
(2008) 04 OHC CK 0074
In the Orissa High Court

Arvind Construction Co. Pvt. Ltd.

APPELLANT

Vs

Sales Tax Commissioner and Another

RESPONDENT

Date of Decision : 24-04-2008

Acts Referred:

Constitution of India, 1950 — Article 265, 286, 300A, 301
ORISSA VALUE ADDED TAX ACT, 2004 — Section 10, 74, 9

Citation : (2008) 106 CLT 493 : (2008) 1 OLR 991 Supp

Hon'ble Judges : A.K. Ganguly, C.J.;Indrajit Mahanty, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Indrajit Mahanty, J.—In this writ application, the Petitioner-company M/s. Arvind Construction Co. Pvt. Ltd. seeks to challenge an Order Dated 17.2.2007 passed by the Addl. Commissioner Sales Tax, Southern Zone, Cuttack in Revision Case No. PU/185/06-07 (vide Annexure-1 to the present writ application) dismissing the Petitioner's revision application and affirming the order passed by the Sales Tax Officer, levying tax and penalty on the Petitioner u/s 74(5) of the Orissa Value Added Tax (OVAT) Act, 2004 amounting to Rs. 11,71,980/- on the ground that the consignment of the goods being brought into the State of Orissa by the Petitioner was not accompanied with the prescribed declaration as required u/s 74(2)(a) of the OVAT Act, 2004 read with Rule 79(2) of the OVAT Rules, 2005.

2. The order of the Sales Tax Officer was earlier challenged before this Court in W.P.(C) No. 324 of 2007 and this Court by Order Dated 12.1.2007 was pleased to direct release of the vehicle carrying goods subject to the Petitioner depositing a sum of Rs. 1,95,330/- representing the "tax demand" and securing the "penalty" amount of Rs. 9,76,650/- by way of Bank guarantee in favour of the Checkgate Officer and further directed the Petitioner to file a revision application before the Commissioner. Pursuant to the aforesaid directions of the High Court, the Petitioner filed revision petition before the Addl. Commissioner of Sales Tax, Cuttack and final order was passed on 17.2.2007 affirming the order of Sales Tax

Officer. Hence, the challenge to the said order has been made in the present writ application.

3. It is averred by the Petitioner-company in its Writ Petition that the Petitioner-company has been registered under the Companies Act, 1956 and while it has its registered office located in New Delhi, it also operates from its branch office located at Bhubaneswar in the State of Orissa. In Orissa the Petitioner-company is solely engaged in the business of providing "services" to M/s. Orissa Mining Corporation, a Govt. of Orissa undertaking (hereinafter referred to as "O.M.C.") and is presently providing services of Excavation, drilling and blasting, dewatering, transport of overburden in South Kaliapani Quarry No. D, belonging to the Orissa Mining Corporation.

4. The Petitioner-company asserts that in order to provide such services to M/s. OMC, it purchased one Atlas Copco make "Crawl Air Drill" machine from the manufacturers located in Maharashtra and paid full value of Central Sales Tax, i.e., " 12.5% for the said machinery and the same was being transported through a vehicle bearing Regd. No. AP-221-8443 from the State of Maharashtra, to the Petitioner's branch office located in the State of Orissa. While the driver of the vehicle carrying the goods presented the documents for verification to Opposite Parties at the Unified Check Gate at Girisola, Dist. Ganjam in the State of Orissa, i.e., the entry point into the State of Orissa, the Sales Tax authorities levied and collected Entry tax on the said goods and allowed the vehicle to enter into the State of Orissa. The Petitioner-company asserts that the Sales Tax authorities at the check-gate being satisfied that OVAT is not leviable on the said goods, therefore, did not charge the same and after collecting Entry tax on the goods, permitted the vehicle to enter the State of Orissa.

However, after the vehicle moved within State of Orissa towards its final destination on 3.1.2007, the Sales Tax authorities at Dadhimachhagadia Check Gate, Bajpur detained the vehicle and kept the same stationary for a period of three days, and in order to justify their otherwise illegal conduct of withholding the vehicle of the Petitioner, passed an Order Dated 6.1.2007 holding the Petitioner to be an "unregistered dealer" and imposed, OVAT tax of Rs. 1,95,330/- and penalty of Rs. 9,76,650 , which has now been affirmed by the Commissioner of Commercial Tax in the impugned revisional Order Dated 17.2.2007 vide Annexure-1.

