(1988) 08 OHC CK 0013

In the Orissa High Court

Case No : Original Jurisdiction Case No''s. 745, 746 and 747 of 1987

Perforaciones Maritimas APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 03-08-1988

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 366

Citation : (1988) 71 STC 336

Hon'ble Judges : S.C. Mohapatra, J;R.C. Patnaik, J;K.P. Mohapatra, J

Bench : Full Bench

Advocate : B.K. Mohanti and Bibek Mohanty, for the Appellant; A.B. Misra, Standing Counsel (S.T.) and S. Mohapatra, Additional Standing Counsel (S.T.), for the Respondent

Judgement

R.C. Patnaik, J.—The petitioner, a company registered under the laws of and having its registered office in Mexico and carrying on business of offering service for drilling of oil wells has filed this batch of writ applications under articles 226 and 227 of the Constitution of India challenging the vires of Sub-clause (iv) of the definition "sale" in Clause (g) substituted by Orissa Act 13 of 1984 in place of the original definition in Section 2 of the Orissa Sales Tax Act, 1947 and the orders of assessment and demand notices relating to the assessment years 1984-85, 1985-86 and 1986-87 under the Orissa Sales Tax Act and Rule 5 of the Orissa Additional Sales Tax Rules as per annexures-1 and 1/A in each of the writ applications.

2. The petitioner-company claimed to have the expertise and necessary machinery, equipments and technical know-how for drilling oil wells on high seas. For carrying out the operation and rendering services it had a drilling rig called "AZTECA" complete with drilling and other equipments. Messrs. Oil India desired to have off-shore wells drilled on the Mahanadi basin with a view to exploring hydrocarbons. It entered into contracts with the petitioner for mobilisation of its rig in Oil India''s petroleum license areas in the Bay of Bengal. The operation

commenced with effect from 3rd April, 1983 and drilling programme was demobilised in October, 1986. It carried out operations on behalf of the Oil India as per its specifications. The petitioner was an independent contractor. Oil India had no control over its employees or the rig or the operation. It had only access to the drilling site for the purpose of observing, inspecting the work that was being performed. Clause 5.04 of the contract stipulated that the petitioner would be solely responsible for the operation of the drilling unit including supervising, moving operations and positioning on drilling locations as required by the operator as well as such operations on board of the drilling unit. The petitioner was to take all measures reasonably necessary to provide safe working conditions and observe safety regulations with acceptable petroleum industry practices. The petitioner was to select, replace, fix hours of labour and remuneration of its personnel on the rig. The employees were to be its employees. Oil India had no control over them. The operations were carried on in high seas over which the sales tax authorities had no jurisdiction. Nevertheless, the Sales Tax Officer, Bhubaneswar II Circle, opposite party No. 3, proceeded to assess the petitioner u/s 12(5) of the Orissa Sales Tax Act and Rule 5 of the Orissa Additional Sales Tax Rules and raised demands and levied penalty as per annexures-1 and 1/A in each of the writ applications.

3. To get over the rule laid down in The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd., Article 366 of the Constitution of India was amended by the Forty-sixth Amendment Act, 1982. Clause (29A) was inserted. So far as relevant for our purpose, it read:

''Tax on the sale or purchase of goods'' includes--

(a) ?.

(b) ?.

(c) ?.

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(e) ?.

(f) ?.

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made.

4. To achieve the object and purpose for which the constitutional amendment was made, the Orissa Legislature substituted the definition of "sale" occurring in Section 2(g) of the Orissa Sales Tax Act by the Orissa Sales Tax (Amendment) Act, 1984 (Orissa Act 13 of 1984). As amended, the definition of "sale" so far as

is relevant reads as under:

(g) ''sale'' means with all its grammatical variations and cognate expression, any transfer of property in goods for cash or deferred payment or other valuable consideration and includes,--

(i) ....

(ii) ?.

(iii) ....

(iv) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

5. It will thus be seen that the definition of "sale" in Sub-clause (iv) of Clause (g) of Section 2 is the verbatim reproduction of Sub-clause (d) of Clause (29A) of Article 366 of the Constitution of India. Having regard to Clause (29A) in Article 366 of the Constitution of India, any challenge to the vires of Clause (g)(iv) of Section 2 of the Orissa Sales Tax Act is futile. The State Legislature has the competence to enact the provision having regard to entry 54 of List II of the Constitution. The field of legislation having been delineated by Clause (29A)(d) of Article 366 and Sub-clause (iv) of Clause (g) of Section 2 of the Act being verbatim reproduction of Sub-clause (d) of Clause (29A) of Article 366, there is no substance in the challenge that the State Legislature did not have the competence to enact the provision.

6. The next contention relates to the legality and vires of the assessment. It is submitted that there was no sale inside the State. The operations were carried on high seas. There was no transfer of goods. The services rendered by the petitioner did not come even within the definition of "sale" in Section 2(g)(iv). There was no transfer of the right to use any goods nor were any goods, as defined, involved. In our opinion, these questions are either questions of law, questions of fact or mixed questions of law and fact which the statutory authorities are competent to adjudicate. We would, therefore, decline to interfere and require the petitioner-assessee to exhaust the statutory remedy available under the law which, in our opinion, is quite efficacious, adequate and comprehensive. We would, therefore, require the petitioner to prefer appeals against the orders of assessment before the appellate authority within two weeks from today with applications for condonation of delay which, if filed, in the facts and circumstances would be allowed by the appellate authority and the appeals would be set down for hearing on merits. By order dated 4th March, 1987, the demands were stayed by this Court. The stay order in respect of demands in each of the cases would operate until disposal of the appeals, if any, filed. If, however, the appeal/appeals are not filed within two weeks, the order of stay shall stand vacated. The appeals are directed to be disposed of within three months from the date of filing.

7. With the aforesaid observations and directions, the writ applications are

disposed of. No costs.

K.P. Mohapatra, J.

I agree.

S.C. Mohapatra, J.

I agree.

