IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18626 of 2014

==========

M/s Mapra Laboratories Pvt. Ltd., a company registered under the Indian Companies Act, 1956 having its local office at S.P. Verma Road, Patna through its Supervisor Sri Ajay Kumar s/o Late Saroj Kumar, aged about 53 years Resident of New Khaprail Chak, Parsa Bazaar, Patna Post Office Parsa Bazaar, Police Station Parsa Bazaar, District Patna.

.... Petitioner/s

Versus

1. The Commercial Taxes officer Special Circle, Patna
2. The Commissioner-cum-Principal Secretary, Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Bailey Road, Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 19348 of 2014

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M/s Mapra Laboratories Pvt. Ltd.

.... Petitioner/s

Versus

The Commercial Taxes officer Special Circle & Anr

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 6485 of 2015

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1. Lupin Limited, a Company incorporated under the Companies Act, 1956 having it registered office at 159, C.S.T. Road, Kalina, Santacruz (East) P.O.+P.S. Santacruz (East), Mumbai-400098 and Branch office at Plot No. A6 and A7, Transport Nagar, Pahari, P.O+P.S. Agamkuan, Patna - 800007, through its Manager- Distribution, Shashi Bhushan Gupta, Son of Shri K.C. Gupta, resident fo 114-B, Kailash Apartment, Bahadurpur, P.O. Lohia Nagar, +P.S. Patrakar Nagar, Patna- 800020.

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, having its office at Vikas Bhawan, Bailey Road, Patna.
2. Joint Commissioner of Commercial Taxes (Admn.), Central Division, Patna.
3. Assistant Commissioner of Commercial Taxes, Special Circle, Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 4602 of 2015

==========

1. Mankind Pharma Ltd., a Company incorporated under the Companies Act, 1956

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having its registered office at 236, Okhla Industrial Estate, Phase-3, New Delhi-110020, and Branch Office and Mankind House, Near Alok Petrol Pump, N.H.30, Agamkuan, Pahari, Patna-800007, through its Constituted Attorney Sandeep Bansal, Son of Shri Radhey Shyam Bansal, resident Pushp Vihar Apartment P.O. Exhibition Road, P.S. Gandhi Maidan, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial taxes, null having its office at Vikas Bhawan, Bailey Road, Patna
2. Joint Commissioner of Commercial Taxes (Admn.), Central Division, Patna
3. Commercial Taxes officer, Special Circle, Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 4989 of 2015

==========

1. M/s Alkem Laboratories Ltd., a company registered under the Indian Companies Act, 1956 having its local office at Exhibition Road, Patna, through its Regional Director, Sri Ashok Kumar. S/o Lalan Kumar Singh, aged about 50 years. Resident of F-145, Peoples Co-operative Colony, Kankarbagh, Post Office - Lohia Nagar & Police Station - Kankarbagh, District - Patna.

.... Petitioner/s

Versus

1. The Assistant Commissioner of Commercial Taxes, Special Circle, Patna.
2. The State of Bihar through the Commissioner-Cum-Principal Secretary, Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Bailey Road, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 2532 of 2015

==========

1. Ranbaxy Laboratories Limited, a company in corporated under the Companies Act, 1956 having it registered office at A 41, Industrial Area Phase VIII-A , Sahibzada Ajit Singh Nagar, Mohali, (Punjab) and office at Kankarbagh Main Road, Bahadur, P.O.- Lohia Nagar, P.S.- Kankarbagh, District- Patna through its, authoriased representative Rajesh Kumar Sinha, Manager- Regional Accounts, son of Shri Shyam Shankar Prasad, resident of 4B, Chitra Block, Duke Residency 13, Chandi Talla Lane, P.O. Azad Garh, P.S. Regent Park, Kolkata (West Bengal).

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, having its office at Vikas Bhawan, Bailey Road, Patna.
2. Deputy Commissioner of Commercial Taxes, Patliputra Circle, Patna.

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.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 4552 of 2015

==========

1. Lupin Limited, a Company incorporated under the Companies Act, 1956 having it registered office at 159, C.S.T. Road, Kalina, Santacruz (East) P.O.+P.S. Santacruz (East), Mumbai-400098 and Branch Office at Plot No.A6 and A7, Transport Nagar, Pahari, P.O.+P.S.-Agamkuan, Patna-800007, through its Manager-Distribution, Shashi Bhushan Gupta, Son of Shri K.C. Gupta, resident of 114-B, Kailash Apartment, Bahadurpur, P.O. Lohia Nagar + P.S.-Patrakar Nagar, Patna-800020.