5. Mr. B. Das, Learned Counsel for the Petitioner submitted that the sale and purchase of the Atlas Copco "Air Drill machine" occurred outside the State of Orissa and in course of Inter-State trade and thus, the transaction in question was outside the purview of the OVAT Act, 2004. He further contends that the sale/purchase in question was an inter-state sale/purchase and was covered under Central Sales Tax Act, 1956 and for which the Petitioner company had already paid the full tax thereon " 12.5% to the manufacturer under the Central Sales Tax Act. It is further submitted that no concession whatsoever was availed by the Petitioner while making the inter-state C.S.T. purchase. He further

contends that no right or title to the goods in question were transferred to any other person within the State of Orissa. It was further submitted, that all necessary documentary proof of purchase, payment of Central Sales Tax etc. were duly furnished at check-gate, except declaration in Form 402 A of the OVAT Rules, 2005. He also submitted that since the Petitioner is not a "dealer" within the State of Orissa and was only engaged in executing a "service contract", for O.MC., therefore, there can be no question of violation of any provision of either the OVAT Act or OVAT Rules and, therefore, the levy/demand of OVAT tax as well as penalty, thereon is wholly without jurisdiction. He also submitted that the findings in the impugned order to the effect that the Petitioner is a "dealer" engaged in "works contract" and maintains a canteen and further finding is that the machinery goods are not exempted under the OVAT Act and reliance placed by the Revenue on the Judgment of the Apex Court in the case of State of Rajasthan and Anr. v. D.P. Metals 124 STC 611 are totally baseless and based on an erroneous interpretation of facts as well as law. Learned Counsel asserts that in the case of any tax on sale/purchase of good, the "taxable event" is the act of sale/purchase and in the present case, since the act of sale/purchase or taxable event (sales/purchase of Atlas Copco Air Drill machine) admittedly, took place outside the State of Orissa; the transaction itself is outside the purview of the OVAT Act, 2004.

To this effect, he placed reliance upon the objects and reasons of the OVAT Act, 2004 which provides for "an Act for the imposition and collection of tax on the sale or purchase of goods in the State, i.e., Orissa". Sri Das, therefore, submitted that it is a well settled principle of law laid down by the Apex Court in the case of *Re : Sea Customs Act, Section 20(2)-AIR 1963 SC 1760*, that "Sales Tax" accrues only on the "incidence of taxable event" and on no other. Therefore, the levy of OVAT Tax and penalty for a transaction or taxable event which admittedly occurred outside the State of Orissa is contrary to the well-settled principles of law.

6. Learned Counsel for the Petitioner submitted that the various findings reached by the Revenue regarding whether the Petitioner was a "dealer" or not and whether the Petitioner is carrying on "service contract" or "works contract" and whether the Petitioner maintains a "canteen" and whether the goods in question were "exempted goods" under the OVAT Act and further whether non-furnishing of declaration in Form 402 A justified levy of OVAT Tax and penalty were issues which have nothing to do with determining the "excisibility of tax" under the OVAT Act.

7. Mr. Das contended that furnishing of a "declaration form" as envisaged u/s 74(2)(a) of the act is "not a mandatory requirement of law", so long as other necessary documents are furnished. He further contends that the non-furnishing of the declaration form cannot by itself authorize the State to impose tax and the penalty. In this respect, he placed reliance on Rule 81 of the VAT Rules, 2005 and submits that the said rule has not cast any specific obligation upon the Petitioner

to "obtain" the said declaration form, on the contrary, the provision creates obligation/duty on the revenue authorities to "issue" the said declaration form, if demanded voluntarily by any person and, therefore, he submits that the requirement to furnish declaration in Form 402 A must be deemed to be a voluntary act and not a mandatory requirement of statute.

8. Mr. Das further submits that the power to impose penalty u/s 74(5) & 74(8) flows from the legislative intendment as may be found u/s 74(1), i.e., "with a view to preventing or checking avoidance or evasion of tax". In other words, Sri Das submitted that "penalty" can only be imposed where there has been any "attempt to avoid or evade levy of OVAT tax". In the present case, it is submitted that since the Petitioner-company has paid the full Central Sales Tax on the goods " 12.5%, without claiming any concession, there can be no presumption against the Petitioner that it was seeking to avoid or evade payment of OVAT tax. Accordingly, in view of the aforesaid contentions, Learned Counsel contended that the impugned order was violative of Articles 265, 286 and 300A of the Constitution of India.

