
(2016) 07 RAJ CK 0142

In the Rajasthan High Court

Case No : Civil Writ Petition No.15191 and 11965 of 2009

Cairn India Limited

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 13-07-2016

Acts Referred:

Citation : (2016) 2 WLCRajUC 218

Hon'ble Judges : Mr. Alok Sharma, J.

Bench : Single Bench

Advocate : Mr. A.R. Madhav Rao, with Mr. Sameer Jain, Ms. Mahi Yadav, Ms. Nivedita and Ms. Pragya Sethia, Advocates, for the Petitioners; Mr. R.D. Rastogi Addl. Solicitor General with Mr. Ashish Kumar, Advocate, for the Union of India; Mr. Shiv Mangal Sharma, Advoca

Final Decision : Allowed

Judgement

Mr. Alok Sharma, J.—The petitioner Cairn India Limited (hereinafter `the petitioner") is engaged in the business of exploration and production of crude oil and natural gas in block RJ-ON-90/1 in district Barmer, Rajasthan. It is a mining company registered as a dealer under the Rajasthan Value Added Tax Act, 2003 (hereinafter `the Act of 2003"). The petitioner entered into a Production Sharing Contract (PSC) with the Government of India on 15-5-1995. As in terms of Article 297 of the Constitution of India, petroleum in its natural state vests in the Union of India, under Article 18 of the PSC the sale and disposal of crude oil and condensate from block RJ-ON-90/1 in district Barmer, Rajasthan had to be sold by the petitioner only to the Government of India and its nominees. As per letter dated 24-3-2009 emanating from the Ministry of Petroleum and Natural Gas, Government of India, it initially nominated Mangalore Refinery and Petrochemicals Limited (MRPL), HPCL, and IOCL for lifting purchase of crude oil extracted by the petitioner from RJ-ON-90/1 Barmer. Production of crude oil started at the Mangla field of (RJ-ON-90/1 in district Barmer, Rajasthan) (hereinafter `the Barmer Oil Fields) on 29-8-2009. Since then Essar oil, Reliance

Industries etc. have also been nominated by the Government of India to buy crude oil from the petitioner produced at the Barmer fields.

2. The petitioner entered into a memorandum of understanding in respect of crude oil produced in the Barmer Oil Fields with MRPL on 5-8-2009. Under the modus operandi, then obtaining, crude oil produced by the petitioner company and sold to the nominees of the Government of India was dispatched in heated insulated via road tankers from the Barmer Oil Fields to Kandla (coastal area in Gujarat) where it was stored in tanks (heated chambers) wherefrom it was thereafter loaded onto oil tankers (coastal heated tanker) for being further carried to Mangalore via a coastal run to MRPL's refinery. The petitioner states to have since then laid heated pipeline from Barmer, Rajasthan to Bhogat (Gujarat coast) operationalised in July, 2010, the Central Government has also approved with some intermediary delivery facilities (all in Gujarat State). All such enroute points are regarded as delivery points identified by the Central Government under clause 1.23 of the PSC. As per Article 1.23 of the PSC a "delivery point" is defined as the outlet flange of the delivery facility at Barmer or any other point as identified by the Government of India. MOPNG vide letter dated 30-4-2008 had first provided for the delivery point at Salaya, Gujarat, (subsequently at Bhogat, Gujarat vide letter dated 24-7-2009) for reason of convenience and logistics of transportation of crude oil to the buyers nominated by the Central Government, as buyers of the petitioner's crude oil had refineries for the purpose of processing crude oil outside the State of Rajasthan.

3. The Government of Rajasthan concerned with the shifting of delivery point/s for the sale of Barmer Crude oil outside the state of Rajasthan was apprehensive that such shifting would entail loss of sales tax revenues to the State Government and corresponding windfall gain to the Government of Gujarat. To eschew the aforesaid concerns, the petitioner vide letter dated 23-10-2008 addressed to the Secretary MOPNG stated that the point of sale of crude oil produced at the Barmer Oil Fields would be in Rajasthan and it would advise buyers nominated by the Central Government to set up their branches in Rajasthan to ensure that despite the shifting of the point of delivery of crude from Barmer to Salaya in Gujarat as recommended by the Empowered Committee of Secretaries (ECS) it would not lead to undue loss of revenue to Government of Rajasthan and corresponding windfall gain to the State of Gujarat. The Government of India also conveyed this fact to the State of Rajasthan vide letter dated 14-1-2009. Resultantly vide letter dated 22-1-2009 the Director Petroleum, Government of Rajasthan required the petitioner to submit an undertaking that the crude oil off take point from the Barmer Oil Fields would be in Rajasthan and that the petitioner would ensure that such a clause was incorporated in the Crude Oil Sales Agreements (COSAs) executed by the petitioner with the buyers nominated by the Central Government. Vide letter dated 23-1-2009, the Chief counsel of the petitioner informed the Director, Petroleum Government of Rajasthan that arrangement, as required, pertaining to crude oil off take in Rajasthan would be incorporated in the COSAs with the

buyers to ensure that point of sale of crude oil would remain in Rajasthan.

4. The point of sale of the crude oil having been stated to remain in Rajasthan, the petitioner was then concerned with certain reports in the vernacular press that respondent state was seeking to impose Value Added Tax (VAT) at the rate of 4% then prevailing treating the sale of crude oil from the Barmer Oil Fields as a local sale (Intra State Sale) instead of an inter state sale-as it palpably was, on which the then extant CST @ 2% against C-form was leviable. A letter dated 8-6-2009 in this regard followed from the petitioner to the Principal Secretary, Mines and Petroleum, Government of Rajasthan expressing its apprehension at the potential levy of VAT @ 4% treating the sale of crude oil to the Central Government's nominated buyers outside the state as local sales. It was stated that the uncertainty occasioned by the vernacular press reports would concern crude oil buyers affecting sale of crude from the Barmer Oil Fields and potentially delay finalisation of COSAs and start of production of crude. It was stated that as per the extant laws irrespective of the fact of the point of sale of crude oil being within the state of Rajasthan, only CST as leviable on the petitioner's inter state sales would accrue to the State of Rajasthan as the "originating state". Analogy was drawn with the minerals mined and sold in Rajasthan by RSMML for consumption outside the state of Rajasthan, which transactions were being treated as interstate sales by the Commercial Taxes Department on which CST was leviable and not RVAT. It was pointed out that as the entire production of crude oil by the petitioner from the Barmer Oil Fields was to necessarily move outside the State of Rajasthan as a direct consequence of any sale, as no refinery for processing the said crude oil existed in Rajasthan. Similar letters were addressed on 9-6-2009 to the Principal Secretary, Finance Government of Rajasthan and thereafter to the Chief Minister of Rajasthan as also to the Secretary, Government of India MOPNG.

