
(2006) 04 OHC CK 0038

In the Orissa High Court

Case No : Writ Petition (C) No's. 3631 and 3632 of 2006

Reliance Industries Ltd.-Operator

APPELLANT

Vs

Assessing Authority and Others

RESPONDENT

Date of Decision : 24-04-2006

Acts Referred:

Constitution of India, 1950 — Article 1, 226, 227
Orissa Entertainment Tax Act, 1946 — Section 2, 3(1), 7(4)
Orissa Entry Tax Rules, 1999 — Rule 10(2)
Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 — Section 6, 6(5), 6(6), 7(7)

Citation : (2006) 102 CLT 122 : (2006) 1 OLR 802 : (2006) 148 STC 324

Hon'ble Judges : B.P. Das, J;A.K. Samantaray, J

Bench : Division Bench

Advocate : Debi Pal and B.K. Sharma, A.K. Mohanty, S.P. Kar, N. Patnaik and K.A. Guru, for the Appellant; Ashok Mohanty, Senior Standing Counsel (C.T.), V. Narsingh, A.S.C. (C.T.) and P.V. Balakrishna, for the Respondent

Final Decision : Allowed

Judgement

B.P. Das, J.—The petitioner herein, Reliance Industries Ltd.-Operator, has filed these two writ petitions under Articles 226 and 227 of the Constitution of India questioning the legality and validity of the orders assessment passed by the Assessing Authority, Jagatsinghpur Circle, Paradeep, O.P. No. 1, u/s 7(4) of the Orissa Entertainment Tax Act, 1999 (hereinafter referred to as "the O.E.T. Act") and Rule 10(2) of the Orissa Entry Tax Rules, 1999 (hereinafter called "the O.E.T. Rules") for the years 2003-04 and 2004-05 respectively as well as the demand notices, vide Annexure-1,

As the facts and the points of law involved in both the writ petitions are common, they were heard together and are being disposed of by this common judgment.

2. The petitioner has registered itself as a dealer under O.P. No. 1-Assessing Authority, Jagatsinghpur, and has been assessed to Orissa Entry Tax u/s 7(4) of

the O.E.T. Act and Rule 10(2) of the O.E.T. Rules and demands have been raised to the tune of Rs. 1,79,62,7937- and Rs. 1,02,33,9477- for the assessment years 2003-04 and 2004-05 respectively and the petitioner has been directed to deposit the aforesaid tax. The grievance of the petitioner is that during the course of assessment the claim of the petitioner for deduction on the value of the scheduled goods brought to the State for exploration work has been rejected and entry tax has been levied by the Assessing Authority.

3. The petitioner-company has been granted permission by the Central Government to drill and explore oil and natural gas on the off-shore area identified as "Block NEC OSN-97/2 which includes the territorial waters, Continental Shelf and Exclusive Economic Zone and the present off-shore area is located at least 40 nautical miles away from the coast of Orissa and falls within the Continental Shelf. The petitioner for the purpose of carrying out the aforesaid exploration operation from the rig is required to bring the cargos of consumables, machineries and tools through Paradeep in Orissa. The said materials which are delivered at the rig are not used and/or consumed and/or sold within the local area as defined under the O.E.T. Act. The petitioner deposits entry tax in respect of the goods which are brought within the State of Orissa and used or consumed or utilized within the local area. It is further stated that for the assessment year 2004-05 the Assessing Authority, O.P. No. 1, issued show cause notice on 14.2.2006 under Rule 10(2) of the O.E.T. Rules directing the petitioner to show cause as to why the petitioner should not be assessed provisionally under the O.E.T. Act on the purchase value of the scheduled goods which was ascertained to be Rs. 111,63,13,2327-. In response to the aforesaid show cause notice, the petitioner submitted its reply contending that the materials have been consumed and used by the petitioner in the oil rig situated at a distance of about 40 nautical miles from coast line and the State of Orissa cannot impose entry tax on the materials brought to such oil rig which is situated in the Continental Shelf and beyond the local area as defined in the O.E.T. Act. In the said reply the petitioner further contended that neither application of O.E.T. Act nor Orissa Sales Tax Act nor Orissa VAT Act nor even the Central Sales Tax Act has been extended to the Continental Shelf by way of issuance of notification u/s 6(6) of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (hereinafter called "the Maritime Zones Act"). The Assessing Authority without considering the stand taken by the petitioner has completed the assessment. The reasons given in the assessment orders for rejecting the aforesaid claim are that-

(i) by analysis of Article 1 of the Constitution of India the territories of India comprise of territorial boundary of States, Union Territories as may be acquired and since sovereign rights of India extends upto 200 nautical miles the territorial jurisdiction of State of Orissa also extends upto 200 nautical miles, and

(ii) the said particular portion of sea is the territory of Orissa within which Orissa and no other State or Union Territory can exercise its authority.

