

(2008) 11 PAT CK 0038
In the Patna High Court

Amba Carbonisation Pvt. Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 24-11-2008

Acts Referred:

Citation : (2008) 11 PAT CK 0038

Judgement

1. The petitioner is a Company incorporated under the provisions of the Companies Act. It set up a unit for manufacture of special smokeless fuel (for short, "SSF Coke") at Gidha, Koilwar, District Bhujpur. The industry is said to have been established by the petitioner pursuant to the industrial policy framed by the State of Bihar promising various types of incentives, inter alia, to the new industry. According to the petitioner, it has been granted tax exemption certificate from payment of sales tax on the sale of its finished product viz., SSF Coke under the notification dated 22nd December, 1995 issued in exercise of the power u/s 7(3) of the Bihar Finance Act, 1981 (for short, Act, 1981). That the coal/coke is a notified commodity under the provisions of Act, 1981 for the purpose of levy as well as tax is not in dispute. The exemption granted to the petitioner from payment of sales tax is for a period of ten years from the date of commencement of the production i.e. from 31-8-2000 to 31-8-2010.

2. The Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1993 (for short, "the Entry Tax Act") came into force in the year, 1993, Section 3 of the Entry Tax Act is a charging Section and it provide for tax on entry of scheduled goods into a local area for consumption, use or sale therein. The Entry Tax Act has been amended by Amending Acts in the years 2001, 2004 and 2006. That coal/coke is notified goods under the Entry Tax Act is also not in dispute. The petitioner claims that the raw-material i.e. coal imported from the collieries outside the State of Bihar by it for manufacture of SSF Coke cannot be subjected to the entry tax under the Entry Tax Act as the petitioner is exempted from payment of sales tax on its finished product i.e., SSF Coke. By means of this writ petition, the petitioner, therefore, has prayed for issuance of a direction to the sales tax authorities of State of Bihar not to charge any entry tax

from the petitioner on entry of coal imported by the petitioner from outside the State. The relief is principally founded on the notification dated 22nd of December, 1995 issued by the State Government of Bihar in exercise of the power conferred by clause (b) of Sub-section (3) of Section 7 of the Act, 1981 and the judgment of the Supreme Court in the case of Associated Cement Companies Ltd. Vs. State of Bihar and Others,

3. The Act, 1981 is an Act relating to levy of tax on the sale and purchase of goods in the State of Bihar. Section 3 of the Act, 1981 is the charging Section which, inter - alia, creates a liability of sales tax under the Act. The taxable event is the sales or purchase of goods. Section 7 empowers the State Government to exempt sales tax on sale of any goods or class or description of goods by issuing a notification subject to the conditions or restriction as may be deemed proper.

4. We deem it proper to reproduce the notification dated 22nd December, 1995, as it is, as this notification is the sheet-anchor of the petitioner's claim for exemption from the payment of entry tax. The notification dated 22nd December, 1995 reads thus:

S.O. No. 479 dated 22-12-1995 - In exercise of power conferred by the Clause (b) of Sub-section (3) of Section 7 of the Bihar Finance Act, 1981 (Bihar Act-5 of 1981) Part-I, the Governor of Bihar is pleased to specify that such New Industrial Units which commence their production between 1-9-1995 to 31-8-2000, and which had obtained Registration Certificate, and Tax Exemption Certificate in Form-Ka. Vi. (Bikri)-II after making an application in Form-Ka. Vi. (Bikri)-I annexed to this Notification before the competent authority under the appropriate law will on following terms & conditions be entitled for exemption from payment of sales-tax on sale of their finished products:

1.(a) New Industrial Units means-such Units which have started their commercial production in between 1st September, 1995 to 31st August, 2000; and such Industrial Units which have got License/Registration Certificate from the Competent Authority of the Industries Department/Industrial Area Development Authority/Directorate of Industries & Government of India;

(b) Merely by changing the Proprietorship or Firm's name, a Unit will not be deemed to be a New Unit";

