Office of the Addl. Commissioner of Commercial Taxes (L.A.) Bangalore.
27 MAR 2015
No..........
Gandhinagar, Bangalore.

F.No. 29012/14/2014-SO (ST-II)

Government of India
Ministry of Finance
Department of Revenue
State Tax Division
****

New Delhi, the 16th March, 2015

OFFICE MEMORANDUM

Subject: - C.M.W.P. (Tax) No. 478 of 2014, High Court of Allahabad in the matter of M/s Sandeep Bulk Carriers v. State of UP & Others-reg.

The undersigned is directed to refer to the direction of the High Court of Allahabad in the aforesaid matter vide order dated 19th December, 2014 and to say that the matter has been examined with a view to check the arbitrary use of power by the officials of the Sales Tax Department under the provisions of the Central Sales Tax Act, 1956.

2. In this regard, it is submitted that the Constitutional Amendment (122nd) Bill, 2014 with a view to implement the Goods and Service Tax in the country has been introduced in the Parliament on 19th December, 2014. After implementation of Goods and Service Tax, the Central Sales Tax would be subsumed in Goods and Service Tax regime in the country. Therefore, amendment of Central Sales Tax Act, 1956 to insert necessary provisions to check arbitrary use of power by the officials of Sales Tax Department of State Government to comply with the direction of the Hon'ble High Court of Allahabad in C.M.W.P. (Tax) No. 478 of 2014 High Court of Allahabad in the matter of M/s Sandeep Bulk Carriers v. State of UP & Others vide order dated 19.12.2014 by the Central Government would not be fruitful at this stage.

3. Further, it may be mentioned that as per provisions in Section 9 (2) of the Central Sales Tax Act, 1956, the power to administer the Central Sales Tax Act, 1956 to regulate inter-State trade and commerce vests with the States. Hence, State Governments can issue necessary instructions/guidelines to check arbitrary use of power by its official in case of inter-State trade & commerce.

4. In view of above, a copy of the aforesaid order of the Hon'ble High Court of Allahabad dated 19.12.14 is being forwarded to all the States/UTs for necessary action to comply with the direction thereon in their respective State/UTs under intimation to this office.

Encl. as above

7585
25/3/15

(Mahendra Nath)
Under Secretary (ST-I)
Tele: - 2309 2419

To,

The Principal Secretary (Commercial Tax), Government of UP w.r.t. submission given by the State Governments Counsel in C.M.W.P. (Tax) No. 478 of 2014, High Court of Allahabad filed by M/s Sandeep Bulk Carriers v. State of UP & Others for necessary action.

Copy to the Principal Secretary, Commercial Tax of all other States/UTs for necessary action.

<u>A.F.R.</u>

<u>Judgment delivered on 19.12.2014</u>

<u>Court No. - 1</u>
Case :- WRIT TAX No. - 478 of 2014
Petitioner :- M/S Sandeep Bulk Carriers
Respondent :- State Of U.P. And 3 Ors.
Counsel for Petitioner :- M.K. Pandey
Counsel for Respondent :-
C.S.C.,A.S.G.I.,B.K. Pandey,Gyan Prakash,Jyont Banerjee
<u>Hon'ble Surya Prakash Kesarwani,J.</u>

1. Heard Sri M.K. Pandey, learned counsel for the petitioner, Sri Ashok Pandey, learned Additional Advocate General assisted by Sri B.K. Pandey, learned counsel for the Respondent Nos. 1 to 4 and Sri Jyont Banerjee, learned counsel for the Respondent No.5.

2. This writ petition has been filed praying for the following reliefs:

> i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 5.7.2014 and 8.7.2014, passed by respondent No.2 as well as impugned order dated 16.7.2014 passed by respondent No.3.
> ii) Issue a writ, order or direction in the nature of mandamus directing to respondent to release the Tanker No. UP85V9636 with Bitumen which is lying in the custody of respondent No.2 since 30.6.2014.
> iii) Issue a writ, order or direction in the nature of mandamus directing to respondents pay the damages @ Rs. 5,000/- per day from the date of 30.6.2014.
> iv) issue any other suitable writ, order or direction, as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.
> v) Award the cost of the writ petition in favour of the petitioner.

