IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1434 of 2010

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M/s Patwari Forgings Pvt.Ltd. a Company incorporated under the provisions of Companies Act, 1956 having its Registered Office situated at 6A, Rajendra Nagar, P.S. Kadankuan, District- Patna through one of its Directors, Subhash Kumar Patwari, S/o Late S.N. Patwari resident of 6A, Rajendra Nagar, P.S. Kadam Kuan, Dist. Patna

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Old Secretariat, Bailey Road, Patna
2. The Principal Secretary-cum-Industrial Development Commissioner Vikash Bhavan, Bailey Road, Patna
3. The Principal Secretary-cum-Commissioner of Commercial Taxes Bihar, Patna
4. The Dy. Commissioner of Commercial Taxes Patliputra Circle, Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.D.Sanjay, Advocate
	:	Mr. Gautam Kajriwal, Advocate
	:	Mr. Sushila Agrawal, 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

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

> "(i)For a declaration that the Respondent-State Government in the garb of the provisions of the Bihar VAT Act, 2005 cannot resile from its promise made under the Industrial Policy Resolution, 1995 for granting & continuing with the exemption from payment of Sales-tax on purchase of Raw Materials & on sale of Finished Products to the extent in respect of quantum/amount made in the Industrial Policy, and cannot withdraw the same before completion of the period for availing the amount of exemption ;

(ii) For a direction to the Respondents to fulfill its solemn promise made by the Industrial Policy Resolution, 1995 in any other form which suits to the Respondent-State as they are allowing the benefit of exemption promised to the New Industrial Units by the Industrial Policy, 2006 without contravening any provision of any Act including the Bihar **VAT** Act, 2005 ;
(iii) For a direction to the Respondents to take appropriate measure in terms of the Industrial Policy, 1995 read with 2006 wherein the Respondent State Government has again made similar promise to attract the Entrepreneurs for granting exemption from payment of Sales-tax on purchase of Raw Materials & sale of Finished Products by providing for refund of the amount through the Industries Department ;
(iv) For a direction to respondents to refund the amount of tax realized on purchase of raw material and the amount realized as **VAT** from the entrepreneurs like the Petitioner on sale of Finished Products covered by the Industrial Policy and the Notification issued thereunder ;
(v) For a declaration that the so called alternative provided in Section 96[3][b] of the Bihar Value Added Tax Act, 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 ;
(vi) For restraining the Respondents-Sales-tax Authorities from raising demand of tax on sale of Products of the Petitioner by the Dealers for exemption period covered by the Exemption Certificate ;
(vii) For a declaration in alternative that the provisions of Bihar Value Added Tax Act, 2005 vide Act No. 27 of 2005 published in the official gazette on 23.6.2005 cannot nullify & take away the vested rights accrued to the Petitioner with retrospective effect [before expiry of the period/Quantum] for exemption from payment of Sales-tax on purchase of Raw Materials & sale of Finished Products under the Notification- S O No.:478 & 479 dt. 22.12.1995 issued under the Industrial Policy, 1995 as such provision will be ultra vires the provisions of the Constitution of India ;
(viii) For a declaration that the provision of the Bihar Value Added Tax Act, 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 ;
(ix) For a declaration that Section 96[3][b] of the Bihar Value Added Tax Act, 2005 to the extent it denied the exemption from payment of Sales-tax on sale of Finished Products, the un-availed remaining period/quantum is arbitrary, and cannot sustain in the eyes of law arbitrary & discriminatory ;
(x) For a declaration that Section 94 of the Bihar Value Added Tax Act, 2005 to the extent it repeals the right & privileges acquired & accrued on the basis of the Bihar Finance Act, 1981, Notification issued there under and granted under the Industrial Policy Resolution as being arbitrary, discriminatory and opposed to the doctrine of promissory estoppel **;&**
(xi) For a declaration to read down the provisions of the Bihar Value Added Tax Act, 2005 and to allow the Petitioner to avail the benefit of exemption for the remaining period in terms of the Government Notification-S O N.:479 dt. 22.12.1995 ; and for any other relief[s] for which the Petitioner may legally be found entitled to in the facts of the present case."

Learned counsel for the petitioner 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, petitioner 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 petitioner 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 petitioner 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
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