IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4257 of 2010

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M/S Bharat Sanchar Nigam Ltd. (Electric), Muzaffarpur through its Accounts Officer Shri Ganesh Choudhary, Son of Sri Shivji Choudhary, aged 47 years, resident of Village and P.O.- Kolhua Paigambarpur, P.S.- Ahiyapur, District- Muzaffarpur

... ... 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, Muzaffarpur East Circle, Muzaffarpur

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Shahi, 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 : 17-12-2020

Petitioner has prayed for the following relief(s):

> "a) For quashing order dated 5.11.09 (Annexure- 3) and Demand notice no- P/275 (Annexure-4) passed by Respondent no-3 of the period 2009-10 under Section 24(10) of Vat Act read with Sec 8 of Bihar Tax on Entry of Goods into Local Areas for

Consumption, Use or Sale Therein Act, 1993 (Entry Tax Act) in violation of Principles of Natural Justice, giving show cause notice fixing date of hearing on 15.11.09 and passing order on the same date resulting in miscarriage of justice.

b) For quashing order dated 5.11.09 (Annexure-3) is wholly without jurisdiction since the levy of rate of entry tax @ 8% and 5% is more then 4% prescribed under VAT Act.

c) For holding that serial no-19 of Notification no- SO 95 Dated 31.07.08 covers all other items used in telecommunication and transmission of information i.e. D.G Sets, Electric Meter and Air Conditioner, etc

d) For any other appropriate order/ direction for which 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 2010, 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.

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	