

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17033 of 2016

=====

1. M/s. Shree Shyam Road Carrier through its Proprietor Vinod Pawan Chaudhary, Son of Ram Kumar Chaudhary, Plot No. 283, Kundaim Industrial Estate, Kundaim, Goa- 403115 having its Branch Office near Alok Petrol Pump Bari Pahari, Patna- 800007.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary Commissioner of Excise Department of Registration, Excise and Prohibition, New Secretariat, Vikash Bhawan, Patna-1, Bihar.
2. The Secretary, Commissioner of Excise, Department of Registration, Excise and Prohibition, New Secretariat, Vikash Bhawan, Patna- 800001.
3. The Excise Commissioner, Department of Registration, Excise and Prohibition, Vikash Bhawan, Bailey Road, Patna- 800001.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Parashuram Singh, Advocate
For the Respondent/s : Mr. Vikash Kumar, S.C.-11

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

- 4 12-09-2018 1. By way of present petition, under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ/order directing the respondents to release the bank guarantee of Rs. 66,00,000/- (Rupees sixty six lacs) which the petitioner has furnished with the respondents-Department as security money/ performance bank guarantee for registration of



their 132 vehicles.

2. It is the case on behalf of the petitioner that there is no movement of containers in Bihar therefore, the business of the petitioner cannot proceed and, therefore, the petitioner requested to return/release the bank guarantee. That it is the case on behalf of the petitioner that, however, the respondents have agreed to refund/return the bank guarantee provided the stickers are returned. It is the case on behalf of the petitioner that as the stickers provided are fixed to the vehicles strongly, they cannot be removed from the vehicles and, therefore, the petitioner is not in a position to return the stickers to the respondents-Department and resultantly, the respondents-Department have not returned/released the bank guarantee. Therefore, it is the case on behalf of the petitioner that the condition imposed to return the stickers is arbitrary and not capable of being complied with and therefore, not returning the bank guarantee is bad is law.

3. In response to the notice issued by this Court, the respondents have appeared through Mr. Vikash Kumar, S.C.-11. A counter is filed on behalf of the respondents in which at paragraph-11, it is stated as under;

“11. That it is stated and submitted that there is every possibility of misuse of the stickers provided to the petitioner for their 132 vehicles. As stated above, the department is always ready to refund the bank



guarantee furnished by the petitioner on getting back the sticker provided to the petitioner. In case the petitioner is unable to return the stickers the petitioner should furnish an affidavit to the effect that the stickers provided to the petitioner by the department shall not be misused. It may be stated here that bank guarantee of similarly situated transporter M/S Shiv Enterprises has been refunded to them on their furnishing the required affidavit. The petitioner is at liberty to furnish such an affidavit in the department. On receipt of such affidavit from the petitioner, the bank guarantee deposited by it will be refunded soon.”

4. Mr. Parashuram Singh, learned Advocate appearing on behalf of the petitioner has stated at the Bar that the petitioner is ready and willing to furnish an affidavit to the effect that the stickers provided to the petitioner by the respondents-department shall not be misused. Therefore, it is stated that on furnishing such an affidavit as required by the department now, the bank guarantee may be ordered to be refunded.

5. Having heard learned counsel appearing on behalf of the respective parties and the stand taken by the respective parties referred to hereinabove, we dispose of the present petition by directing the respondents-Department to return/release the bank guarantee of Rs. 66,00,000/- (Rupees sixty six lacs) furnished by the petitioner on the petitioner filing an affidavit to the effect that the stickers provided to the petitioner by the respondents-Department shall not be misused.



6. With this, present petition stands disposed of.

(Mukesh R. Shah,CJ)

(Ashutosh Kumar, J)

Brajesh/-

U			
---	--	--	--