3. Briefly stated the facts of the present case are that the petitioner is a transporter as well as owner of a tanker No. UP85V9636. Bitumen was loaded in the aforesaid tanker from the Indian Oil Corporation, Mathura Refinery in the evening of 27th June, 2014 for

transportation to M/s Concast Infratech Ltd. Bhopal (Madhya Pradesh). Thereafter some mechanical defect developed in the tanker which was repaired in the Chaudhari Works Shop, Delhi bypass Road, Chaudhari Market, Mathura between 28.6.2014 to 30.6.2014, as per copies of bills collectively filed as Annexure No.1. Thereafter the tanker proceeded in the night of 30.6.2014. The aforesaid tanker was intercepted near Farah by the Assistant Commissioner, Commercial Tax, Shift III Mobile Squad, Mathura and after about two hours a detention memo was issued on Ist July, 2014 at about 1 A.M. The tanker was detained by the said authority even though the bitumen loaded in it was found accompanied with all proper and genuine documents including Invoice of selling dealer M/s Indian Oil Corporation, Mathura, bilti and declaration Form 49 of the Madhya Pradesh Government issued by the purchasing dealer M/s Concast Infratech Ltd. Bhopal, Madhya Pradesh. The petitioner submitted an objection on 2.7.2014 before the aforesaid authority bringing to his notice the facts that certain defect developed in the tanker on 28.6.2016 and it could be repaired on 30th June, 2014. An affidavit of the driver of the tanker to the aforesaid effect was also filed, a copy of which has been filed as Annexure No.5. A show cause notice dated

2.7.2014 was issued by the Respondent No.4 which was replied by the petitioner on 4th July, 2014 (Annexure 8) in which he explained the matter, denied the entry of his tanker at Mahuwan Toll Plaza, requested to verify the alleged information of the Toll Plaza and demanded Compensation of Rs. 5,000/- per day for illegal detention of his tanker. However, the respondent No.4 passed seizure order dated 5th July, 2014 on the ground that between 28th June, 2014 to 30th June, 2014 the aforesaid tanker crossed the toll plaza on 28.6.2014 while going from Mathura to Agra and on 29.6.2014 while returning from Agra to Mathura and, as such, it is evident that under the garb of the papers accompanied with the tanker, bitumen in question was being illegally transported. He seized the goods by order dated 5.7.2014 under Section 48 of the U.P. VAT Act (hereinafter referred to as the 'Act') and demanded cash security of Rs. 4,80,000/- for release of the goods. Aggrieved with this order the petitioner moved an application under the proviso to Section 48 (7) of the Act before the Joint Commissioner, Commercial Tax (SIB) and Mobile Squad, Mathura dated 7.7.2014 giving complete details and annexing documentary evidences. It was specifically stated in the application by the petitioner that the information with the department from the toll plaza relates to merely last four digits of the registration number of some vehicle on the basis of which it cannot be said that the petitioner's tanker crossed the toll plaza or the information received by the department relates to the tanker of the petitioner. He stated that in "UP85" series there are twenty two vehicles registered in the office of the R.T.O. Mathura of which last four digits is "9636". However, the respondent No.2 rejected the application of the petitioners vide order dated 8th July, 2014 after recording a finding that vehicle No. 9636 is entered in the records of the toll plaza. On the aforesaid basis he drawn inference that the tanker in question down loaded bitumen at some place and thereafter it came back and again loaded bitumen which was being illegally transported under the cover of the papers of earlier transaction with an intent to evade payment of tax. The respondent No.2 did not verify the complete number of the vehicle with reference to the information received. Aggrieved with the aforesaid order, the petitioner preferred Second Appeal No. 223 of 2014 before the Member, Commercial Tax Tribunal Bench-I, Agra which was dismissed by the impugned order dated 16th July, 2014. Aggrieved with these orders the petitioner has filed the present writ petition for the relief as quoted above.

