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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (T) No. 6724 of 2011**

Ultra Tech Cement Ltd., A Company Incorporated Under The Companies Act, 1956, Having Registered Office At B Wing, Ahura Centre, 2nd Floor, Mahakali Caves Road, Andheri - East, Mumbai-400093 And Factories At Hirmi, Teh. Simga, Dist. Raipur And At P. O. Grasim Vihar, Rawan, Distt. Raipur C.G. Through Its Company Secretary- Sanjeeb Chatterjee Aged 46 Years S/o Late Shri Chuni Chatterjee.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through Secretary, Commercial Tax Deptt. Mantralaya, D K S Bhawan, Raipur C.G.
2. Commissioner, Commercial Tax, Chhattisgarh, Raipur C.G.
3. Dy. Commissioner, Commercial Tax, Near LIC Office, Civil Lines, Raipur C.G.

---- Respondents**And****Writ Petition (T) No. 3859 Of 2010**

Ambuja Cements Limited, A Company Incorporated Under The Companies Act, 1956, Having Its Registered Office At P. O. Ambuja Nagar, Taluk, Kodinar, District Junagarh (Gujrat) & Unit At Village & P. O. Rawan, Tahsil Baloda Bazar, Distt. Raipur (Chhattisgarh) Through Its Authorised Signatory Anoop Kumar Jaiswal, Dy. Manager (Law)

---- Petitioner**Vs**

1. State Of Chhattisgarh, Through The Secretary, Commercial Tax Department, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)
2. Commissioner, Commercial Tax, Chhattisgarh, Raipur
3. Assistant Commissioner, Commercial Tax, Raipur (Chhattisgarh)

---- Respondents**And**

Writ Petition (T) No. 4218 Of 2010

A. C. C. Limited, A Public Limited Company, Having Its Registered Office At Mumbai, Cement House, 121, Maharshi Karve Road, Mumbai & Having One Of Its Cement Unit At Jamul, Cement Works, Jamul, District Durg (C.G.) Through Its Authorised Signatory R. K. Dash, Head Mining, Jamul Cement Works, Jamul, District Durg (C.G.)

---- Petitioner

Vs

1. State Of Chhattisgarh, Through The Secretary, Commercial Tax Department, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)
2. Commissioner, Commercial Tax, Chhattisgarh, Raipur
3. Assistant Commissioner Commercial Tax, Durg (Chhattisgarh)

---- Respondents

And

Writ Petition (T) No. 4823 Of 2010

Lafarge India Pvt Ltd, A company incorporated under the Companies Act 1956, having its registered office at Bakhtawar, 14th Floor, 229 Nariman Point, Mumbai 400021, and Place of Business at Arasmeta Cement Plant, Gopal Nagar, District Janjgir Champa and Sonadeeh Cement Plant, Village – Raseda, Post Office – Baloda Bazar, District Raipur. In the State of Chhattisgarh represented by Mr. S.B.B. Ali, Sr. Manager Legal, Raipur, Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh through its Secretary Commercial Tax Department, Mantralaya, D.K.S. Bhawan, Raipur, Chhattisgarh.
2. The Commissioner, Commercial Tax Department, Commercial Tax House, Tax House Civil Lines, Raipur (CG)

---- Respondents

And

Writ Petition (T) No. 141 Of 2014

A. C. C. Ltd, A Public Limited Company Having Its Registered Office At Mumbai, Cement House, 121, Maharshi Karve Road, Mumbai And Having One Of Its Cement Units At Jamul Cement Works, Jamul District Durg (Chhattisgarh) Through Its Authorized Signatory Gopika Tiwari, Director Plant, Jamul Cement Works, Jamul District Durg (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh, Through The Secretary, Commercial Tax Department, Mantralaya, Mahanadi Bhawan Naya Raipur (Chhattisgarh)
2. Commissioner, Commercial Tax, Chhattisgarh, Raipur
3. Assistant Commissioner, Commercial Tax, Durg (Chhattisgarh)

