

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18122 of 2008

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M/s Manokamna Food Products, Raxaul, a Unit of M/s Ambey Agro Industries Ltd., a Company incorporated under the provisions of the Companies Act, 1956 having its Industrial Unit situated at P.O., P.S. & Town & District – Raxaul, District East Champaran through one of its Directors Amit Agrawal, S/o Shri Satya Narain Agrawal, Resident of 237A, Patliputra Colony, P.S. Patliputra Colony, P.S. Patliputra District - Patna

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary-cum-Commissioner of Commercial Taxes, Government of Bihar, Vikash Bhawan, Bailey Road, Patna
2. The Assistant Commissioner of Commercial Taxes, Raxaul Circle, Raxaul

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. S. D. Sanjay, Sr. Advocate Mr. Mohit Agrawal, Advocate Ms. Parul Prasad, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC 11

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

Date : 18-11-2021

Heard learned counsel for the parties.

The petitioner has prayed for the following relief/s :-

“i) For a declaration that the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein [Amendment & Validation] Act, 2008 [Act No. :13/2008 dt. 15.04.2008] [Annexure-10] being enforced with retrospective effect from 29.08.2006 as *ultravires* Articles 14, 19(1) (g), 246, 301 & 304 of the Constitution of India;

ii) For a declaration that the rate of Entry-tax on any of the Scheduled Commodities to the extent exceeding the Rate of Bihar VAT is discriminatory and the Notification -S O No.95 dt. 31.07.2008



prescribing the rate on wheat being 4 % against the Rate of Wheat under the Bihar VAT being 1% is liable to be declared to be ultravires;

iii) For quashing of the Notification- SO No.95 dt. 31.07.2008 [Annexure-11] issued u/s 3(1) of the Bihar Tax on Entries of Goods into the Local Areas for consumption, use or sale therein Act, 1993, and being enforced with retrospective effect from 01.04.2008, by which rates of entry tax have been fixed for the scheduled goods from 2% to 16% on their entry into a local area for consumption, use or sale therein for the purported purpose of development of trade, commerce and industries in the State.

iv) For issuance of an appropriate writ(s) or order(s) or direction (s) to the respondents for restraining them from making any demand of entry tax from the Petitioner pursuant to the notice of demand dt. 20.09.2007.

v) For issuance of an appropriate writ(s) or order(s) or direction(s) to the respondents for restraining them from making any demand of entry tax from the Petitioner on the import of Wheat in the local areas of the State of Bihar; and for any other relief(s) for which the Petitioner may legally be found entitled to in the facts & circumstances of the present case.”

The dispute primarily pertains to the period of six months, i.e., October, 2006 to March, 2007.

In our considered view, the matter can be put to rest in view of the order dated 29th of August, 2017 passed by Hon’ble the Apex Court in *Civil Appeal No(s).1179/2017 (arising out of SLP (C) No.10694 of 2007* titled as *State of Bihar Vs. The Food Corporation of India*, which is reproduced hereinunder, in toto :-

“Leaved granted.



A perusal of the judgment of the High Court indicates that it has allowed the writ petition of the respondent/assessee herein on two grounds, which are as under :

1) the tax was non-discriminatory in nature and violative of the provisions of Article 304 (b) of the Constitution of India inasmuch as previous sanction of the President of India was not taken; and

2) vide Notification No. SO 34 dated 01.04.2006, paddy, rice, wheat, pulses, flour, atta, maida, suji and besan were added at Serial No. 25 of the Schedule and on the same date vide another Notification bearing No. SO 32, in exercise of the power under Section 3(1) of the Bihar Entry Tax the rate of entry tax on paddy, rice, wheat was fixed at 4% of their value. As on that date sales tax on paddy, rice, wheat was 1%.

On that basis, the High Court held that the aforesaid SO 32 is discriminatory in nature.

Insofar as the finding of the High Court that the Act is violative of provisions of Article 304(b) of the Constitution is concerned, the same stands overruled by a Nine Judge Bench judgment of this Court in the case of *Jindal Stainless Steel vs. State of Haryana* reported in 2016(11) SCALE 1. To this extent the judgment of the High Court is set aside.

Insofar as the second issue holding SO 32 dated 01.04.2006 in respect of paddy, rice and wheat for the period 01.04.2006 to 30.06.2006 as discriminatory is concerned, we do not find any error. The findings on issue no. 2 are accordingly upheld. The appeal is accordingly allowed.”

Noticeably, a coordinate Bench of this Court vide judgement dated 24th of January, 2007 rendered in CWJC No. 11787 of 2006, titled as *Food Corporation of India Vs. The State of Bihar & Ors.*, had struck down the action initiated by the respondent, in recovering the amount in excess of the rate



fixed under the Bihar Value Added Tax Act, 2005.

As such, the petition is allowed. The Respondents cannot charge and petitioner is not liable to pay any amount in excess of what stands ordered by this Court as affirmed by Hon’ble the Apex Court.

Interlocutory Application(s), if any, stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	22.11.2021
Transmission Date	