5. Vide letter dated 22-6-2009 the Deputy Secretary, Government of Rajasthan Finance, Tax department responded to the petitioner's letter dated 8-6-2009 inter-alia stating that since the point of sale of crude oil had been agreed by the petitioner to be in Rajasthan, the sale was liable to be treated as a local sale attracting VAT @ 4%. The petitioner vide letter dated 30-6-2009 refuted that assertion and stated that merely because the point of sale was in Rajasthan, the sale could not be treated as a local sale exigible to RVAT overlooking the important fact that the movement of the crude sold outside the State of Rajasthan was occasioned by the very sale itself. Hence the sale in issue was an inter state sale, which in terms of Central Sales Tax Act, 1956 was exigible only for CST @ 2% against C-forms. It was pointed out that the nominated buyers of crude sold by the petitioner would issue Form-C from the importing State in which they may be registered as dealers for their respective refinery business on an undertaking to use the crude oil purchased from the petitioner at Barmer for processing at their refineries, all of which were situate outside the State of Rajasthan. It was also stated that the petitioner had required MRPL, HPCL, IOCL to whom crude was to be sold as nominees of the Central Government under the

PSC to set up Rajasthan office and get themselves registered as dealers in the State of Rajasthan. They had however refused to do so, in view of the fact that the transaction of sale of crude oil was clearly an inter state sale exigible only to CST for which they were not required to be registered as dealer/s in State of Rajasthan under the RVAT Act, 2003.

6. Be as it may, vide letter dated 29-7-2009, the Deputy Secretary, Finance, Government of Rajasthan reiterated the State Government's stand that in view of the undertaking of the petitioner to have the point of sale for the crude oil produced at the Barmer Oil Fields in Rajasthan, the said sale with invoicing and the transfer of title of goods in the State of Rajasthan, (as alleged) was an intra state sale and hence liable to Rajasthan VAT at the rate of 4% *advolverum*.

7. Disagreement on the nature of sale transactions between the petitioner and the respondent State ongoing, the petitioner company having in the meantime commenced production of crude oil in the Barmer Oil Fields under PSC dated 15-5-1995 entered into a MOU dated 5-8-2009 with MRPL for sale of crude. Clauses 7 and 10 of the MOU read thus:

"7. Till completion of Bhogat facilities, Mangla crude oil will be delivered in small parcel sizes (200,000 bbls). The crude oil delivery point under the PSC will be decided by Government for this period. However, sellers undertake to deliver the nominated volume of crude oil to MRPL at Mangalore port at Seller's risk and cost. For the purpose of payment of crude oil, the quantity of crude oil will be lower of (a) discharged quantity at Mangalore escalated by 0.2% or (b) Bill of Lading quantity at Kandla/ load port.

10. The Buyer will not re-sell or consume the crude oil purchased under this MOU in the State of Rajasthan and Gujarat and the same shall be transported outside the state of Gujarat and Rajasthan."

8. The crude oil sold to MRPL was transported from the Barmer Oil Fields through heated tankers to Gujarat where it was stored in heated chambers and then sent onward by ships to its final destination at Mangalore where MRPL's refinery is situated.

9. A show cause notice dated 15-9-2009 then came to be issued by the Assistant Commissioner Commercial Taxes, Jodhpur to the petitioner under Section 22 of the RVAT Act, 2003 alleging that it had made local sale of crude oil in a quantity of 358.02 Metric Tons aggregating to Rs.71,60,400/- from Barmer Oil Fields on which VAT @ 4% *advolverum* was leviable. In reply the petitioner stated that the issue whether the transaction of sale of crude oil by the petitioner to MRPL was intra state or inter state sale was pending in SBCWP No.11965/2009, and thus the notice not be proceeded with. The petitioner then deposited CST @ 2% against C form furnished by the buyer on the crude oil sold in the month of September, 2009. Subsequently the tax as claimed has been deposited for the month of August, September and October, 2009, all no doubt subject to the outcome of this writ petition.

10. This Writ petition along with SBCWP No.11965/2009 came up for admission before this court on 16-11-2011, whereupon vide an interim order the court required the petitioner to invoke Section 36 of the RVAT Act, 2003 and submit a representation on the issues agitated before the court, to the Commissioner Commercial Taxes Department. It was further directed that till the disposal of the petitioner's representation, the assessing authority would not pursue the show cause notice dated 23-9-2009. In the circumstances, the petitioner filed a determination application before the Commissioner, Commercial Tax Department. It was stated that the sale of crude oil from the Barmer Oil Fields to the nominees of Government of India, in that case MRPL with refinery situate outside state of Rajasthan-in the State of Karnataka, could in no circumstance be construed as an intra state sale but was clearly an inter state sale not exigible to RVAT @ 4% advoeum or at all, as sought to be levied but only to CST @ 2% against "C"-form. It was submitted that the sale of crude oil to refineries nominated by the Central Government under the PSC with their refineries outside the State of Rajasthan was an obvious inter state sale on the implied but necessary condition that the crude oil in issue was to resultantly moved out of the State of Rajasthan. Hence the sale partook the character of an inter state sale under Section 3(a) of the Act of 1963. It was pointed out that at no point of time MRPL had any place of business in State of Rajasthan before or after purchasing the crude from Barmer Oil Fields. It was stated that even otherwise as per the MOU between the petitioner and MRPL, the buyer had categorically covenanted that it would not resell or use the crude oil purchased under the MOU in the State of Rajasthan and even in the State of Gujarat but instead that the crude oil purchased from the petitioner's Barmer Oil Fields would be transported outside both the State of Gujarat and Rajasthan.

