
(2008) 04 CHH CK 0029
In the Chhattisgarh High Court

South Eastern Coalfields Ltd. and Another	APPELLANT
Vs	
Assistant Commissioner of Commercial Tax and Others	RESPONDENT

Date of Decision : 09-04-2008

Acts Referred:

Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 —
Section 3(1)

Citation : (2009) 24 VST 348

Hon'ble Judges : Rajeev Gupta, C.J.;Sunil Kumar Sinha, J

Bench : Full Bench

Judgement

Sunil Kumar Sinha, J.—Since these three writ petitions involve a common question of law, therefore, they are being disposed of by this common judgment.

2. In sum and substance, it has to be determined as to whether, in these cases, the petitioner(s) (S.E.C.L.) was liable to pay the entry tax u/s 3(1) of the M.P. (C.G) Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (for short, "the Entry Tax Act") or not ?

3. The facts, briefly stated, are that the petitioner(s), South Eastern Coal Fields Limited (S. E. C. L, a subsidiary of the Coal India Limited, C. I. L.) is a Government undertaking. The petitioner(s)" company carries on coal mining in various coal fields in the State of Chhattisgarh and is engaged in business of its sale. The National Thermal Power Corporation (N.T.P.C.), being set up at Korba, for generation of power, requires coal in a large quantity for which initially Gevra project of the petitioner-company was conceived. The Madhya Pradesh Electricity Board (M.P.E.B) now Chhattisgarh State Electricity Board (C.S.E.B) is another bulk purchaser of the coal. As per the pleadings in W.P. No. 4024 of 1999, there were written agreements for supply of coal with N.T.P.C. and M.P.E.B. The coal mines are nationalized and supply of coal is regulated by the Central Government. The method is that the industries requiring coal in their factories, for supply of coal, have to apply to linkage-committee constituted for the purpose of allotment of coal. The linkage-committee sets out programme

periodically for allotment of coal for their consumption in their industries from specified area/collieries. The smaller consumers of coal apply for allotment of coal to the area headquarters of the petitioner(s) which issues permits for coal, sold to them. The permit/delivery orders specify the colliery, quantity of coal, grade of coal and the name and address of the consumer. Such small consumers bring their own trucks and take delivery of the coal at the pit mouth and carry the coal in their vehicles to their places. For supply of coal to N. T. P. C., a silo has been created by the petitioner(s) company where the coal is carried from the coal mines and at the silo, delivery is given to N. T. P. C. to transport it through their MGR system of coal transportation to their own power houses/Likewise supply to M. P. E. B. is made through railway wagons from the railway siding. In respect of cement factories, iron and steel industries and such other industries, coal is loaded in the wagons at the siding and in this manner the sale/supply is regulated. In all above cases of coal supply the coal is taken by the purchasers to their places for their consumption or use. In case of sale/supply to N. T. P. C. and M. P. E. B (C. S. E. B) the agreements themselves stipulate that the coal is being purchased by them for consumption at the place or location of such power houses. At the places of silo point and at the railway siding or at the weighment site purchasers did not have any consumption, use or sale of coal whatsoever it may be therein, i.e., in the local area of these places. The coal destined to places outside the local area of silo and the railway siding did actually move out to their work places outside that area in a continuous journey to their ultimate places. The coal which is not delivered at the pit mouth is at first transported by trucks to the silo or the railway station and then put into silo or railway wagons for onward journey of the work places of the purchasers and such journey is continuous from the pit mouth to the work places of the purchasers.

4. The case of the petitioner(s)-company is that it was not assessed to entry tax on sale of coal at any point of time earlier. However, the State authorities assessed them for various years and made them liable for payment of entry tax u/s 3(1) of the M. P. (C. G) Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhinyam, 1976 (Entry Tax Act) and made various demands from them with respect to various assessment years which gave rise to causes of action to them for filing the instant writ petitions for the following main relief(s).

5. W.P. No. 4024 of 1999 has been filed for quashing of the order of assessment levying the entry tax on the petitioner pertaining to the year 1995-96, annexure P10, as also the confirmation of the said order in revision filed as annexure P14 and the recovery notice filed as annexure P15. Likewise, W. P. No. 433 of 2001 has been filed for quashing of the re-assessment proceedings pertaining to the years 1990-91, 1991-92, 1992-93 and 1993-94 along with quashment of the order levying penalty vide annexures P11, P12, P13, P14 and P15; whereas W. P. No. 513 of 2001 has been filed for quashing of the order of assessment and demand notice levying the entry tax on the petitioner for supply of coal by it pertaining to the year 1996-97.