9. The Revenue, on the other hand, while supporting the orders impugned herein, inter alia, submitted that the vehicle in which the Petitioner's goods was being transported was stopped for inspection on 3.1.2007, on which date, the driver of the vehicle produced the supporting documents as available with him before the Sales Tax Officer for verification. On verification, it was found by the Sales Tax Officer that the supporting documents did not include the "declaration in a Form 402 A of OVAT Rules", as required by 74(2) A of the OVAT Act 2004 read with Rule 79(2) and 81 of the VAT Rules, 2005. It is further averred that though the driver was given opportunity for furnishing the wanting documents, yet, he expressed his inability to do the needful, for which a show cause notice was given to the person in-charge. In reply to show cause notice, it was submitted that the Petitioner was not a "dealer" as defined under the OVAT Act, 2004 and he also submitted a copy of the agreement executed between the Petitioner and O.M.C. Ltd. and claimed that it was performing a "service contract" for their clients M/s. O.M.C. It is further stated that the Sales Tax Officer after "careful examination of the agreement" came to the conclusion that the Petitioner is a "dealer" under the OVAT Act and, therefore, since the consignment of the consignee was not accompanied with the "prescribed declarations", as required u/s 74(2)A of the OVAT Act read with Rule 79(2) and 81 of VAT Rules, the S.T.O. was justified to levy OVAT tax and penalty, which is supported by the decision of the Hon'ble Supreme Court reported in the case of D.P. Metals (supra).

10. Learned Addl. Standing Counsel on behalf of the Revenue submitted that in the present case, penalty had been levied u/s 74(5) of the OVAT Act, 2004 and the said provision, clearly stipulates that the same has been enacted with a view to "prevent or checking avoidance or evasion of tax". Learned Counsel further submits that if an Act requires a thing to be done in a particular manner (as

required u/s 74(5) of the OVAT Act) and the requisite declaration is not furnished, then the law provides for imposition of penalty for not doing such act in the manner prescribed. It is further submitted that the only enquiry required in law for the purpose of deciding the liability to penalty is to ascertain whether, what is required to be done by the Act has been complied with or not and nothing else. He, therefore, submits that the "location where the taxable event" took place and even if it took place out side the State, is immaterial for the purpose of challenge the imposition of tax/penalty. He also submits that furnishing of a declaration form is "mandatory" and is clear and unambiguous. The claim of the Petitioner, that Section 74(5) of the OVAT Act is voluntary, is erroneous and providing the necessary declaration form has to be held to be mandatory, since the same is required to prevent evasion/avoidance of tax.

11. The Learned Counsel for the Revenue relied on a Judgment of the Hon''ble Supreme Court in the case of The Municipal Council, Madurai Vs. R. Narayanan and Others, , wherein it has been laid down that a statute or any enacting provision therein must be so construed as to make it "effective and operative" and it is well settled that principles of law that while construing a taxing statute one has to look merely at what is clearly said and in a manner so as to make the machinery workable.

12. For these principles, reliance has placed by the Revenue on the Judgment in the case of Mahipatra Pvt. Ltd. v. Union of India reported in 6 (2007) VST 248. Learned Addl. Standing Counsel submits that it is not in dispute that declaration in Form 402 A has not been furnished and, therefore, the same is a clear violation of Clause A(2) of Section 74 and thereby, the consequential imposition of penalty u/s 74(5) of the Act is lawfully justified.

In so far as the contention of the Petitioner based on Sub-section (14) of Section 74 of the Act is concerned, Learned Addl. Standing Counsel submits that the said Sub-section (14) does not stipulate that "transactions" must be liable to tax but only stipulates the "goods" which are not liable to tax under the Act. Therefore, under the OVAT Act, all goods are liable to tax and Sub-section (14) applies to only those cases where no tax is leviable or goods are tax-free goods.

13. Learned Addl. Standing Counsel, further submitted that for the purpose of imposition of penalty no mens rea needs to be proved and places reliance on the Judgment of Hon''ble Supreme Court in the case of R.S. Josi, Sales Tax Officer, Gujarat v. Ajit Mills Limited and Anr. 40 STC 497. In so far as infraction of Article 286 is concerned, he submitted that furnishing the declaration at Check Gates and the requisite information which are within the knowledge of consignor or consignee, is not in any manner restrictive of movement of goods and it is within the competence of the State Legislature to enact the provision to prevent the evasion of tax and, therefore, imposition of the requirement for providing a declaration in Form 402 A.

