IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19210 of 2015

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Pashupati Road Carrier Private Ltd., a company incorporated under the Companies Act 1956 having its registered office at A-873 1st Floor, Near Hanuman Mandir, Shastri Nagar, P.O. + P.S.- Shastri Nagar New Delho-110052 and Branch office at Shitla Mata Mandir Road, P.O.- Chhoti Pahari, P.S. Agamkuan, District- Patna through its Manager, Brajendra Kumar, son of Shri Surendra Prasad Sharma, resident of village- Purainia, P.O.- Neora, P.S.- Bihta, District- Patna

.... Petitioner

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Bailey Road, Patna.
2. Commercial Taxes Officer, Karmnasha Check Post, Kaimur

.... Respondents

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Appearance :

For the Petitioner : Mr. D.V.Pathy, Advocate
Mrs. Manju Jha, Advocate
Mr. Anshuman Singh, Advocate

For the Respondents : Mr. Anil Kumar Sinha, G.A. 9
Mr. Pawan Kumar, A.C. to G.A. 9

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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)

4 11-02-2016 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 14.11.2015 passed by the respondent no.2 under Section 60 (4)(b) read with Section 56 (4) (b) of the Bihar Value Added Tax Act, 2005 as also for release of the transport vehicle along with the goods laden thereon. The petitioner was transporting goods from the State of Punjab and UP to the State of Bihar on the transport vehicle No.JH-02L-7299. For the said purpose it was carrying the

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requisite declaration form D-IX along with the required documents including invoice. The truck of the petitioner was intercepted by the Commercial Taxes Officer, Karmnasha Check Post, Kaimur and on his direction the petitioner produced all the requisite documents including invoice and e-suvidha declaration in support of the goods being transported. However, the respondent no.2 taking a view that the petitioner was in fact carrying dietary food supplement and syrups and had shown the same as medicines in the e-suvidha declaration and had paid tax @ 5% instead of applicable tax of 13.5% and also undervalued the goods which were of much higher value than the value disclosed passed the aforesaid order.

Aggrieved by the impugned order dated 14.11.2015, the petitioner has approached this Court.

It is firstly submitted by the learned counsel for the petitioner that the respondent no.2 could not have relied upon the MRP as the provision regarding Section 15 (5) of the Act authorizing levy of tax at maximum retail price has been declared ultra vires by order of this Court dated 04.05.2015 passed in the case of Mapra Laboratories (India) Ltd. vs. The State of Bihar & Ors..

It is further submitted by learned counsel for petitioner that the respondent no.2 has only the authority to verify and check the contents of the goods being transported which are mentioned in the e-suvidha declaration but has practically made a classification of the category of goods on the basis of his understanding of the matter, whereas the same could only have been looked into by the concerned Assessing Officer. It is, thus, submitted that the order itself is without jurisdiction.

Learned Govt. Advocate No.9 appearing on behalf of the State submits that the petitioner had declared the value of goods at 18 per cent and 20 per cent of the MRP and thus, it was under declaration of value for which the respondent no.2 had rightly exercised his powers. It is further submitted that the petitioner had also misclassified the goods as medicines whereas the goods in question were food supplement which are manufactured by the petitioner-consigner under the licence issued under the Foods Safety and Standards Act.

On a consideration of the facts and circumstances of the case, we find sufficient force in the submission of the learned counsel for the petitioner regarding the jurisdiction of the officer under Chapter IX of the Bihar Value Added Tax Act, 2005 which is only to ensure that the goods which pass the check post carry the necessary declaration as required under Sub-section (2) of Section 16 of the Act and further the other necessary documents accompanying such goods and the description of goods as stated in the invoice match with the goods as described in the transport challan. In the present matter, it is not in dispute that the description of the goods in the invoice including their brand names fully matched with what was stated in the transport challan.

It is evident from the counter affidavit filed on behalf of the State that the said goods were in the nature of Vitamin B-Complex with Zinc & Lysine oral solution and similar such Antioxidants, Multivitamin & Multimineral tablets etc.; whether the same could be classified as medicines or as food supplements is not a matter which has to be determined by the authorities of the integrated check post but the Assessing Authority of the concerned dealer, it being not in dispute that the consignee dealer was a registered dealer.

In the aforesaid circumstances, we are of the view that it was not open to the authorities of the integrated check post, to have interfered with the movement of the transport vehicle of the petitioner carrying the goods. If there was any question of categorization of goods or valuation of the goods and the officer at the integrated check post had any suspicion in that regard, at best he could have passed on his opinion in the matter to the concerned authority who could have taken appropriate steps in accordance with law.

For the aforesaid reasons, the writ application is allowed. The impugned order dated 14.11.2015 is quashed. The vehicle along with goods have already been released vide order dated 16.12.2015 on furnishing Bank Guarantee of Rs.1.25 lacs by the petitioner. Let the bank guarantee be returned by the respondents to the petitioner expeditiously.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

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