---- Respondents

And

Writ Petition (T) No. 142 Of 2014

Ambuja Cements Limited A Company Incorporated Under Companies Act, 1956, Having Its Registered Office & Factory At P. O. Ambuja Nagar, Taluk, Kodinar, District Somnathgiri (Gujrat) & Unit At Village & P. O. Rawan, District Baloda Bazar, (Chhattisgarh) Through Its Authorised Signatory Anoop Kumar Jaiswal, Manager (Law), P.O. Rawan, Dist. Baloda Bazar, (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh, Through The Secretary, Commerical Tax Department, Mantralaya, Mahanadi Bhawan, Naya Raipur (Chhattisgarh)
2. Commissioner, Commercial Tax, Chhattisgarh, Raipur
3. Assistant Commissioner, Commercial Tax, Raipur (Chhattisgarh)

---- Respondents

And

Writ Petition (T) No. 156 Of 2014

Ultratech Cement Ltd. A Company Incorporated Under The Companies Act, 1956, Having Registered Office At B Wing, Ahura Centre, 2nd Floor Mahakali Caves Road, Andheri East, Mumbai- 400093 And Factories At Hirmi, Tah Simga, District Baloda Bazar- Bhatapara, And P. O. Grasim Vihar, Rawan District Baloda Bazar- Bhatapra, Through Its Company Secretary Sanjeeb Chatterjee Aged 49 Yrs, S/o Late Shri Chuni Chatterjee

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Commercial Tax Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
2. Commissioner, Commercial Tax, Chhattisgarh, Raipur
3. Assistant Commissioner, Commercial Tax, Near L I C Office, Civil Lines, Raipur

---- Respondents

And

Writ Petition (T) No. 174 Of 2014

M/s Century Cement Prop. Century Textiles And Industries Ltd., Having Its Head Office At Industry House, 159 Churchgate Reclamation, Mumbai 400020 And Cement Manufacturing Unit At P.O. Baikunth 493116, District Raipur (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh, Through The Secretary, Commercial Tax Department, Mantralaya, Mahanadi Bhawan, Naya Raipur (Chhattisgarh)
2. Commissioner, Commercial Tax Chhattisgarh, Raipur
3. Assistant Commissioner, Commercial Tax, Raipur (Chhattisgarh)

-----Respondents

For Respective Petitioners:	Shri Shashank Dubey, Senior Advocate along with Shri Bhaskar Pyasi and Shri Siddharth Dubey, Shri Ashish Shrivastava along with Shri Somya Rai and Shri Raja Sharma, Advocates
For Respondent/State:	Shri Prafull N. Bharat, Additional Advocate General

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per Navin Sinha, Chief Justice

19/1/2016

1. The Petitioners are Cement Companies having leased mines for quarrying limestone. The limestone is converted into clinker at their clinkerisation units. Clinker is then stock transferred by them to their respective units outside the State for manufacture of cement.
2. The Petitioners challenge the imposition of a higher rate of entry tax on limestone when it is clinkerised in the local area but is stock transferred to their units outside the State to the extent it is used for manufacture of cement.

3. The question of law arising for consideration being common the writ applications have been heard together and are being disposed by a common order.

4. Learned Senior Counsel making the lead arguments submits that liability for entry tax arises under the Chhattisgarh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (hereinafter referred to as 'the Act'). The charge is based on entry of the goods into a local area for consumption, use or sale therein. The incidence of tax on limestone, an item mentioned in Schedule II, arises under Section 3 of the Act on the entry of the limestone into such local area for consumption, use or sale. Section 6 provides for the principles governing levy of entry tax and stipulates that entry tax shall not be payable unless entry of the goods specified in the Schedule is effected into the local area. There shall be a presumption that the goods which have entered the local area have been used, consumed or sold therein unless shown otherwise.