(c) For the purpose of grant of exemption from payment of sales-tax, Industrial Unit means only such Unit which manufactured goods for sale, and for this purpose, meaning of "Manufacture" will be same as defined under Chapter-I of the Bihar Finance Act, 1981 (Part-1 of the Bihar Act 5 of 1981);

2. This facility will only be applicable to the following industries described under the category of "Thrust Industries" under Clause-15 of the Industrial Resolution Policy, 1995:

(i) Mineral Based Industries,

- (ii) Metal Industries,
- (iii) Engineering Industries,
- (iv) Energy Production & Connected Industries,
- (v) Non-conventional Energy,
- (vi) Telecommunication,
- (vii) Electronic/Computer
- (viii) Consumer Goods (Domestic)
- (ix) Plastic
- (x) Drugs & Medicines
- (xi) Leather
- (xii) Aquaculture,
- (xiii) Poultry Farming, Meat Processing etc. Animal Husbandry based,
- (xiv) Industries based on recycling of garbage and eco-friendly raw materials.
- (xv) Environmental Protection Industries,
- (xvi) Commercial/Industrial Forestation,
- (xvii) Health Services,
- (xviii) Food & Food Processing, Milk & Cow Processing
- Fruits & Vegetable Processing, Tissue Culture Processing, Seeds Processing
- Organic Processing & Production Agriculture Technology
- (xix) Agro Based Industries, Sugar, Alcohol & Molasses Cattle Feed Tea
- Plantation, Processing & Packaging Jute Paper, Flowery Culture
- (xx) Tourism

3. Benefit of tax exemption will only be available to those Units which have not opted for benefit of deferment from payment of tax. Once, an option is exercised, it cannot be changed.

4. This facility will not be available for Undertakings of the Central or State Government;

5. Benefit of exemption from payment of Sales-tax on sale of finished products will be available for a period of 10 years from the date of Production to the Units situated in Class-A Districts and for the period of 8 years to those Unit situated in Class-B Districts classified in Industrial Policy, 1995 or 300% of the Fixed Capital Investment made by the Communication, Computer, Software & Hardware & Electronic Industries mentioned in Clause 2 of this Notification and 150% of the

Fixed Capital Investment made by other industries whichever is achieved earlier;

6. Date of production means the date from which the Unit commences its actual commercial production in accordance with its Original Project for which it has been registered;

7.(a) The Certificate from the General Manager, District Industries Centre/ Managing Director, Industrial Area Development Authority will only be considered to be acceptable in relation to the date of production of the Small Scale Industries on which maximum investment up to Rs. 60.00 lac is made;

(b) The Certificate from the Director of Industries/Director, Technical Development, Department of Industries will be valid and acceptable in respect of the date of production of large & medium Industries;

(c) In case of any dispute in the date of production, the decision of the Director of Industries in case of Small Scale Industries and the decision of the Industries Development Commissioner in case of Medium and Large Industries will be acceptable as final;

8. It will be essential for availing this benefit that the building in which the Unit is situated belongs to the Owner/Entrepreneur under his own Ownership or any of the Partners or under the Owners of a Holding Company, if the Premises of the Unit has been taken on lease on which the Building is situated, then the benefit will be extended only if the lease is for the period not less than 15 years and is a Registered Lease in the name/favour and is a Registered Lease in the name/favour of the Proprietor/Partner or the Managing Director of the Company;

9. If the Electricity Connection is not in the name of Unit/Firm or Proprietor/ Partner/Holding Company, then the benefit of exemption from payment of Sales-tax will be admissible only when the Electricity Connection is transferred/ authorized in the name of its own unit/Proprietor of the Unit/any Partners or Managing Director or Holding Company;

10.(a) If the Unit is closed temporarily for a period of less than 6 months, and restarts production thereafter, it will continue to get the benefit of exemption from payment of Sales-tax, but this period will be calculated within applicable period;

(b) In case, any Industrial Unit has suspended the production for a period more than 6 months except for the reason of natural calamities or for the reason beyond the control of the Industrial Units, in respect of which the Director of Industries/Commercial Taxes Officer is satisfied then it will become disentitled for benefit of exemption from payment of Sales-tax from the date of suspension of production, but the Director of Industries/Commissioner of Commercial Taxes on behalf satisfied can allow the benefit for the remaining period;

11. The benefit of exemption from payment of Sales-tax will also be available to the Industrial Units undergoing for expansion/diversification/modernization, if the

Units commence production between 1-9-1995 to 31-3-2000 after undergoing expansion/diversification/modernization.

