IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7985 of 2024

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Pawan Carrying Corporation a proprietory concern having its office at 133/282 Transport Nagar, Kanpur through its authorized signatory Prabhat Kumar, son of Shri Pradeep Kumar resident of village Raiyapur Bhadri Kunda, Bhadri, Pratapgarh, PS Kunda, Uttar Pradesh 230201.

... ... Petitioner/s

Versus

1. Commissioner CGST & Central Excise having its office at Bir Chand Patel Path, Central Revenue Building, Patna 800001.
2. Asst. Commissioner, CGST & Central Excise, Division Darbhanga having its office at Near Congress Bhawan, N P Mishra Path, Balbhadarpur, Laheriasarai, Darbhanga 846001.
3. Superintendent CGST & Central Excise, Division Darbhanga having its office at Near Congress Bhawan, N P Mishra Path, Balbhadarpur, Laheriasarai, Darbhanga 846001.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D.V. Pathy, Advocate Mr. Sadashiv Tiwari, Advocate
For the Respondent/s	:	Dr. K.N. Singh, Additional Solicitor General Mr. Anshuman Singh, Sr. SC, CGST & CX Mr. Shivaditya Dhari Sinha, AC to ASG

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-05-2024

The petitioner is concerned with the detention of a vehicle (Truck) No. UP 78 GN 3657 and the penalty imposed as per Annexure- P-7 order dated 24.04.2024. The detention was by Annexure-P-2 on 30.03.2024. The notice was issued on the very next day on 01.04.2024 as per Annexure-P-6 after physical verification and recording of statement, which is evidenced by Annexures-P-2 to P-5. In Annexure P-6, the hearing was scheduled on 05.04.2024 at 05:30 P.M. Eventually, the order was passed as Annexure-P-7 on 24.04.2024.

2. Shri D.V. Pathy, learned Counsel for the petitioner points out that the issue is covered and the order is hit by limitation, as has been declared in Annexure-P-9 judgment of this Court.

3. Learned ASG, however, points out that Annexure-P-6 has given the petitioner seven days' notice which expires only on 8th of April, 2024 and then a further period of seven days has to be given for being heard as per sub-section (4) of Section 129.

4. The learned ASG also submits that habitually there seems to be mistake committed in the Registration Number of the vehicles, which is a clear case of evasion.

5. We notice that the petitioner is similar in both the cases, but then the officer had to initiate proceedings and conclude it within the time specifically provided under the Statute.

6. We are not convinced that the order can be saved on the grounds stated by the learned ASG. Section 139(3), as we found in Annexure-P-9, provides for a notice within seven days of detention and an order within a further period of seven days

from the date of service of such notice. Sub-section (4) only speaks of an opportunity of being heard which has to be necessarily within the seven days period and if the owner of the goods do not turn up within the time provided, nothing prevents the detaining officer from passing an order of penalty. In the present case, we see that it is squarely covered by the declaration as stated in Annexure-P-9.

7. We hence, allow the writ petition setting aside Annexure-P-7 order on the ground of limitation. The vehicle and the goods will be released forthwith.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	14.05.2024
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