

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19875 of 2011

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M/S Bharat Sugar Mills (proprietor Upper Ganges Sugar and Industries Limited), At , P.O. and P.S. Sidhwalia, District - Gopalganj Through Its Senior Executive Vice President B.K. Sureka

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Commissioner Of Commercial Taxes, Government Of Bihar, Patna
3. The Assistant Commissioner Of Commercial Taxes, Gopalganj Circle, Gopalganj

... .. Respondent/s

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y.V.Giri, Sr. Advocate Mr. Ashish Giri, Advocate
For the Respondent/s	:	Mr.Lalit Kishor, Advocate General Mr. Vikash Kumar, AC to AG

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

Date : 07-10-2020

Petitioner has prayed for the following relief(s):-

- (i) To hold and declare the Bihar Entry of Goods into Local Area for Consumption, Use or Sale Therein (Amendment and Validation) Act, 2008 (Act 13 of 2008) (hereinafter referred to as the 'Validating Act, 2008') unconstitutional and ultra vires Article 14, 19(1)(g), 300A and 301 of the Constitution of India (as contained in Annexure-5).
- (ii) To hold and declare the Bihar Entry of Goods into



Local Area for Consumption, Use or Sale Therein (Amendment and Validation) Act, 2008 (Act 13 of 2008) (hereinafter referred to as the 'Validating Act, 2008') (Annexure-5) arbitrary, unfair and amounting to overreaching the judgment of the Hon'ble Court as reported in 2008 BRLJ-239 (M/s United Spirit Ltd. Vs. State of Bihar &ors) (Annexure-4) read with judgment reported in 2007(1) PLJR-502 (M/s Indian Oil Corporation Ltd. & anr. Vs. State of Bihar & ors), (M/s Harinagar Sugar Mills Ltd. Vs. State of Bihar & ors) (Annexure-2) and therefore liable to be struck down.

- (iii) To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the ex parte assessment order and demand notice dated 25.10.2010 passed by the respondent the Assistant Commissioner of Commercial Taxes, Gopalganj Circle, Gopalganj (Annexure-8 series) whereby and whereunder Entry Tax liability of the petitioner has been assessed to the tune of Rs.13,68,182/- for the period 29.8.2006 to 31.3.2007.
- (iv) To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the order dated 30.9.2011 passed by the respondent Commissioner of Commercial Taxes, Bihar, Patna (Annexure-10) in Revision Petition filed by the petitioner bearing Revision Case No. CC(S)60/2011-12 whereby and whereunder the revision petition against the impugned assessment order and demand notice has



been dismissed.

- (v) To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the demand/order bearing no.461 dated 17.10.2011 passed by the respondent Assistant Commissioner of Commercial Taxes, Gopalganj Circle, Gopalganj (Annexure-11) directing the petitioner to make payment of Entry Tax to the tune of Rs.1,13,01,758/- (which is consolidated amount for the year 2006-07 and 2007-08).
- (vi) To hold and declare that no Entry Tax can be levied to the petitioner for the period 29.8.2006 to 31.3.2008 in absence of any notification, fixing the rate of Entry Tax, for the said period in light of the judgment passed by this Hon'ble Court as reported in 2008 BRLJ-239 (M/s United Spirit Ltd. Vs. State of Bihar & ors) (Annexure-4).
- (vii) To issue an appropriate writ/order/direction in the nature of Mandamus commanding the respondents not to proceed from assessing, levying or recovering any Entry Tax for the period 29.8.2006 to 31.3.2008.
- (viii) To any other relief or reliefs for which the petitioner is found entitled in the facts and circumstances of the case."

2. In so far as challenge laid to the constitutional validity of the principal/amendment Act is concerned, at the threshold, the Learned Senior Counsel Shri Y.V.Giri appearing for the petitioner, clarifies that the petitioner does not press for such



relief. Prayers (i) and (ii) stand disposed thereof.

3. Herein forward, this order only pertains to the notice(s) of demand imposing liability of payment of entry tax on the petitioner.

4. We notice that the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1993 (hereinafter referred to as 'the principal Act') was amended several times. We are concerned with one such amendment brought about by virtue of the Bihar Entry of Goods into Local Area for Consumption, Use or Sale Therein (Amendment and Validation) Act, 2007 (Act 12 of 2007) (hereinafter referred to as 'the amendment Act'). By this amendment Act of 2007, the schedule to the principal Act was amended, and substituted with effect from August 29, 2006. Certain goods were included for the purposes of incidence of taxation.

