IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15291 of 2016

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Bihar State Hydroelectric Power Corporation Ltd, having it office at 2nd Floor, Sone Bhawan, Bir Chand Path, R Block More, Patna - 800 001, through its Chief Engineer, Sri Mani Saran, Son of late Jagdishwari Sharan, Resident of Kumhrar, Nayatola, Kankarbagh, P.O-Agamkuan P.S.-Agamkuan, District- Patna- 800 026.

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, Bihar having its office at Vikash Bhawan, Bailey Road, Patna.
2. Asstt. Commissioner of Commercial Taxes, west Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.V.Pathy, Advocate
Mr. Rajib Ranjan, Advocate
Mrs. Manju Jha, Advocate
Mr. Sadashiv Tiwari, Advocate

For the Respondent/s : Mr. Anil Kumar Sinha-GA 1

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

Date : 23-01-2018

Challenge in this petition filed by the petitioner are made to the notices issued to them as contained in Annexure-1 series demanding duty for the period from 2007-08 up to 2012-13 and charging duty under Section 4A of the Bihar Electricity Duty Act, 1948 inserted by Section 23 of the Bihar Finance Act, 2007.

During the course of hearing, we find that the issue stands answered by a co-ordinate Bench of this Court in CWJC No.17429 of 2014 (M/s. NTPC Limited Vs. The State of Bihar & Ors.) and other cases decided by a common judgment passed on 14.12.2016.

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Even though the imposition was challenged by NTPC in the said case, we find that the issue considered in the said case pertain to the power of the State Government to impose duty on a sale of electricity and after taking note of the powers available under Entry 53 of List II and Entry 54 of List II of Seventh Schedule of the Constitution, the learned Division Bench has held that so long as transfer of sale of electricity is not for consumption, the State Government does not have any power to impose duty. In fact, the issue has been dealt with by the learned Division Bench in the said judgment in the following manner:

> "We have considered the submissions of learned counsels for the parties. It is difficult to accept the submission of learned counsel for the State that the decision of the Apex Court in NTPC's case (supra) is not relevant in the present matter as that was a case of inter-State sale. In our view the constitutional propositions discussed in the said case based upon a long line of earlier decisions of the Apex Court, are something which cannot be ignored merely because it was a case of inter-State sale, while the fact of the matter remains that the Apex Court has interpreted Entry 53 to be read as taxation on the consumption or sale for consumption of electricity. That being the position whether the tax levied is under Entry 53 of List II as a tax on consumption or sale for consumption of electricity, or under Entry 54 of List II as taxes on sale or purchase of goods, it will make no difference since the goods which are to be taxed, that is, 'electricity' remains the same under both the

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> circumstances and the levy can only be on the consumption or sale for consumption of electricity in terms of what has been laid down by the Apex Court in the NTPC"s case (supra). The distinction between the two entries in respect of electricity has been clarified in para 23 of the said judgment where it has been said that if the State Legislature chooses to impose tax on consumption of electricity it will not be possible to do so under Entry 54, because it does not provide for taxes on consumption whereas Entry 53 permits the same."

If we analyze the facts in hand in the backdrop of the aforesaid principle, we find that in this case also, the electricity which has been sold by the present petitioner is to the Bihar State Electricity Board, South Bihar Power Distribution Company Limited and North Bihar Power Distribution Company Limited and once the sale is not for consumption, but for further distribution by the Electricity Board and the Distribution Companies, the principle laid down in the case of NTPC (supra) would apply.

We are also informed that the Special Leave to Appeal (c) Diary No. 11556/2017 filed by the State of Bihar in the case of M/s NTPC Ltd. (supra) has also been dismissed by the Hon'ble Supreme Court as is evident from Annexure-6 which is an order passed by the Hon'ble Supreme Court on 03.07.2017 upholding the law laid down in the NTPC (supra).

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However, in the facts and circumstances, we need not go into the constitutional validity of the provision, but we hold that the said provision is not applicable in the transaction impugned herein and, therefore, we allow this writ petition and quash the notices Annexure-1 series.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.01.2018
Transmission Date	

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