IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9737 of 2012

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Barh Super Thermal Power Project, Barh (A unit of NTPC Ltd., a PSU), through its Deputy Manager (Finance) Shri Harjendra Singh, aged 40 years, S/O Late Karnail Singh, resident of C-14, Jagat Amarvati Apartment, Bailey Road, P.O. GPO & P.S. S.K. Puri, Dist. Patna

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner of Commercial Taxes, Bihar, Patna
3. The Joint Commissioner of Commercial Taxes (A.D.M.), Patna
4. The Assistant Commissioner of Commercial Taxes, In Charge, Barh

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Umesh Lal Verma
For the Respondent/s : Mr.Lalit Kishor Aag1

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

Date : 09-09-2020

Petitioner prays for following relief (s) : -

"a) For quashing Assessment Order under Entry Tax Act read with Section 25 of Bihar Vat Act, 2005 (referred to as the 'BVAT, 05' for the sake of brevity hereinafter) dated 21.03.2012 and Notice of Demand dated 23.03.2012 (Annexure-1 series), issued by the Assistant Commissioner of Commercial Taxes Incharge, Barh Circle, Barh (referred to as the 'ACCT, Barh' for the sake of brevity hereinafter) for payment of Entry Tax of Rs.21, 29, 99, 511/- on 26.03.2012 (within 3 days from receipt of notice of demand) without service of mandatory notice under sub Section 2 of Section 25 in Form III read with Rule 21 (3) being in violation of principles of natural justice and *ultra vires.*

b) For quashing the entire proceedings U/S 8 of Entry Tax read with Section 25 of Bihar Vat Act, 2005, being bad in law, for non-service of mandatory notice in Form N III as held by this Hon'ble Court in CWJC No.20438 of 2010 dated 5.04.2011 (Annexure-3).

c) For quashing notification by Act 12 of 2007 w.e.f. 29.08.2006 levying Entry Tax @ 8 % on '*Boilers and its parts etc.* including items under Section 14 of CST Act vide Serial 17 against the rate of 4 % prescribed under VAT Act being discriminatory fit to be struck down [Refer (2008) 13 VST 40 (Pat)]."

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.
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> 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, 2012 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.

Petition stands disposed of in the aforesaid terms.

Interlocutory Application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/chn/-

AFR/NAFR	
CAV DATE	
Uploading Date	18.09.2020
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