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.... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, having its office at Vikas Bhawan, Bailey Road, Patna. null null
2. Joint Commissioner of Commercial Taxes (Admn.), Central Division, Patna.
3. Commercial Taxes Officer, Special Circle, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 5626 of 2015

==========

1. M/s Alembic Pharmaceuticals Ltd., a company registered under the Indian Companies Act, 1956 having its local office at Shardalok, Sandalpur Road, Kumhrar, Sultanganj, Patna, through its Authorized Signatory Mr. Parsan Kumar Singh. Son of Late Sharda Raman Singh. Bhardwaj Bhawan, New Area, Kadamkuan, Post Office - Kadamkuan & Police Station - Kadamkuan, District - Patna.

.... Petitioner/s

Versus

1. The Commercial Taxes officer, Special Circle, Patna.
2. The State of Bihar through the Commissioner-Cum-Principal Secretary, Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Bailey Road, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 6482 of 2015

==========

1. Lupin Limited, a Company incorporated under the Companies Act, 1956 having it registered office at 159, C.S.T. Road, Kalina, Santacruz (East) P.O.+P.S. Santacruz (East), Mumbai-400098 and Branch office at Plot No. A6 and A7, Transport Nagar, Pahari, P.O+P.S. Agamkuan, Patna - 800007, through its Manager- Distribution, Shashi Bhushan Gupta, Son of Shri K.C. Gupta, resident fo

114-B, Kailash Apartment, Bahadurpur, P.O. Lohia Nagar, +P.S. Patrakar Nagar, Patna- 800020.

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, having its office at Vikas Bhawan, Bailey Road, Patna.
2. Joint Commissioner of Commercial Taxes (Admn.), Central Division, Patna.
3. Assistant Commissioner of Commercial Taxes, Special Circle, Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 6483 of 2015

==========

1. Lupin Limited, a Company incorporated under the Companies Act, 1956 having it registered office at 159, C.S.T. Road, Kalina, Santacruz (East) P.O.+P.S. Santacruz (East), Mumbai-400098 and Branch office at Plot No. A6 and A7, Transport Nagar, Pahari, P.O+P.S. Agamkuan, Patna - 800007, through its Manager- Distribution, Shashi Bhushan Gupta, Son of Shri K.C. Gupta, resident fo 114-B, Kailash Apartment, Bahadurpur, P.O. Lohia Nagar, +P.S. Patrakar Nagar, Patna- 800020.

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, having its office at Vikas Bhawan, Bailey Road, Patna.
2. Joint Commissioner of Commercial Taxes (Admn.), Central Division, Patna.
3. Assistant Commissioner of Commercial Taxes, Special Circle, Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 6484 of 2015

==========

1. Lupin Limited, a Company incorporated under the Companies Act, 1956 having it registered office at 159, C.S.T. Road, Kalina, Santacruz (East) P.O.+P.S. Santacruz (East), Mumbai-400098 and Branch office at Plot No. A6 and A7, Transport Nagar, Pahari, P.O+P.S. Agamkuan, Patna - 800007, through its Manager- Distribution, Shashi Bhushan Gupta, Son of Shri K.C. Gupta, resident fo 114-B, Kailash Apartment, Bahadurpur, P.O. Lohia Nagar, +P.S. Patrakar Nagar, Patna- 800020.

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, having its office at Vikas Bhawan, Bailey Road, Patna.
2. Joint Commissioner of Commercial Taxes (Admn.), Central Division, Patna.
3. Assistant Commissioner of Commercial Taxes, Special Circle, Patna

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.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 4055 of 2015

==========

1. M/s Cachet Pharmaceuticals Pvt. Ltd., a Company registered under the Indian Companies Act, 1956 having its local office at Exhibition Road, Patna through its Director, Sri lalan Kumar Singh S/o Late Udit Narayan Singh, aged about 72 years Resident of Sandalpur, Biscoman Colony, Patna, Post Office & Police Station Gulzarbagh, District Patna.