In the present case, the OVAT Act, 2004 has been enacted by the State

legislature, and the State is also competent to enact laws relating to offence against the law in respect of any of the matters of list-II entry 54 of 7th Schedule to the Constitution of India. It is further submitted that the requirement of filing of declaration at Check Gate has been held to be a mere stoppage and not restrictions falling under Article 301 of the Constitution of India. In this respect, reliance placed by the Revenue on the Judgment in the case of State of Bihar and Ors. v. Harihar Prasad Debuka 73 STC 353, as well as in the case of Tripura Goods Transport Association and Anr. v. Commissioner of Taxes and Ors. 112 STC 609.

14. In the light of the contentions advanced by the parties as has been noted above, the essential question that arises for consideration calls for an interpretation of Section 74(2)(a) of the OVAT Act, 2004 and whether even in a case where there has been no evasion or avoidance of tax, whether the non-submission of declaration in Form 402A of the OVAT Rules, is by itself an adequate ground or a basis for levying OVAT Tax or penalty stipulated therein.

To clarify this point, it would be relevant to quote Section 74(2)(a) of the OVAT Act and Rules 79(2) and 81 of the OVAT Rules, 2005, which runs as follows:

Section 74. Establishment of check-posts and inspection of goods while in transit-
(2) The driver or person-in-charge of every vehicle or carrier of goods in transit shall--

(a) carry with him the records of the goods including "Challan" and "Bilties", bills of sale or dispatch memos and prescribed declaration form or way bill duly filed in and signed by the consignor of goods carried.

Rule 79. Establishment of check gates and inspection of goods while in movement - (2) The driver or the person-in-charge of the vehicle or carrier of goods shall stop the vehicle or carrier, as the case may be, at a check-post or barrier and keep it stationery as long as it is reasonably required by the officer-in-charge of the check-post or barrier and allow examination of the goods, in the vehicle or carrier and inspection of all records connected with the goods in the vehicle or carrier including way bill, declaration and transit pass.

Rule 81. Issue and use of declaration forms - (1) Issue and use of declaration forms shall be regulated in the following manner, -

(i) the declaration referred to in Sub-rule (2) of Rule 79 shall be in triplicate;

(ii) the declaration referred to in Clause (i) shall be supplied on application in Form VAT-402A and on payment, as may be fixed by the Government from time to time;

(iii) the declaration shall be issued with due authentication with official seal and signature or facsimile signature of the Assistant Sales Tax Officer or the Sales Tax Officer having jurisdiction;

(iv) the declaration shall be issued to a casual dealer or a person, who

(a) imports or brings any goods into the State or receives any goods dispatched from any place outside the State on his own account, or

(b) consigns any goods from a place inside the State to a place outside the State either on his own account or on the account of any consignee,

(v) the Assistant Sales Tax Officer or the Sales Tax Officer referred to in Clause (iii) shall be-

(a) the Assistant Sales Tax Officer or Sales Tax Officer of the R.R. Unit or in charge of the check-post or barrier, established in and around a railway station, steamer station, port, airport, post office or courier office in case, the consignment of goods is transported through railways, waterways, Air or postal or courier services;

(b) the Assistant Sales Tax Officer or the Sales Tax Officer, under whose jurisdiction, the casual dealer carries on business or the person ordinarily resides;

(vi) not more than one declaration form in triplicate shall be supplied to such casual dealer or person at a time;

(vii) no second or subsequent supply of declaration form shall be made to such casual dealer or person unless the copy of the declaration furnished at the R.R. Unit or check-post or barrier is called for, or electronic information in relation to such declaration is accessed or such other account as may be required for verification of the transaction of purchase or sale made on the strength of such declaration, is called for and examined.

15. The OVAT Act, 2004 was promulgated on 25th March, 2005 and from its Preamble it appears that it is "An Act to Provide for the Imposition and Collection of Tax on the Sale or Purchase of Goods in the State."

It is, therefore, clear that the OVAT Act, 2004 as well as Rules, 2005 have to be considered keeping-not-only the Preamble of the Act in mind but also the scope of Entry-54 of List-II of 7th Schedule to the Constitution of India, since the following has been stated by the State in its counter affidavit:

It is not in dispute that levy under OVAT Act enacted under Entry-54, List-II of the Constitution is within the Legislature competence of the State. Entry-54 of the List-II of the 7th Schedule of the Constitution of India stipulated as follows:

Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry-92A of List-I.