11. The respondent department, before the Commissioner, however asserted that the point of sale of crude from the Barmer Oil Fields having been unconditionally agreed by the petitioner to be in Rajasthan and the delivery point of the crude oil sold being in Rajasthan with reference to clause 19.4 of the PSC, the title in the crude oil simultaneously passed to the buyer in Rajasthan and hence the sale was a local (intra-state) sale exigible to RVAT @ 4% advolerum. The Commissioner then required the petitioner to submit details of the method of dispatch of crude to the nominated buyer MRPL and others similarly nominated, which it did. The Commissioner was informed that crude oil was first dispatched by road from the Barmer Oil Fields through heated tankers to Kandla where it was appropriately stored for further loading on oil ship tankers (coastal heated tankers) to destination Mangalore. It was stated that after July, 2010 subsequent to heated pipelines having been laid by the petitioner from Barmer to Bhogat, Gujarat the activity of dispatch and sale of crude oil was carried out through the said pipelines with delivery point/s of such supplies being the designated place/s in Gujarat as notified by the Central Government. Further under the PSC the Government of India's nominees now also Essar Oil, Reliance Industries, Gujarat, were being delivered crude at the different delivery points all in Gujarat

as designated by the Central Government.

12. The Additional Commissioner VAT & IT, Commercial Tax Department vide a perfunctory order dated 9-2-2012 rejected the determination application filed by the petitioner under Section 36 of the RVAT Act, 2003 and held that the sale of crude oil by the petitioner to MRPL was a local sale on which RVAT @ 4% advolerum was leviable. So too for all other sales. Aggrieved the petitioner has filed this petition re-agitating the case that the sale of crude oil from Barmer, even with the point of sale being in Rajasthan, is an inter-state sale, as the sale occasions as a necessity-as an inevitable incident of the sale-movement of goods outside the State of Rajasthan as part of as continuous seamless and unbroken transaction.

13. The defence to the writ petition as reflected in the reply primarily is that in view of undertaking of the petitioner under its letter dated 23-10-2008, as also indicated in the letter of 23-1-2009 addressed to the then Chief Minister Rajasthan and subsequent communications on the issue, the sale of crude oil by the petitioner to the various nominees of the Central Government is a local sale. It has been asserted that delivery of the crude oil sold to MRPL was also at Barmer in view of the delivery point set out in clause 19.4 of the PSC dated 15-5-1995 which was at the relevant time the outlet flange of the petitioner at its delivery facility at Barmer. A completed sale as defined in Section 2(38) of the RVAT Act, 2003 thus obtained in the State of Rajasthan, and therefore, levy of RVAT @ 4% advolerum on the sale transaction was appropriate. It was submitted that the whole case set up by the petitioner seeking to treat the sale of crude to various nominees of the Government of India, albeit situate outside Rajasthan, as an inter state sale is nothing but an after thought to wriggle out of the petitioner's commitment/ undertaking with regard to the point of sales being in Rajasthan and thus escape the levy of RVAT @ 4% advolerum causing loss of revenue to the State of Rajasthan in the cross hairs of a contrary commitment made. It was submitted that the issue whether the sales of crude oil produced at Barmer Oil Fields to nominees of the Central Government are local sales or inter state sales is a question of the fact determined by the Additional Commissioner (VAT & IT) under his impugned order dated 9-2-2012 on the evidence on record and brooks no interference under Article 226/ 227 of the Constitution of India. It was submitted that the show cause notice dated 15-9-2009 was thus rightly issued to the petitioner as its liability of tax for the assessment year 2008-09 exceeded Rs.20,000/- and had not been discharged. It was submitted that for the period August, 2009 to June 2010 the petitioner dispatched crude oil produced at Barmer Oil Fields through heated tankers and thereafter through heated pipeline. It has been submitted that a wholistic reading of Article 1.23, 19.4 and 27.2 of the PSC between the petitioner and the Central Government indicates that crude oil was to be delivered at the outlet flange of the petitioner's delivery facility at Barmer. It was submitted that the pipeline laid down by the petitioner first from Nagana, Barmer to Bhogat in Gujarat and to Radhanpur and Viramgham is a mere convenience for the buyers and cannot entail change in the

nature of the transaction from one of local sale to an inter state sale. MTP Nagana Barmer is the dispatch point of crude oil to the buyers designated by the Central Government and with the petitioner's undertaking that for the sale of crude oil, the point of sale will be in Rajasthan, invoices were thus drawn, delivery followed at Barmer and hence a completed intra state sale is clearly made out.

14. Additional submissions have also been filed by the respondent state objecting to the territorial jurisdiction of the Jaipur Bench, for the reason that the impugned show cause notice dated 15-9-2009 was issued by the Assistant Commissioner Commercial Tax Department Jodhpur within the jurisdiction of the Principal Seat of this court. It has been further submitted that the determination order dated 9-12-2012 passed by the Commissioner under Section 36 of the Act of 2003 is appealable under Section 83 of the Act of 2003, and therefore the petitioner has an alternative remedy for reason of which this court should eschew exercising its jurisdiction under Article 226 of the Constitution of India.

15. The doctrine of promissory estoppel has also been pressed. It was submitted that petitioner had made a commitment by way of its undertaking dated 23-10-2008 to the Government of Rajasthan that the point of sale of the crude shall be in the State of Rajasthan such that the State would suffer no loss of revenue. It was submitted that for establishing the petitioner's project for excavation of crude oil from the Barmer Oil fields, the Government provided the company land ad-measuring over 8000 Bighas. Further the Right to Use (ROU) over hundred of acres of land was granted to the petitioner to lay the pipeline to Bhogat, Gujarat on the representation that the point of sale of crude oil produced would be at Barmer. The State of Rajasthan having thus facilitated the establishment of project of the petitioner at Barmer at enormous cost, the State cannot be denuded of its rights of collecting due tax under RVAT Act, 2003 on the transaction. It has been submitted that in the circumstances, the impugned order dated 9-2-2012 passed by the Additional Commissioner (VAT & IT) on the petitioner's determination application treating the petitioner's sale of crude oil as an intra state sale is legal and warrants no interference by this court.

