

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.395 of 2007

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M/S Progressive Construction Ltd., a company incorporated under the provisions of the Companies Act, 1956 having its registered office at 42, Bibiganj, NH-28, Bhagwanpur Chawk, P.S.- Muzaffarpur, Town and District-Muzaffarpur through its Administrative Officer, Satyendra Roy, son of Shri Ram Naresh Roy, resident of Bibiganj, P.S.-Muzaffarpur, District-Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Law, Government of Bihar, Old Secretariat, Patna.
2. The Commissioner Commercial Taxes, Government of Bihar, Vikash Bhawan, Bailey Road, Patna.
3. The Dy. Commissioner of Commercial Taxes, Muzaffarpur Circle, Muzaffarpur.
4. The Assistant Commissioner of Commercial Taxes, Gopalganj Circle, Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Purnendu Singh, Advocate Ms. Pronoti Singh, Advocate Mr. Dhananjay Kumar Shahi, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, S.C. 11

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

Date : 31-08-2020

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

“a) For holding and declaring that the provisions of “Bihar Tax on Entry of Goods into Local Area for consumption, use of sale therein Act, 1993” as amended upto date ultra virus the constitution and also not in conformity with the recent judgment of the Apex Court in Case of M/s Jindal Stainless Ltd. and Another Versus State of



Haryana and others reported in (2006) 7 SCC 241.

b) For issuance of appropriate writ(s), direction(s), order(s) holding that amendment brought by Bihar Finance Act, 2006 giving retrospective effect is an encroachment upon power of judiciary and a colourable piece of legislation.

c) For declaring amendments made in the Act 10 of 201, Act 9, 2003 and Act 19, 2006 without previous sanction of the Hon'ble President makes the provisions ultra virus Article 304 (a) and (b) of the Constitution of India.

d) For declaring "Bihar Tax on Entry of Goods into Local Area for consumption, Use or Sale therein Act, 1993" as amended upto date cannot be termed as "a Compensatory Tax and is ultra virus Article 14, 19(1)(g) and 301 Constitution of India.

e) For quashing the notice dated 23.10.2006 contained in process No. 1878 dated 16.10.2006 under the signature of Deputy Commissioner of Commercial Taxes as being wholly without any authority of law and contrary to the judgement of the Apex Court.

f) For restraining the respondents to proceed in furtherance of inspection dated 11.11.2006 and 21.11.2006 from taking any coercive action for realization of the entry Tax from the petitioner's company.

g) For issuance of any other appropriate writ(s), direction(s) order(s) as this Hon'ble court may



deed fit and proper.”

The present petition was tagged along with the 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. (2) 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*³ and subsequently modified in *Jindal's case*⁸ has no juristic basis and is therefore rejected.

1159.6. The decisions of this Court in *Atiabari*², *Automobile Transport*³ and *Jindal*⁸ 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 2007 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 each one of the petitioners file a fresh petition placing on record not only the specific legislation or part thereof, Constitutional validity whereof they wish to challenge, as also specify the grounds, in addition to the one reproduced supra.

This they are permitted to do so within a period of eight weeks on the same and subsequent cause of action. We notice that there are no interim orders in favour of the petitioner.



As and when such petition is filed, the same shall be considered for hearing on priority basis.

Petition stands disposed of in the aforesaid terms.

Interlocutory Application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

sujit/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

