IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7259 of 2005

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1. M/S Gyan Enterprises, a Proprietorship Firm having its place of business at Mohania Road, Shivpur, P.S. Dehiri, Jagdishpur, District Bhojpur through its Proprietor, Gyanendra Kumar Singh, S/o Shri S. B. Singh, Resident of Sukhdeo Nagar, Ratu Road, P.S. Sukhdeo Nagar, Ranchi.
2. M/s Rahul Industries, a Proprietorship Firm, having its place of business at Bhojpur Road, P.S. Udaipur, Distrtict – Rohtas, through its Proprietor, Raj Kumar Dhanuka, S/o late Ram Gopal Dhanuka Resident of Saket Nagar, Kanke Road, P.S. Gonda, District-Ranchi.
3. M/s Snowtemp Commercial Pvt. Ltd., (S.S.F Division) a Company incorporated under the provisions of the Companies Act, 1956 having its place of business at Naubatpur Road, P.S. Garahani, District – Bhojpur through its Director, Sundeep Kedia, S/o late S.R. Kedia Resident of 5/20, Sevak Baidya street, P.S. Lake, District Kolkata-29.
4. M/s India Smokeless Fuel Industries, a Proprietorship Firm having its place of business at Mohania Road, Shivpur, P.S. Jagdishpur, District Bhojpur through its Proprietor, Kailash Chandra Kejriwal, S/o Shri Murlidhar Kejriwal Resident of Lalpur, P.S. Lalpur, District Ranchi.
5. M/s Jyoti Vikash Industries, a Proprietorship Firm, having its place of business at Village Bharsara, P.S. Jagdishpur, District-Bhojpur, through its Proprietor, Kamal Kumar Dhanuka, S/o late Ram Gopal Dhanuka Resident of Saket Nagar, Kanke Road, P.S. Gonda, District Ranchi.
6. M/s Pearl Industries, a Partnership Firm, having its place of business at Sanjhauli, Bhojpur Road, Udaypur, Sanjhauli (Rohtas) through one of its Partner Praveen Kumar Agrawal, S/o Shri Om Prakash Agrawal, resident of 310, Panchvati, Kanke Road, P.S. Gonda, District Ranchi.
7. M/s Economical Coke Co., a Proprietorship Firm having its place of business at Village & P.S. Siris, District-Aurangabad through its Proprietor, Pramila Gupta, W/o Narendra Gupta, Resident of Narendra Talkies Complex, P.S. Barun, District Aurangabad
8. M/s Salasar Fuel Industries, a Proprietorship Firm having its place of business at Kurari Karmnasa, P.S. Durgawati, District Bhojpur, through its Proprietor, Kailash Chandra Kejriwal, S/o Shri Murlidhar Kejriwal, Resident of Lalpur, P.S. Lalpur, District Ranchi.
9. M/s Shree Ram Enterprises, a Proprietorship Firm, having its place of business at Village Dularpur, P.S. Udwant Nagar, Dist. Bhojpur through its Proprietor, Suresh Kumar Kejriwal, S/o Shri Mohan Lal Kejriwal, Resident of Lalpur, P.S. Lalpur, District Ranchi.
10. M/s Shivam Enterprises, a Proprietorship Firm having its place of business at Dularpur, P.S. Udwant Nagar, District Bhojpur through its Proprietor, Raj Kumar Dhanuka, S/o Late Ram Gopal Dhanuka, Resident of Saket Nagar, Kanke Road, P.S. Gonda, District Ranchi
11. M/s Snowtemp Commercial Pvt. Ltd., a Company incorporated under the provisions of the Companies Act, 1956 having its place of business at, P.S. Garahani, Dist. Bhojpur through its Director, Sundeep Kedia, S/o late S.R. Kedia Resident of 5/20, Sevak Baidya street, P.S. Lake, District Kolkata – 29
12. M/s S.R. Industries a Proprietorship Firm, having its place of business at Shivpur, P.S. Jagdishpur District – Bhojpur through its Proprietor, Bijay Dhanuka, S/o late Ram Gopal Dhanuka, Resident of Saket Nagar, Kanka Road, P.S. Gonda, District Ranchi.