16. In rejoinder to the additional submissions of the respondent state it has been submitted by the petitioner that the Jaipur Bench has territorial jurisdiction to hear the writ petition, inasmuch as the Additional Commissioner's order dated 9-2-2012 dismissing the petitioner's determination application under Section 36 of the Act of 2003 filed pursuant to interim directions dated 16-11-2011 in SBCWP No.11965/2009 has been passed at Jaipur. It was further submitted that letters dated 22-6-2009 and 29-7-2009, also under challenge have been issued by the Finance Department of Government of Rajasthan at Jaipur. On the issue of alternative remedy of an appeal under Section 83 of the Act, 2003 it was submitted that primarily under challenge in the writ petition is the very jurisdiction of the Additional Commissioner in resorting to the Act of 2003, when on the plain admitted facts of the case the contract of sale of crude oil at Barmer

occasioned, as a necessary incident known to all concerned, the movement, of crude oil sold, outside the state of Rajasthan rendering it an inter state sale under Section 3(a) of the CST Act, 1956. What thus is to be determined by the court is only a pure question of law, already settled by the Apex Court several times over, and hence the petitioner should not be relegated to the purported alternative remedy under the Act of 2003 which is not at all efficacious but instead has the potential of dragging the petitioner in a spiral of unwarranted litigation each quarter, leading to harassment.

17. It has been further submitted that the allegation of the petitioner seeking to backtrack on its undertaking dated 23.10.2008 as also reflected in the letter dated 23-1-2009 and other correspondences is incorrect and false. The undertaking submitted by the petitioner is sought to be misconstrued. It merely stated that the point of sale of crude oil produced at the Barmer Oil Fields would be in the State of Rajasthan. But there was no undertaking that the petitioner would pay tax on the sale as per the provision of the RVAT Act, treating it to be a local sale. Such an undertaking was/ is inconceivable in the state of settled law. It was submitted that the law declared by the Apex Court is that even if the point of sale and delivery is in a state, but the sale occasions movement of goods out of the state, as a part of one seamless unbroken transaction, it would be an inter state sale and not a local sale. In the instant case all quantities of crude oil under contract of sale with the buyers even with the point of sale in Rajasthan, as a necessary incident occasioned the movement of good, purchased, outside the State of Rajasthan in view of undisputed fact that there is no refinery in the State of Rajasthan for processing the crude oil. The respondent State itself has in fact at all times been aware that crude oil produced at the Barmer Oil Fields and sold to the nominees of the Central Government would be as a consequence moved to the refineries outside the State of Rajasthan for being processed. It was submitted that under Article 265 of the Constitution of India no tax can be levied or collected without authority of law, and this also excludes the collection of taxes on the ground of a purported agreement/undertaking-absent any statutory foundation for the levy in issue-in this case RVAT. Reference has been made to the judgment of the Apex Court in case of Bonanzo Engineering and Chemical Private Limited v. Commissioner of Central Excise [(2012) 4 SCC 771] to submit that estoppel even if made out cannot entail collection of tax not otherwise leviable in law.

18. It has been further submitted that Article 286 of the Constitution of India as also the Schedule VII thereof make it clear that in case of Inter state sales, tax can only be levied by an Act of Parliament which in the instant case is the Central Sales Tax Act.

19. In the course of the hearing before this court on 25-2-2016, it was directed that the respondent State file an affidavit with regard to the opinion of the Ministry of Finance, Government of India received by it, on the issue of nature of sale of the Barmer crude oil sold by the petitioner, under the Production Sharing

Contract, to the nominees of the Central Government.

20. Pursuant to the said directions, an additional affidavit has been filed by Mr. Prem Singh Mehra, the Principal Secretary Finance. Annexed thereto is a copy of letter dated 18-8-2009 sent by the Ministry of Petroleum & Natural Gas to the Chief Secretary Government of Rajasthan. The said letter makes two aspects clear (i) that the liability of sales tax is not decided by point of delivery and (ii) that liability of sales tax in respect of a transaction would be determinable inter alia by the defined point of sale and the nature of sale which in turn would depend on the terms of contract between the parties to the sale transaction. Specific to the case at hand the said letter amongst other aspects, refers to a scenario where the sale of crude oil takes place in Rajasthan but the crude oil has to be necessarily thereafter carried out side the state of Rajasthan. It was opined that such a transaction where a sale in Rajasthan occasioned the movement of goods outside the State, would be deemed to have taken place in the course of inter-state trade and be subject to levy of CST. The letter further categorically states that CST would apply even when the point of delivery was within the State as Section 3(a) of the CST Act, 1956 lays down that a sale or purchase of goods shall be deemed to have taken place in the course of inter-state trade or commerce if such sale or purchase occasions the movement of goods from one state to another. In the circumstances it was concluded that (i) state sales tax/ VAT would accrue to Rajasthan Government in case the sale of crude oil is made for further processing within Rajasthan but (ii) CST would accrue to Rajasthan if the sale is made in Rajasthan but occasions the need to be necessarily moved to another State for refining.

21. Response of Prem Singh Mehra to aforesaid letter as reflected in his affidavit is quite evasive and untenable. What is lopsidedly and wrongly emphasised by him in the aforesaid letter is the point of sale only overlooking the conjunctive requirement of looking as to whether the sale occasioned the movement of goods outside the State. The Principal Secretary Finance with all the legal paraphernalia as his disposal was expected to be more forthright in assisting the court. This unfortunately is not the case.