4. The petitioner challenges the assessment orders mainly on the ground that u/s 6(6) read with Section 7(7) of the Maritime Zones Act, the Union of India has been vested with the power and authority to extend the application of certain enactments in force in India to the Continental Shelf and Exclusive Economic Zone by way of notification. In the absence of such a notification, the claim of the opposite parties that the location of the Rig is a part of local area is clearly illegal, invalid and not sustainable in law.

5. In this regard our attention was drawn by the learned Counsel for the petitioner to Sub-section (6) of Section 6 of the Maritime Zones Act which has vested the Central Government with the power to extend the application of any enactment which is for the time being in force in India or any part thereof to the continental shelf or any part thereof including any designated area under Sub-section (5) thereof. According to the learned Counsel for the petitioner, it is an undisputed fact that the Central Government has not extended the application of the O.E.T. Act or Orissa Sales Tax Act, 1947 or Orissa Value Added Tax Act, 2004 or even the Central Sales Tax Act, 1956 to the continental shelf. According to the learned Counsel for the petitioner, the orders of assessment are bad and are liable to be set aside.

6. Opposite party Nos. 1 and 2, i.e., the Assessing Authority, Jagatsinghpur, Paradeep, and the Commissioner of Commercial Taxes have filed a counter affidavit in W.P.(C) No. 3631/2006 and the same has been adopted in the other writ petition, as prayed for.

The opposite parties in their counter affidavit have stated that M/s, Reliance Industries Ltd.- Operator is a registered dealer under the jurisdiction of O.P. No. 1 and at serial No. 3 of the Registration Certificate it has been mentioned that the dealer intends to use the goods as per the list attached in the manufacture/ processing of goods for sale or in mining or in the generation of distribution of electricity or any other form of power inside the State of Orissa and the location of place of business at Paradeep is shown as Central Warehousing Corporation. The scheduled goods mentioned in the utilized way bills have been received by the petitioner at Paradeep itself and the record of O.P. No. 1 shows that the petitioner has awarded the contract of Mud Engineering Work to Bakar Hughes, Singapore Pvt. Ltd. and the place of business of the aforesaid contractor has also been shown as Central Warehousing Corporation, Paradeep Port, where the place of the business of the dealer is situated. In the Registration Certificate granted to the contractor, at serial No. 3 it has been mentioned that -"The dealer intends to use the following goods in the manufacture/ processing of goods for sale in mining or in the generation of distribution of electricity or any other form of power inside the State of Orissa,-Nil- FOR EXECUTION OF WORKS CONTRACT CHEMICALS 7 MACHINERIES (As per list attached)." According to the opposite parties, certain scheduled goods were brought by the petitioner to its own account by using the way-bills and such scheduled goods were taken delivery by the petitioner at Paradeep, which is the local area within the State. It is further

stated that during the course of assessment proceedings for the year 2Q03-04, though the goods were claimed by the petitioner to have been utilized outside the local area in the seas for the purpose of exploration of Oil wells, the way-bills revealed that the petitioner has brought goods into the local area of Paradeep against the way-bills issued to it showing its place of business at Paradeep as the destination and the petitioner has failed to produce any document in support of its contention that the goods claimed to have been sent outside the local area have actually been taken out on his own account for which the petitioner is liable to pay entry tax on such goods unless the claim for deduction/non-liability to pay tax in respect of the goods conclusively proved by the petitioner. The further submission of the learned Counsel for the opposite parties is that the contract with M/s. Baker Hughes Singapore Pvt. Ltd. reveals that the petitioner entered into an indivisible contract for the work to be executed and as per the terms of the contract, the contractor is liable to mobilize the Mud materials, equipment, accessories and personnel etc. but these goods have been brought by the petitioner on its own account into the local area. It is stated that as the admitted fact of the case is that the petitioner by itself has not executed the works but has engaged contractor for the purpose and that the goods claimed to have been sent outside the local area have been utilized in the works offshore, the conclusion would be that the petitioner has supplied the goods to the contractor on cost recovery basis for utilization in the work and, therefore, the goods attract liability to tax in the hands of the petitioner and that too in the absence of any contrary evidence brought on record by the petitioner, it is also clear that the goods brought into the local area have been assembled within the local area for specific equipment and assembly of such equipment which have been utilized in putting up the oil wells or the Rigs. Therefore, the petitioner is liable to pay the entry tax as the goods were utilised within the local area at Paradeep and exigible to entry tax. So, according to the learned Counsel for the opposite parties, the goods were brought and used and or consumed and or sold in the local area for which the same are exigible to entry tax.