12. For the purpose of exemption in case of expansion/diversification/modernization, following conditions will have to be fulfilled:

(a) For the purpose of expansion/diversification/modernization, Additional Investment 50% or more of the Un-depreciated value of Fixed Capital Investment in the existing Unit has been made on the Plant & Machinery;

(b) As a result of expansion/diversification/modernization, the Incremental Production doesn't remain less than 50% of the Installed Capacity.

(c) The Unit undergoing expansion/diversification/modernization will have to submit its project before the commencement of work, in case of Small Scale Industrial Unit - to the General Manager, District Industries Centre, Managing Director, Industrial Area Development Authority & concerned Circle In-charge, Commercial Taxes Department, and in case of Medium & Large Scale Industrial Unit - to the Director, Director of Industries, Technical Development or Commissioner of Commercial Taxes, Bihar along with the details of the Proposed Additional Capital Investment within the fixed period and the proposal for expansion/diversification/modernization;

(d) The benefit of exemption will be admissible only to the extent of Incremental Production on the extended capacity consequent upon expansion/diversification/modernization in case a Unit has undergone expansion/diversification/modernization;

Under this part, Incremental Production means 2/3rd of the originally installed capacity or the maximum production during the past three years preceding the year of expansion/diversification/modernization, whichever is more in both;

In case the diversification, this facility will be admissible only in relation to such Commercial Goods which was not manufactured by the Unit prior to diversification;

(e) the benefit of exemption from payment of Sales-tax on expansion/diversification/modernization will be admissible only if along with the Incremental Production, the Original Production is also continued;

13. If any Unit by merely makes change in the name will not be considered to be a new Unit and the benefit under this policy will not be admissible to such Unit.

14. The owner of the Unit will be obliged to maintain separate accounts of sale and purchases for sale and purchase of goods.

15. The owner of the Unit will be obliged to produce the accounts relating to the sale on demand by the competent authority appointed u/s 9 of the Bihar Finance Act, 1981.

16. (i) The dealer claiming tax exemption under this Notification on the sale

subsequent to the sale made by the owner of the Unit will be required to obtain counter foil along with his return. He will also produce the Cash memo/Bill or invoice along with the purchase order, if any, relating to the purchase before the Assessing Officer as an evidence in support of his claim.

(ii) The dealer claiming exemption on tax on subsequent sale after sale by the Unit will be required to keep separate accounts for such goods.

(iii) The declaration mentioned in subclause (1) will be serially printed numbers and it will be issued from a book in bounded form and will be duly authenticated by the Commercial Taxes Officer of the concerned circle.

(iv) The dealer issuing the declaration form will maintain register serially containing date-wise details of the declaration forms, which will also contain the name of purchasing dealer, description of goods, quantity and price and it will also be authenticated by the Commercial Taxes Officer of the concerned circle.

(v) The declaration form will be signed by the owner of the Unit or his authorized representative.

17. Under this Notification, the Units eligible for exemption from payment of sales Tax is required to make an application along with necessary documents & evidences before the Competent Authority in the prescribed form within 60 days from the date of commencement of production or from the date of publication of this Notification in the Official Gazette, whichever is later. However, the delay up to 60 days can be condoned on showing reasonable cause;

18.(1) The interested Unit, for the purpose of exemption from payment of Sales tax will be required to file an application in the prescribed form in this Notification in the Circle of the Commercial Taxes (Finance) Department within whose jurisdiction, the Unit is situated;

(2)(a) The concerned Circle In-charge will cause an enquiry on the facts mentioned in the Application under the relevant provisions of the Bihar Finance Act, 1981;