Contentions:

22. Mr. A.R. Madhav appearing with Mr. Sameer Jain on behalf of the petitioner has submitted that, under Clause 1.23 of the PSC, the point of delivery was to be the one identified by the Central Government. Initially this was the point at which the crude oil reached the outlet flange of the delivery facility of the petitioner at Barmer. Subsequently other delivery points were identified from time to time, (Salaya on 30-4-2008, Bhogat on 25-7-2009) and (Kandla, Radhanpur and Viramgham on 5-10-2009) all en route as approved by the Central Empowerment Committee (CEC) set up by the Central Government. Counsel submitted that the risk and title in the crude oil sold passes to the buyers as agreed by the parties to the transaction. The sale of the crude oil by the petitioner thus would stand completed as agreed even where the point of sale of

the crude oil is at Barmer. The mining lease granted by the State of Rajasthan to the petitioner for excavation of oil specifically noted the PSC and recorded that the mining lease would inter alia be subject to the terms and conditions agreed upon in the Production Sharing Contract (PSC) and/ or deed/ agreement signed in regard to the block/area. Thus the terms of the PSC including the right of Central Government to fix delivery points and place where title and risk passes in goods to the buyers as set out in PSC was accepted, at least impliedly by the State of Rajasthan. And now it is not open to the respondent State to object to the multiple delivery points fixed by the Central Government outside the State of Rajasthan. Mr. Madhav Rao then submitted that the delivery point at Barmer was in any event only for the purpose of determination of the price of the crude oil supplied and cannot be in any event be construed as an incident of a completed sale without regard to the specific terms of the MOU/COSAs entered into between the petitioner and its buyers.

23. Mr. Madhav Rao further submitted that it is in the context of delivery points having been fixed by the Central Government under its letter dated 30-4-2008 at Salaya, Gujarat on 30-4-2008, thereafter Bhogat, Gujarat on 24-7-2009, the petitioner to assuage the apprehension of respondent State that all revenues would be lost to it, undertook vide its letter dated 23-10-2008 that the point of sale of crude oil excavated in Barmer would be in State of Rajasthan, as correctly reflected in the letter dated 7-1-2009 by the petitioner to the then Chief Minister of Rajasthan and other correspondences on the subject. This was done to exclude the possibility of stock transfer of crude oil produced at the Barmer fields to Gujarat resulting in complete loss of revenues to the State of Rajasthan even with regard to CST in respect of inter state sales. The undertaking of the petitioner was never accompanied by any commitment whatsoever on the issue of delivery point for the crude oil sold. Clause 1.23 of the PSC made it the prerogative of the Central Government to fix the different/multiple delivery points for sale of crude oil produced in Barmer. Mr. Madhav Rao emphatically pointed out that it is inconceivable that subsequent to the Central Government deciding on 30-4-2008 that the delivery point would be at Salaya, Gujarat outside the state of Rajasthan, the petitioner could have submitted an undertaking contrary thereto on 23-10-2008 and committed to ensuring that the delivery point for sale of crude oil from Barmer would be in the State of Rajasthan. It was submitted that the undertaking given by the petitioner on 23-10-2008 to the State of Rajasthan and other correspondences on the subject with regard to point of sale being in Rajasthan has only entailed that crude oil would be appropriated by the nominated buyers of Government of India at Barmer and nothing more. Thereafter in terms of delivery points determined by the Central Government and governing MOU/ COSAs, the crude oil moves out of the State of Rajasthan to Gujarat. Further as the crude oil cannot at all be used in Rajasthan, the point of sale in Rajasthan only occasions, as of necessity and obvious clear intent the movement of crude oil sold to the buyers to their oil refineries, all situate outside the State of Rajasthan. In these circumstances in

terms of Section 3(a) of the CST Act, 1956 the sale of crude oil by the petitioner to the nominees of the Government of India is evidently without any question at all, an inter state sale on which the State of Rajasthan, cannot levy RVAT, but as the originating state, on the inter-state sale would be entitled to 2% CST against C form.

24. Mr. Madhav Rao further submitted that the sale of Barmer crude oil thus being an inter state sale, the provisions of VAT Act, 2003 could not attract thereto in view of the clear language of Section 4 of the Act of 2003 itself, which provides that levy of VAT and its rate would be inter alia subject to the provisions of the CST Act, 1956. It was submitted that under Section 3 of the CST Act a sale or purchase of goods is deemed to have taken place in the course of inter state trade/ commerce if the sale or purchase occasions the movement of goods from one state to another. Mr. Madhav Rao also submitted that the crude oil sold to MRPL following the MOU dated 5-8-2008 was to be utilised by MRPL at its Mangalore refinery as in borne out from clause 10 of the MOU between the petitioner and MRPL which records that MRPL would not resell or consume the crude oil in the State of Rajasthan or Gujarat and the crude oil would be transported outside the two states.

25. Mr. Madhav Rao placed reliance on the decisions of the Apex court in the case of Oil India Limited v. the Superintendent of Taxes [(1975)1 SCC 733], Indian Oil Corporation Ltd. v. Union of India [(1980) Supp. SCC 426], DCM Ltd. v. Commissioner of Sales Tax Delhi [(2009)4 SCC 231], M/s. Gannon Dunkerley & Co. v. State of Rajasthan [(1993)1 SCC 364], Commissioner Sales Tax UP v. [(1992)3 SCC 750] and Hyderabad Engineering v. State of A.P. [(2011)4 SCC 705] to contend that even where the title and risk passes in fact is totally irrelevant to determine the question as to whether the sale is local on which the State Sales tax is exigible or whether it is an inter state sale to which CST attracts. It was submitted that the only consideration for the court is to examine as to whether the sale in issue occasioned the movement of goods from one state to another. It was submitted that in the circumstances, the crude oil produced by the petitioner at the Barmer oil fields, admittedly not capable of being utilised in state of Rajasthan as no refinery obtains for the purpose in state of Rajasthan, admittedly moved consequent to its sale outside the state of Rajasthan to Gujarat and Karnataka. This nature of the transaction thus partakes the character of an inter state sale. Even section 4 of the CST Act, 1956 which lays down when a sale can be said to have taken place in a state makes it subject to the provision of Section 3 of the CST Act, 1956. Mr. Madhav Rao then submitted that the issue in the writ petition also engaged the attention of the Ministry of Finance, Government of India wherein it was categorically stated as reflected in its letter dated 10-9-2009 that the sale of crude oil at Barmer to nominees of the Central Government for being processed by Refineries situate out side the state of Rajasthan would be an inter state sale.