6. The contention of learned Senior Counsel for the petitioner(s) is that the authorities erred in law while holding the petitioner(s) responsible to pay entry tax on coal sold to various parties under prior agreement, allotment orders and delivery orders showing the places of destinations where the coal was to be consumed which shows that the coal was not to be utilized for consumption, use or sale in the local area, for which the petitioner(s) was held to be responsible to pay entry tax. He further contended that the respondents erred in law in holding that since there is an entry into a different local area in the course of journey from the colliery to the place of purchasers, there is a liability of the petitioner(s) to pay entry tax only because the petitioner(s) entered the coal to the place of silo or railway siding which falls in different local area. He argued that there may be a case in which the pit mouth of a coal mine may be situate in a different local area to the weighbridge or silo or railway siding and if for the purpose of delivery of coal to its destination, it travels to these local areas for its proper loading or for weighing, the petitioner(s) would not be responsible for payment of entry tax in accordance with the provisions of Sub-section (1) of Section 3 of the Entry Tax Act. His submission was that the word "therein" used by the Legislature in Clause (a) of Sub-section (1) of Section 3 has got a definite meaning and the respondents have erred in law while not interpreting the clause in its real sense and have made the petitioner liable for payment of entry tax.

7. On the other hand, learned Additional Advocate-General appearing for the State opposed these arguments and supported the action of the State on the ground that as soon as the coal is entered into a different local area, the petitioner(s) would be responsible to pay entry tax as per the provisions of Clause (a) of Sub-section (1) of Section 3 of the Act. His contention was that the sale would be complete only when a final delivery is made to the purchasers, may be after weighing the coal or after getting it finally loaded in the wagons through silo point or through the coal handling plant (C. H. P) and if these fall in a different local area the petitioner(s) would be liable to pay entry tax.

8. We have heard learned Counsel for the parties at length and have also perused the records of the writ petitions.

9. Admittedly, source of levy and collection of entry tax is derived from the provisions of Section 3(1) of the Entry Tax Act, which reads as follows:

3. Incidence of taxation.-(1) There shall be levied an entry tax,:

(a) on the entry in the course of business of a dealer of goods specified in Schedule II, into each local area for consumption, use or sale therein ; and

(b) on the entry in the course of business of a dealer of goods specified in Schedule III, into each local area for consumption or use of such goods but not for sale therein ;

and such tax shall be paid by every dealer liable to tax under the Vanijyik Kar Adhiniyam, who has effected entry of such goods:

Provided that...

(only relevant portion quoted).

10. A bare perusal of the provisions of the Act would show that the entry tax is a tax on entry of goods into a local area for consumption, use or sale in the course of business of a dealer. This tax is not a tax on sale or purchase of goods which is provided in general sales tax (GST). The key word used in Clause (a) of Sub-section (1) of Section 3 is "therein" which clearly shows that for the purpose of imposition of entry tax, the goods must have entered into the local area of the concerned authority for the purpose of consumption, use or sale in that particular area.

11. In the matter of *Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality*, , a similar question arose for consideration before the Supreme Court as to whether the Burmah-Shell Company was liable to octroi in respect of goods which it brought into the municipal area but which were re-exported thereafter. In such case, the apex court held that octroi was always understood to be on goods brought for consumption, use or sale and the company was liable to pay octroi tax on goods brought into local area (a) to be consumed by itself or sold by it to consumers direct and (b) for sale to dealers who in their-turn sold the goods to consumers within the municipal area irrespective of whether such consumers brought them for use in the area or outside it. The company, however, was not liable to octroi in respect of goods which it brought into the local area and which were re-exported. In the context of said case, the apex court held that the word "therein" does not mean that all the act of consumption must take place in the area of municipality. It is sufficient if the goods are brought inside the area to be delivered to the ultimate consumer in that area because the taxable event is the entry of goods which are meant to reach an ultimate user or consumer in the area.

