

(2012) 02 AHC CK 0011

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 11810 of 2011, 7995 of 2007, 10738, 12263 of 2011, 4150, 4583, 7390 of 2006, 2898, 3142, 4218, 3518, 5168, 5325, 5330, 5563, 5733, 5734, 5718, 8569, 9184, 9628, 9627, 9549, 9466, 9395, 8194, 8193 of 2007, 232, 1059

Gobind Sugar Mills Ltd. and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-02-2012

Acts Referred:

Constitution of India, 1950 — Article 301, 304(b)

Uttar Pradesh Tax on Entry of Goods into Local Areas Act, 2007 — Section 17, 9(4)

Citation : (2012) 2 ADJ 739

Hon'ble Judges : Uma Nath Singh, J; Satish Chandra, J

Bench : Division Bench

Advocate : Sudeep Kumar, S.M.K. Choudhary, Rahul Srivastava, Kunal Srivastava, Shubham Agrawal, Rakesh Ranjan Agrawal, Suyash Agrawal, P. Agrawal, Alok Kumar, Anand Mohan, Nikhil Agrawal, Raj Kumar, Ashok Kumar, Abhyuday Misra, Praveen Kumar, Shikhar Anand, J.P. Mathur, Mudit Agarwal, Sumit Kumar, P. Bisht, Akhilesh Kalra, Ram Raj, Abhinav N. Trivedi, Anand Dubey, Aftab Ahmad, Amitabh Mani, Pushkar Baghel, Naresh Chandra Mishra, Amit Saxena, Jitendar Saxena, Rohit Tripathi, Ved Prakash Singh, Rajesh Tewari, Dileep Singh, Anupam Kumar, Aasif Razzaque Khan, Krishna Agrawal, Santosh Kumar Rastogi and Hari Om Singh, for the Appellant;

Judgement

Satish Chandra, J.—Heard learned counsel for the petitioners and Sri H.P. Srivastava, learned Additional Chief Standing Counsel and perused the material available on records. In all these writ petitions the petitioners as traders, manufacturers and importers bringing scheduled goods into the local areas in the State of U.P. for consumption, use or sale therein have challenged the validity of the U.P. Tax on Entry of Goods into Local Areas Act, 2007, (in short the U.P. Act of 2007) on the grounds of lack of the legislative competence of the State of U.P. of enactment, as also violative of freedom of trade, commerce and intercourse guaranteed under Article 301 and not saved by Article 304 (b) of the Constitution

of India. The petitioners have also challenged the retrospectivity of the Act. w.e.f. 1.11.1999, when the U.P. Tax on Entry of Goods Ordinance, 1999, replaced by U.P. Tax on Entry of Goods Act, 2000, was promulgated and which was struck down by this Court in *Indian Oil Corporation Limited and Another Vs. State of Uttar Pradesh and Others*, .

2. The substance of challenge in all these writ petitions to the constitutional validity of the U.P. Act of 2007 is that the entry tax is levied under the Act is by way of payment of compensatory tax of which the quantifiable/measurable benefits are not provided either facially or patently to its payers, in view of the tests laid down in *Jindal Stainless Ltd. and Another Vs. State of Haryana and Others*, . The expenditure of the entry tax as compensatory tax collected is not broadly in proportion to defray the cost of regulation, or to meet the outlet incurred for some special benefit to the trade commerce and industry. There is no link between the entry tax collected and the facilities extended to the trades, directly or indirectly, and for which the State on which the burden of proof lies has failed to prove the direct and immediate effect on trade and commerce, as laid down in *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, , and the working trust enunciated in *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, .

3. All the writ petitions are pertaining to the entry tax. The issue was already decided by this Hon''ble High Court at Allahabad in leading Writ Tax No. 1484 of 2007 (*ITC Limited v. State of U.P. and others*) alongwith connected Writ Tax petitions.

