IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 7855 of 2015

==

Rajiv Kumar Tandon S/O- Late Onkar Nath Tandon Proprietor- M/s Rajiv Trading Corporation, -Exhibition Road, Raja Market, P.S- Kotwali, District- Patna

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner-Cum-Secretary, Vikash Bhawan, Patna
2. The Assistant Commissioner of Commercial Tax, West Circle, Near Gandhi Maidan, Patna.

... ... Respondent/s

==

Appearance :

For the Petitioner/s : Mr.Krishna Mohan Mishra, Advocate
For the Respondent/s : Mr.Lalit Kishore (A.G.)
Mr. Vikash Kumar (SC 11)

==

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)To issue appropriate writ to quash the notification contained in S.O. No- 95 dated 31.07.2008 issued under Entry Tax Act with respect to Electrical Goods as the rate prescribed under entry tax for electrical goods is 8% however for the same goods the rate of levy of tax is 5% under VAT Act as such, the rate prescribed under entry tax act is discriminatory and violative of Article- 14, 19(1)(g), 301,303, and 304 of the constitution of India because by this notification the petitioner being importer of goods from the outside state have to pay excess rate of tax in comparison to the local dealer or person who manufacture and sale out the goods.
> (ii) To issue appropriate writ to quash the notice dated 12.02.2015 which contain in memo no. 23189 and 23190 for the assessment year 2011-12 and 2012-13 as being illegal, discriminatory and arbitrary as the notice has been issued on the basis of said notification dated

31.07.2008 wherein the respondent has made demand of 3% of difference of tax between Bihar Value Added Tax Act and Bihar Tax on Entry of Goods Act.
(iii) To hold and declare that the rate prescribed in entry tax act for the dealer whom import goods from outside state has created a separate class of dealer who have to pay excess tax in comparison to the dealer or person who manufactured and sale out the goods from local market as such the notification issued under section 3 is discriminatory and impose unreasonable restriction on freedom of trade and commerce as such the notification issued under section 3 is against the provision made under article 304 of the Constitution of India.
(iv) To issue writ/ writs, order/orders, direction/ directions as deem 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* 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 07.09.2015 and prays that the same to be made absolute, in finality.

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
Transmission Date	