(1987) 08 PAT CK 0005

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 93 of 1985

M/s. S.S.J. Enterprisers APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 20-08-1987

Acts Referred:
Bihar Sales Tax Rules, 1983 — Rule 38(2), 42(2)

Citation : (1988) PLJR 355

Hon'ble Judges : N.P. Singh, J

Bench : Single Bench

Advocate : G.C. Bharuka, Navniti Prasad Singh and Ramesh Kr. Agrawal, for the Appellant; Shashank Kumar Singh, G.P. 4 and Ajay Behari Sinha, J.C. to G.P. 4., for the Respondent

Judgement

N.P. Singh, J.—This writ application has been filed on behalf of the petitioner for quashing an order dated 3.4.1985 passed by the Commercial Taxes Officer imposing penalty of Rs. 41,628/- and the consequential demand notice dated 22.4.1985. A prayer has also been made to release 700 dozen Hercules Brand Beer which had been seized from a public carrier truck No. ATS 1234 at Pardih, District Singhbhum, on the ground that rule 42(2) of the Bihar Sales Tax Rules, 1983, framed under the provisions of the Bihar Finance Act, 1981 was ultra vires. It appears that the seizure has been made and penalty has been imposed because the truck in question was carrying articles without a road permit (Form XXVIIIB) which was a must, in view of rule 42(2), Later it has been made obligatory by Notification No. S.O. 1432 dated 28.12.1985. A Bench of this Court in the case of Bhagwan Pd. v. O.I. Nethuda Check Post (1980 BBCJ 475 : 1980 BRLJ 110) held that the restriction imposed by rule 38(2) of the Bihar Sales Tax Rules, 1976 applies to infra-State trade and not to inter-State trade. Rule 42(2) of the 1983 Rules is virtually reproduction of rule 38 of the 1976 Rules.

2. On behalf of the petitioner it was urged that in that view of the matter, even rule 42(2) has to be read to be applicable only to intra-State trade and not to

inter-State trade. In the present case, it has been asserted that the truck was seized while it was carrying goods in connection with an inter-State trade from Banglore to Dhanbad and as such the requirements of rule 42(2) of the Rules aforesaid were not attracted. In other words, the seizure could not have been made and penalty could not have been imposed on the ground that the truck was passing without a road permit (Form XXVIIIB).

3. Mr. Shashank Kumar Singh, learned Government Pleader No. 4, who has appeared for the State, after perusal of the records and seeking instructions from the Commercial Taxes Department, has stated that the respondents are not in a position to contradict the aforesaid statements. According to him, the truck had been seized on the assumption that rule 42(2) was applicable even in such a situation. In that view of the matter, I am left with no option but to allow this writ application and to quash the order imposing penalty against the petitioner. I am informed that the articles which had been seized have already been released to the petitioner, as such no specific order is required to be passed. If any amount has been realised towards the penalty, then they shall be refunded to the petitioner within four months from the date of production of this order.