4. The writ petition was heard on 7th August, 2014. After noticing the facts in brief and submissions of the learned counsel for the parties, respondents were directed to file counter affidavit and also to produce the records pertaining to seizure. On 14th August, 2014 this Court passed the following orders:

> "1. Heard Sri Manoj Kumar Pandey, learned counsel for the petitioner and Sri B.K. Pandey, learned Standing Counsel for the respondents.
>
> 2. The respondents have filed counter affidavit of Sri B.P. Singh, Assistant Commissioner, Commercial Tax, Mobile Squad, Unit -III, Mathura which is taken on record. Petitioner may file rejoinder affidavit within four days.
>
> 3. **The seized goods is Bitumen. It is not disputed that the same has been manufactured by Indian Oil Corporation, Mathura. Sri B.P. Singh, Assistant Commissioner, Commercial Tax, Mobile Squad, Unit -III, Mathura who is present in the Court along with Sri K.K. Varma, Joint Commissioner (SIB) Commercial Tax, Mathura have stated that the tanker in question was loaded from IOC Ltd., Mathura as per enquiry made. On an enquiry, it has been found that this tanker has not loaded Bitumen after 27.6.2014 from IOC Ltd., Mathura till it was detained. The only basis for seizing Bitumen loaded in the tanker in question is that as per information received, last four digits in numerical of registration number of tanker in question is common to a vehicle of similar type which has crossed Mahuwan Toll Plaza on 29/30.6.2014. It is not the case of the respondents that last four digit in numerical of registration number of vehicle may not be common in registration number of another similar type of vehicle.**
>
> **4.The registration number of the tanker in question is U.P.-85 V-9636 as evident from the documents found by the authorities accompanying the goods. Photostat copies of two other invoices of Indian Oil Corporation Ltd., Mathura both dated 30th June, 2014 filed as Annexure No.1 evidences that Bitumen were loaded in two other tankers bearing registration number as U.P.-85 P-9636 and U.P.-81 F-9636. Thus, last four numerical digit of all these three tankers are common while the tankers are different and having different registration number. Thus the ground of seizure of the goods stand fully demolished.**
>
> **5. Learned counsel for the petitioner submits that the seizure is wholly baseless and has**

been made only to harass the petitioner and therefore damages @5000/- per day may be directed to be paid by the respondents for wholly arbitrary, illegal, unauthorized and baseless detention of his tanker since 30.6.2014 till it is released.

6. Respondents pray for and are granted four days' time to bring on record the facts found in the inquiry made from Indian Oil Corporation, Mathura with regard to the loading of the goods in the tanker in question. They shall specifically explain the aforementioned facts found from the records of this writ petition and the submission of the petitioner on damages.

7. Put up on 20th August, 2014. Personal appearance of both the above noted officers is exempted till further order."

5. On 20th August, 2014 a supplementary counter affidavit on behalf of State respondents was filed by Sri B.P. Singh, Assistant Commissioner, Commercial Tax, Sector V, Mathura in which he stated in paragraph No.2,3,7 and 8 as under:

"2. That an enquiry has been made by the deponent from Indian Oil Corporation vide letter dated 16.8.2014.

3. That on enquiry it has been received by the Indian Oil Corporation that Vehicle No. UP85V/9636 was loaded from our office on 27.6.2014 and thereafter till 30.6.2014 the said tanker was not loaded.

4. That in between 27.6.2014 to 30.6.2014 only three bitumen tanker have been loaded from this office whose last four digit number 9636 are as follows:

i) UP85V/9636 was loaded on 27.6.2014

ii) UP81F/9636 was loaded on 30.6.2014

iii) UP85P/9636 was loaded on 30.6.2014

7. That there is no malafide intention on the part of the deponent to harass the petitioner nor the deponent has any personal grievance against the petitioner, because of action of the deponent if any inconvenience cause to the court ***the deponent prays unconditional apology and assure the court that he will remain careful in future.***