.... Petitioner/s

Versus

1. The Assistant Commissioner of Commercial Taxes, Special Circle, Patna.
2. The State of Bihar through the Commissioner-cum-Principal Secretary, Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Bailey Road, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 4060 of 2015

==========

1. M/s Galpha Laboratories Ltd., a Company registered under the Indian Companies Act, 1956 having its local office at Exhibition Road, Patna-800001, Bihar through its Deputy Manager (Accounts), Sri Sushil Kumar Thakur, aged about 51 years S/o Sri Ram Swarth Thakur Resident of Mahavir Nagar, P.O. G.P.O., P.S. Beur, District Patna-800002, Bihar.

.... Petitioner/s

Versus

1. The Commercial Taxes Officer, Special Circle, Patna.
2. The State of Bihar through the Commissioner-cum-Principal Secretary, Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Bailey Road, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 4057 of 2015

==========

1. M/s Aristo Pharmaceuticals Pvt. Ltd., a company registered under the Indian Companies Act, 1956 having its local office at S.P. Verma Road, Patna-800001, Bihar through its Branch Manager, Sri Parshu Ram Roy, aged about 64 years S/o Sri Triveni Roy Resident of Indrapuri, Road No. 2, P.O. and P.S. Patliputra, District Patna-800013, Bihar.

.... Petitioner/s

Versus

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1. The Commercial Taxes Officer, Special Circle, Patna.
2. The State of Bihar through the Commissioner-cum-Principal Secretary, Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Bailey Road, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 4056 of 2015

==========

1. M/s Mapra Laboratories Pvt. Ltd., a company registered under the Indian Companies Act, 1956 having its local office at S.P. Verma Road, Patna through its Supervisor Sri Ajay Kumar s/o Late Saroj Kumar, aged about 53 years Resident of New Khaprail Chak, Parsa Bazaar, Patna Post Office Parsa Bazaar, Police Station Parsa Bazaar, District Patna.

.... Petitioner/s

Versus

1. The Commercial Taxes Officer, Special Circle Patna.
2. The State of Bihar through the Commissioner-cum-Principal Secretary, Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Bailey Road, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 2531 of 2015

==========

1. Ranbaxy Laboratories Limited, a company in corporated under the Companies Act, 1956 having it registered office at A 41, Industrial Area Phase VIII-A , Sahibzada Ajit Singh Nagar, Mohali, (Punjab) and office at Kankarbagh Main Road, Bahadur, P.O.- Lohia Nagar, P.S.- Kankarbagh, District- Patna through its, authoriased representative Rajesh Kumar Sinha, Manager- Regional Accounts, son of Shri Shyam Shankar Prasad, resident of 4B, Chitra Block, Duke Residency 13, Chandi Talla Lane, P.O. Azad Garh, P.S. Regent Park, Kolkata (West Bengal).

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, having its office at Vikas Bhawan, Bailey Road, Patna.
2. Deputy Commissioner of Commercial Taxes, Patliputra Circle, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 19624 of 2014

==========

1. M/s Mapra Laboratories Pvt. Ltd.(Local Office at S.P Verma Road,Patna)through its Supervisor Sri Ajay Kumar Son of Late Saroj Kumar Resident of New Khaprail

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Chak,Parsa Bazar,Patna,P.O+P.S-Parsa Bazar,District-Patna

.... Petitioner/s

Versus

1. The Commercial Taxes officer Special Circle ,Patna
2. The commisioner-cum-Principal Secretary,Commercial Taxes,Bihar,Patna,having its office at Vikas Bhawan,Bailey Road,Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 19785 of 2014

==========

1. M/s Mapra Laboratories Pvt. Ltd., a company registered under the Indian Company Act, 1956 having its local office at S.P. Verma Road, Patna through its Supervisor Sri Ajay Kumar S/o Late Saroj Kumar, aged about 53 years Resident of New Khaprail Chak, Parsa Bazaar, Patna Post Office Parsa Bazaar, Police Station Parsa Bazaar, District Patna.

