IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.785 of 2021

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Food Corporation of India Regional Office, Exhibition Road. Patna through its General Manager, (Bihar Region)

... ... Petitioner/s

Versus

1. The State of Bihar Through its Chief Secretary Bihar
2. The Commissioner of Commercial Taxes, Bihar, Vikash Bhawan, Patna.
3. The Deputy Commissioner of Commercial Taxes, Pataliputra Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sachida Nand Kishore Pd. Sinha, 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 : 01-12-2021

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

For holding and declaring section 2 of the Bihar Entry Tax (amendment and validating of the Act) , 2008, (Act 13 of 2008) to be void and ultravires and of no consequence. and in consequence of quashing the order dated 22.02.2010 C.C(s) 74 in appeal case No S.T. P.R 34 of 2009-10 passed by the Joint Commissioner of commercial Taxes (Appeal), Central Division, Patna as void as based on a provision in the amendment Act aforementioned which is ultravires and void and further for quashing the order of assessment dated 17.02.2009 of the Assistant Commissioner of Commercial Taxes, Patliputra Circle, Patna for the period 2006-07 as void, totally illegal and without jurisdiction and holding and declaring that the applicant was not at all liable to pay entry tax during the period of Assessment. And now for quashing of Rate of Tax applied retrospectively and to hold that 4% rate of Entry Tax may not be more than rate of VAT Tax 1%/ Addl Tax which is discriminatory and violative of constitution.

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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.

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> 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/Sanjay

AFR/NAFR	
CAV DATE	
Uploading Date	02.12.2021
Transmission Date	

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