5. Section 4-A provides for entry tax at enhanced rates on certain goods consumed or used in such local area for manufacture of other goods. The State Government issued a notification on 29.9.1997 fixing the rate of entry tax on limestone at 2.5% when it was used in lime kilns for manufacture of lime and at 10 % when used for the manufacture of other goods. The notification was amended on 31.3.2010 providing that when limestone was used for manufacture of clinker to be used, consumed or sold within the State Entry tax would be payable at 10%. But if the limestone was used for manufacture of clinker and the clinker was then sent outside the State by way of stock transfer, the entry tax liability on the taxable quantum of the limestone to that extent would be 25%. The latter notification was subsequently amended on 1.7.2014 replacing 25% with Rs.50 per metric ton and on

5.7.2015 to Rs.60 per metric ton.

6. The power under Section 4-A of the Act to fix a different rate of tax could be invoked if the specified goods entered a local area for use or consumption in such local area for manufacture of other goods. The incidence of higher rate of tax arose if the goods entering such local area were consumed, used or sold for the purpose of manufacture of other goods and not for use, consumption or sale in the form in which they entered such local area. A different rate of higher tax could be imposed on limestone entering the specified local area and used for manufacture of clinker. But it was impermissible to impose differential rates of entry tax on clinker based on the nature of the end user of the goods manufactured. The State having once resolved to fix the rate of entry tax on limestone capable of being used for manufacture of clinker in such local area at 10% it cannot make a sub classification with regard to such goods merely because after such production the goods were stock transferred outside the State. There was no rationale or nexus for this sub-classification.

7. The amendments to the notification dated 29.9.1997 are not in consonance with Section 9 of the Act which provides for gazette publication of amendments to Schedules II and III of the Act. There is no denial to this specific assertion made in Writ Petition (T) No.3859/2010 (Ambuja Cements Limited vs. State of Chhattisgarh & Ors), Writ Petition No.4218/2010 (A.C.C Ltd vs. State of Chhattisgarh & Ors), Writ Petition (T) No.141/2014 (A.C.C Ltd. vs. State of Chhattisgarh & Ors) and Writ Petition (T) No.142/2014 (Ambuja Cements Limited vs. State of Chhattisgarh & Ors).

8. The invalidity of the notifications is evident from the counter affidavit of the State that when clinker is stock transferred outside the State and used for

manufacture of cement, the State loses revenue by way of sales tax to the extent of 15% which it would have earned if the clinker had been used for manufacture of cement within the State and sold. The State was therefore essentially trying to make up for loss of revenue. If the incidence of taxation at entry is exhausted by fixation of rate of entry tax at 10% for goods entering such local area capable of being used for manufacture of other goods including clinker in such local area. Reliance was placed on (1993) Supp (4) Supreme Court Cases 536 (Hotel Balaji vs. State of A.P) to contend that such an act on part of the State essentially would attract the liability for purchase tax on stock transfer of the clinker by the Petitioners to their units outside the State but not entry tax.

9. It was next submitted that List II of the VIIth Schedule in item 52 vested power in the State to frame laws to levy tax on entry of goods into a local area for consumption, use or sale. But the power to tax on stock transfer of the clinker would fall under Item 54 which deals with tax on sale or purchase of goods. It was contented that the stock transfer would attract tax liability akin to purchase of goods.

10. Learned Additional Advocate General for the State submitted that the power of the State to levy a different rate of entry tax with regard to goods capable of being used for manufacture of other goods upto 50% of the taxable quantum has been upheld by this Court in Writ Petition (T) No.1336 of 2007. The State had the power to levy a higher rate of tax on goods entering a local area capable of being used for manufacture of other goods. A different rate of higher tax could therefore be fixed on basis of the end use of the product entering local area. If limestone entered a local area and was converted to clinker which was used for manufacture of cement outside the

State, causing revenue loss of sales tax on cement had it been manufactured and sold in the State the State was fully justified in levying a higher rate of entry tax to the extent that the clinker may have been stock transferred outside the State at the rate of 25%. By the stock transfer of clinker outside the State, it was deprived of 15% sales tax and to make up that deficit, the entry tax was enhanced to that extent on such amount of clinker as was stock transferred outside the State for manufacture of cement.