8. That there is no place of storage of liquid in the office of Commercial Tax Department hence it is requested from the petitioner to remove the tanker from the body of engine and if the *petitioner so desires he can take away the vehicle. The application of the petitioner was rejected to unloaded the bitumen from the tanker. This order has been passed by the deponent on 24.7.2014 against which the petitioner has no grievance till today and he has not taking any steps to challenge the order dated 24.7.2014."*

6. On 20th August, 2014 learned counsel for the parties made submissions and this Court passed the following order:

> *Heard Sri Manoj Kumar Pandey, learned counsel for the petitioner, Sri Ashok Kumar Pandey, learned Additional Advocate General assisted by Sri B.K. Pandey, learned Standing Counsel for the State respondents, Sri Jayant Banerjee, learned Central Government Counsel for the respondent no. 5 and Sri Kunwar Saxena, learned counsel, who has been requested by the Court to assist in the matter.*
>
> *Sri Ashok Kumar Pandey, learned Additional Advocate General appearing on behalf of the State Government submits that he has instruction to seek time to come out with the stand of the State Government for appropriate law / guidelines / instructions which may have a check on arbitrary exercise of power or negligent action of authorities of the Government so as to minimize the possibility of harassment of people. He further states that some time may be granted to the Government to consider the matter in the light of the observation made in paragraph no. 3 of the order dated 20.8.2014 passed in this writ petition.*
>
> ***He submits that looking to the facts and circumstances of the case and observations made in the orders dated 7th August, 2014, 14th August, 2014 and 20th August, 2014, the goods in question, as an interim measure, shall be provisionally released forthwith by the respondent no. 4. He further states that while considering the matter the Government shall take into consideration the view expressed by Hon'ble Supreme Court in the Case of N. Nagendra Rao and Company Vs. State of Andhra Pradesh 1994 (6) SCC 205 para 8, 9, 13 to 20, 25 and 29 and the Division Bench Judgement of this Court in the Case of Ram Singh and others Vs. State of U.P. and others 2000 U.P.T.C. 865 para 6, 7, 8 and 15 and also the judgement of Hon'ble Supreme Court in Lucknow Development Authority Vs. M.K. Gupta, A.I.R. 1994 SC 787 para 8 and 11 and the provision of Government (Liability in Tort) Act, 1967 published in the extra-ordinary gazette of India part 2, Section 2 dated 22nd May, 1967 which lapsed.***
>
> *Sri Jayant Banerjee, learned Central Government Counsel also seeks time to obtain instructions on the line stated by the learned Additional Advocate General.*
>
> *As jointly prayed by learned Additional Advocate General and learned Central Government Counsel, put up on 8th September, 2014 for further hearing.*

As interim measure as suggested by the learned Additional Advocate General, it is provided that the goods in question and Tanker no. U.P. 85 V 9636 shall be provisionally released forthwith without any security but subject to undertaking to be furnished before the respondent no. 4 by the petitioner that he shall not transfer, alienate or dispose of in any manner the tanker in question till further order of this Court in this revision.

Learned Additional Solicitor General is also requested to assist in the matter on next date fixed."

7. On 21st August, 2014 on the request of learned standing counsel for the State of U.P. and learned standing counsel for the central government, the matter was directed to be put up on 28th August, 2014. The matter was again heard on 28th August, 2014 and following order was passed:

"Heard Sri Manoj Kumar Pandey, learned counsel for the petitioner, Sri Ashok Kumar Pandey, learned Additional Advocate General assisted by Sri B.K. Pandey, learned Standing Counsel for the State respondents, Sri Jayant Banerjee, learned Central Government Counsel for the respondent no. 5 and Sri Kunwar Saxena, learned counsel, who has been requested by the Court to assist in the matter.

Sri Ashok Kumar Pandey, learned Additional Advocate General appearing on behalf of the State Government submits that he has instruction to seek time to come out with the stand of the State Government for appropriate law / guidelines / instructions which may have a check on arbitrary exercise of power or negligent action of authorities of the Government so as to minimize the possibility of harassment of people. He further states that some time may be granted to the Government to consider the matter in the light of the observation made in paragraph no. 3 of the order dated 20.8.2014 passed in this writ petition.