26. On the impugned order dated 9-2-2012 passed by the Additional

Commissioner VAT & IT on the determination application filed by the petitioner pursuant to order dated 16-11-2011 passed by this Court in SBCWP No.11965/2009, counsel submitted that it was palpably perverse and vitiated by complete non-application of mind as it only lopsidedly focused on the petitioner's undertaking dated 23-10-2008, the letter dated 7-1-2009 and other correspondences reflecting the petitioner's commitment to the point of sale being in Rajasthan without noticing and addressing the terms of the MOU dated 5-8-2008 between the petitioner and MRPL, particularly condition 10 thereof and the undisputed fact that following the sale of crude oil to MRPL, the crude oil was only appropriated at Barmer but had to be resultantly transported outside the State of Rajasthan to be utilised at MRPL's refinery at Mangalore in the State of Karnataka. It was submitted that the Additional Commissioner failed to address the fundamental aspects of the transaction regarding the contract of sale occasioning the movement of goods (crude oil) outside the State of Rajasthan while farcically determining the question as to whether the sale in question to MRPL at Barmer partook the character of an intra state sale or an inter state sale. It was submitted that the Additional Commissioner has very cursorily, flouting his obligation to follow the judgments of the Apex Court relevant to the issue before him, disregarded the catena of judgments of the Apex Court squarely covering the issue before him by a sleight of hand mechanically observing that the facts of the cases decided by the Apex Court were different from the facts of the case before him.

27. Mr. Madhav Rao submitted that consequently the impugned notice dated 15-9-2009, being without jurisdiction as also the letters dated 22-6-2009 and 29-7-2009 being wholly illegal be quashed and be set aside. So be the order dated 9-2-2012 passed by the Additional Commissioner. And it be declared that the sale of crude by the petitioner from the oil fields in Barmer to MRPL etc. all nominated by the Central Government under Clause 1.23 of the PSC with refineries outside the State of Rajasthan is an inter state sale.

28. Mr. Ranjeet Kumar Solicitor General with Mr. Shiv Mangal Sharma and Mr. N.M. Lodha, Advocate General with Mr. Vishal Sharma appearing for the respondent State have submitted that finding of the Additional Commissioner (VAT & IT) on the sale transactions including the one between the petitioner and MRPL being an intra state sale, is one of fact that brooks no interference at the hands of this court in exercise of its jurisdiction under Article 226 of the Constitution of India. It was submitted that the impugned order dated 9-2-2012 passed by the Additional Commissioner VAT & IT suffers from no error of jurisdiction, perversity or patent error of law apparent on the face of record, and therefore the petitioner be relegated to its alternative remedy of an appeal under Section 83 of the RVAT Act, 2003 there against. It was submitted that under RVAT Act, 2003 it is the point of sale which is the incident of taxation and in the instant case as per the petitioner's own undertaking under letter dated 23-10-2008 and the subsequent letter dated 7-1-2009 the point of sale of crude oil produced in Barmer is the state of Rajasthan. Consequently the petitioner

having admitted to the point of sale at Barmer, where the sale invoices are also drawn would be liable to pay VAT @ 4% on the transaction in respect of which show cause notice dated 15-9-2009 and letters dated 22-6-2009 and 29-7-2009 had been issued. Reliance has been placed on the judgment in case of *Balabhagas Hulaschand v. State of Orissa* [1976(2) SCC 44] in support of the contention that sale of crude oil by the petitioner to MRPL in the context of its undertaking dated 23-10-2008 would render the sales of crude oil from the Barmer Oil fields intra state sales. It was submitted that the delivery point of the crude oil, sold to MRPL in terms of Clause 19.4 of the PSC was at the outlet flange of the petitioners delivery facility at Barmer. The sale was thus completed in Rajasthan and it is of no consequence as to whether the crude oil sold, was then transported outside the State of Rajasthan. The legality of change of delivery points to other than the outlet flange of the delivery facility at Barmer as reflected in Clause 19.4 of the PSC has also been impugned, albeit half heatedly, as contrary to Rule 5 of the Petroleum and Natural Gas Rules, 1959.

29. It was submitted that the point of sale and delivery point being in the State of Rajasthan, neither the subsequent change of delivery point by the Central Government to places outside the State of Rajasthan on the recommendations of the CEC in the exercise of power under Clause 1.23 of the PSC nor the subsequent movement of crude oil outside the State of Rajasthan following the sale could morph a local sale into an inter state sale. It was submitted that in terms of Section 4 of the CST Act, 1956 the sale between the petitioner and MRPL is a sale within the state as the crude oil sold by the petitioner to buyers was a specific and ascertained good and the sale was complete at the point it was made.

30. Mr. Ranjeet Kumar submitted invoking the doctrine of promissory estoppel that the petitioner having admitted to the point of sale of the Barmer crude oil in Rajasthan could not now contend/ assert that sale of crude oil from Barmer to MRPL and others is an inter state sale. It was submitted that the petitioner's letter/undertaking dated 23-10-2008 and 7-1-2009 are conclusive of the matter and it was only based on the petitioner's representation that the Right to Use (ROU) for laying of pipeline from the State of Rajasthan the Gujarat was granted to the consortium of Cairn and ONGC. It was submitted that the petitioner having made representations to the State of Rajasthan that no revenue loss would be caused to it as the point of sale of the Barmer crude oil would be in Rajasthan, cannot now take a different stand before this court which exercises equitable extraordinary jurisdiction under Article 226 of the Constitution of India. Reference in support of the contention has been made to the judgments in case of *Union of India v. Godfrey Philips India Limited* [(1985)4 SCC 369] and *Kanishka Trading v. Union of India* [(1995)1 SCC 274].