It is also relevant to take note of scope of Entry-92A of List-I (Union list) which stipulates as follows:

Taxes on the sale to purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-state trade or commerce.

16. In the present case at hand, it has been asserted by the Petitioner that the

act of its purchase of machinery in question was in course of inter-state trade and, therefore, the transaction clearly comes within the purview of the Central Sales Tax Act. It is also asserted by the Petitioner that it has paid the necessary Central Sales Tax at the "full rate" of 12.5% without availing any concession thereto and it is such goods which have been transported into Orissa and which is now the subject matter of dispute. Even the Revenue does not deny the aforesaid facts but appears to act under the impression that even if the transaction comes under the Central Sales Tax Act in which full tax has been paid and even if, no question of evasion or avoidance of tax arises, yet, since the OVAT Act required the Petitioner to furnish a declaration under Form 402A of the OVAT Rules, the failure on the part of Petitioner from furnishing such a declaration can/is the basis of the present impugned levy of tax as well as penalty.

It is admitted by the Revenue that even though the transaction in question is a transaction under the Central Sales Tax Act, yet, in terms of Section 74(2)(c) of the OVAT Act, the Petitioner was required to produce all documents including the prescribed "way-bill" relating to the goods.

17. Section 74 of the OVAT Act vests authority in the Revenue to establish check posts and to carry out inspection of goods while in transit. While Sub-section (1) thereto, stipulates that the Government may establish check posts or barriers "with a view to preventing or checking evasion or avoidance of tax". Thereafter, Sub-section (2) mandates that the driver or person-in-charge of the vehicle/carrier of goods in transit is required to carry the necessary documents pertaining to those goods and further states that the driver or person-in-charge of the vehicle is also required to produce documents including the "prescribed way-bill".

The goods in transit contemplated under Section-74 can be divided into two categories:

- (1) Transit within the territory of the State, which is covered under Sub-sections (3) to (9) and;
- (2) Transit from a place outside the State to a place outside the State is covered under Sub-sections (10) to (14).

It is clear from the reading of Section-74, that the object behind the said provision was to check the evasion or avoidance of tax. It is clear therefrom that in a case where there is in fact, no evasion or avoidance of tax lawfully due and in a case where all necessary tax has already been paid, obviously, in such a case there can be no allegation of an attempt of evasion or avoidance of tax. Apart from the above, the leviability of the OVAT Tax and charge to levy tax or incidence thereto is contained in Sections 9 and 10 of the OVAT Act. The leviability for incidence of tax arises only in the event the sale or purchase of goods is within the State of Orissa. Therefore, the taxable event for the purpose of levy of tax is nothing other than the sale or purchase of goods within the State

of Orissa. Apart from this provision, there is also a "presumptive levy of tax", contemplated under Sub-section (11) of Section 74 of the Act, which applies in a case where a vehicle comes from a place from outside the State, enters into the State, by obtaining a "transit pass" by declaring the contents of its cargo and thereafter, if the Check Gate Officer of the "exit gate" finds on an examination of the contents of the vehicle, that the goods which entered the State either/do not exist or there is a shortfall in the same, a presumption under Sub-section (11) of Section 74 of the Act, can be drawn that the goods which had entered into the State had, in fact, been "sold inside the State". In these given set of facts, OVAT Tax can be levied as well as penalty contemplated therein.

18. Therefore, we are of the view that from the nature of the tax contemplated under the OVAT Act, 2004, it is only a transaction to which Sections 9 and 10 of the Act are attracted or in a case where the "presumption" as contemplated u/s 74(11) of the Act arises, does OVAT Tax become payable apart from the right to levy penalty.

19. In the present case at hand, it is the contention of the Revenue that the mere non-submission of declaration in Form 402 A can form a legal basis for a demand of OVAT tax and penalty. We are afraid, we cannot accept such a contention.

Rules 79(2) of the OVAT Rules stipulates that the requirement of submission of "way-bill" in Form 402 A and under Rule 81. Stipulation has been made under Rule-81(1)(H) that the declaration referred to in Clause (i) shall be supplied on application in Form VAT-402 A and on payment, as may be fixed by the Government from time to time.

