three vehicles of the petitioners along with goods laden thereon shall be released and allowed to proceed back to their place of origin with intimation by the Commercial Taxes Department of the State to the competent Sales Tax authority of the State of West Bengal in this regard.

Learned counsel for the State shall inform the authorities of the Integrated Check Post to permit release of the consignment as directed by us on the last occasion along with the modification made today of the earlier interim order.

Learned counsel for the State however, submits that the petitioners cannot be permitted to take any advantage of the letter dated 23.10.2015 as inspection was made by the Integrated Check Post on 25.10.2015 and the petitioners had been made aware about the cancellation of the registration of the consignee by letter dated 23.10.2015, which has also been annexed in the writ petition as Annexure-3 at page 16, although no reference to the same has been made in the writ petition. It is thus, submitted by learned counsel for the State that the petitioner has no explanation as to why it has not taken steps immediately upon learning about the cancellation of the registration by intimating about the same to the authorities of the State of Bihar and other States.

Considering the various aspects involved in the matter, we do not consider it a fit case for looking into the same in the present writ petitions as they may be better looked into by the statutory authority under the Bihar VAT Act.

The writ applications are, accordingly, disposed of with liberty to the petitioners to approach the statutory authorities under the Act.

In case, the petitioners file such appeals within a period of four weeks from today, then the competent authority shall consider the same keeping in view the fact that the petitioners have been pursuing their remedies before this Court.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Sudhir Singh, J)

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