31. In respect of the Secretary, MOPNG, Central Government letter dated 18-8-2009 addressed to the Chief Secretary Government of Rajasthan it was first submitted that the said letter not being part of pleadings should not be taken

into consideration. The further submission was that the opinion is general in nature without regard to the terms and conditions of COSAs entered by the petitioner with different buyers nominated by the Central Government for purchase of crude oil from Barmer oil fields facility or the petitioner's undertaking of 23-10-2008 and 7-1-2009 and the Director of MOPNG's letter dated 14-1-2009 stating that no loss of revenue would accrue to the State of Rajasthan from the change in the delivery point from Barmer to Salaya/Bhogat, etc. Even while it is admitted that the opinion by the Secretary, MOPNG conveyed to the Chief Secretary of Government of Rajasthan categorically states that liability of sales tax is not determined by point of delivery, Mr. Ranjit Kumar emphasised that the point of sale of goods is not irrelevant and the petitioner having admitted in its undertaking dated 23-10-2008 and letter dated 7-1-2009 that the point of sale would be in Rajasthan the sales of crude oil at Barmer partakes the character of local sales exigible to RVAT Act, 2003.

32. Heard. Considered.

33. It would be appropriate to first deal with the objection to the territorial jurisdiction of the Jaipur Bench to hear this petition. It is not in dispute that the impugned order dated 9-2-2012 has been passed by the Additional Commissioner VAT & IT at Jaipur. It is also not in dispute that also under challenge are the letters dated 22-6-2009 and 29-7-2009 which have been issued by the Department of Finance at Jaipur. In the circumstances the objections as to the territorial jurisdiction of Jaipur Bench to hear the writ petition is quite untenable and liable to be rejected.

34. On the issue of an alternative remedy available to the petitioner under Section 83 of the RVAT Act, 2003, for one this petition has been pending before this court for the last over six years. It was admitted on 2-7-2012, pleadings are complete, and the parties have been heard at length. Further the challenge in this writ petition is fundamentally to the jurisdiction of the respondent state to resort to the RVAT Act, 2003 despite the prohibition of Section 4 thereof in respect of inter state sale. Aside of the aforesaid, the facts of the case are not in dispute and only the adjudication of a legal issue on admitted facts is sought. Even in the impugned order dated 9-2-2012 no finding obtains that the crude oil sold by the petitioner from the Barmer Oil fields is not forthwith moved out from the State of Rajasthan as agreed with the buyers or the movement of goods is not an obvious incident of sale. The Apex Court in the judgments rendered in the case of *Union of India v. Vicco Laboratories* [(2007)13 SCC 270] *Union of India v. Hindalco Industries Ltd.* [(2003) ELT 481(SC)] *Whirlpool Corporation v. Registrar of Trade Marks* [(1998)8 SCC 1] has held that where a petition inter alia agitates an issue of jurisdiction of the Statutory Authority to take proceedings against the petitioner, a petition under Article 226 of the Constitution of India would be maintainable. Further, this writ petition also agitates the case that the determination of sale transaction of petitioner company with regard to crude oil produced at Barmer Oil fields as a local sale by the Additional Commissioner VAT

& IT under the impugned order dated 9-2-2012 is in cross hairs of multiple decisions of the Apex Court as to what constitutes in an inter-state sale and aside of being perverse the impugned order dated 9-2-2012 is also contumacious in deliberately not following the mandate of law as determined by the Apex Court. The Apex Court in the case of *State of U.P. v. Mohammad Nooh* [(1958)1 SCR 595], *Ram and Shyam Company v. State of Haryana* [(1985)3 SCC 267] has held that where the order impugned is stated to be illegal, invalid or being contrary to settled law a petition at the instance of aggrieved party would lie before the jurisdictional High Court under Article 226 of the Constitution of India and such a petition ought not to be rejected on the ground of an alternative remedy of a Statutory Appeal. So to in *Hyderabad Engineering Ltd. v. State of A.P.* [(2011)4 SCC 705], *Oil India Ltd. v. The Superintendent of Taxes* [(1975)1 SCC 733], *D.C.M. Ltd v. Commissioner of Sales Tax, Delhi* [(2009)4 SCC 231], *Indian Oil Corporation Ltd. v. Union of India* [(1980) Suppl. SCC 428], *CST v. Bakhtawar Lal Kailash Chand Areti* [(1992)3 SCC 950] it has been held that a writ petition can not be rejected on the ground of availability of alternative remedy, if requisite facts obtain.

35. For the aforesaid reasons, I am of the considered view that in the context of the facts and circumstances of the case and the nature of challenge laid in writ petitions, the alternate remedy under Section 83 of the Act of 2003 to impugn the order dated 9-2-2012 passed by the Additional Commissioner VAT & IT or for that matter against the show cause notice dated 15-9-2009 is not an efficacious remedy. Remitting the petitioner to the statutory alternative remedy at this belated stage would only prolong the litigation to the detriment of the petitioner as well as the respondent state. Prolonged litigation benefits none.

36. On the merits of the petition it would be appropriate to recapitulate the essential facts in brief. Petroleum in its natural state is vested in Union of India which has in terms of the PSC (production sharing contract) entered into agreement with the petitioner for excavation of crude oil from the Barmer Oil fields and its sale. As per Article 18 of the PSC the crude excavated by the petitioner as a contractor has to be, sold only to Government of India or its nominees. All terms and conditions including the delivery point are to be determined by the Central Government in terms of clause 1.23 of the PSC. Initially the delivery point was referred to under clause 19.4 of the PSC as the outward flange of the petitioner's delivery facility at Barmer, albeit in the context of price determination of crude oil sold, yet subsequently vide communication dated 30-4-2008 the delivery point was first shifted, on the recommendations of the Empowered Committee of Secretaries from Barmer to the outlet flange as Salaya, Gujarat on 30-4-2008 and subsequently on 24-7-2009 to Bhogat, Gujarat. And then additionally en route on 5-10-2009 to Kandla, Radhanpur and Viramgham for supplies to be made to various other nominees of the Central Government. In terms of PSC the passing of title and risk go hand in hand with the delivery point and/ or as determined otherwise by the Central Government as also under the contract of sale between the parties. It is true that the petitioner