5. We also notice that under the principal Act, certain Notifications were introduced from time to time prescribing the rate of tax for certain goods in the schedule. We are concerned, more specifically with the Notifications being; SO 92 dated July 25, 2001; SO 159 dated August 22, 2003; SO 99 dated July 22, 2006; and SO 95 dated July 31, 2008.

6. It is the argument of the petitioner that the schedule



under the amendment Act, 2007 wholly substituted the schedule under the principal Act, which also meant that all notifications prescribing rate of tax for the scheduled goods stood repealed. Since the next notification after the amendment Act, for prescribing rates of tax was SO 95 dated July 31, 2008, the period between August 29, 2006 (coming into force of the amendment Act), and SO 95 dated July 31, 2008, there existed no applicable rate of tax.

7. We do not agree with this argument, more so because our attention was brought to the savings clause in the amendment Act, 2007, which read as follows:

"2.(2) Any assessment, collection, adjustment, reduction or computation made or any action taken or anything done or purported to have been taken or done under the Bihar Entry of Goods into Local Area for Consumption, Use or Sale Therein Act, 1993 and notifications issued and rules made thereunder shall be deemed to be and to have always been, for all purposes, as validly and effectively assessed, collected, adjusted, reduced, computed or taken or done as if the said Act amended by this Act had been in force at all material times and accordingly, notwithstanding anything contained in any judgment, decree, or order of any court or tribunal or other authority." (emphasis supplied)

8. The concept of savings clause has been recognised since way-back, by the case of **State of Punjab v. Mohar Singh, (1955) 1 SCR 893**. The relevant extracts are as follows:

"6.Under the law of England, as it stood prior to the Interpretation Act of 1889, the effect of repealing a statute



was said to be to obliterate it as completely from the records of Parliament as if it had never been passed, except for the purpose of those actions, which were commenced, prosecuted and concluded while it was an existing law. A repeal therefore without any saving clause would destroy any proceeding whether not yet begun or whether pending at the time of the enactment of the Repealing Act and not already prosecuted to a final judgment so as to create a vested right. To obviate such results a practice came into existence in England to insert a saving clause in the repealing statute with a view to preserve rights and liabilities already accrued or incurred under the repealed enactment...”

9. This has subsequently been reiterated time and again including, in the recent cases of **Indore Development Authority v. Manoharlal SLP (C) No. 9036-9038 of 2016** and **BCCI v. Kochi Private Limited 2018 6 SCC 287**, etc.

10. Therefore, it is trite law that the saving clause limits the scope of repeal by way of amendment. It resurrects a provision, which would otherwise be obliterated by way of repeal that comes with an amendment act.

11. In the case of **State of Odisha v. Anup Kumar Senapati Civil Appeal No. 7395 of 2019**, the Hon’ble Apex Court observed that the words of a comprehensively worded savings clause would guide the repealing authority of the amendment act:

“33. In general savings of the rights accrued under Section 6 of the General Clauses Act are subject to a contrary intention evinced by the repealing Act. It depends upon the repealing provisions what it keeps alive and what it intends



to destroy when repeal and saving clause is comprehensively worded, then the provisions of Section 6 of the General Clauses Act are not applicable.”

12. In the case of **Milkfood Ltd v. GMC Ice Cream (P) Ltd (2004) 7 SCC 288** reiterated by a constitution bench of the Hon'ble Apex Court in **Indore Development Authority v. Manoharlal(supra)**, it was observed that the Court is to interpret the repeal and savings clause in such a manner so as to give a pragmatic and purposive meaning thereto.

13. It is clear to us that in the instant case, the savings clause, i.e. Section 2 sub-section (2) of the amendment Act, 2007, explicitly ensures that the notifications issued pursuant to the principal Act continue to have force.

14. In our considered view, SO 95 dated July 31, 2008 which prescribes that the said Notifications were to come into force with effect from April 1, 2008 is merely clarificatory in nature and in any event would not supersede or substitute the earlier Notifications, i.e. SO 92, SO 159; or SO 99.

15. This brings us to the ancillary issue, which, in fact, has become the main issue of the matter, that whether the order dated October 25, 2010 passed by the Assessing Authority, i.e., Assistant Commissioner of Commercial Taxes, Gopalganj Circle, Gopalganj, as also the order dated September 30, 2011



passed by the Revisional Authority, i.e., Commissioner of Commercial Taxes, Bihar, Patna are in accordance with the statutory provisions and more specifically the Notifications issued thereunder and in particular SO 92; SO 99 or SO 159.

