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HIGH COURT OF CHHATTISGARH AT BILASPUR

WP No. 4466 of 2006

Bharat Earth Movers Ltd., A Government of India Undertaking 1/A Sirgitti Industrial Area, Bilaspur, having registered office at BEML Soudha, 23/1, 4th Main S.R. Nagar, Bangalore.
Represented by : Chairman/Managing Director.

---- Petitioner

Versus

1. The Additional Commissioner, Commercial Tax, Raipur (C.G.)
2. The Assistant Commissioner, Commercial Tax, Bilaspur (C.G.)

–--Respondents

AND

WPT No. 5011 of 2008

Bharat Earth Movers Ltd., A Government of India Undertaking 1/A Sirgitti Industrial Area, Bilaspur, having registered office at BEML Soudha, 23/1, 4th Main S.R. Nagar, Bangalore.
Represented by : Chairman/Managing Director.

---- Petitioner

Versus

1. The Additional Commissioner, Commercial Tax, Raipur (C.G.)
2. The Assistant Commissioner, Commercial Tax, Bilaspur (C.G.)

–--Respondents

For Petitioner	:	Mr. Ashish Shrivastava along with Mr. Animesh Verma, Advocate instruction of, Advocate
For State	:	Mr. D.R. Minj, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

23/08/2017

1. These are the two writ petitions being identical in nature except for the fact that the assessment year in both the writ petitions are different, therefore being decided by this common order.

2. The challenge in the present writ petitions is to the levy of Entry tax and interest on the entry of goods in question. The stand of the petitioner are that, the petitioner are public sector undertaking in the business of sale and supply of Heavy earth moving machines, spare parts and accessories to Strategic Industries. The respondents

authorities had issued notice for assessment in respect of the sale of goods by the petitioner establishment. Assessment order was passed on 23.02.2004. This order was subjected to revision under Section 62(1) of the Commercial Tax Act and the revision petition also was rejected on 04.03.2005 vide Annexure P/3 and P/6 respectively. It is thereafter that the present writ petitions have been filed assailing the levy of Entry tax by the respondents.

3. The petitioner has put forth two grounds for challenging the levy of Entry tax. First being that the sale which has been made by the petitioner establishment is not complete within the local limits and that it is only complete when the product is delivered at the destination of the purchasers which undisputedly is outside the local area of Sirgitti where the petitioner have their sales office and therefore, the petitioner would not be entitled for payment of Entry tax on the said sale.

4. According to the petitioner, in the present case, the goods are only being dispatched from the petitioner's establishment at Sirgitti. As such, it is only transmission of goods from Sirgitti to a different local area and only when the purchaser/consumer receives the goods at the end point at the place where the consumer has his business, would the sale get complete. The sale gets complete only when the goods enters a local area and is consumed within the local area, so as to attract the provisions of ***Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Per Kar Adhiniyam.***

5. The Second ground which has been raised by the petitioner is that, the Entry tax would also not been leviable on the petitioner establishment for the reason that it is not just a sale alone which would make the product leviable of Entry tax. The product which is sold by the petitioner also has to be used or consumed within the local area from where it is being sold so as to attract the provisions of Entry Tax Act.

6. According to the counsel for the petitioner from the admitted document in their possession and which is also being made available to the respondents, none of the product which has been purchased or dispatched from Sirgitti, Bilaspur is being used or

consumed within the local area of Sirgitti and 100% of the product sale/dispatch from the petitioner establishment is being used outside the local area and on this ground also, the petitioner shall not be entitled for levy of Entry Tax.

7. The counsel for the petitioner relied upon two decisions of the Supreme Court. One in the case of ***Hiralal Thakorlal Dalal v. Broach Municipality and Others [AIR 1976 SC 1446]*** and other in the case of ***Municipal Council, Jodhpur v. M/s. Parekh Automobiles Ltd. & others [1990 (1) SCC 367]***. Both these decisions of the Supreme Court were pertaining to the levy of Octroi on goods which were being brought into particular local area. The definition of Octroi tax in two judgments referred were Pari-materia to the definition of incidence of taxation under the provision of ***Chhattisgarh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam 1976*** section 3 of the Act.