He submits that looking to the facts and circumstances of the case and observations made in the orders dated 7th August, 2014, 14th August, 2014 and 20th August, 2014, the goods in question, as an interim measure, shall be provisionally released forthwith by the respondent no. 4. He further states that while considering the matter the Government shall take into consideration the view expressed by Hon'ble Supreme Court in the Case of N. Nagendra Rao and Company Vs. State of Andhra Pradesh 1994 (6) SCC 205 para 8, 9, 13 to 20, 25 and 29 and the Division Bench Judgement of this Court in the Case of Ram Singh and others Vs. State of U.P. and others 2000 U.P.T.C. 865 para 6, 7, 8 and 15 and also the judgement of Hon'ble Supreme Court in Lucknow Development Authority Vs. M.K. Gupta, A.I.R. 1994 SC 787 para 8 and 11 and the provision of Government (Liability in Tort) Act, 1967 published in the extra-ordinary gazette of India part 2, Section 2 dated 22nd May, 1967

which lapsed.
Sri Jayant Banerjee, learned Central Government Counsel also seeks time to obtain instructions on the line stated by the learned Additional Advocate General.
As jointly prayed by learned Additional Advocate General and learned Central Government Counsel, put up on 8th September, 2014 for further hearing. As interim measure as suggested by the learned Additional Advocate General, it is provided that the goods in question and Tanker no. U.P. 85 V 9636 shall be provisionally released forthwith without any security but subject to undertaking to be furnished before the respondent no. 4 by the petitioner that he shall not transfer, alienate or dispose of in any manner the tanker in question till further order of this Court in this revision.
Learned Additional Solicitor General is also requested to assist in the matter on next date fixed."

8. On 8th September, 2014 this Court passed the following orders:

Sri Ashok Kumar Pandey, learned Addl. Advocate General stats that the State Government is considering to issue a Government Order to provide a remedy including compensation for wrong committed by Government Officers or Employees and as such ten days time may be granted.
Sri Jyont Banerjee, learned Counsel for the Central Government also prays for 10 days further time to obtain instructions in compliance of the order dated 28th August, 2014.
Learned counsel for the petitioner submits that sufficient opportunity has already been given to the respondents and as such writ petition may be decided since pleadings are complete.
As prayed by the learned Addl. Government General and learned counsel for the Central Government, put up this case on 18th September, 2014."

9. On 8th September, 2014 on the joint request of learned counsel for the parties, the matter was directed to be put up on 22nd September, 2014 on which date again learned counsel for the respondents sought time and the matter was directed to be put up on 25th September, 2014. The learned counsel for the parties again made their submission on 25th September, 2014 and the judgment was reserved.

<u>Submissions of learned counsel for the petitioner</u>

10. Learned counsel for the petitioner submits that it is the admitted fact of the case that even though the information received by the Respondent No.4 from toll plaza was not related to the tanker of the petitioner yet he

arbitrarily and negligently acted and also misleaded the higher authorities including the Tribunal and this Court to give an impression as if the information received from the toll plaza related to the tanker in question of the petitioner which was the sole basis for seizure of bitumen and detention of the vehicle of the petitioner since Ist July, 2014 till 28.8.2014. The fact with regard to unauthorized and baseless detention of the tanker in question also stands admitted by the State respondents in the supplementary counter affidavit filed on 20th October, 2014. The Respondent No.4 has also prayed for unconditional apology. He submits that the respondents have not disputed the loss to the petitioner at the rate of Rs. 5,000/- per day due to detention of the tanker since the date of detention of the tanker. He submits that the entire action of the State Respondents was wholly arbitrary, illegal, unauthorized with a view to cause harassment to the petitioner. He further submits that the respondents usually cause harassment to transporter and dealers to extract money for their personal gains and such type of illegal actions are the source of corruption. He, therefore, submits that as per undertaking given by the learned Additional Advocate General, the State Government must issue some guidelines or enact some provision to protect and compensate honest and genuine transporters/dealers against arbitrary, illegal and negligent actions of the authorities. He relied upon the judgment of Hon'ble Supreme Court in the case of **N. Nagendra Rao and Company Vs. State of Andhra Pradesh 1994 (6) SCC 205, Lucknow Development Authority Vs. M.K. Gupta AIR 1994 SC 787 and**