11. We have considered the respective submissions on behalf of the parties and are satisfied that the writ petitions deserves to be allowed for reasons to be discussed hereinafter.

12. The fact that entry tax is compensatory in nature need not detain the discussion in view of the settled law and acknowledgement by the State in its counter affidavit with regard to its character as it was being utilized for the benefit of the public by investing the revenue generated for the convenience of the people of the State by constructing road works, street lights and providing irrigation to the farmers etc. The parties are ad idem on the issue and it need not be discussed any further.

13. Entry 52 List II to the VIIth Schedule of the Constitution vests power in the State to frame laws with regard to taxes on the entry of goods into a local area for consumption, use or sale therein. Item 54 vests power in the State to levy tax on sale or purchase of goods other than newspaper and subject to Entry 92-A of List I. The State has the power to frame different laws dependent on the nature of the transaction. The preamble of the Act states that it was enacted to levy a tax on the entry of goods into a local area for consumption, use or sale therein. Section 2(1) (b) defines entry tax as a tax on entry of goods into a local area for consumption, use or sale therein to be

levied and payable in accordance with the provisions of the Act. Local area has been defined in Section 2(1) (d) as the area comprised within the limits of a local authority and the latter is defined in Section 2(1) (e) as an authority constituted under a law relating to local authority excluding Janpad Panchayat, Zilla Panchayat, Mandal Panchayat or such authority as may be specifically excluded by the State Government by notification. Taxable quantum is defined under Section 2(1) (j) of the Act as the aggregate of the taxable purchase value and the taxable market value.

14. Section 3 provides for the incidence of taxation on the entry of goods specified in Schedule II into a local area for consumption, use or sale. Limestone is to be found as an entry in Schedule II. Section 4-A provides for entry tax at enhanced rates in a specified local area on goods which are used, consumed or sold in such local area for manufacture of other goods. It reads as follows :-

“4-A. Provision for entry tax at enhanced rate on certain goods consumed or used in manufacture of other goods [and on packing materials].-(1) The State Government may, by notification, specify the local area or areas and [the goods] which are used or consumed in such local area or areas mainly for the manufacture of other goods [or as packing materials] and may direct that, [as from the date specified in the notification and in such manner as may be prescribed], the entry tax payable by a dealer under this Act shall be charged on his taxable quantum relating to such goods at a rate not exceeding [fifty] per centum as may be specified in such notification notwithstanding anything to the contrary contained in Section 4.

(2) On the issue of the notification under sub-section (1), entry tax shall not be chargeable and payable on such goods at any other rate mentioned in any other provisions of this Act].” (emphasis added)

15. The statutory provision on plain reading vests power in the State government to fix higher rate of entry tax in specified local areas on specified

goods used, consumed or sold in such local area for manufacture of other goods. In other words if the goods entering a specified local area are not used, sold or consumed in such area in the form in which they entered but are used for manufacture of other goods in such local area it shall attract a higher rate of tax. Entry tax in such case could be charged on the taxable quantum at a rate not exceeding 50%. On a plain reading a higher rate of tax could be imposed based on the nature of the product manufactured from the goods entering the local area. Once the nature of the product manufactured is made the basis of tax it has to be applied uniformly and there can be no further imposition based on the nature of the end user of the goods so manufactured. With regard to the limits of authority for levying tax under a taxing statute it was observed in (1971) 2 SCC 741 (CGT. N.S.Ghetti Chettiar) as follows :-

“19.....In interpreting tax laws. Courts merely look at the words of the section. If a case clearly comes within the section, the subject is taxed and not otherwise.”

16. Section 6 provides that entry tax shall not be payable unless the entry of the goods is effected into the local area as may have been identified in Schedules II or III. Once the goods have entered into a local area, there is a presumption that it was for consumption, sale or use within the same unless the person concerned demonstrated otherwise.