On reading of the aforesaid provision, we are in respectable agreement with the contention advanced on behalf of Petitioner that the aforesaid Rule cannot be attracted in the case of a completed transaction under the Central Sales Tax Act, in which, the entire tax liability has been paid without claiming concession. This transaction is no longer a transaction in which either evasion or avoidance of tax can at all arise. No further stipulation can be imposed thereto, by way of requiring such a transaction to comply with Rules either the OVAT Act, 2004 or Rules, 2005. In this respect, Rule-81 of the OVAT Rules clearly indicates the use of the term "may". In the circumstances of present case, we are of the view that the said Rule does not cast any obligation upon the Petitioner to either obtain the same and on the contrary, an obligation is cast upon the Revenue to issue the same if the same is demanded by any person.

20. The Petitioner claims to be carrying out a "service contract" entered into with the Orissa Mining Corporation (a State Govt. undertaking) at its South Kaliapani Quarry, in the district of Jajpur. It is clear that the Petitioner and/or the person-in-charge of the vehicle presented before the Sales Tax Officer at the Entry Check Gate, all the necessary documents pertaining to the goods including the evidence of payment of full tax under the Central Sales Tax Act. Thereafter, the Petitioner

also deposited the necessary "Entry Tax" leviable thereto, only then, he was permitted entry into the State of Orissa. While, the vehicle was traveling within the State of Orissa towards its final destination, the Sales Tax Officer, Dadhimachhagadia Check Gate has passed the impugned order levying tax and penalty.

21. We are constrained to note that although the Revenue permitted/the vehicle to enter into the State of Orissa, even assuming for the sake of argument that there has been infraction any statutory provision, it would have been appropriate for any officer who comes across such violation, to intimate the Sales Tax Officer having jurisdiction (which in the present case would be Sales Tax Officer, Jajpur) to take up the investigation into the matter. In other words, even assuming the Sales Tax Officer, Dadhimachhagadia Check Gate, Bajpur, had the authority to stop the vehicle while it was traveling within the State of Orissa, for the purpose of verification of its documents, any infraction found ought to have been intimated to the Sales Tax Officer having jurisdiction over the area where the Petitioner was operating. Such an officer upon receipt of information could have initiated appropriate action for the purpose of determining the liability, if any.

Instead of this, the Sales Tax Officer, has raised the impugned demand to the extent of even determining the "nature of the transaction entered into between the Petitioner and the O.M.C. Ltd." and also rejecting the Petitioner's stand that contract was a "service contract" by concluding that the agreement between the parties was a "Works Contract". The further finding is that the Petitioner was a "dealer" under the OVAT Act, for the reason that it is running a "canteen" on its site, where it is carrying its work. Obviously all these findings are matters of fact, which obviously, should be left to be determined by the Sales Tax Officer having jurisdiction over the area in which such work has been carried out. The present case exemplifies the manner in which there is a clear conflict of jurisdiction which could have been avoided by the Revenue, if the Sales Tax Officer at Dadhimachhagadia (who stopped and inspected the vehicle), could have passed on this information to the Sales tax Officer, Jajpur, who then could have proceeded against the Petitioner in accordance with law.

22. In view of the aforesaid findings, in our considered view the transaction in question being a "completed transaction", under the Central Sales Tax Act, is not covered by the provision of Section 74 of the OVAT Act, 2004. Since the Central Sales Tax has been paid in full, obviously, there exists no possibility of any evasion or avoidance of OVAT tax and, therefore, requiring the Petitioner to furnish Declaration of Form 402 A cannot be held to be "mandatory" and is held to be "directory". Accordingly, the impugned Order Dated 17.2.2007 passed by the Commissioner of Commercial Taxes, Orissa, Cuttack in Revision Case No. PU/185/06-07 under Annexure-1 is quashed and levy of penalty, is declared to be invalid in law. The amounts deposited by the Petitioner be refunded to the Petitioner as well as bank guarantees be released in its favour within a period of four weeks.

However, it shall be open for the Sales Tax Officer having jurisdiction over the area in which the Petitioner is performing his contract with O.M.C. Ltd. to initiate appropriate action for the alleged non-registration of the Petitioner as a "dealer" under the OVAT Act and the same shall be dealt with in accordance with law. With the aforesaid observations and directions, the Writ Petition is allowed to the extent indicated above. No costs.

A.K. Ganguly, C.J.

23. I agree.