12. In the matter of *Hiralal Thakorlal Dalal Vs. Broach Municipality and Others*, , the Constitution Bench of the apex court, with reference to the Bombay Municipal Boroughs Act, 1925, again held that the goods brought into a local area and re-exported were not liable to octroi. A prayer was made before the Constitution Bench to reconsider the law laid down in *Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality*, and while rejecting such prayer it was held by the Constitution Bench that the law on the subject-matter has been quite clearly laid down in *Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality*, and there was no necessity of its reconsideration.

13. Further, in the matter of *Municipal Council, Jodhpur Vs. Parekh Automobiles Ltd. and Others*, , the apex court held that there can be no octroi duty levied by the concerned municipality in respect of the goods sold by the Indian Oil Corporation within the municipal limit but clearly intended to be transported for use or consumption outside the municipal limit.

14. Referring to the decisions rendered in the matters of *Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality*, , *Hiralal Thakorlal Dalal Vs. Broach Municipality and Others*, and *Municipal Council, Jodhpur Vs. Parekh Automobiles Ltd. and Others*, , the apex court held in the matter of *Entry Tax Officer, Bangalore Vs. Chandanmal Champalal and Co. Etc. Etc.*, as follows : (page 8 of STC)

...It is true that *Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality*, , *Hiralal Thakorlal Dalal Vs. Broach Municipality and Others*, and *Municipal Council, Jodhpur Vs. Parekh Automobiles Ltd. and Others*, were concerned with State enactments which empowered the municipalities to levy the impost. All the same a close reading of the said decisions does indicate that they have read the words "sale therein" occurring in entry 52 of List II as meaning "a sale of goods within a local area for consumption or use therein"-though as a matter of fact, in a given case, the goods may be taken out and consumed there. The decisions clearly say that where the goods are sold within a local area for the purpose of being taken out of that local area and are actually taken out, no levy is permissible under entry 52. It is not possible to distinguish the said decisions on the grounds suggested by the appellant. Besides, octroi or any impost in the nature of that impost has always been looked upon with certain amount of disfavour. Acceptance of the State's contention in this case would ultimately result in driving up the price of these goods to the consumer. It would become another sales tax in effect.

15. Therefore, on the above principles laid down by the apex court in various decisions, it is apparent that the liability to pay entry tax u/s 3(1) of the Entry Tax Act only arises on entry of goods in the course of business of a dealer into a local area for consumption, use or sale therein. This provision clearly states that the entry tax has been levied on the entry in the course of business of a dealer of goods specified in Schedule to the Act into each local area for consumption, use or sale therein and the liability to pay tax would arise only if entry of goods into a local area is for consumption or use or sale in the specified local area. Needless to say that if the goods are under transit to their final destination which is not the local area where the tax is being sought, the local authority would not be justified to impose entry tax on such goods.

16. In the present matters, the coal which was extracted from different coal mines was either delivered from the pit mouth of the mines or it was carried to weighing bridge and was delivered to its further destination or it was taken to a place of silo point or to the railway siding and then it was taken to the ultimate destination. Admittedly, the local areas in which the silo point, railway siding or weighing bridge are located are not the areas in which the coal was to be consumed or used or its sale was made, because, as per the agreements, referred to above, as also as per the other materials brought on record it was transported to its ultimate destination where the consumption, use or sale was made and such destination was not the local area in which it has been levied for

entry tax. Therefore, we are of the considered view that on the said grounds the imposition of entry tax by the concerned authority on the coal sold by the petitioner(s) under different agreements and transit orders was not in accordance with law. As such, the coal sold was not liable to entry tax by such authority.

17. In the result, the petitions are allowed. It is held that in the facts and circumstances of these cases, the petitioner(s) is not liable to pay entry tax u/s 3(1) of the Entry Tax Act. Consequently, the impugned orders contained in annexures P10, P14 and the recovery notice, annexure P15, filed in W. P. No. 4024 of 1999 are quashed. Likewise, reassessment proceedings pertaining to the years 1990-91, 1991-92, 1992-93 and 1993-94 along with the penalty imposed vide annexures P11, P12, P13, P14 and P15 filed in W. P. No. 433 of 2001 are also quashed. The order of assessment for the assessment year 1996-97, annexure P9, challenged in W. P. No. 513 of 2001 and the demand notices issued in pursuance of the said order are also quashed.

18. The parties shall bear their own costs.