17. The notification dated 29.9.1997 made classification with regard to different rate of entry tax at 10 % based on production of clinker from limestone within the local area as distinct from its use in a lime kiln. All limestone converted to clinker in a local area will form a class. The subsequent sub-classification of clinker for different rates of tax based on its end user stands vitiated for lack of authority to levy such tax under Section

Section 4-A as the power stood exhausted. The sub-classification sought to be done based on the end user outside the local area is therefore clearly unsustainable in the law as having no nexus with the object to be achieved by levy of higher rate of entry tax. The well settled essential components for a valid classification was reiterated recently in (2015) 10 SCC 681 (Union of India v. N.S. Rathnam) as follows :-

“14.....in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that, that differential must have a rational relation to the object sought to be achieved by the statute in question. If the Government fails to support its action of classification on the touchstone of the principle whether the classification is reasonable having an intelligible differentia and a rational basis germane to the purpose, the classification has to be held as arbitrary and discriminatory.

18. The first principle for interpreting of a taxing statute is to do so strictly and literally. If the language of the statute is clear, the person liable to pay tax is clearly identified and there is no ambiguity of language, irrespective of the consequences that may follow literal interpretation shall have to be done. There is no occasion for the Court to interpret the statutory provision in any other manner and apportion liability on the person other than on whom the statute imposes the liability. We may profitably refer to the observation in (2010) 14 SCC 751 (CCE v. Doaba Steel Rolling Mills as follows :-

“26. On the principles of interpretation of taxing statutes, the following passage from the opinion of late Rowlatt, J. in *Cape Brandy Syndicate v. IRC* has become the locus classicus and has been quoted with approval in a number of decisions of this Court: (KB p. 71)

“... in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment.

There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.”

19. The submission on behalf of the Petitioners that the procedure under Section 9(2) of the Act has not been followed by proper Gazette notification while issuing the amendments to the notification merits no consideration for the simple reason that there is no amendment by either addition or deletion of the item limestone mentioned in Schedule II.

20. The Respondents by purporting to enhance entry tax on limestone if stock transferred outside the State after clinkerisation were essentially seeking to compensate themselves for loss of revenue from sale of cement which would have accrued by sales tax if the cement had been manufactured and sold in the State. The unsustainability of the contention on behalf of the State is evident from the observations in Hotel Balaji (supra) relied upon by the Petitioners observing as follows:-

“33.What in effect the State says is this: “Raw material when purchased is taxable but I won't tax the raw material if you sell the goods manufactured out of such raw material within the State because I derive larger revenue there; I do not want to tax both the raw material and the manufactured goods, in the interest of trade and public. But if you dispose of the manufactured goods in some other manner, I will tax the purchase of raw material because there is no reason why I should forego the purchase tax due on raw material, when I am not getting any revenue from your method of disposal or despatch of manufactured products.....”

21. Since we are not called upon to decide the nature of tax that the State can or may levy in the circumstances we refrain from expressing any opinion or discussion with regard to the same.

22. Resultantly, the notification dated 31.3.2010 and the consequential

notifications dated 1.7.2014 and 5.7.2014 are held to be not sustainable to the extent that they impose entry tax at 25% on limestone clinkerised and stock transferred outside the State for manufacture of cement outside such local area. The impugned notifications are therefore set aside to that limited extent.

23. During the pendency of the writ applications, by order dated 27.8.2014 the Petitioners were required to pay entry tax at the higher rate subject to the result of the writ petition. It is not the case of the Respondents that Clinker was sold by the Petitioners to third parties but has been stock transferred to their own cement units. The Petitioners are therefore held entitled to restitution. The 15% additional entry tax is directed to be refunded to the Petitioners within a maximum period of three months from the date of receipt and/or production of a copy of the order failing which it shall carry interest at the bank rate till date of payment.

24. The Writ Petitions are allowed to the extent indicated.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE