

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.898 of 2010

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Upper Ganges Sugar and Industries Prop. Of Hasanpur Sugar Mills, P.O-
Hasanpur Sugar Mill And Distt- Samastipur Bihar Through Its Assistant Vice
President Finance, Manoj Prasad S/O Shri Birendra Prasad Holder Of Power
Of Attorney On Behalf Of The Company.

... .. Petitioner/s

Versus

1. The State Of Bihar and ors Through Its Special Secretary, Department Of
Law, Govt. Of Bihar
2. The Commissioner Of Commercial Taxes Cum Principal Secretary To
Government Finance Commercial Taxes Department, Govt.Of Bihar, New
Secretariat, Vikas Bhawan, Bailey Road, Patna
3. The Deputy Commissioner Of Commercial Taxes, Samastipur Circle,
Samastipur
4. The Assistant Commissioner Of Commercial Taxes, Samastipur Circle,
Samastipur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ramesh Kumar Agrawal, Adv
For the Respondent/s : Mr. Vikash Kumar SC-11.

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(The proceedings of the Court are being conducted through Video
Conferencing and the Advocates joined the proceedings through Video
Conferencing from their residence.)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 31-08-2020

Heard learned counsel for the petitioner and learned
counsel for the respondents.

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

"(i) To declare the Bihar Tax on Entry of goods
into local areas for consumption, use or sale therein
(Amendment and Validation) Act, 2008(Act No. 13 of
2008) dated 15.04.2008(hereinafter referred to as 'the
Amendment and Validation Act, 2008' only) as
contained in Annexure-7 as ultra vires Articles 14, 19(1)



(g), 246, 301 and 304 of the Constitution of India.

(ii) To quash notification bearing No. S.O. 95 dated 31.07.2008 (Annexure-8) issued under Section 3(1) of the Bihar Tax on Entries of Goods into the Local Areas for consumption, use or sale therein Act, 1993, by which rates of entry tax have been fixed for the scheduled goods mentioned in 26 entries from 2% to 16% on their entry into a local area for consumption, use or sale therein for the purpose of development of trade, commerce and industries in the State of Bihar.

(iii) For issuance of an appropriate writ(s) or order(s) or direction(s) to the respondents for restraining them from making any demand of entry tax from the petitioner sugar mill on the purchases made by them.

(iv) For issuance of appropriate writ, order or direction for refund of the entire amount of entry tax recovered from the petitioner along with reasonable rate of interest."

The present petition was tagged along with other cases of similar nature and listed for hearing before different Benches from time to time.

In effect, the petitioner challenged the Constitutional validity of different provisions of the Bihar Tax on Entry of Goods into Local Area for Consumption, Use or Sale Therein Act, 1993, as amended from time to time.

It is a matter of record that Hon'ble the Apex Court vide judgment dated 14th of July, 2006 passed in Civil Appeal No. 3453 of 2002, titled as **M/S. Jindal Stainless Ltd. & Anr. Vs. State Of Haryana And Ors** had permitted the parties, before the Supreme Court, to place within two months additional



material in the concerned writ petitions.

In most of the cases, such an additional material was not placed by the parties, perhaps for the reason that the issue decided in terms of the said judgment was pending consideration before a Larger Bench of Hon'ble the Apex Court.

Subsequently, a Constitution Bench (Nine Judges) of the Hon'ble Apex Court in the case of **Jindal Stainless Limited & Another Vs. State Of Haryana & Others**, reported in (2017) 12 SCC 1, after examining the correctness of the decision rendered in the case of **Jindal Stainless Ltd. and another Vs. State of Haryana and others**, reported in (2006) 7 SCC 241 has observed as under:

“1159. By majority the Court answers the reference in the following terms:

1159.1. Taxes simpliciter are not within the contemplation of Part XIII of the Constitution of India. The word “free” used in Article 301 does not mean “free from taxation”.

1159.2. Only such taxes as are discriminatory in nature are prohibited by Article 304(a). It follows that levy of a non-discriminatory tax would not constitute an infraction of Article 301.

1159.3. Clauses (a) and (b) of Article 304 have to be read disjunctively.

1159.4. A levy that violates Article 304(a) cannot be saved even if the procedure under Article 304(b) or the proviso thereunder is satisfied.

1159.5. The Compensatory Tax Theory evolved in Automobile Transport case and subsequently modified in Jindal's case has no juristic basis and is therefore rejected.

1159.6. The decisions of this Court in Atiabari, Automobile Transport and Jindal cases and all other judgments that follow these pronouncements are to the extent



of such reliance overruled.

1159.7. A tax on entry of goods into a local area for use, sale or consumption therein is permissible although similar goods are not produced within the taxing State.

1159.8. Article 304 (a) frowns upon discrimination (of a hostile nature in the protectionist sense) and not on mere differentiation. Therefore, incentives, set-offs etc. granted to a specified class of dealers for a limited period of time in a non-hostile fashion with a view to developing economically backward areas would not violate Article 304(a). The question whether the levies in the present case indeed satisfy this test is left to be determined by the regular Benches hearing the matters.

1160. States are well within their right to design their fiscal legislations to ensure that the tax burden on goods imported from other States and goods produced within the State fall equally. Such measures if taken would not contravene Article 304(a) of the Constitution. The question whether the levies in the present case indeed satisfy this test is left to be determined by the regular Benches hearing the matters.

1161. The questions whether the entire State can be notified as a local area and whether entry tax can be levied on goods entering the landmass of India from another country are left open to be determined in appropriate proceedings.”

Perhaps, the only surviving issue requiring consideration by this Court is the one pointed out in Paragraph 1161, reproduced supra.

However, after the matter was heard for some time, we find the record to be totally silent on facts or grounds with regard thereto. No doubt, the issue is purely legal. But even the relevant provisions of the Statute claimed to be ultra vires are not on record and the reason is not far to seek for the petition was filed way back in the year, 2010 and the Legislation was



amended/enforced subsequently. That apart, even during the course of hearing we found absolute incoherence with regard thereto.

As such, we are of the considered view that petitioner shall file a fresh petition placing on record not only the specific legislation or part thereof, constitutional validity whereof he wish to challenge, as also specify the grounds, in addition to the one reproduced supra.

This petitioner is permitted to do so within a period of 12 weeks on the same and subsequent cause of action. As and when such petition is filed, the same shall be considered for hearing on priority basis.

Learned counsel for the petitioner invites our attention to the interim order dated 04.02.2010 and prays that the same to be made absolute, infinality.

We are not inclined to allow such a prayer. However, since we permit the petitioner to file an exhaustive petition on the same and subsequent cause of action, the such interim order(s) would continue for a further period of 12 weeks, within which, a fresh petition be filed. We clarify that if such a petition is not filed within 12 weeks and mentioned for early listing, the interim order(s) shall automatically stand vacated, without any



further reference to this Court.

Petition stands disposed of in the aforesaid terms.

Interlocutory Application, if any, shall stand disposed
of.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.10.20
Transmission Date	NA