Division Bench Judgment of this Court in the case of Ram Singh and others Vs. State of U.P. and others 2000 U.P. T.C. 865

Submissions on behalf of State Respondents

11. Learned Additional Advocate General fairly submits that the detention of the tanker and the seizure of bitumen in question by the State authorities cannot be justified but he submits that it was bonafidely done and the tanker has already been released in compliance to the order dated 28th August, 2014. He, therefore, submits that no further orders may be passed as the writ petition has practically become infructuous. He submits that the state government is considering for enactment of appropriate law/guidelines/instructions to have a check on arbitrary exercise of power and negligent action of authorities of the state government so as to minimize the possibility of harassment.

Submission on behalf of Respondent No.5

12. Learned counsel for the central government submits that the Department of Revenue, Ministry of Finance, Government of India New Delhi is considering to make appropriate law/guidelines/instructions which may have a check on arbitrary exercise of power by the authority so as to minimize the possibility of harassment of the transporters and dealers in general and to facilitate free flow of trade and commerce. He submits that this will take some time.

Discussions and findings

13. I have carefully considered the submissions of learned counsel for the parties.

14. It is undisputed that the sole basis for detention of

the tanker in question and seizure of the bitumen by the Respondent No.4 was the information collected by him from the toll plaza which revealed that last four digit of the registration number of the tanker in question was similar to the last four digit of registration number of a vehicle recorded in the records of toll plaza. It is also not disputed that the source of supply of bitumen from Mathura is only the Mathura Refinery of M/s Indian Oil Corporation. Even if there was some doubts about the genuineness of the invoice of bitumen accompanying the tanker in question, the Respondent No.4 who was a mobile squad officer of the department at Mathura should have verified the said invoice of bitumen from M/s Indian Oil Corporation, Mathura. But neither he took any steps in this regard nor the Joint Commissioner nor the Tribunal considered it appropriate to verify the invoice and the information and thus they mechanically passed the orders. For the reasons best known to the authorities concerned, they detained the tanker in question and seized the bitumen despite the fact that the information received was not tallying with the full registration number of the tanker in question. Registration number of three tankers containing similar last four digits are registered with the transport department as has been admitted by the Respondents in the supplementary counter affidavit. On verification from the Indian Oil Corporation, Mathura Refinery, Mathura it was found by the authorities concerned that bitumen in the tanker in question was loaded as per invoice accompanying it and thereafter it was not loaded from the Mathura Refinery till 30.6.2014. The bills of repair of the tanker in question in support of proof that it was under repair from the night of 28.6.2014 till 30.6.2014, were not even verified by the authorities concerned so as dispute its genuineness. In the supplementary counter affidavit dated 20.8.2014 the Respondents have even admitted that the tanker in question was detained and bitumen was seized without any basis.

15. In para 8 of the aforesaid supplementary counter affidavit dated 20.8.2014 the respondents stated that the application of the petitioner to unload the bitumen from his tanker was rejected on 24.7.2014 and the petitioner was directed to remove the tanker from the body of the engine and then to take away his vehicle. In my opinion even if such an order was actually passed by the respondent No.4, yet it was a complete nullity for reasons that firstly no power is conferred under the Act and the Rules to pass such orders, secondly it was wholly impossible to remove the mounted body of the fully loaded big tanker with bitumen weight 24.60 M.T. from body of the engine and thirdly the petitioner was directed merely to take away the body of the engine which could not be of any use for the petitioner who is engaged in the business of running his tanker on hire.