8. It was argued by the counsel for the petitioner that the two grounds, firstly, the sale not being complete within the local area as according to the petitioner sale would be complete only after it is delivered to the respective purchasers or consumer and since the sale is not complete from their establishment based at Sirgitti Bilaspur, assessment made by the assessing officer and the decision of the revisional officer is bad in law.

9. It was secondly contended that their consumer themselves have vide document enclosed along with writ petition admit that the product of the petitioner are been used by them in area outside Sirgitti Bilaspur and on this ground also as per the provisions of Section 3 of the Act of 1976 dealing with incidence of taxation, the petitioner establishment should not have been saddled with the liability of payment of Entry tax.

10. State counsel however opposing the petition submits that very provision of law i.e. section 3 of the Act of 1976 by itself is so explicit and that there being no ambiguity in the provisions of law. The petitioner cannot escape assessment of Entry tax. According to the State counsel, the provisions of law makes the Entry tax applicable to all these goods which are specified in schedule-II of Act and which

enters local area for consumption, use or sale. According to the State counsel any of these three components mentioned herein would make Entry tax leviable. In the instant case according to the State counsel the undisputed fact is that, all sale being made is at their establishment at Sirgitti Bilaspur and thus the sale is complete at the point of sale and therefore there is no question of the petitioner getting an exemption from provision of Entry tax being made applicable.

11. He further referred to the definition of Entry tax as envisaged under Section 2B of the Act of 1976 which again holds that the Entry tax means a tax imposed upon entry of goods into a local area which in the instant case an undisputed fact is that the product which is been sold by the petitioner establishment is being brought into the local area from outside of the local area.

12. State counsel also referred to the provision of ***section 4 of the Sale of Goods Act, 1930***, which defines sale and agreement to sell and thus harps on the fact that sale was complete at Sirgitti Bilaspur itself attracting Entry Tax Act.

13. State counsel further relied upon the decision of the ***Madhya Pradesh High Court reported in (1994) 13 TLD-197*** and also ***(2000) Volume 33 Vikray Kar Nirnay*** dealing with similar set of contentions. He further referred to the decision of Division Bench of this High Court passed on 10.09.2009, wherein bunch of writ petitions challenging the virus of the provisions of the Entry Tax Act was decided and this High Court has held that the provision of law is not ultra-virus, which has further being affirmed by the Supreme Court and the State counsel thus prayed for rejection of the present petition.

14. Having heard the rival contentions put forth on either side and on perusal of contentions for better appreciation of fact, it would be proper at this juncture to refer to certain provisions of the Act of 1976 which pertains and which is relevant for adjudication of issue raised in the present writ petition.

15. Section 2AA defines entry of goods into the local area. For ready reference, said definition is reproduced herein under:-

> ***"2AA. Entry of goods into a local area" with all its grammatical variations and cognate expressions means entry of goods into that local area from any place outside thereof including a place outside the State of consumption, use or sale therein;"***

16. The plain reading of the aforesaid definition of entry of goods into a local area means goods coming into the specific local area from outside and which include outside the State also. When we compare the facts of the present case with the aforesaid definition what is undisputed is that, the petitioner establishment has a place of business in the local area of Sirgitti at Bilaspur from where the petitioners carry on the business of sale of their machines and also spare parts relating to all these machines. The petitioner have their purchasers/consumers all around the State of Chhattisgarh and most of the consumers/purchasers have their establishment beyond the local area of Sirgitti Bilaspur.

17. The next definition which would be relevant for consideration is that of the definition of Entry tax as defined under Section 2B of the Act. Section 2B for ready reference is reproduced as under:

> ***2B. "Entry tax" means a tax on entry of goods into a local area for consumption, use or sale therein levied and payable in accordance with the provisions of this Act.***

18. The plain reading of the said definition of Entry tax again means that the tax imposed upon a goods which is brought from outside into a local area for consumption, use or sale.

19. By common understanding of the definition so prescribed it clearly means that, the Entry tax would be leviable on all those goods which have been brought into the local area from outside for either consumption, use or sale by the petitioner establishment. This definition further makes it explicit that the Entry tax would be attracted on any one of the component of consumption or use or sale and it need not be that the consumption, use and sale has all to

be done within the local area itself so as to make the product leviable of the Entry tax.