13. M/s Ruhi Enterprises, a Proprietorship Firm having its place of business at Kurari G.T. Road, Karmnasa, P.S. Durgawati, Kaimur, Bhabhua through its Proprietor, Gyanendra Kumar Singh, S/o Shri Shyam Bihari Singh Resident of Sukhdeo Nagar, Ratu Road, P.S. Sukhdeo Nagar, Dist: Ranchi.
14. M/s Shrey [India] Enterprises a Proprietorship Firm having its place of business at P.S. Garahani, District- Bhojpur through its Proprietor, Bijay Dhanuka, S/o late Ram Gopal Dhanuka, Resident of Saket Nagar, Kanke Road, P.S. Gonda, District Ranchi.
15. M/s Hindustan Industries, a Proprietorship Firm having its place of business at Village Bharsara, P.S. Jagdishpur, District-Bhojpur through its Proprietor, Anil Kumar Kejriwal, S/o Shri Inder Lal Kejriwal, Resident of Lalpur, P.S. Lalpur, District Ranchi.
16. M/s Salasar Coal Service, a Proprietorship Firm having its place of business at Kurari Karmnasa, P.S. Durgawai, District Bhabhua through its Proprietor, Brij Mohan Poddar, S/o Late Moti Lal Poddar, Resident of C/o Rajasthan Tea Co., Upper Bazar, P.S. Kotwali, Town & District – Ranchi.
17. M/s Jasgdish Industries a Proprietorship Firm having its place of business at Kurari Karmnasa, P.S. Durgawati, District- Bhabhua, through its Prop. Sunil Kumar Kejriwal, S/o Shri Chiranji Lal Kejrawal Resident of Lalpur, P.S. Lalpur, District Ranchi.
18. M/s Samrat Fuel Enterprises, a Partnership Firm having its Head Office at Barun Aurangabad and its Industrial Unit situated at Tendua, P.S. Pahaleja, District Rohtas through one of its Partners, Surjit Singh, S/o Shri Sarab Singh, Resident of Barun P.S. Barun, District Aurangabad
19. M/s Jai Durga Fuel industries, a Partnership Firm having its Head Office at Raju Market, New Dilia, P.S. Dehri-on-Sone, District Rohtas and its Industrial Unit situated at Sikaria, Shankarpur, P.S. Indrapuri, District Rohtas through one of its Partners, Subodh Kumar Singh, S/o late Raghupati Singh, Resident of Dehri-on-Sone, P.S. Dehri-on-Sone, District – Rohtas.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Old Secretariat, Patna
2. The Secretary-cum-Commissioner of Commercial Taxes, Bihar, Vikash Bhawan, Bailey Road, Patna.
3. The Secretary, Department of Industries, Government of Bihar, Patna, Vikash Bhawan, Bailey Road, Patna
4. The Joint Commissioner of Commercial Taxes (Admn.), Patna Division, Patna
5. the Joint Commissioner of Commercial Taxes (Admn.), Gaya Division, Gaya.
6. The Dy. Commissioner of Commercial Taxes, Sasaram Circle, Sasaram.
7. The Assistant Commissioner of Commercial Taxes, Aurangabad Circle, Aurangabad.
8. The Assistant Commissioner of Commercial Taxes, Bhabhua Circle, Bhabhua
9. The Assistant Commissioner of Commercial Taxes, Sahabad Circle, Arrah.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.D.Sanjay, 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 : 26-08-2020

Petitioners have prayed for the following relief(s):-

> “(i) For a declaration that the provisions of Bihar Value Added Tax Ordinance, 2005 cannot nullify & take away the vested rights accrued to the Petitioners with retrospective effect [before expiry of the period] for exemption from payment of Sales-tax on sale of Finished Products under the Notifications – **S O** *No*.: 478 & **S O** No.: 479 both dt. 22.12.1995 issued under the Industrial Policy, 1995 as such provision will be ultra vires the provision of the Constitution of India ;
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> (ii) For a declaration that the provision of the Bihar Value Added Tax Ordinance, 2005 to the extent it denies the benefit to the Industrial Units granted exemption in exercise of statutory power by the State Government to that extent, it will not be applicable in relation to Industrial Units enjoying the benefits promised by the State Government for the un-availed period ;
>
> (iii) For a declaration that Section 96[3][b] of the Bihar Value Added Tax Ordinance, 2005 to the extent it denied the exemption from payment of Sales-tax on sale of Finished Products, the un-availed remaining period is arbitrary, and cannot sustain in the eyes of law arbitrary & discriminatory;
>
> (iv) For a declaration that Section 94 of the Bihar Value Added Tax Ordinance, 2005 to the extent it repeals the right & privileges acquired & accrued on the basis of the Bihar Finance Act, 1981, Notification issued thereunder and granted under the Industrial Policy Resolution as being arbitrary, discriminatory and opposed to the doctrine of promissory estoppel;
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> (v) For a declaration to read down the

provisions of the Bihar Value Added Tax Ordinance, 2005 and to allow the Petitioners to avail the benefit of exemption for the remaining period in terms of the Government Notifications- ***S O*** No.:478 & ***S O*** No.:479 both dt. 22.12.1995;

(vi) For a declaration that the provisions of the Bihar Value Added Tax Ordinance, 2005 will not be applicable to the products of the Petitioners till it reaches to the hands of the customers, and under the present ordinance, no tax could be leviable on the value addition on subsequent sale in absence of any provisions of deemed adjustment of the exempted portion of the tax amount;

(vii) For a declaration that the Present Case is covered by the law laid down by this Hon'ble Court in the case of *Iris Electronic [India] pvt Ltd vs. State of Bihar & ors*. reported in **2003[1] PLJR 509** wherein this Hon'ble Court held that the Sales-tax Department cannot levy any tax on the goods manufactured by an Exempted Unit;

(viii) For restraining the Respondents-Sales-tax Authorities from raising demand of tax on sale of Products of the Petitioners by the Dealers;

(ix) For a declaration that the so called alternative provided in Section 96[3][b] of the Bihar Value Added Tax Ordinance, 2005 read with Rule 57 of the Bihar Value Added Tax Rules, 2005 i.e. option for deferment from payment of tax is arbitrary & discriminatory; and for any other relief[s] for which the Petitioners may legally be found entitled to in the facts of the present case."

Learned counsel for the petitioners fairly concedes that with the passage of time, present petition has become infructuous inasmuch as there is change with respect to the position of law.

However, it is pointed out that with the enforcement of the new Enactment/Policy, petitioners alone stands discriminated inasmuch as the benefit of exemption from payment of tax stands conferred to twenty two Industrial Units and only petitioner has been left out.

This issue, in our considered view, can be agitated by the petitioners first with the appropriate authority and thereafter before the appropriate forum in accordance with law.

Liberty, as prayed for, is granted for such purpose.

We only hope and expect that as and when petitioners as also similarly situated person(s) approach the respondent authorities venting out their grievances of discrimination with regard to conferment of benefits under the relevant Statute/Policy, the same shall be considered and decided in accordance with law expeditiously and preferably within a period of three months thereafter.

Petition stands disposed of in the above terms.

Interlocutory Application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

B.Kr./-

AFR/NAFR	
CAV DATE	
Uploading Date	31.08.2020
Transmission Date	