M/S Harinagar Sugar Mills Ltd Vs State Of Bihar And Ors

Civil Writ Jurisdiction Case No. 2744 Of 2008

Court: Patna High Court

Date of Decision: Aug. 31, 2020

Acts Referred:
Constitution Of India, 1950 â€" Article 14, 19(1)(g), 246, 301, 304, 304(a)

Citation: (2020) 08 PAT CK 0079

Hon'ble Judges: Sanjay Karol, CJ; S. Kumar, J

Bench: Division Bench

Advocate: Ramesh Kumar Agrawal, Vikash Kumar

Final Decision: Disposed Of

Judgement

The petitioner has prayed for the following relief(s):-

Ã¢â‚¬Å“(i) To declare the Bihar Tax on Entry of goods into local areas for consumption, use or sale therein (Amendment and Validation) Act, 2007 (Act

No. 12 of 2007) dated 19.04.2007 (hereinafter referred to as Ã¢â‚¬Ëœthe Amendment and Validation Act, 2007Ã¢â‚¬â„¢ only) (Annexure -14), as ultra vires

Articles 14, 19(1)(g), 246, 301 and 304 of the Constitution of India.

(ii) To issue writ of mandamus commanding the respondents not to enforce and apply the provisions of the Bihar Tax on Entries of Goods into the

Local Areas for consumption, use or sale therein Act, 1993 (Act No. 16 of 1993) (hereinafter referred to as Ã¢â‚¬Ëœthe Parent Act of 1993Ã¢â‚¬â„¢ only)

(Annexure -2) as amended by the Amendment and Validation Act, 2007 (Annexure Ã¢â‚¬" 14).

(iii) 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 sugar mill on the purchases made by them.

(iv) To any other relief or reliefs for which the petitioner is found entitled to in the facts and circumstances of the case.Ã¢â‚¬â€‹

The present petition was tagged along with the other cases of similar nature and listed for hearing before different Benches from time to time.

In effect, the petitioner challenged the Constitutional validity of different provisions of the Bihar Tax on Entry of Goods into Local Area for

Consumption, Use or Sale Therein Act, 1993, as amended from time to time.

It is a matter of record that HonÃ¢â‚¬â„¢ble the Apex Court vide judgment dated 14th of July, 2006 passed in Civil Appeal No. 3453 of 2002, titled as M/s.

JINDAL STAINLESS Ltd. & ANR. Vs. STATE OF HARYANA AND ORS. had permitted the parties, before the Supreme Court, to place within

two months additional material in the concerned writ petitions.

In most of the cases, such an additional material was not placed by the parties, perhaps for the reason that the issue decided in terms of the said

judgment was pending consideration before a Larger Bench of HonÃ¢â‚¬â„¢ble the Apex Court.

Subsequently, a Constitution Bench (Nine Judges) of the HonÃ¢â‚¬â„¢ble Apex Court in the case of JINDAL STAINLESS LIMITED & ANOTHER

VS. STATE OF HARYANA & OTHERS, reported in (2017) 12 SCC 1, after examining the correctness of the decision rendered in the case of

Jindal Stainless Ltd. (2) and another Vs. State of Haryana and others, reported in (2006) 7 SCC 241 has observed as under:

Ã¢â‚¬Å“1159. By majority the Court answers the reference in the following terms:

1159.1. Taxes simpliciter are not within the contemplation of Part XIII of the Constitution of India. The word Ã¢â‚¬Å“freeÃ¢â‚¬ used in Article 301 does not

mean Ã¢â‚¬Å“free from taxationÃ¢â‚¬â€‹.

1159.2. Only such taxes as are discriminatory in nature are prohibited by Article 304(a). It follows that levy of a non-discriminatory tax would not

constitute an infraction of Article 301.

1159.3. Clauses (a) and (b) of Article 304 have to be read disjunctively.

1159.4. A levy that violates Article 304(a) cannot be saved even if the procedure under Article 304(b) or the proviso thereunder is satisfied.

1159.5. The Compensatory Tax Theory evolved in Automobile Transport case3 and subsequently modified in JindalÃ¢â‚¬â„¢s case8 has no juristic basis

and is therefore rejected.

1159.6. The decisions of this Court in Atiabari2, Automobile Transport3 and Jindal8 cases and all other judgments that follow these pronouncements

are to the extent of such reliance overruled.

1159.7. A tax on entry of goods into a local area for use, sale or consumption therein is permissible although similar goods are not produced within the

taxing State.

1159.8. Article 304 (a) frowns upon discrimination (of a hostile nature in the protectionist sense) and not on mere differentiation. Therefore, incentives,

set-offs etc. granted to a specified class of dealers for a limited period of time in a non-hostile fashion with a view to developing economically

backward areas would not violate Article 304(a). The question whether the levies in the present case indeed satisfy this test is left to be determined by

the regular Benches hearing the matters.

1160. States are well within their right to design their fiscal legislations to ensure that the tax burden on goods imported from other States and goods

produced within the State fall equally. Such measures if taken would not contravene Article 304(a) of the Constitution. The question whether the

levies in the present case indeed satisfy this test is left to be determined by the regular Benches hearing the matters.

1161. The questions whether the entire State can be notified as a local area and whether entry tax can be levied on goods entering the landmass of

India from another country are left open to be determined in appropriate proceedings.Ã¢â‚¬â€‹

Perhaps, the only surviving issue requiring consideration by this Court is the one pointed out in Paragraph 1161, reproduced supra.

However, after the matter was heard for some time, we find the record to be totally silent on facts or grounds with regard thereto. No doubt, the issue

is purely legal. But even the relevant provisions of the Statute claimed to be ultra vires are not on record and the reason is not far to seek for the

petition was filed way back in the year 2008 and the Legislation was amended/enforced subsequently. That apart, even during the course of hearing

we found absolute incoherence with regard thereto.

As such, we are of the considered view that each one of the petitioners file a fresh petition placing on record not only the specific legislation or part

thereof, Constitutional validity whereof they wish to challenge, as also specify the grounds, in addition to the one reproduced supra.

This they are permitted to do so within a period of eight weeks on the same and subsequent cause of action. We notice that there are no interim

orders in favour of the petitioner. As and when such petition is filed, the same shall be considered for hearing on priority basis.

Petition stands disposed of in the aforesaid terms. Interlocutory Application, if any, shall stand disposed of.