4. The Hon''ble High Court vide its order dated 23.12.2011 has dismissed all the writ petition by observing that:

150. For the reasons given as above, we hold that the State of U.P. did not lack legislative competence in enacting U.P. Tax on Entry of Goods into Local Areas Act, 2007, imposing entry tax on the entry of scheduled goods into the local areas for consumption, use or sale thereunder. The provisions of the Act patently and facially indicate and that there are sufficient guidelines and guarantees under the Act for ensuring that the entire amount of entry tax collected and credited to the U.P. State Development. Fund is utilised only for the purposes of its reimbursement to facilitate the trade, commerce and industry. The State Government has also established that the entire amount of entry tax is by way of reimbursement/recompense to the trade, commerce and industry, in the local areas of the State of U.P. provides quantifiable/measurable benefits to its payers. The levy under the Act, 2007 is also not discriminatory, unreasonable or against public interest. The levy of entry tax under the Act, therefore, does not violate the freedom of trade, commerce and intercourse guaranteed under Article 301 of the Constitution of India. Section 17 of the Act validating the amount of entry tax levied, assessed, realized and collected under the U.P. Tax on Entry of Goods Act, 2000, is also valid and authorises the State to keep the entire amount, for the purposes of its utilisation for facilitating trade, commerce and intercourse in the

local areas of the State.

151. We may observe by way of clarification that in these writ petitions we have confined our enquiry to the constitutional validity of the U.P. Tax on Entry of Goods into Local Areas Act, 2007, and whether the entry tax is compensatory in nature, which does not violate the freedom of trade, commerce and intercourse under Article 301 of the Constitution of India. We have not examined the other issues namely the validity of the notices, assessments, rebates, exemption and the liability of the traders, and manufacturers of the scheduled goods to pay entry tax. All other questions, will remain open to be considered by the competent authorities under the Act in accordance with law.

152. All the writ petitions are consequently dismissed. The interim orders are discharged.

5. Being aggrieved, the petitioners have filed SLP before the Hon"ble Apex Court against the judgment and order dated 23.12.2011 (supra). The SLP was registered as SLP (C) No. 324-327/2012. The Hon"ble Apex Court on 17.1.2012 passed an interim order following order which on reproduction read as under:

The Respondent/State has levied Entry Tax on import of crude oil into the State under the provisions of U.P. Tax on Entry of Goods into Local Areas Act, 2007 (hereinafter referred as "U.P. Act, 2007"), the vires of which has been upheld by the Division Bench of the High Court of Judicature of Allahabad vide its order dated 23.12.2011 in Writ Tax No. 1483 of 2007 and connected matters. Several assesseees have approached this Court being aggrieved by the orders passed by the Allahabad High Court in the aforesaid writ petitions. While considering the request made by some of the petitioners/assesseees, we have passed conditional interim orders dated 10.1.2012 and 13.1.2012.

On a request made by learned Solicitor General, we had separated these special petitions, though they were posted before the Court on the previous dates of hearing. While doing so, after hearing Shri R.F. Nariman, learned Solicitor General, appearing for the petitioners, we had passed the following Order:

Shri R.F. Nariman, learned Solicitor General, appearing for the Petitioner in this matter, would contend that the respondents have issued demand notices, inter alia, demanding the payment of Entry Tax under the provisions of U.P. Tax on Entry of Goods Into Local Areas Act, 2007 for the assessment periods 2007--2008, 2008--2009, 2009--2010 and 2010-2011, without there being any quantification by way of assessments for all these years.

Faced with this situation, learned senior counsel, Sh. K.K. Venugopal, appearing for the respondent--State would submit that he will file an appropriate affidavit indicating whether the petitioners herein have filed the monthly or annual returns for the assessment years in question and whether the department has completed assessments or the basis on which the demand notices are issued. To facilitate them to file the said affidavit, we adjourn this matter to Thursday i.e.

12.1.2012.

On the last date of hearing, learned senior counsel appearing for the petitioners had submitted before us that there was no basis for the State to issue demand notices for the assessment years 2008--2009, 2009--2010 and 2011--2012. According to the learned senior counsel, the State and its authorities have not even quantified tax liability by way of assessments for all these years.

Taking that into consideration, we had requested Shri K.K. Venugopal, learned senior counsel, appearing for the respondent/State to inform us the basis on which the demand notices have been issued to the assesseees for the aforesaid assessment years.

