(2023) 12 OHC CK 0109

In the Orissa High Court

Case No : Writ Petition (C) No.10803 Of 2016

M/s. Bajpayee Bajaj APPELLANT

Vs

State Of Odisha & Others RESPONDENT

Date of Decision : 18-12-2023

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

Citation : (2023) 12 OHC CK 0109

Hon'ble Judges : Dr. B.R. Sarangi, ACJ;Murahari Sri Raman, J

Bench : Division Bench

Advocate : Sunil Mishra

Final Decision : Disposed Of

Judgement

1. This matter is taken up through hybrid mode.

2. None appears for the Petitioner at the time of call.

3. Heard Mr. Sunil Misrha, learned Standing Counsel for the Revenue.

4. The writ petition has been filed with the following prayer:-

"Under the above circumstances, it is most respectfully prayed that your Lordships shall be graciously pleased to admit this petition, call for and peruse the connected records and after hearing the petitioner's counsel, be further pleased to:-

(i) Declare the impugned Act to be Ultra Vires being violative of the Articles 301 and 304 of the Constitution;

(ii) Declare the impugned Entry Tax Act to be invalid being violative of the Article 304(b) of the Constitution;

(iii) Issue a writ in the nature of mandamus or issue any other appropriate writ declaring that the petitioner is not liable to pay entry tax in respect of the goods not manufactured inside the state and are brought outside the State;

(iv) Issue a writ in the nature of Mandamus commanding the opposite parties to refund the amount of entry tax collected/realized/paid under the impugned Act with interest @10% per annum from the date of realization to the date of refund;

(v) Issue a writ in the nature of prohibition prohibiting the Opposite party nos.4 and 5 from collecting the entry tax from the petitioner on the purchase of goods for resale."

5. Mr. Sunil Mishra, learned Standing Counsel for the Revenue contended that he has filed Misc. Case No.4959 of 2018 in W.P.(C) No.12049 of 2013, wherein at para-3 it has been averred as follows:-

"3. That the validity of levy of entry tax on goods imported from outside the territory of India has been upheld by the Hon'ble Apex Court in the order dt.09.10.17 in State of Kerala & Others vs. FR. William Fernandez Etc. Etc. in C.A. Nos.3381-3400 of 1998. The Hon'ble Court in paragraph 144 of the said order dt.09.10.17 had arrived at the following conclusions:

(i) Orissa Entry Tax Act, 1999, Kerala Tax Act, 1994 and Bihar Tax on Entry of goods in local area for consumption, Use or sale, 1993 (before its amendment by Bihar Act, 2003 and 2006) do not exclude levy of entry tax on the goods imported from any place outside territories of India into local area for consumption, use or sale.

(ii) All the Entry Tax Legislations questioned in these appeals are legislations which are within the legislative competence of the State legislatures and do not intrude the legislative domain of Parliament as reserved in Entry 41 and Entry 83 of List I.

(iii) The import of goods from any territory outside India comes to an end when the goods enter into the custom frontiers of India & are released for home consumption.

(iv) After import of goods comes to an end the State Legislature has full legislative competence to levy entry tax under Entry 52 List II.

(v) The original Package Theory as developed by the American Supreme Court in case of Brown vs. State of Maryland (supra) is not applicable in this country & the imported goods are not exempted from entry tax till it reaches to the factory premises/ destination of its consumption, use or sale.

(vi) Non inclusion of custom duty in the definition of purchase value in the Statute of entry tax is not an indicator of the fact that legislature never intended to levy entry tax on imported goods.

(vii) Entry Tax legislation are fully covered by Entry 52 List II & the submission that essence of Entry 52 is octroi which can be levied only by local authorities & State has no legislative competence to impose entry tax under Entry 52 List II is fallacious."

6. Mr. Sunil Mishra, learned Standing Counsel for the Revenue further contended that in view of the law decided by the Apex Court in State of Keral & Others vs. FR. William Fernandez Etc. Etc., 2017 SCC OnLine SC 1291= (2018) 57 GSTR 6 (SC); Jindal Stainless Ltd. Vrs. State of Haryana, (2016) 11 SCALE 1 and Order dated 28.03.2017 in State of Odisha vrs. Reliance Industries Ltd., CA Nos.6474-6798 of 2017, this matter may be disposed of accordingly.

7. Having heard learned Standing Counsel for the revenue and after going through the record, this writ petition stands disposed of in terms of judgments and order as referred to above..

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