16. Respondents have also submitted unconditional apology by supplementary counter affidavit dated 20.8.2014. All these facts leaves no manner of doubt that the tanker in question was detained and bitumen continued to be seized illegally, arbitrarily and without any basis by the

authorities for more than 58 days. The seizure itself was beyond the power conferred under Section 48 of the Act. The quantum of loss suffered by the petitioner as prayed for compensation in the writ petition has not been specifically disputed by the state respondents. The only stand taken by the respondent is that the quantum of damages cannot be determined in writ jurisdiction as held by division bench of this Court in Civil Misc. Writ Petition No. 67 of 2006 Raj Pal Road Lines (P) Ltd. Mumbai Vs. State of U.P. and others decided on 1.11.2010. Perusal of the aforesaid judgment shows that in that case the Division Bench found that it was doubtful whether the respondents are responsible for damage or solely responsible for damages inasmuch as some slackness on the part of the petitioners in that case was also found. In the present set of facts it is the admitted case of the respondents that the tanker in question was detained merely on the basis of similarity of last four digits of registration number of the tanker in question with the registration number of some other vehicles/tankers. The respondents acted most arbitrarily, and negligently in not verifying the information received by them from toll plaza so as to find out the complete registration number of vehicle and further not verifying the facts with regard to loading of the tanker in question from the Indian Oil Corporation, Mathura which they did while filing supplementary counter affidavit dated 20.8.2014. Even the reply dated 4.7.2014 (Annexure 8) submitted by the petitioner was not given any weight either by the respondent No.4 or by the Joint Commissioner. The Tribunal also acted mechanically.

16. Under the circumstances the impugned seizure order dated 5.7.2014, the order of Joint Commissioner under proviso to Section 48 (7) of the Act dated 8.7.2014 and the impugned order of the Commercial Tax Tribunal, Bench-I, Agra dated 16.7.2014 passed in IInd Appeal No. 223/2014 cannot be sustained and are hereby set aside. The provisional release of the tanker and bitumen in question by order dated 28th August, 2014 is hereby confirmed. Any undertaking furnished by the petitioner before the Respondent No.4 pursuant to the order dated 28th August, 2014 is discharged.

17. Now the question arises that what amount of compensation may be awarded to the petitioner for illegal detention of the tanker in question. In the case Ram Singh and others (supra) Division Bench of this Court held in paragraph Nos. 7,13 and 15 as under:

> "7. In the same decision the Supreme Court in para 11 observed as under:
>
> "Today the issue thus is not only of award of compensation but who should bear the burnt. The concept of authority and power exercised by public functionaries has many dimensions. It has undergone tremendmous change with passage of time and change in socio-economic outlook. The authority empowered to function under a Statute while exercising power discharges public duty. It has to act to subserve general welfare and common good. In discharging this duty honestly and bonafide loss may accrue to any person. And he may claim compensation, which may in circumstances be payable. But where the duty is performed capriciously or the exercise of power results in harassment and agony then the responsibility to pay the loss determined should be whose? In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the (street is) made to run from one end to other with no result. The culture of window clearance appears to be totally dead. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system public administration, no

doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that exercise of discretion was malafide and the complainant is entitled to compensation for mental and physical harassment then the office can no more claim to be under protective cover. When a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricions exercise of power and the national commission finds it duly proved then it has a statutory obligation to award the same? It was never more necessary than today when even social obligations are regulated by grant of statutory powers. The test of permissive form of grant are over. It is now imperative and implicit in the exercise of power that it should be form the sake of society. When the court directs payment of damages or compensation against the state, the ultimate sufferer is the common man. It is the tax payers money which is paid for in action of those who are entrusted under the act to discharge their duties in accordance with law. It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression which finding of course should be recorded carefully or on material and convincing circumstances and not lightly then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries."

13. In our opinion the time has come when these illegalities by the authorities of detaining and seizing the must be strongly checked, otherwise the law will continue to be violated by such authorities.