.... Petitioner/s

Versus

1. The Commercial Taxes Officer Special Circle, Patna.
2. The Commissioner-cum-Principal Secretary, Commercial Taxes, Bihar, Patna having its office at Vikas Bhawn, Bailey Road, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 19044 of 2014

==========

1. Mankind Pharma Ltd.a Company incrporated under the Companies Act, 1956 havig its registered office at 236, Okhla Industrial Estate, Phase - 3, New Delhi-110020, and Branch Office at Mandkind House, Near Alok Petrol Pump, N.H.-30, Agamkuan, Pahari, Patna - 800007, through its Constituted Atoorney Sandeep Bansal Son of Radhey Shyam Bansal, Resident of Pushp Vihra apartment, P.O. Exhibition Road, P.S.- Gandhi Maidan, District - Patna

.... Petitioner/s

Versus

1. The State of Bihar throgh Commissioner of Commercial Taxes, having its office at Vikash Bhawan, Bailey Road, Patna
2. Joint Commissioner of Commeercial Taxes (Admin.), Central Division, Patna
3. Asstt. Commissioner of Commercial Taxes, Special Circle Patna
4. Commercial Taxes Officer, Special Circle, Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 9709 of 2014

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1. Mankind Pharma Ltd., a Company incorporated under the Companies Act, 1956 having it registered office at 236, Okhla Industrial Estate, Phase-3, New Delhi-110020, and Branch Office at Manking House, Near Alok Petrol Pump, N.H. 30, Agamkuan, Pahari,Patna- 800007, through its Constituted Attorney Sandeep Bansal, Son of Shri Radhey Shyam Bansal Resident of Pushp Vihar Apartment, P.O Exhibiton Road, P.S- Gandhi Maidan, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, having its office at Vikas Bhawan, Bailey Road, Patna.
2. Joint Commissioner of Commercial Taxes (Admn.), Central Division, Patna.
3. Asstt. Commissioner of Commercial Taxes, Special Circle Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 19057 of 2014

==========

1. Mankind Pharma Ltd., a Company incorporated under the Companies Act, 1956 having it registered office at 236, Okhla Industrial Estate, Phase-3, New Delhi-110020, and Branch Office at mankind House, Near Alok Petrol Pump, N.H. 30, Agamkuan, Pahari, Patna-800007, through its Contituted Attorney Sandeep Bansal, S/o Shri Radhey Shyam Bansal resident pushp Vihar Apartment, P.O. Exhibition Road, P.S. Gandhi Maidan, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, having its office at Vikas Bhawan, Bailey Road, Patna.
2. Joint Commissioner of Commercial Taxes (Admn.), Central Division, Patna.
3. Asstt. Commissioner of Commercial taxes, Special Circle, Patna.
4. Commercial Taxes Officer, Special Circle, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 19075 of 2014

==========

1. Mankind Pharma Ltd., a Company incorporated under the Companies Act, 1956 having it registered office at 236, Okhla Industrial Estate, Phase-3, New Delhi-110020, and Branch Office at mankind House, Near Alok Petrol Pump, N.H. 30, Agamkuan, Pahari, Patna-800007, through its Contituted Attorney Sandeep Bansal, S/o Shri Radhey Shyam Bansal resident pushp Vihar Apartment, P.O. Exhibition Road, P.S. Gandhi Maidan, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, having its

office at Vikas Bhawan, Bailey Road, Patna.
2. Joint Commissioner of Commercial Taxes (Admn.), Central Division, Patna.
3. Asstt. Commissioner of Commercial taxes, Special Circle, Patna.
4. Commercial Taxes Officer, Special Circle, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 7797 of 2014

==========

1. M/S Alkem Laboratories Ltd., a company registered under the Indian Company Act, 1956 having its local office at Exhibition road, Patna through its Director Sri Prabhat Narain Singh S/o Late Prasidh Narain Singh, Resident of Flat No. 103, Sri Ram Palace, Boring Canal Road, Patna, Post Office- Boring Road, Police Station- Buddha Colony, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner-cum-Principal Secretary, Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Bailey Road, Patna
2. The Joint Commissioner of Commercial Taxes, Administration, Central Division, Patna
3. The Commercial Taxes Officer, Central Division, Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 2530 of 2015

==========

1. Ranbaxy Laboratories Ltd. a Compay incorporated under the Companies Act, 1956 having it registered office at A 41, Industrial Area Phase VIII-A, Sahizada Ajit Singh Nagar Mohali (Punjab) and Office at Kankarbag Main Road, Bahadurpur, P.O. Lohia Nagar, P.S. - Agam Kuan, District Patna through its authorized representative Rajesh Kumar Sinha, Manager REgional Accounts Son of Shri Shyam Shankar Prasad, resident of 4B, Chitra Block, Duke Residency 13, Chandi Talla Lane, P.O. - Azad Garh, P.S. - Regent Park, Kolkata (West Bengal).

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commerical Taxes, having its office at Vikas Bhawan, Bailey Road, Patna.
2. Deputy Commissioner of Commercial Taxes, South Circle, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 14919 of 2013

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1. M/S Riga Sugar Company Limited (Distillery Division), At And P.O. Riga, Distt. Sitamarhi, Through Its Chairman - Cum - Managing Director Om Prakash Dhanuka Son Of Late Pursottam Lal Dhanuka Resident Of Riga Sugar Company Ltd., P.O. And P.S. Riga, District - Sitamarhi

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Department Of Industries, Government Of Bihar, Patna
2. The Principal Secretary, Excise And Prohibition Department, Government Of Bihar, Patna
3. The Industrial Development Commissioner - Cum - Principal Secretary, Department Of Sugarcane Industry, Government Of Bihar, Patna
4. The Controller Of Molasses - Cum - Excise Commissioner, Bihar, Patna
5. The Excise Superintendent, Riga, Sitamarhi, Bihar

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 18243 of 2014

==========

1. Chennai Network Infrastructure Ltd.a Company incorporated under the Companies Act, 1956, having its corporate office at Global Vision 3rd floor Electronic Sadan-2 P.O. an P.S. MIDC TTC Industrial Area Mahape Navi Mumbai an branch office at Markendey Complex 3rd floor, Gayatri Mandir Road Kankarbagh, P.O. and P.S.- Kankarbagh, District Patna through its authorized signator Dharm Nath Jha Son of Shri Mahendra Jha, Resient of Navratanpur Postal Park P.O. Kankarbagh, P.S.- Kankarbagh, District -Patna

.... Petitioner/s

Versus

1. State of Bihar Through Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Patna
2. Assistant Commissioner of Commercial Taxes, Integrated Check Post, Dalkola

.... Respondent/s

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Appearance :

For the Petitioners : Mr. D.V. Pathy, Advocate
Mr. D.B. Gupta, Advocate
Mrs. Manju Jha, Advocate
Mr. R.K. Rastogi, Advocate
Mr. P.K. Mishra, Advocate
Mr. Abhi Shankar, Advocate
Mr. Manish Rastogi, Advocate
Mr. Prijat Saurav, Advocate

For the Respondents : Mr. Sandip Kumar, G.A.-8
Mr. Rajesh Ranjan, Advocate
Mr. A. Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)
Date: 04-05-2015

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Heard learned counsel for the petitioners and learned Government Advocate No. 8 for the State.

All the writ applications raise common issues and they have, accordingly, been heard together and are being disposed of by this common judgment.

The challenge in all the writ petitions, in nine of them after amendments were allowed, is to the validity of the provisions contained in Section 15(5) of the Bihar Value Added Tax Act, 2005 and the Notification bearing No. S.O. 47 dated 05.04.2006 issued therein.

In all the cases the petitioners are aggrieved by the orders of assessment passed by the Competent Authority by which trade discounts allowed by them to their wholesalers has been disallowed on the ground that that the petitioners having exercised the option under Section 15(5) of the Bihar Value Added Tax, 2005 to pay in lieu of the tax payable by them, tax at the rate specified in Section 14 on the maximum retail price of such goods in the manner as may be prescribed, the tax has to be levied on the maximum retail price (M.R.P.) of the entire goods whether shown as sold or as bonus goods

given to their dealers.

The facts of the concerned case may be taken from C.W.J.C. No. 9709 of 2014. The petitioner in the said writ petition is engaged in the business of manufacture and sale of medicines and had filed its return with the respondent Commercial Tax Authorities and paid tax on the basis of the sale disclosed, claiming exemption in respect of supply of medicine free of cost to its dealer under a Scheme which was in the nature of quantitative or trade discount on the purchase of certain quantity of medicines. The said quantity of medicines was supplied free of cost without charging or collecting any amount in respect to them. The stand of the petitioners before the Tax Authorities was that there being no valuable consideration for supply of such extra quantity of medicines, the said transactions would not amount to sale and thus, be not chargeable under the provisions of the Act. In the earlier years, the respondents were accepting the return filed by the petitioners.