16. According to Shri Y.V. Giri, learned Senior Counsel for the petitioner, the petitioner is dealing with the goods specified in paragraph-16 of the petition, which is reproduced herein below: -

1. Boiler Casing And Structure
2. Boiler Distribution Header
3. Boiler Duct Support
4. Boiler Gas Duct
5. Boiler Panel
6. Boiler Roof Tube Support, Ref, Holder
7. Boiler Stocker Hopper
8. Boiler Stocker Hopper, Gas Duct
9. Boiler Super Heater Coil
10. Boiler Superheater Elements
11. Boiler Superheater Header
12. Boiler Upper Drum Internals
13. Chock For Tube Light
14. M.S. Pipe
15. Paint
16. Panel
17. PVC Cables
18. PVC Copper Wire
19. Ruled Paper



20. Ruled Register
21. Switch Flush Type 5A
22. Switch Rotary
23. Transformer Oil
24. S.S. Pipe
25. S.S. Plate
26. Duplicate Book
27. Register
28. Mill Roll Oil IV
29. Plastic Sheet White
30. Air Conditioner
31. PVC Insulated Cables
32. Polythene Sheets.

17. It is a settled principle of law that fiscal statutes need to be interpreted and applied strictly and the benefit of doubt, if at all, would enure in favour of the assessee. However, it is equally settled that if the assessee is liable to be subjected to incidence of taxation, then he must abide by and be dutiful in paying the tax, expeditiously, and in accordance with law.

18. Upon perusal of the impugned assessment order dated August 25, 2011 passed by the Assistant Commissioner of Commercial Taxes, Gopalganj Circle, Gopalganj, which according to Shri Vikash Kumar, the learned counsel for the Revenue, is not placed fully on record, we notice that the same was passed in the absence of the assessee and was ex parte in



nature. We also notice that total demand computed along with the amount of penalty is running into lakhs of rupees and that the petitioner filed a revision application assailing the said order and none of the contentions raised by the petitioner vide his application (Annexure-7) as also placed before the Revisional Authority dealt with.

19. Petitioner is engaged in the business of manufacture and sale of sugar, processed by vacuum Pan Process. For producing the same, the petitioner has imported certain goods in the shape of hardware, etc. Whether each one of the items, so imported by him, are actually covered in the prescribed schedule or not is something which is not reflective from the orders passed by the Assessing Officer as also Revisional Authority. It is true that petitioner has not placed the entire order passed by the Assessing Officer, but then even from the material which is placed before us, it can be easily gathered and more particularly the order at page-75 placed on record, which is detailed in nature, that the Assessing Officer has specifically not dealt with any one of the objections raised by the petitioner, though the order is ex-parte in nature. This order at page-75 runs into four pages. It pertains to the years 2006-07 but it does not even refer to the description of the goods, much less showing how it is covered



under the schedule of the Notification.

20. To us, the order appears to have been passed without proper application of mind. Even the order passed by the Revisional Authority, running into one and a half pages, to say the least, is cryptic in nature, not even referring to, much less dealing with the contentions raised by the petitioner.

21. As such, we quash and set aside the impugned order dated October 25, 2010 passed by the Assistant Commissioner of Commercial Taxes, Gopalganj Circle, Gopalganj, the order dated September 30, 2011 passed by the Commissioner of Commercial Taxes, Bihar, Patna and the consequential demands raised pursuant thereto with the following directions:-

- a. The Assessing Officer shall pass a fresh order with respect to the assessment in issue, i.e., assessment years 2006-07 and 2007-08;
- b. Since the matter is old, we direct that such proceedings be conducted expeditiously, and on day-to-day basis;
- c. We direct the petitioner to make itself available through an authorized representative in the office of the Assessing Officer on October 14, 2020;
- d. Assessing Officer shall afford opportunity to the assessee to place additional material, if so desired and required, which shall positively be done within a period of two



weeks thereafter;

- e. Petitioner undertakes to co-operate and not take any unnecessary adjournment;
- f. Assessing Officer shall positively pass a fresh order within a period of two months from today;
- g. We clarify that the issue of the validity of the Act shall not be subject matter of adjudication as it stands concluded;
- h. Needless to add, the amount deposited by the petitioner shall be adjusted against the demands which may be raised pursuant to the fresh order which the Assessing Officer shall pass. And in the event of any amount found to have been paid in excess by the petitioner shall be refunded within a period of three months, subject to the proceedings attaining finality.

22. No other submission was made on behalf of either of the parties.

23. The writ petition stands allowed in the above terms.

24. Interlocutory Application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	11.10.2020
Transmission Date	

