**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.11271 of 2005**

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M/S City Gold Metals Pvt. Ltd., a Company incorporated under the provisions of the Companies Act, 1956, having its Industrial Unit/Place of business situated at N.H. 31, Bye Pass Road, Belouri, Purnea through one of its Directors, Krishnaraj Gupta, S/O Shri Chakaravarty Prasad, 105, Om Raj Apartment, Jamal Road, Patna 800 001, P.S. Gandhi Maidan, District Patna 800 001

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Old Secretariat, Patna
2. The Secretary-cum-Commissioner of Commercial Taxes, Bihar, Vikash Bhawan, Bailey Road, Patna
3. The Secretary, Department of Industries, Government of Bihar, Patna, Vikash Bhawan, Bailey Road, Patna
4. The Joint Commissioner of Commercial Taxes (Admn.), Purnea Division, Purnea.
5. The Assistant Commissioner of Commercial Taxes, Purnea Circle, Purnea.

... ... Respondent/s

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**Appearance :**
For the Petitioner/s : Mr.S.D.Sanjay
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 : 26-08-2020**

Petitioner has prayed for following relief(s) :

"(i) For a declaration that the provisions of Bihar Value Added Tax Act, 2005 vide Act No.27 of 2005 published in the official gazette on 23.6.2005 cannot nullify & take away the vested rights accrued to the petitioner with retrospective effect (before expiry of the period/quantum) for exemption from payment of Sales-tax on sale of Finished Products under the Notification-S. O. No.479 dt. 22.12.1995 and Notification – S.O.No.57 dt. 02.03.2000 issued under the Industrial Policy, 1995 as such provision will be *ultra vires* the provisions of

the Constitution of India;
(ii) For a declaration that the provision of the Bihar Value Added Tax Act, 2005 to the extent it denies the benefit to the Industrial Units granted exemption in exercise of statutory power by the State Government to that extent, it will not be applicable in relation to Industrial Units enjoying the benefits promised by the State Government for the un-availed period;
(iii) For a declaration that Section 96[3][b] of the Bihar Value Added Tax Act, 2005 to the extent it denied the exemption from payment of Sales-tax on sale of Finished Products, the un-availed remaining period/quantum is arbitrary, and can not sustain in the eyes of law arbitrary & discriminatory;
(iv) For a declaration that Section 94 of the Bihar Value Added Tax Act, 2005 to the extent it repeals the rights & privileges acquired & accrued on the basis of the Bihar Finance Act, 1981, Notification issued there under and granted under the Industrial Policy Resolution as being arbitrary, discriminatory and opposed to the doctrine of promissory estoppel ;
(v) For a declaration to read down the provisions of the Bihar Value Added Tax Act, 2005 and to allow the petitioner to avail the benefit of exemption for the remaining period in terms of the Government Notification S.O.No.479 dt. 22.12.1995;
(vi) For a declaration that the Present Case is covered by the law laid down by this Hon'ble Court in the case of *Iris Electronic [India] Pvt. Ltd. Vs. State of Bihar & Ors.* reported in *2003(1) PLJR 509* wherein this Hon'ble Court held that the Sales-tax Department can not levy any tax on the goods manufactured by an Exempted Unit.
(vii) For restraining the Respondents-Sales-tax Authorities from raising demand of tax on sale of Products of the petitioner by the Dealers;
(viii) For a declaration that the *so called* alternative provided in Section 96[3][b] of the Bihar Value Added Tax Act, 2005 read with Rule

> 57 of the Bihar Value Added Tax Rules, 2005 i.e. option for deferment from payment of tax is arbitrary & discriminatory; and for any other relief(s) for which the Petitioner may legally be found entitled to in the facts & circumstances of the present case."

Learned counsel for the petitioner fairly concedes that with the passage of time, present petition has become infructuous inasmuch as there is change with respect to the position of law.

However, it is pointed out that with the enforcement of the new Enactment/Policy, petitioner alone stands discriminated inasmuch as the benefit of exemption from payment of tax stands conferred to twenty two Industrial Units and only petitioner has been left out.

This issue, in our considered view, can be agitated by the petitioner first with the appropriate authority and thereafter before the appropriate forum in accordance with law.

Liberty, as prayed for, is granted for such purpose.

We only hope and expect that as and when petitioner as also similarly situated person(s) approach the respondent authorities venting out their grievances of discrimination with regard to conferment of benefits under the relevant Statute/Policy, the same shall be considered and decided in accordance with law expeditiously and preferably within a period of three months thereafter.

Petition stands disposed of in the above terms.

Interlocutory Application, if any, shall stand disposed of.

**(Sanjay Karol, CJ)**

**( S. Kumar, J)**

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| **AFR/NAFR** | |
| **CAV DATE** | |
| **Uploading Date** | 02.09.2020 |
| **Transmission Date** | |