(b) The concerned Circle Incharge either himself or through other Competent Authority will cause local inspection & enquiry made as he thinks fit & necessary;

(c) The Circle In-charge will pass an order regarding eligibility of the Unit for exemption from payment of sales-tax on the basis of the specification and the Report of the Local Enquiry, and will forward it along with the concerned documents to the Jt. Commissioner of Commercial Taxes (Admn) for his approval;

(d) The concerned Jt. Commissioner of Commercial Taxes (Admn.) of the Division on receipt of the Application will grant his approval immediately or will return back the same with necessary directions;

(e) On receipt of approval from the Jt. Commissioner of Commercial Taxes (Admn), the Circle In-charge will immediately issue a Certificate in favour of the

Unit or will dispose off the Application in accordance with the direction of the Joint Commissioner of Commercial Taxes (Admn);

(3) The Commissioner of Commercial Taxes, suo motu, in the interest of revenue, shall be empowered to review the order of the Circle In-charge Joint Commissioner of Commercial Taxes (Admn) or will pass necessary order;

19. The Competent Authority will be entitled to reject the Application of such Unit which does not fulfill the required condition mentioned in the Notification or does not provide necessary papers & evidence after granting reasonable opportunity of hearing;

20. The Government will have right to reconsider the exemption, at any point of time, and to amend any of the conditions or procedures.

(Bikri-Kar/U/3/95 (Part-3)) By order of the Governor of Bihar, S. Vijayaraghwan Commissioner of Commercial Taxes- cum-Special Secretary to Government, Bihar, Patna.

5. Although pleadings in the writ petition are not specific with regard to the application made by the petitioner before the competent authority for exemption, the date of commencement of production by the petitioner's unit and the issuance of tax exemption certificate but the Government counsel did not dispute before us that the petitioner's unit has been issued tax exemption certificate pursuant to the notification dated 22nd December, 1995, whereunder it is exempted from payment of sales tax on the finished products i.e. SSF Coke for the period from 31st of August, 2000 to 31st of August 2010.

6. The question that falls for our determination is: whether by virtue of and in the light of the exemption certificate from payment of sales tax having been granted to the petitioner for its finished products, namely, SSF Coke for the period from 31st August 2000 to 31st August, 2010, the petitioner is entitled to exemption from payment of entry tax on the coal imported by it from outside the State as raw-material for its finished products?

7. Section 3 of the Entry Tax Act is the charging Section which reads thus:

3. Charge of Tax.- (1) There shall be levied and collected a tax on entry of scheduled goods into a local area for consumption, use or sale therein at such rate not exceeding 20 per centum of the import value of such goods as may be specified by the State Government in a notification published in a official gazette subject to such conditions as may be prescribed;

Provided different rates for different scheduled goods and different local areas may be specified by the State Government.

Provided further, that if an importer claims that he imported goods notified under Sub-section (1) not for the purpose of consumption, use or sale, the burden of providing that the import was for purposes other than for consumption, use or sale, shall be on importer importing such goods and making such claim.

(2) The tax leviable under this Act shall be paid by every dealer liable to pay tax under Bihar Finance Act, 1981 or any other person who brings or causes to be brought into the local areas such scheduled goods whether on his own account or on account of his principal or taxes delivery or is entitled to take delivery of such goods on such entry:

Provided no tax shall be leviable in respect of entry of such scheduled goods effected by a person other than the dealer if, the value of such goods does not exceed 25 thousands in a year.

Provided further, that where an importer or scheduled goods liable to pay tax under the Act, becomes liable to pay tax under the Bihar Finance Act, 1981 (Bihar Act 5 of 1981) by virtue of sale of such scheduled goods, his liability to pay tax under the Bihar Finance Act, 1981 shall stand reduced to the extent of tax paid under the Act.

(3): The liability to pay tax on Scheduled goods shall only be at the point of first entry into a local area and any subsequent entry or entries into any other local area or areas of the said Scheduled goods shall not be subject to tax provided the subsequent importing dealer produces before the assessing officer the original copy of the cash memo, invoice, bill or challan issued to him by the dealer from whom he purchased or received the said Scheduled goods, and files a true and complete declaration in the Form and manner prescribed.

