

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6206 of 2005

1. M/S Bhagwati Coke Industries Pvt. Ltd., a Company incorporated under the provisions of the Companies Act, 1956 having its place of business situated at Industrial Area, Aurangabad through one of its Directors, Shyam Kishore Prasad, S/O Late Deo Nandan Prasad, Resident of Urmila Villa, Mohalla Surya Mandir Road, P.O. & P.S. Town & District Aurangabad.
2. M/S Bhawani Coke Industries Pvt. Ltd., a Company incorporated under the provisions of the Companies Act, 1956 having its place of business situated at Bhupatipur, P.S. Sirish, District Aurangabad through its Managing Director, Sunil Kumar Singh S/O Late Ram Naresh Singh, Resident of Bhupatipur, P.S. Sirish, District Aurangabad.
3. M/S Maa Mundeshwari Carbon Pvt. Ltd. a Company incorporated under the provisions of the Companies Act, 1956 having its place of business situated at Bhairampur, P.O. Paharia, P.S. Bhagwanpur, District Kaimur at Bhabhua through one of its directors Manoj Kumar Singh, S/O Rajeshwar Prasad Singh resident of Bhairampur, P.O. Paharia, P.S. Bhagwanpur, District Kaimur.
4. M/S Jai Mangala Fuels Pvt. Ltd., a Company incorporated under the provisions of the Companies Act, 1956 having its place of business situated at Lakhi Bagh, Manpur, P.S. Gaya, District Gaya through its Managing Director, Ashok Kumar Singh, S/O Shri Babban Singh, Resident of Lakhi Bagh, Manpur, P.S. Gaya, District Gaya.

... .. 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 Asstt. Commissioner of Commercial Taxes, Aurangabad Circle, Aurangabad
5. The Dy. Commissioner of Commercial Taxes, Gaya Circle, Gaya
6. The Assistant Commissioner of Commercial Taxes, Bhabhua Circle, Bhabhua

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.S.D.Sanjay
For the Respondent/s : Mr.Sc4

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-08-2020



Petitioners have prayed for following relief(s) :

“(i) For a declaration that the provisions of Bihar Value Added Tax Ordinance, 2005 cannot nullify & take away the vested rights accrued to the petitioner with retrospective effect (before expiry of the period) for exemption from payment of Sales-tax on sale of Finished Products under the Notification-S. O. No.478 & S.O.No.479 both dt. 22.12.1995 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 Ordinance, 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 Ordinance, 2005 to the extent it denied the exemption from payment of Sales-tax on sale of Finished Products, the un-availed remaining period is arbitrary, and cannot sustain in the eyes of law arbitrary & discriminatory;

(iv) For a declaration that Section 94 of the Bihar Value Added Tax Ordinance, 2005 to the extent it repeals the rights & privileges acquired & accrued on the basis of the Bihar Finance Act, 1981, notification issued thereunder 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 Ordinance, 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.478 & S.O.No.479 both dt. 22.12.1995;

(vi) For a declaration that the provisions of the



Bihar Value Added Tax Ordinance, 2005 will not be applicable to the products of the petitioners till it reaches to the hands of the customers, and under the present ordinance no tax could leviale on the value addition on subsequent sale in absence of any provisions of deemed adjustment of the exempted portion of the tax amount;

(vii) 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.

(viii) For restraining the Respondents-Sales-tax Authorities from raising demand of tax on sale of Products of the Petitioner by the Dealers;

(ix) For a declaration that the *so called* alternative provided in Section 96[3][b] of the Bihar Value Added Tax Ordinance, 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)

chn/-

AFR/NAFR	
CAV DATE	
Uploading Date	31.08.2020
Transmission Date	