15. We are inclined to grant compensation to the petitioners in these cases instead of relegating the petitioner to file Civil Suits as we want to stop the illegal practice of detaining and seizing of the vehicle by the U.P. Trade Tax Authorities. Everyone knows that a civil suit often takes ten years or more to decide and hence we are not relegating the petitioner to that remedy, however, Sri Pradeep Kumar Gupta, learned Additional Chief Standing Counsel requested that he will himself speak to the Commissioner, Trade Tax, U.P. and convey the displeasure of this Court and the Commissioner will ensure that these illegalities do not occur in future. We accordingly direct the Commissioner, Trade Tax the charge sheet the officials who had committed these illegalities and proceed Departmentally against them. The Commissioner shall also grant proper compensation to the petitioner in both these cases commensurate to the loss they have suffered preferably within two months from the date of production of a certified copy of this order in accordance with law. The Commissioner shall also issue instructions to all Trade Tax Authorities forthwith that such illegalities must stop immediately."

18. The judgment in the case of M/s Raj Pal Road Lines (supra) relied by the respondents is distinguishable on the facts of the present case. It is admitted case of the state respondents that the tanker in question was baselessly detained. The detention continued from 1st July, 2014 upto 28th August, 2014. There is no dispute on

the period of illegal detention of the tanker in question. The state respondents have also not disputed the quantum of loss caused to the petitioner and compensation thereof as prayed in the reply dated 4.7.2014 (Annexure 8) and also in the writ petition which has been reproduced in para (2) above. This Court in the case of **Ram Singh and others** (supra) has directed the Commissioner to grant proper compensation. Respectfully following directions given in the case of Ram Singh and others (supra). I hold that the petitioner is entitled for compensation. However, determination of quantum of compensation is left to be decided by the respondent No.1.

19. In view of the above discussions the respondent No.1 is directed to determine the compensation within 30 days from today and to pay the amount of compensation to the petitioner by account payee bank draft within two weeks thereafter. The state government shall be at liberty to conduct an inquiry in the matter of illegal detention of the tanker and seizure of bitumen in question and may take action in accordance with law against the guilty officers/employees.

20. Now the last point that needs consideration is the undertaking of the State Government given through the learned Additional Advocate General and also of the Central Government as given by the learned Central Government counsel as recorded in paragraph 8 and 12 of this judgment. Learned Additional Advocate General has stated that State Government is considering to issue a government order to provide remedy including compensation for wrongs committed by government officers or employees. A statement has been made on

behalf of the Central Government that the Department of Revenue, Ministry of Finance, Government of India, New Delhi is considering for making appropriate laws/guidelines/instructions which may have a check on the arbitrary exercise of power by authorities so as to minimise the possibility of harassment of transporters and dealers in general and to facilitate free flow of trade and commerce. Harassment and injury to persons particularly a person of poor class of society, by officers/ employees of governments by their arbitrary, negligent and illegal actions can be effectively checked provided there is a law providing efficacious remedy for consequential liability of such officers/employees on one hand and on the other hand appropriate compensation to aggrieved person. Such a law/government order may also provide for speedy disposal of such matters. This shall also effectively check corruption. Learned Additional Advocate General for the State Government as well as the central Government Counsel have stated that the State Government as well as Central Government is considering to enact a law or to issue a government order for this purpose. Under the circumstances this Court hopes and trusts that the State Government as well as the Central Government **shall consider** the matter in the light of the undertakings as recorded in paras 8 and 12 above and may take appropriate decision/action in accordance with law preferably within three months from today.

21. In result the writ petition succeeds and is hereby allowed with cost of Rs. 20,000/- which the respondent No.1 shall pay to the petitioner within a month from

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today apart from compensation as directed above.

Let a copy of this order be sent by the Registrar General of this Court to the Chief Secretary and Principal Secretary Law of the Government of Uttar Pradesh as well as to the Law Secretary and the Finance Secretary of the Central Government for doing the needful.

Order Date :- 19.12.2014

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Requisition Information								
Folio No.	Application Date	Case Type	Case No.	Year	Case filed at	Date of Judgment/Order	Court Fee	No.of Pages
861 of 2015	8.1.2015	WTAX	478	2014	Allahabad	19.12.2014	35.0	19

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