Provided that no tax shall be levied and collected in respect of any motor vehicle which was registered in any other State or Union Territory under the Motor Vehicles Act, 1988 for a period of fifteen months or more before the date on which it is registered in the State under that Act.

8. It needs no elaboration that entry tax is not a tax from sale of the goods. Its taxable incidence is entry of goods into local area for the purpose of sale, consumption or use. Sales-tax and entry tax are two distinct, different and separate form of taxes. Liability to pay sales-tax arises on sale or purchase of goods while on entry of goods into local area for purpose of sale, consumption or use, the liability to pay entry tax accrues. Save and except to the extent provision has been made for adjustment of payment of tax under the entry tax being adjusted against sales-tax or payment of sales tax to be adjusted against the payment under the Entry Tax Act, the liability of tax accrues on happening of the taxable event. However, the liability of sales tax as well as entry tax may be exempted by the State Government by issuing necessary notification in exercise of the power conferred on it by virtue of Section 7 of the Act, 1981 and Section 6 of Entry Tax Act. While granting such exemption, the State Government may also impose the terms and conditions and restrictions as may be deemed fit and proper. The exemption may be granted by the State Government to any class of dealers, persons or importers.

9. Section 6 of the Entry Tax Act reads thus:

6. Exemption from tax.- The State Government may by notification and subject to such conditions and restrictions as it may impose exempt from levy of tax any class of dealers, persons or importers.

10. The provisions of the Entry Tax Act and more particularly, Sections 3 & 6 would show that Section 3 of the Entry Tax Act creates liability of entry tax and that liability stands exempted only if the notification has been issued by the State Government in exercise of the power u/s 6 of the Entry Tax Act. That no notification by the State Government has been issued in favour of the petitioner u/s 6 of the Entry Tax Act from payment of entry tax on the goods imported by it from outside the State is admitted position. In other words, there is no exemption from levy or payment of entry tax exempting the petitioner from payment of entry of scheduled goods from outside into the State of Bihar for consumption and use by the petitioner.

11. Mr. S.D. Sanjay, counsel for the petitioner, however, relied upon the second proviso appended to Section 3(2) of the Entry Tax Act in support of his contention that petitioner is exempted from payment of entry tax on the entry of scheduled goods from outside the State of Bihar for its consumption and use by the petitioner. What is provided by second proviso appended to Sub-section (2) of Section 3 is that the liability to pay tax by an importer under the Act, 1981 shall stand reduced to the extent of tax paid under the Entry Tax Act. In other words, where importer of scheduled goods is liable to pay tax under the Entry Tax Act becomes liable to pay tax under the Act, 1981, the tax paid by such importer under the Entry Tax Act is adjustable against his liability to pay tax under the Act 1961. Second proviso appended to Sub-section (2) of Section 3 of the Entry Tax has no application to the present fact situation as the petitioner does not seek adjustment of entry tax against payment of sales tax. As a matter of fact, the petitioner's case is otherwise. The petitioner claims that since it is exempted from payment of sales tax by virtue of exemption given to it on its finished products i.e. SSF Coke it is not liable to pay entry tax for the coal purchased by it outside the State of Bihar for its use or consumption. We are afraid, this situation is not at all covered by second proviso appended to Sub-section (2) of Section 3.

12. The two words "exemption" and "adjustment" are quite distinct and separate. "Adjustment" is to set off or to approximate; settle. "Exemption" on the other hand presupposes existing liability for being freed by way of an exception. Exemption is a freedom from liability or from duty. Seen thus, the provision contained in second proviso appended to Section 3(2) of the Entry Tax Act means that the amount that has been paid by way of entry tax be settled against the sales tax liability under the Act, 1981. Thus, second proviso appended to Sub-section (2) of Section 3 is of no help to the petitioner. It is also important to bear in mind that by exemption of payment of sales tax to the petitioner, a privilege has been conferred upon the petitioner. The privilege extended under Act, 1981 cannot be extended on equity or otherwise unless it

has been so extended from payment of entry tax u/s 6 of the Entry Tax Act.