The State has now filed affidavit dated 11th January, 2012 and additional affidavit dated 16th January, 2012, and in the said affidavits they have frankly admitted that for the period prior to 2007--2008, orders of assessment have been completed and the demand notices have been issued. Therefore, the contention of the learned Solicitor General that there was no basis for issuing demand notices; demanding taxes for the aforesaid period, has no merit. In so far as the assessment for the period of 2008--2009, 2009--2010 and 2010--2011 is concerned, the State has admitted that the assesseees, for the aforesaid period, have filed monthly returns but have not accepted the liability to pay, the entry tax on the import of crude oil. It is also stated that the assessing authority has issued a pre--assessment notice u/s 9(4) of the U.P. Act, 2007. It is also brought to our notice at the time of hearing of this petition that on the request, made by the assessee, the matter now stands adjourned for the years 2008--2009, 2009--2010 to 23 January, 2012 and for the assessment year 2011--2012, is adjourned to 30 January, 2012. A reading of the affidavit, so filed by the respondent--State, would indicate that for the aforesaid period, quantification of the tax liability is yet to be determined, and therefore, it may not be permissible for the State to issue any demand notices demanding tax from the assesseees for the aforesaid assessment years. However, it is now open to the State and its authorities to quantify the tax liability, either based on the returns filed by the assessee or on the basis of best assessment order, if they so desire, and if the Act so permits for the assessment years 2008--2009, 2009--2010 and 2010--2011. After such quantification, the State is at liberty to issue appropriate demand notices.

Learned Solicitor General, Shri R.F. Nariman, submits that the assesseees stand unique in its own way and the assessee should not be treated like any other assessee(s). We are not inclined to accept the request of the learned Solicitor General. We say so for the reason that all the dealers under the Act, unless they are exempted from payment of tax under the Act, should be treated equally and further, the uniformity even while passing the interim orders is the hallmark of this justification. Therefore, the assessee is also a dealer under the Act and the said assessee is to be treated in the same manner as has been done in the case of the other assesseees under the Act.

Learned Solicitor General, Shri R.F. Nariman has also brought to our notice the orders passed by this Court in the case of Bongaigaon Refinery & Petrochemical Ltd. [Now Indian Oil Corporation Limited] v. State of Assam and others, wherein this Court has granted an interim stay of the demand notices issued by the assessing authority by directing the assessee to deposit twenty five per cent of the outstanding amount and then has modified it by increasing the deposit to be made approximately to thirty three per cent.

At this stage, we only to say that the interim Order(s) are not precedents. It can be modified/varied in the facts and circumstances of each case.

Lastly, learned Solicitor General submits that the assessee has not filed his monthly return for some of the months for the assessment years of 2008--2009, 2009--2010 and 2010--2011. If that is so, the assessee is permitted now to file their monthly returns for the assessment years of 2008--2009, 2009--2010 and 2010--2011 in four weeks time from today, After the expiry of such period, the assessing authority is directed to complete the assessment(s) for the aforesaid period and issue demand notices, accordingly. The petitioner is also granted six weeks" time thereafter for complying with the demand notice(s) issued by the assessing authority in accordance with the orders passed by us on 11th January, 2012 and 13th January, 2012 in M/s. Vikram Cement v. State of U.P. and others in SLP (Civil) No. 33/2012.

Ordered accordingly.

SLP (C) No. 324--326/2012 [GAIL (India) Ltd. and another v. State of U.P. and others]

Learned Solicitor General, Shri R.F. Nariman, has produced the details of Entry Tax assessed and demands pending for the assessment years 2000--2001 to 2009--2010. On instructions, he submits that the petitioners herein have paid substantial amount by way of Entry Tax to the Department. It is also his case that what now requires to be paid is approximately 100 crores only.

It is also brought to our notice that for the assessment years 2000--2001 to 2009--2010, the petitioners have filed appeals/revisions before the High Court/statutory authorities and those appeals are pending for consideration. Now, a request is made that the petitioners should be permitted to make an application/petition for grant of ad-interim stay of the demand notices issued by the respondents State for the assessment years 2000--2001 to 2009--2010.

Shri K.K. Venugopal, learned senior counsel appearing for the State opposes the request made by the learned Solicitor General, Shri R.F. Nariman.

Taking into consideration respective contentions canvassed by the learned counsel for the parties, we are of the view that the request of the learned Solicitor General is reasonable and requires to be accepted since it is not causing any prejudice to the department. Accordingly, we grant liberty to the petitioners/assesseees to make appropriate application/petition before the appellate

authorities/revisional authorities/High Court within four weeks" time from today. If such an application is filed within the time granted by this Court, the appellate authority/revisional authority/High Court will consider the same in accordance with law within four weeks thereafter.

Shri Sunil Gupta, learned senior counsel appearing for the State, on instructions would submit that the respondents shall not resort to any recovery proceedings against the petitioners till the disposal of the applications/petitions filed by the assessee. The same is placed on record.

SLP (C) No. 196/2012 [Moser Beer India Ltd. v. State of U.P. and others]

Notice to the respondents.

Learned counsel appears and accepts notice on behalf of all the respondents.

Leave granted.

