IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11622 of 2006

==

M/S Bharat Sanchar Nigam Ltd. Bihar Circle, Patna through its Assistant General Manager (L) N.K. Jain aged about 56 years, son of Late H.C. Jain, Resident of K-52, IIIrd Floor P.S. Hanuman Nagar, Patna

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, New Secretariat, Patna
2. The Commissioner of Commercial Taxes, Bihar, New Secretariat, Patna
3. The Assistant Commissioner of Commercial Taxes, Patliputra Circle, Patna Bhawan, Bailey Road, Patna

... ... Respondent/s

==

Appearance :
For the Petitioner/s : Mr. Alok Kumar Shahi, Advocate
For the Respondent/s : Mr. Vikash Kumar, SC 11

==

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

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-12-2020

Petitioner has prayed for the following relief(s):

> "(a) For quashing penalty imposed and interest charged under Section 8 (1) of Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1993 (Entry Tax Act) read with under Section 16 (8)/16(9) of Bihar Finance Act, dated 18.08.2006 (Annexure- Iseries and 2 Series) is

wrong, illegal and without Jurisdiction in view of the Apex court Judgement and also Jharkhand High Court decisions declaring Entry Tax Act as ultravires.

(b) For direction to issue statutory forms which has been withheld for non-payment of tax.

(c) For any other appropriate order/direction for which the petitioner is found entitled by this Hon'ble Court."

It is not in dispute that the reason for filing the present petition was to derive benefit of the decision rendered by Hon'ble the Apex Court in **Jindal Stainless Limited and another Vs. State of Haryana, (2006) 7 SCC 241.** It is also not in dispute that the said decision stands re-considered vide its subsequent decision reported in **Jindal Stainless Limited and another Vs. State of Haryana, (2017) 12 SCC 1.**

In this view of the matter, we are of the considered view that now petitioner is required to take recourse to the alternate remedies as provided under the provisions of the Bihar tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1993.

We are conscious that the present petition pertains to the year 2006, but this factual matrix, of serious disputes, cannot be gone into in these proceedings, more so on the basis of proceedings initiated based only on legal principle which now stands reviewed.

We notice that pursuant to our order dated 21st of September 2006, petitioner has deposited a sum of Rs.45,00,000/-. If that were so, then, perhaps, it would meet the statutory condition of pre-deposit of tax of adjudication the appeal on merits.

As such, we dispose of the present petition with the following directions:

(a) Petitioner shall take recourse to such remedies as are otherwise provided under the provisions of the Act, which shall positively be done within a period of two months from today.

(b) The petitioner has been pursuing the present matter, as such, if the appeal is preferred within the aforesaid period, the issue of limitation shall not be allowed to come in the way of adjudication of the matter on merits. Learned counsel for the State assures the same.

(c) Such proceedings initiated shall be concluded within a period of two months from the date of filing.

(d) 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.

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

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

(g) Liberty reserved to the petitioner to subsequently approach the Court, if the need so arises, on the very same cause of action.

(h) We have not expressed any opinion on merits.

The petition stands disposed of in the aforesaid terms.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	22.12.2020
Transmission Date	