13. We may, now, refer to the decision of the Supreme Court in the case of Associated Cement Companies Ltd., upon which heavy reliance has been placed by the counsel for the petitioner. That was a case where the company had two manufacturing units, one at Sindri and another at Jhinkpani. Both the units were part of the State of Bihar prior to its bifurcation on 15th November, 2000. After re-organization, both these units have fallen in the State of Jharkhand. These units were registered under the Bihar Finance Act as well as the Entry Tax Act. In the year, 1995, the State Government of Bihar came out with an industrial policy to give incentives to new industrial units as well as addition/expansion to existing units. The Associated Cement Companies Ltd. seem to have put in additional money in Sindri unit on additional/incremental production of cement. Sales tax exemption was granted to the expanded unit under the Bihar Finance Act as well as industrial policy for the period from 1-4-1980 to 31-2-1997. For the sales tax that was payable by that company under the Bihar Finance Act, it claimed its entitlement to adjust the entry tax paid by it under the Entry Tax Act. However, the claim was not accepted by the commercial taxation authorities and notices came to be issued to the petitioner proposing to levy of tax for the assessment years, 1998-1999, 1999-2000 and 1-4-2000 to 14-11-2000. The company challenged these notices before this Court by filing writ petition. This Court was not persuaded by the contentions of the company and dismissed the writ petition on 28th March, 2003. Aggrieved thereby the Associated Cement Companies Ltd. carried the matter to the Supreme Court. The issue that was raised before the Supreme Court is reflected in paragraph 2 of the report which reads thus:

2. The appellant questioned legality of the notices issued on 30-5-2002 and 24-6-2002 by the Deputy Commissioner, Commercial Taxes, Patna Special Circle, Patna (Respondent 3) proposing to levy tax for Assessment years 1998-99, 1999-2000 and 1-4-2000 to 14-11-2000 under the Bihar Finance Act, 1981 (in short "the Act") before the High Court. Notices were issued on the purported basis that the appellant was not entitled to adjustment of tax paid under the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1993 (hereinafter referred to as "the Entry Tax Act"). The High Court upheld validity of the notice and action taken by the respondents concerned.

14. While dealing with the aforesaid question, the Supreme Court after referring to the provisions of the Bihar Finance Act and the Bihar Entry Tax Act considered the matter thus:

17. Crucial question, therefore, is whether the appellant had any "liability" under the Act. The answer to this lies in Section 3 of the Act which is extracted above and is the charging section. In Sub-section (1), subject to the provisions of the part (i.e. Part I), sales tax or purchase tax, as the case may be, shall be paid by every dealer as provided in the Section itself. Section 7 speaks of exemption. Sub-section (3) of Section 7 stipulates that the State Government may, by notification and subject to such conditions or restrictions as it may impose,

exempt from sales tax or purchase tax certain sales or purchases as the case may be. The question of exemption arises only when there is a liability. Exigibility to tax is not the same as liability to pay tax. The former depends on charge created by the statute and the latter on computation in accordance with the provisions of the statute and rules framed thereunder if any. It is to be noted that liability to pay tax chargeable u/s 3 of the Act is different from quantification of tax payable on assessment. Liability to pay tax and actual payment of tax are conceptually different. But for the exemption the dealer would be required to pay tax in terms of Section 3. In other words, exemption presupposes a liability. Unless there is liability, question of exemption does not arise. Liability arises in terms of Section 3 and tax becomes payable at the rate as provided in Section 12. Section 11 deals with the point of levy and rate and concessional rate.

18. The word "liable" in The Concise Oxford Dictionary means "legally bound, subject to (a tax or penalty), under an obligation". In Black's Law Dictionary (6th Edn.) the word "liable" means:

Bound or obliged in law or equity; responsible; chargeable; answerable; compellable to make satisfaction, compensation, or restitution.... Obligated, accountable for or chargeable with.