In this Civil Appeal, the appellant is questioning the correctness or otherwise of the common judgment and order passed by the High Court of Judicature of Allahabad in Writ Tax No. 1482 of 2007 etc. dated 23.12.2011.

In the Writ Petition filed, the appellant had questioned the constitutional validity of the U.P. Tax on Entry of Goods Into Local Areas Act, 2007 ("U.P. Act, 2007" for short).

We have heard learned counsel for the parties on the prayer made for grant of interim relief and also perused the records.

We are not inclined to grant the blanket stay order as prayed for by the appellant. Accordingly, we pass the following order:

The operation of the impugned judgment and order is stayed subject to the appellant in each case depositing 50% of the accrued tax liability/arrears under the U.P. Act, 2007 and furnish bank guarantee for the balance amount within four weeks from today. It goes without saying, that the aforesaid deposit shall be made after adjusting the amount(s) paid or deposited during the pendency of the Writ Petition before the High Court. The appellant is directed to keep the bank guarantee(s) alive during the pendency of these appeals. The amount(s) so deposited/paid and the bank guarantee(s) furnished is subject to the result of these appeals.

The appellant shall also deposit 50% of the tax liability/arrears, including interest and penalty, and furnish bank guarantee for the balance amount as and when demand notices are issued under the U.P. Act, 2007 for the past period.

In default, the interim order(s) granted by this Court shall automatically stands vacated.

In case the State of Uttar Pradesh loses the matter at the time of final hearing, it shall refund to the appellant the amount deposited with interest at the rate which

may be fixed by this Court.

It is also made clear that in case the appellant loses the matter, the Department is at liberty to encash the bank guarantee(s) offered by the appellant and also issue demand notice(s) demanding interest, and penalty on the amount outstanding as arrears of tax.

The appellant shall continue to pay the tax at the prevailing rate(s) for the future period as applicable to each one of the assesseees.

In view of the interim order passed by us, we expect that the Department shall not resort to coercive steps to recover the amounts due to the Department.

If for any reason, the appellant in this appeal wants to seek statutory remedies provided under the Act against the assessment orders, best judgment assessment orders, provisional assessment orders, appeals or revisions before appropriate forum, they are at liberty to do so and if such appeals or revisions are filed, we direct the statutory authorities to consider the same in accordance with law.

We also reserve liberty to the respondent--State of U.P. to verify the veracity of the statement made by the appellant in the affidavit filed insofar as the tax burden being passed on the consumers directly or indirectly.

Liberty is granted to the respondents to file appropriate application before this Court for modification of the interim orders granted, if for any reason, the appellant in this case has passed on the tax burden on the consumers.

6. In view of above, we dispose of all the writ petitions with the following directions:

(i) that the petitioner(s) in each case shall deposit 50% of the accrued tax liability/arrears under the U.P. Act, 2007, and furnish bank guarantee for the balance amount within a month. The deposit shall be made after adjusting the amount(s) if any already paid/deposited during the pendency of the writ petition(s). The assessee is also directed to keep the said bank guarantee alive during the pendency of above-mentioned bunch of SLPs by Hon''ble the Supreme Court. The amount(s) so deposited/paid and the bank guarantee furnished shall be subject to the result of said bunch of SLPs;

(ii) that each petitioner shall continue to pay the tax at the prevailing rate(s) in future as applicable from time to time;

(iii) that where notices have been issued, the petitioner(s) shall submit the reply within a period of six weeks. Similarly, where the assessment orders have been made, the petitioner(s) can file appeal within a period of six weeks and the appellate authority thereafter decide the same on merit within a period of six weeks thereafter without raising plea of limitation subject to Co-operation of the petitioner(s) in the proceedings;

(iv) that petitioner(s) shall be at liberty to claim the adjustment/refund, if any, of the amount so deposited in accordance with the final verdict of the Hon''ble Apex Court in the above-mentioned SLPs;

(v) that the petitioner(s) shall be at liberty to avail statutory remedy available to them for the redressal of their grievances within a period of six weeks and the authority concerned shall decide the same on merit, in case they so avail within a period of six weeks thereafter and without raising any plea of limitation subject to cooperation of the petitioner(s) in the proceedings;

(vi) that in violation of any of the above-mentioned directions, the department shall be at liberty to take steps to recover the dues in accordance with law and,

(vii) that in view of above the interim order granted in writ petition(s) earlier shall stand vacated.

With the aforesaid directions/observations, the writ petitions are disposed of.