undertook under letter dated 23-10-2008 and 7-1-2009 to ensure that point of sale would be the State of Rajasthan. This position was also recognised by the Central Government in its letter dated 18-8-2009. But it is not at all in dispute that the crude oil excavated at the Barmer Oil fields and sold to nominees of the Central Government such as MRPL, IOCL etc. cannot be processed in State of Rajasthan for the reason that none of the nominees, who purchase the crude oil have their refineries in State of Rajasthan and for the purpose of refining the crude oil purchased to various petroleum products the crude oil has to be as of necessity and known to all concerned moves outside the State of Rajasthan occasioned by the sale. The MOU dated 5-8-2008 between the petitioner and MRPL in fact prohibits resale or use of the crude oil not only in Rajasthan but also in Gujarat and mandates it being moved out of the two states. From the facts on record it transpires that the State of Rajasthan has at all times being conscious of the fact that crude oil produced at Barmer Oil fields in the absence of refinery in State of Rajasthan would be utilised out of the State of Rajasthan by the buyers nominated by the Central Government. This has also not been denied. Thus even with the point of sale of the crude oil produced at Barmer Oil fields being in the State of Rajasthan, it does not detract from the fact that the sales occasioned the movement of goods (crude oil) outside the State of Rajasthan. Section 3(a) of the Central Sales Tax Act, 1956 defines an inter-state sale as under:-

"3. When is a sale or purchase of goods said to take place in the course of inter-state trade or commerce.--A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase--

(a) occasions the movement of goods from one State to another;"

37. The issue as to what constitutes an inter-state sale has been dealt with on several occasions by the Apex Court. In the case of *Balabhagas Hulaschand v. State of Orissa* (supra) the Apex Court has held that if the movement of goods from one state to another is the result or an incident of the contract of sale, then the sale is an inter-state sale. In the instant case also the crude oil produced at Barmer Oil Fields as of necessity and as contracted has to be moved-occasioned by the sale-from Barmer to refineries of the buyers who are all situate outside the state of Rajasthan for the purpose of its processing. In the case of *English Electric Company of India Limited v. The Deputy Commercial Tax Officer* [(1976)4 SCC 460] the Apex Court has held that even when the movement of goods from one state to another is an incident of the contract it is a sale in the course of inter-state sale. What is decisive is whether the sale is one which occasions the movement of goods from one state to another. The inter state movement must be the result of a covenant, express or implied, in the contract of sale or an incident of the contract. The case of *State of A.P. v. National Thermal Power Corporation Limited* [(2002)5 SCC 203] was where electricity generated in thermal power station located in one state and pursuant to contract of sale, was sold to Electricity Board or Government of another state where it

was received and consumed. Resultantly, the Apex Court held such a sale to be an inter-state sale. It was further held that inter-state trade has three essential ingredients (i) there must be a contract of sale, incorporating a stipulation, express or implied, regarding inter-state movement of goods; (ii) the goods must actually move from one state to another pursuant to such contract of sale, the sale being the proximate cause of movement; and (iii) such movement of goods must be from one state to another state where the sale concludes.

38. Similarly in the instant case, after excavation of crude oil by the petitioner from Barmer Oil Fields and its sale at the delivery points identified by the Central Government the goods move in a seamless unbroken transaction through heated pipelines to the nominated buyers MRPL etc. at their refineries situated in Gujarat and Karnataka, so that when the sale to MRPL was at the Delivery Point Barmer where the sale occasioned the movement of goods to Karnataka via Gujarat by road and steamer. In the circumstances, the ingredients of inter state sale are fully made out and it cannot be held that the sale of Barmer Crude oil by the petitioner to the nominees of the Central Government—all with refineries outside the State of Rajasthan is an intra state sale.

39. The defence of the respondent State to the writ petition overlooks the fundamental aspect of sale transaction between the petitioner and nominated buyers of crude oil where movement of goods is inevitably occasioned out of the State of Rajasthan in one unbroken transaction, following the sale, as all nominated buyers such as MRPL etc. have their refineries in State of Gujarat and Karnataka. There is no third party. There is no third party transaction. Further in terms of the judgments of the Apex Court referred to above, where the sale and delivery takes place has been relegated to an inconsequential event when the sale seamlessly occasions the movement of goods outside the state. It is thus evident that the sale transaction of crude oil by the petitioner in the facts of the case, even with the point of sale being in Rajasthan, partakes the character of an inter-state sale. The purport of the undertaking by the petitioner in its letter dated 23-10-2008 as also the subsequent letter dated 7-1-2009 was only that the change of the delivery point by the Central Government from the outward flange of the petitioner's delivery facility at Barmer to Salaya on 30-4-2008 would not facilitate stock transfer of Barmer crude oil to Gujarat such that the State of Rajasthan would stand deprived as the originating state, of its revenue on inter-state sales at the applicable rate. The undertaking did not at all state that RVAT would be paid. The levy was only to be dependent on the sale being a local sale or inter-state sale. In the instant case the sales on the facts relevant thereto being an inter-state sale, as the originating state in terms of Section 9 of the CST, the State of Rajasthan is entitled CST at the rate applicable to an inter-state sale. Besides it is preposterous to argue that sales tax would be leviable contrary to law and the mandate of Article 265 of the Constitution of India on the basis of a purported undertaking by the petitioner. The Apex Court in the case of *Bonanzo Engineering and Chemicals Pvt. Ltd. v. Commissioner of Central Excise* [(2012)4 SCC 771] has held that there can be no taxation based

on waiver. So to it cannot be on alleged consent. Further it would be noteworthy to record that the undertaking of 23-10-2008 by the petitioner and subsequent letter dated 7-1-2009 do not in any manner unequivocally represent to the State of Rajasthan that the crude oil sold by the petitioner would be a local sale.

40. For the aforesaid reasons the impugned order dated 9-2-2012 is quashed and set aside. As also is the notice dated 15-9-2009 and letters dated 22-6-2009 and 29-7-2009. They are also quashed and set aside. It is held that the sale of crude oil by the petitioner from the Barmer Oil Fields to MRPL etc., all nominated by the Central Government, under clause 1.23 of the PSC is an inter state sale and the Commercial Taxes Department of the State of Rajasthan has no jurisdiction to levy any tax under the provisions of the RVAT Act, 2003. Central Sales Tax at the rate applicable from time to time would however be leviable by the Commercial Taxes Department.

41. Resultantly, both writ petitions No.15191/2009 and No.11965/2009 stand accordingly allowed.