7. At this stage it would be worthwhile to have a look at the relevant provisions of the O.E.T. Act.

Sub-section (f) of Section 2 of the Act defines "Local area" to mean "a dealer or any other person who in any capacity brings or causes to be brought any scheduled goods into a local area for consumption, use or sale therein;

Sub-section (1) of Section 3 of the Act provides as follows:

3. Levy of tax-

(1) There shall be levied and collected a tax on entry of the scheduled goods into a local area for consumption, use or sale therein at such rate not exceeding twelve percentum of the purchase value of such goods from such date as may be specified by the State Government and different dates and different rates may be specified for different goods and local areas subject to such conditions as may be

prescribed.

Provided that the State Government may direct that in such circumstances and under such conditions and for such period as may be prescribed, a dealer shall pay in lieu of tax payable under this Act a sum fixed in the prescribed manner, and in such a case the tax shall be deemed to have been compounded.

(2) ...

(3) ...

8. The aforesaid background of the statutory provisions and the uncontroverted fact that the Rig is situated in Continental Shelf and in the absence of a notification issued by the Central Government in terms of Section 6(6) of the Maritime Zone Act, extending the application of O.E.T. Act, we have to examine whether the goods which were taxed were sold, used or consumed within the local area as claimed by the opposite parties in their counter affidavit.

In the counter affidavit a new plea has been taken by the opposite parties which we have stated in the foregoing paragraph that the petitioner had entered into a contract for Mud Engineering Work with M/s. Baker Hughes Singapore Pvt. Ltd. This fact was not referred to in the orders of assessment and, in our considered opinion, this is totally a new plea taken by the State before this Court in their counter affidavit. Therefore, we have to consider the case in the premises of the facts which were taken into consideration at the time of passing the orders of assessment. The findings of the Assessing Authority is reflected in the order relevant portion of which is quoted below :

As such Section 6 of the Territorial Water, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 provides a limit on the continental shelf of 200 nautical miles from the baseline and declares that India has and has always had full and exclusive sovereign rights in respect of continental shelf. This leaves no doubt about the sovereignty of India over the continental shelf. If the boundary line of India extends to continental shelf for limited purposes, the boundary line of Orissa also extends to that part, for that limited purposes. In my opinion, therefore, this particular portion of the sea is the territory of Orissa within which Orissa and no other State or Union Territory can exercise its authority.

Foreign embassy located in any country is the fixed part of the territory of the foreign state. The law of foreign state prevails in its embassy, irrespective of the fact that it is not located in its own country. Likewise, Vessels in the sea are also flouting part of territory of the State. As such law of land prevails in those vessels when flouting in the sea. In this instant case the dealer company brought a vessel so called Rig, fitted all its machines in this rig for the purpose of digging the sea bed in search of natural gas. As such the vessels used by the company is found to be the flouting part of the territory of the State. So the material now brought to the State to be used or consumed in this vessel attracts the liability of

the dealer Company to pay tax under the Entry Tax Act.

Considering all these aspect, I feel that the dealer company is not justified in claiming deduction on the value of the schedule goods brought to the State for Exploration work.

9. From the above, it is clear that the Revenue is making out a new case saying that the goods were brought by the petitioner inside the State of Orissa by virtue of a contract for assembling at Paradeep. On the other hand, the very document annexed as Annexure-C/1 series, i.e., the form of way-bill, clearly indicates that "These Goods are for onward despatch outside the State of Orisa (High Seas Location for Oil and Gas exploration) through Paradeep Port". In the aforesaid premises, as there is nothing in the assessment as regards the contract with M/s. Baker Hughes Singapore Pvt. Ltd., as indicated in the counter affidavit filed by the opposite parties, and in view of the fact that there is nothing to indicate in the assessment orders that the goods were entered into the local area as defined in the O.E.T. Act for consumption, use or sale therein, we have no hesitation to quash the assessment orders passed by the Assessing Authority-O.P. No. 1 as well as the demand notices, vide Annexure-1 and we order accordingly.

Both the writ petitions are accordingly allowed. There will be no order as to cost.