IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16701 of 2007

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M/S DOMCO SMOKELSS FULES PVT. Ltd., a company incorporated under the Indian Companies Act, 1956, having its factory at Industrial Area, Aurangabad, Bihar, through its Director Shri Binay Prakash son of Ram Chandra Prasad, resident of 403, Commerce House, Sharda Babu Street, Ranchi, District- Ranchi (Jharkhand)

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner Commercial Taxes, Government of Bihar, Patna
2. The Commissioner Commercial Taxes, Government of Bihar, Patna
3. The Assistant Commissioner Commercial Taxes, Aurangabad Circle, Aurangabad.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raj Kishor Pd., Advocate
Mr. Tej Bahadur Roy, Advocate

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 prayed for the following relief(s):-

"i) To issue an appropriate writ/order/direction holding that provisions of Section 94(2)(c) and 96(3)(b) of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as 'the Act") are ultra vires to the Constitution of India to the extent, it takes away the vested right of the petitioner to avail the benefit of exemption from payment of sales tax on purchase of raw material and is also against the provisions of Constitution of India.

ii) To issue an appropriate writ/order/direction in the nature of writ of mandamus directing the respondents authorities to issue necessary statutory forms i.e Form (Ga) to the petitioner in order to avail the benefit of exemption granted to the petitioner from payment of Sales Tax on purchase of raw materials in terms of notification No.478 dated 22.12.1995 as also in terms of the

Industrial Incentive Policy,1995.

iii) To issue an appropriate writ/order/direction holding that provisions of the Act will not take away vested right of the petitioner to avail the benefit of exemption from payment of Sales Tax on purchase of raw material as have been held by this Hon'ble Court in the case of the petitioner earlier as the provisions of the Act will not be made applicable in the State of Jharkhand from where the petitioner has to purchase its raw material and even the Value Added Tax has not been adopted by the State of Jharkhand.

iv) To any other relief or reliefs for which the Petitioner is entitled."

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)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	27.08.2020
Transmission Date	