IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10968 of 2017

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M/s Riga Sugar Co. Ltd., Distillery Division, having registered office at 14 Netaji Subhash Road, Kolkata- 700001 and having Distillery Plant at Riga, District- Sitamarhi, Bihar through its Senior General Manager, Sri Uday Shankar Dwivedi, Son of Shri Rishideo Dwivedi, Resident of Riga Sugar Mill Colony, District- Sitamarhi, Bihar.

... ... Petitioner/s

Versus

1. The State Of Bihar through The Principal Secretary, Finance Department, Government of Bihar, Patna.
2. The Principal Secretary, Finance Department, Government of Bihar, Patna.
3. The Commercial Tax Tribunal through its Commissioner and Secretary, Vikas Bhawan, Bailey Road, Patna-800001
4. The Joint Commissioner of Commercial Taxes (Appeal) Tirhut Division, Muzaffarpur.
5. The Assistant Commissioner of Commercial Taxes, Sitamarhi Circle, Sitamarhi.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ashish Giri, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC 11

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

Date : 16-12-2020

Petitioner has prayed for the following relief(s):

> "I. To issue an appropriate writ, order, direction in the nature of certiorari for quashing the judgement dated 31.03.2017 passed by the Commercial Taxes Tribunal,

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Bihar, Patna in Revision Case No. MZ218/2007 by which the revision filed by the petitioner has been dismissed upholding the order dt. 01.02.2007 passed by Learned Joint Commissioner of Commercial Taxes (Appeal) Tirhut Division, Muzaffarpur upholding the assessment order by which the Sales Tax @ 25% has been assessed for sale of denatured spirit for the period 2004 & 2005 coming to Rs. 1,22,39,168.00 including penalty and thus the remaining amount of Rs. 26,87,416.00 was demanded. (Annexure-10) Pg.86

ii. To issue an appropriate writ, order, direction in the nature of certiorari for quashing the order dated 01.02.2007 passed by the Learned Joint Commissioner of Commercial Taxes (Appeal) Tirhut Division, Muzaffarpur in Appeal Case No. ST/ST 14/2006-07 dismissing the appeal preferred by the petitioner against the order of assessment dt. 17.04.2006 and demand notice receiving dt. 29.06.2006 passed by the Assistant Commissioner of Commercial Taxes, Sitamarhi Circle, Sitamarhi and accordingly upholding the assessment order and demand notice. (Annexure-8) Pg. 64

iii. To issue an appropriate writ, order, direction in the nature of certiorari for quashing the order of assessment dt. 17.04.2006 and demand notice receiving dt. 29.06.2006 passed by the Assistant Commissioner of Commercial Taxes, Sitamarhi Circle, Sitamarhi in Assessment Case No. ST624(i)® by which the liability for payment of Sales Tax for sale of denatured spirit during the period 2004 to

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> 2005 has been assessed @ 25% coming to Rs. 1,22,39,168.00 including penalty and thus the remaining amount of Rs. 26,87,416.00 was demanded to be paid and has also wrongly calculated the exemption at the rate of 25% on denatured spirit instead of 8% (Annexure- 5 & 5A, Pg.42
>
> iv. To issue an appropriate writ, order, direction in the nature of mandamus directing the respondent authorities to refund an amount of Rs. 1,09,76,743.92 alongwith interest which has been wrongfully retained by the respondent.
>
> v. To hold and declare that Sales Tax @ 25% is not applicable for denatured spirit but Sales Tax @ 8% is only applicable in terms of Section 12(1) of the Bihar Finance Act, 1981 during the period in question i.e. 2004 & 2005 and hence for calculating the grant of exemption in favour of the petitioner it has to be at the rate of 8% and not 25%.
>
> vi. To issue any other relief for which the petitioner is entitled for."

Shri Giri, learned counsel for the petitioner prays for permission to withdraw the petition reserving liberty to prefer an appeal under the provisions of the Bihar G.S.T. Act with a further prayer that the appeal be heard on merits and the the issue of limitation be not allowed to come in the way of such adjudication.

Prayer allowed.

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Petition is disposed of as withdrawn.

Since the matter pertains to the year 2006-07, respondent concerned is directed to consider and dispose of the appeal, if the petitioner files such appeal within a period of four weeks from today along with a copy of the present order, within a period of two months thereafter.

It stands clarified that the proceedings, during the time of current Pandemic- Covid-19 shall be conducted through digital mode, unless the parties otherwise mutually agree to meet in person i.e. physical mode.

Equally, liberty is reserved to the petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law.

Needless to add, while considering such appeal, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties.

Liberty reserved to the petitioner to approach the Court, if the need so arises, subsequently on the same and subsequent cause of action.

We have not expressed any opinion on merits.

The petition stands disposed of in the aforesaid

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terms.

Interlocutory Application(s), if any, also stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

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CAV DATE	
Uploading Date	21.12.2020
Transmission Date	

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