## IN THE HIGH COURT OF JUDICATURE AT PATNA

**Civil Writ Jurisdiction Case No.3286 of 2017**
**Civil Writ Jurisdiction Case No. 3346 of 2017**

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M/s Bishnu Flour Mills Pvt. Ltd. a Private Limited Company Inchoporated Under the Indian Companies Act Having its Factory and Place of Business at Camp, Dalan, P.O. Katihar and District Katihar through its One of the Directors Ashish Agrawal Son of Sri Dilip Agrawal, resident of House No. 5, State Bank Colony, G.T.kanal Road, P.S. Model Town, Delhi-110009

.... .... Petitioner/s

Versus

1. The State of Bihar through the Commissioner-cum-Principal Secretary, Commercial Taxes Department, Bihar having its Office at Vikash Bhawan, Bailey Road, Patna.
2. The Deputy Commissioner, Commercial Taxes, Katihar Circle, Katihar.

.... .... Respondent/s

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**Appearance :**
(In CWJC No.3286 and 3346 of 2017)
For the Petitioner/s : Mr. Ramesh Kumar Agrawal, Advocate
Mr. Shive Kumar, Advocate
For the Respondent/s : Mr. Lalit Kishore(PAAG-1)
Mr. Bishwa Bibhuti Kumar Singh, Advocate

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE**
**and**
**HONOURABLE MR. JUSTICE SUDHIR SINGH**
ORAL JUDGMENT
**(Per: HONOURABLE THE ACTING CHIEF JUSTICE )**
**Date: 07-03-2017**

The grievance of the writ applicants in the present petitions is that though vide notification dated 25th of February, 2009, Paddy, Wheat and Rice were exempted from levy of Entry Tax by way of a notification published as 27.2.2009 in exercise of powers conferred under Section-6 of the Bihar Tax on Entry of

Goods into Local Areas for Consumption, Use or Sale Therein Act, 1993, (for short 'the Act'), but still the Assessing Officer has levied Entry Tax on wheat up to 21st of January, 2014 on the strength of notification published dated 22nd of January, 2014 amending the Schedule in exercise of powers conferred under Section-3A of the Act. It is thus contended that levy of entry tax after 27.2.2009 is illegal.

2. To appreciate the contentions raised, certain statutory provisions need be extracted:

"3A. **Power of State Government to amend Schedule**.–The State Government may, be notification, amend or after the Schedule of this Act or add anything in it.

6. **Exemption from tax**.–The State Government may be notification and subject to such conditions and restrictions as it may impose exempt from levy of tax any class of dealers, persons or importers."

(1). "S.O.9, dated 27th February, 2009—In exercise of the powers conferred by Section 6 of the Bihar Tax on Entry of Goods Into Local Areas for Consumption, Use or Sale therein Act, 1993 (Bihar Act 16,1993), the Governor of Bihar is pleased to delete the entries contained in Serial No.25 of the Notification No.95, dated 31st July, dated 31st July, 2008 of the Commercial- Taxes Department and exempt Paddy, Wheat and Rice from the levy of Entry Tax.

2. This notification shall come into force from the date of issue."

(2) "S.O.6, dated the 22nd January, 2014—In exercise of powers conferred by Section 3A of the Bihar Tax on Entry of

Goods into Local Areas for Consumption, Use or Sale therein Act, 1993 (Bihar Act 16 of 1993), the Governor of Bihar is pleased to make the following amendment to the Schedule, as amended from time to time, appended to the said Act, namely-

**Amendment**

1. The words and commas "Paddy, Wheat, Rice," shall be deleted from the present entries of Serial Number 25 of the Schedule, as amended from time to time, appended to the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1993 (Bihar Act 16 of 1993).

2. This notification shall come into force with effect from the date of its issue."

(3) "S.O.8, dated the 22nd January 2014—In exercise of powers conferred by Section 6 of the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1993 (Bihar Act 16 of 1993), the Governor of Bihar is pleased to cancel departmental notification number S.O. 9, Dated 27th February, 2009, and notification number S.O. 10, Dated 27th February, 2009 with immediate effect."

3. A reading of the provisions of Section-3A of the Act shows that the State Government is competent to amend or alter the Schedule of the said Act. The Schedule is in respect of goods which attract Entry Tax. Once the goods are in the Schedule, the State Government is empowered to exempt from levy of Entry Tax in terms of the powers conferred under Section 6 of the Act. Therefore, the entry of goods in the Schedule is the basic provision on the basis of which Entry Tax is leviable, but the power of

exemption in respect of the goods is in terms of Section-6 of the Act mentioned in the Schedule.

4. The notification dated 27th of February, 2009 was published under Section-6 of the Act exempting Paddy, Wheat and Rice from levy of Entry Tax. Thus, such goods were though part of the Schedule in terms of Section-3A of the Act, but the wheat, paddy and rice were exempted in terms of Section-6 of the Act. Subsequently, on 22nd of January, 2014, the Schedule itself has been amended and the Paddy, Wheat and Rice were deleted from the entries of Serial-25 of the Schedule. Vide such notification, the exemption from levy of Entry Tax on Paddy, Wheat and Rice became redundant as the Schedule itself was amended. Thus, Paddy, Wheat and Rice were not liable to Entry Tax with effect from 27th of February, 2009 in terms of notification issued under Section-6 of the Act, but from 22nd of January, 2014, the Schedule having been amended, the levy of Entry Tax on Paddy, Wheat and Rice came to be deleted.

5. The aforesaid items are entitled to exemption from levy of Entry Tax from 27th of February, 2009 itself. The assessment years in question are 2012-13 and 2013-14. Therefore, the levy of Entry Tax is not permissible and sustainable in law.

6. Consequently, such levy is set aside. The Assessing

Authority shall give effect to the order of this Court in accordance with law.

7. The writ petitions stand allowed.

**(Hemant Gupta, ACJ)**

**(Sudhir Singh, J)**

K.C.jha/-

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