

02. 27.02.2019

Heard Mr. B.K. Mahanti, learned Senior Advocate along with Mr. Bibek Mohanti, learned counsel for the petitioner and Mr. Sunil Mishra, learned Standing Counsel for the opposite party-Revenue.

2. By way of this writ petition, the petitioner has prayed for the following relief:

"It is, therefore, prayed that this Hon'ble Court may graciously be pleased to admit this petition, issue notice to the opposite parties, and after hearing, allow this application;

And further be pleased to issue appropriate writ by striking down the Odisha Entry Tax Act, 1999 and consequently, the rules framed thereunder.

And also be pleased to issue a writ of mandamus to the opposite parties to grant refund of amount collected towards entry tax from the petitioner."

3. The Hon'ble Supreme Court in the case of ***State of Kerala and others vs. Fr. William Fernandez*** [Civil Appeal Nos.3381-3400 of 1998] decided on 09.10.2017, in para-143, has held as under:

"143. Learned counsel appearing for the State of Orissa has opposed the prayer of the petitioner seeking liberty to raise the issue. It is contended that petitioners have not raised the relevant issues nor pleaded in support of the plea of discrimination under Article 304(a). The parameters under which entry tax can violate the Article 304(a) has now been conclusively laid down by Nine Judges Bench in Jindal Stainless Ltd.(supra). We are thus of the view that liberty be given to petitioners to raise the plea of discrimination under Article 304(a) in accordance with the law as laid down by Nine Judges Bench in

Jindal Stainless Ltd.(supra). We, however, are of the view that for the above purposes, it is not necessary to grant any liberty to file a fresh writ petition at this stage and at this distance of time. The ends of justice shall be served, if liberty is granted to the petitioners to revive their writ petitions by making a proper application before the High Court. In the writ petitions which have been dismissed by the Orissa High court against which present appeals are decided, the liberty to revive such petition and to urge ground under Article 304(a) is granted which can be availed only within the period of 30 days from the date of this judgment."

4. In view of the above, it will not be appropriate to entertain the writ petition since earlier the petitioner was not before this Court. The Supreme Court has granted revival of those writ petitions which were filed before this Court earlier. It is true that the petitioner was a party to the proceeding before the Hon'ble Supreme Court but he was not a party in the earlier writ petitions before this Court. Therefore, the relief claimed in this writ petition cannot be granted.

5. The writ petition stands disposed of with the above observation. All connected Misc. Cases/I.As are disposed of accordingly.

Urgent certified copy of this order be granted on proper application.

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( **K.S. Jhaveri** )  
**Chief Justice**

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(**K.R. Mohapatra**)  
**Judge**