On the basis of an audit objection made by the Accountant General, Bihar an application for revision was filed by the Joint Commissioner of Commercial Taxes (Administration), Central Division Patna before the Commissioner of Commercial Taxes under Section 73A of the Act and in the said revision proceeding, it was held by the Commissioner of Commercial Taxes by his order dated

27.03.2014 for the period 2010-11 that the supply of medicines free of costs to the petitioners would be subject to tax in view of provisions of Section 15(5)(b) of the Act and, accordingly, the order of assessment dated 29.07.2014 passed by the Assessing Authority, was set aside.

Similar orders were passed by the Commissioner of Commercial Taxes in many of the matters covered by the other writ petitions and in some of the other petitions, the said order has been followed by the Assessing Authorities of the Commercial Tax Department.

Under the scheme of the Bihar Value Added Tax Act, 2005, Section 3 is the charging section which provides that every dealer whether registered under the erstwhile Bihar Finance Act, 1981 (since repealed) or under the present enactment would be liable to pay tax on the sale and purchase made by him. Section 15(5) is in the nature of exception to the general scheme of Taxation and provides option to certain class of registered dealers to pay in lieu of the tax payable by them, tax at the rate specified in Section 14, on the maximum retail price of such goods in the manner prescribed. Section 15(5) is quoted below :-

> "Compounding of tax liability in certain cases.-(5) (a) Notwithstanding anything to the contrary contained in the Act, the State Government may, by notification and subject to

such conditions and restrictions and in respect of such goods as may be specified in the notification, permit any class of registered dealers, being an importer or a manufacturer, to pay, in lieu of the tax payable by him, tax at the rate specified in section 14 on the maximum retail price of such goods in the manner prescribed.

(b) where a dealer has purchased any goods-

(i) from an importer or a manufacturer upon payment of tax on the maximum retail price of such goods; or

(ii) From another registered dealer where tax on the maximum retail price of such goods was paid in Bihar on an earlier occasion subsequent sales of the same goods in the State of Bihar shall not be levied to tax, if the dealer making the subsequent sale produces before the prescribed authority the original copy of the cash memo, or invoice or bill issued to him and files a true and complete declaration in the form and in the manner prescribed."

Various submissions were made by learned counsel for the petitioners taking us to the scheme of the Act and the various definitions of sale, gross turnover sale price, etc. under the Act, as also provisions of Entry 54, List-2, Seventh Schedule of the Constitution of India and Section 366 (29-A) thereof to show that both under the constitutional scheme as also under the Bihar Act, the taxable event is the sale of goods, one of the principal criteria of

which is money consideration for the sale. It is also sought to be pointed out by learned counsel for the petitioners that under the constitutional scheme, the tax could only be levied on transaction of sale and not otherwise and the incidence of a tax on sale or purchase could only be on the price or consideration in the sale said and not for any future price or consideration of sale which has not yet taken place. According to learned counsel, maximum retail price is not the sale price which is charged when the transaction takes place between a manufacturer and importer like the petitioners and their wholesalers, as in the present matter.

To cut short the matter, learned counsel for the petitioners has placed reliance upon a decision of the Supreme Court in the case of ***State of Rajasthan & Anr. Vs. Rajasthan Chemist Association: [2006] 147 STC 542 (SC)*** in which similar provision for levy of tax on the first point of sale of drugs, medicines or any formulation or for that matter any other commodity of manufacturer / wholesalers / distributor/retailers was to be charged on the basis of the maximum retail price published on the package which was challenged by way of writ petitions and the same had been allowed by the High Court of Rajasthan and the State moved before the Supreme Court challenging the decision of the High Court of Rajasthan. The appeal by the State of Rajasthan was dismissed by the Supreme Court holding that such

provision is ultra vires. The following paragraphs 44, 46, 55, 57 and 60 of the judgment of the Supreme Court are relevant for consideration:-

