

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7164 of 2015

M/s Global India Marketing Co. a proprietary concern having its office at Rajendra Chowk. Hazipur, P.O. and P.S. Hazipur, District - Vaishali through its proprietor Ramesh Kumar Chaurasia son of Shri Ram Khelawan Prasad Chaurasia, Resident of Gudri Road, P.O. and P.S. Hazipur, District Vaishali.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary-Cum-Commissioner of Commercial Taxes, Bihar Patna having it's office at Vikas Bhawan, Patna.
2. The Deputy Commissioner of Commercial Taxes (Incharge) Hazipur Circle, Hazipur.
3. The Commercial Taxes Officer, Hazipur Circle, Hazipur having it's office at Hazipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Prakash Chandra Agrawal
For the Respondent/s : Mr.Lalit Kishore (AG)

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

Date : 09-09-2020

The petitioner has prayed for the following relief(s):-

- “(i) For holding and a declaration that the notification bearing S.O. No. 95 dated 31.07.08 to the extent it prescribes chargeability of 8% of Entry Tax against import of electrical goods and other such items vide its Entry 17 is illegal, ultra vires and violative of section 3 (2) 2nd proviso to the Bihar Tax on Entry of Goods Into Local Areas For Consumption, Use or Sale Therein Act 1993 (hereinafter referred to as “the Bihar Entry Tax Act” for short)
- (ii) For holding and a declaration that the notification bearing S.O. No.95 dated 31.07.08 in so far as it seeks to prescribe levy of 8% Entry Tax against import of Electrical goods into the State of Bihar



defeats the very scheme of set off against tax liability under the Bihar Valued Added Tax Act 2005 (hereinafter referred to as “the Bihar VAT Act” for short) and as such results in additional tax burden to be borne directly by the dealers contrary to the nature and characteristic of indirect taxation:

- (iii) For holding and a declaration that the notification bearing S.O. No.95 dated 31.07.08 in so far as it seeks to prescribe levy of 8% Entry Tax against import of Electrical goods into the State of Bihar is ultra vires the Constitution of India being violative of article 301 and 304;
- (iv) For holding and a declaration that the notification bearing S.O. No.95 dated 31.07.08 in so far as it seeks to prescribe levy of 8% Entry Tax against import of Electrical goods into the State of Bihar as against the prescribed rate 4% of tax to be levied and recovered by the dealers under Bihar VAT Act falsifies the statutory assurance made in 2nd proviso to section 2(3) of Bihar Entry Tax Act;
- (v) For holding and a declaration that the notification bearing S.O. No.95 dated 31.07.08 in so far as it seeks to prescribe levy of 8% Entry Tax against import of Electrical goods into the State of Bihar as against Bihar VAT leviable @ 4% on point of sale deserves to be struck down in light of the law settled by this Hon’ble Court in Food Corporation of India Vrs. The State of Bihar & Others reported in 2008 (2) PLJR page 689 and United Breweries Ltd. Vs. The State of Bihar and Others reported in 2004 (3) PLJR page 305;
- (vi) For quashing of the ex-parte order dated 26.08.14 passed by the respondent Commercial Taxes Officer, Hazipur Circle, Hazipur whereby the petitioner has been assessed for the financial year 2010 – 11 on the basis of audit objection raised by the Accountant General Bihar on grounds of short payment of Entry tax by the petitioner @ 4% against scheduled rate of 8% and for quashing of the consequent demand notice dated 27.08.14 issued by the said respondent calling upon the petitioner to deposit a sum of



Rs.37,24,974/- on account of entry tax liability under the Bihar Entry Tax Act:

- (vii) For any other relief or reliefs to which the petitioner is found and title in the facts and circumstances in this case.”

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* 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, 2015 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. 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 11.05.2015 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 eight weeks, within which, a fresh petition be filed. We clarify that if such a petition is not filed within eight 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)

B.Kr./-

AFR/NAFR	
CAV DATE	
Uploading Date	18.09.2020
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