The above position was noted in *Zunjarrao Bhikaji Nagarkar Vs. U.O.I. and Others*,

19. Tax at the appropriate rate would have become payable but for the exemption. Decision in *Australian Mutual Provident Society v. IRC* 1962 AC 135, has stated the position as follows:

The phrase "exempt from taxation" (Land and Income Tax Act, 1954 (No. 6701) (New Zealand), Section 86(1)) does not cover income that is not at all within the reach of the New Zealand tax laws. It refers to income that would, had it not been for the exemption, otherwise have been so taxable.

15. The answer to the aforesaid question is found in paragraph 20 of the report which reads thus:

20. Therefore, it cannot be said that as tax was not paid on portion of the turnover of the scheduled goods i.e. cement, the appellant assessee had no liability under the Act. It was definitely liable to pay tax under the Act, but for the exemption. There is no dispute that the appellant assessee was liable to pay tax under Sub-section (3) of Section of the Entry Tax Act. Therefore, it was entitled to reduction to the extent of tax paid under the Entry Tax Act while working out tax payable by it under the Act.

16. What has been held by the Supreme Court is that the Associated Cement Companies Ltd. were entitled to reduction to the extent of tax paid under the Entry Tax Act while working out tax payable by it under the Bihar Finance Act. The judgment of the Supreme Court in *Associated Cement Companies Ltd.* cannot be read to laying down the proposition that where an assessee is

exempted from payment of sales tax u/s 7 of the Bihar Finance Act he becomes automatically exempted from payment of entry tax for the goods purchased from outside the State for its use or consumption. In our considered view, the aforesaid decision does not help the case of the petitioner at all.

17. We have, thus, no hesitation in holding that the petitioner is not entitled to any declaration that it is not liable to pay entry tax on entry of coal caused by it after making purchases from outside the State because of sales tax exemption certificate issued to it exempting from payment of sales tax on sale of its finished products.

18. Mr. S.D. Sanjay, counsel for the petitioner, then pressed into service decision of this Court in the case of Indian Oil Corporation Limited and Another and Harinagar Sugar Mills Limited Vs. State of Bihar and Others and prayed that the respondents be directed to refund the amount paid by the petitioner towards entry tax as per the said decision for the relevant period.

19. The Division Bench of this Court summarized its conclusions as follows:

(i) The levy under the Parent Act of 1993, before its amendments, was not compensatory in character and was, therefore, violative of Article 301 of the Constitution.

(ii) The Parent Act of 1993, before its amendments, was nevertheless saved by virtue of Article 304(b) of the Constitution and the decision in Bihar Chamber of Commerce to that extent remains subsisting till date.

(iii) The amendments introduced in the Act by amending Acts 10 of 2001 and 9 of 2004 were bad because the former made the Act violative of Article 304(a) of the Constitution and further because both the amendments were made without the previous sanction of the President.

(iv) The introduction of imported goods within the definition of "Entry of Goods" was bad for being retrospective as also for want of the Presidential sanction/ assent.

(v) After the 2006 Amendment the levy under the Act acquired the nature of a compensatory tax and the Act in its present form is a valid piece of legislation.

20. The Government counsel would submit that the judgment of this Court in the case of Indian Oil Corporation Ltd. has been challenged before the Supreme Court and the appeal is pending there. He, however, submitted that he has no objection if it is observed that the petitioner's case shall be considered by the respondent No. 4 with regard to refund of entry tax prior to the Amending Act of 2006, in accord with the decision that may be given by the Supreme Court in the appeal arising out of the judgment in the case of M/s. Indian Oil Corporation Ltd.

21. In what we have discussed above, the writ petition is liable to be dismissed and is dismissed. However, we clarify that in case the judgment of this Court in the case of M/s. Indian Oil Corporation is upturned or modified, the petitioner

shall be at liberty to apply to the respondent No. 4 or the concerned authority for refund to entry tax as per the decision of the Supreme Court. No order as to costs.