> "44. The pivotal question, therefore, which needs to be considered is whether the measure to which rate of tax is to be applied on single point transaction of sale of any formulation by the wholesaler to the retailer can be something notional which is not related to subject of tax or to say in other words, whether MRP to be chargeable subsequent to taxing event by a retailer when he sells the same goods to consumer can provide a basis which has nexus with taxable event to provide a valid measure to which rate of tax can be applied."
>
> 46. In the context of meaning assigned to expression "sale of goods" or price or consideration element of such "sale of goods" are taxable event, the conclusion that can fairly be reached is that for the taxing event of sale, if the price is to be the basis for measuring tax, it must relate to actual transaction of sale that becomes subject of tax and not to a different transaction that may take place in future at a price.
>
> 55. By devising a methodology in the matter of levy of tax on sale of goods, law prohibits taxing of a transaction which is not a completed sale and also confine sale of goods to mean sale as defined under the Act. This cannot be overridden by devising a measure of tax which relates an event which has not come into existence when tax is ex hypothesis determined, much less which can be said a completed sale and which cannot be subject of legislation providing tax on "sale of goods" by transplanting a sum related to a "likely price" to be charged for subsequent sale to be taxed by the device of measuring tax for the completed transaction which become subject of tax.
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> 57. If the legislation can provide for a measure of tax on subject of tax by substituting any notional value, which at no point of time becomes part of or related to subject of tax, viz.,

> sale of goods, then the fact that it is related to MRP loses its significance altogether. If this is permitted to be done the legislation can provide for any measure the purpose of applying the rate of tax, whether it is founded on MRP or any other fixed value which Legislature may provide will make little difference. It is not contended by the appellant that even the measure is not relatable to MRP, it can be substitute any value as a measure of tax. Subject of tax is not the goods or goods sold, but a transaction of "sale of goods" as defined under the Sales Act.
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> 60. If section 4A is designed to bring a levy into existence which is divorced from the "sale" subject to tax under the Act, it is beyond legislative competence under entry 54 of List II of the Seventh Schedule. The notification to the extent it intends to levy tax on first point sale with reference to price which could be charged in respect of subsequent sale which has not come into existence at the time liability of tax arises and is determined ex hypothesi is unsustainable on that basis."

With regard to the Supreme Court judgment which is quoted above, the submission of learned counsel for the State is that there is a difference between the provisions of Rajasthan Sales Tax involved in the aforesaid decision and the provisions in the present matter in the sense that under the Rajasthan Act the provision of levy of Sales Tax on the MRP was mandatory where as under the Bihar Act it is only an option which has to be exercised by the concerned dealer and the petitioners having exercised such option, it is not open to them to turn around and challenge the orders passed by the respondents on the basis of the provisions of Section 15(5) of the Act. To our mind, such

submission is fit to be rejected for the simple reason that it has been clearly held by the Apex Court in the case of Rajasthan Chemist Association (supra) that to bring the levy into existence which differs from sales subject to tax under the Act is beyond the legislative competence under Entry 54 List II of the Seventh Schedule. The notification to the extent it intends to levy tax on first point sale with reference to price which could be charged in respect of a subsequent sale which has not come into existence at the time liability of tax arises and is determined ex hypothesi is unsustainable on that basis. It was further clearly held by the Apex Court that the subject of tax in such legislation is not the goods or goods sold but a transaction of "sale of goods" as defined under the Sales of Goods Act and thus providing for measure of tax on the subject of tax by substituting any notional value like the MRP or otherwise, is beyond the legislative competence of the State legislature.

In the aforesaid, view of the matter, the State Legislature not being competent to provide for levy of tax on the first point of sale on the basis of MRP or any other notional value, there could be no question of the legislature providing for the same even by way of exercise of option by the dealer concerned. The matter goes to the root of the competence of the State Legislature under the Constitution to frame any such enactment and if it is not competent to enact such a

measure then it is equally not competent to do the same by way of providing option for levy of tax upon the dealer in such matter.

Thus, in the light of the aforesaid discussion Sub-section (5) of Section 15of the Bihar Value Added Tax, 2005 is declared ultra vires. Consequently, the impugned orders passed by the Commissioner in the revision application as also by the Assessing authority in accordance with the same cannot be sustained and, are accordingly, quashed.

We, however, make it clear, that since these petitioners were aggrieved not by the original orders of assessment per se under the provisions of Section 15(5) of the Act but the action of the Commissioner in exercising his revisional powers and re-opening the earlier assessments, hence, any order which has acquired finality shall not be re-opened on the basis of striking down of the provisions of Section 15(5) of the Act.

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

Saif/-Jagdish

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