20. It is also relevant at this juncture to refer to clause-A of Sub-section 1 of Section 3 dealing with the incidence of taxation which for ready reference is reproduced herein as under:-

> ***"(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"***

21. This provision also in ordinary term mean that the Entry tax shall be leviable from businessman/dealer for goods specified in schedule-II of the Act and which is brought into a local area upon its entry for the purpose of consumption, use or sale therein.

22. The aforementioned three provisions of the Act itself clearly reflects that all that is required for making the product leviable of Entry tax is the entry of goods from outside into the particular local area for either consumption, use or sale. None of the provisions of the Act reflects that the intention of the legislature was that the need of all three components i.e. consumption, use or sale has to be accomplished together so as to make the product leviable of Entry tax. That was the precise reason they have used the term "or" after the term "use" or else they would have used the term "and" in between to give the meaning harped upon by the petitioners. The term "or" itself means you can have one or the other.

23. At this juncture it would be worthwhile to refer to the judgment of the Madhya Pradesh High Court in the case of ***Kothari Brothers Durg v. State of M.P. and others*** decided on 22.08.1994, wherein the same provision of law was under challenged and for the same grounds the virus of the same provision was put to test.

24. It is the same grounds which have been raised by the petitioners also in the present writ petitions. The said judgment i.e. the case of Kothari Brothers (Supra), the product was supply of textiles to other dealers outside District Durg, where the petitioner therein had its dealership dealing with the same provision of law. The Division

Bench of the Madhya Pradesh High Court in paragraphs No. 7 & 8 have held as under:-

> ***7. We will now advert to the decisions placed before us by both sides having a bearing on the controversy in this case. Petitioner relies on the leading decision that of the Constitution Bench in Burmah Shell Oil Storage and Distributing Co. of India Ltd., Balgaum v. Belgaum Borough Municipality, Belgaum, AIR 1963 SC 906. The company caused entry of petroleum products into the municipal octroi limits either for use or consumption by itself or for sale generally to its dealers and licensees who in their turn, sold them to others. The company was also directly selling the products to Govt. local bodies and private concerns. It has a Divisional Office and Depot at Belgaum within its municipal limits. The company appointed dealers and licensees as per agreement. The Court held that the company was liable to pay octroi tax on the 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 bought them for use in the area or outside it. The Court held that the company was not liable to pay octroi in respect of goods which it brought into the local area and which were re-exported, either by itself or through dealers outside the area. In such cases, the company has to follow the procedure and claim refund. Tax is payable even when goods are brought into the area for sale within the area to an ultimate consumer for consumption or use,***

though he may consume or use the same outside the area. In such a case, the act of sale means putting the goods for use or consumption. This decision has been followed in M/s. Hiralal Thakorlal Dalai v. Broach Municipality, AIR 1976 SC 1446.

8. Strong reliance is placed by the respondents on the decision in Municipal Council, Jodhpur v. Parekh Automobiles Ltd., (1990) 1 SCC 367. Second respondent in that case, Indian Oil Corporation, has a Depot at Jodhpur. Petroleum products were brought to the Depot within municipal limits and taken to Dangiawas, a place outside the octroi limits and supplied to the Dealer, first respondent, M/s. Parekh Automobiles Ltd., who sold the same to consumers in Dangiawas. The Court proceeded on the basis that the sale by the I.O.C. to M/s. Parekh Automobiles took place within the Octroi limits of Jodhpur. The matter was considered in the light of Section 104 of Rajasthan Municipalities Act which provided for octroi on goods and animals brought within the limits of the municipality for 'consumption, use or sale therein'. Octroi was to be collected at the time of entry. Section 133 provided an alternative mode of payment by mercantile firms or public bodies by maintaining current account for the octroi so due and the current account was to be settled periodically. Rule 13 of the Rules, worked out the details of the alternative mode. When the goods are brought into the local area, entry pass in Form No. 7 would be given. When the goods are taken out of the octroi limits, transport pass in Form No. 5 would be given. In the latter case,

the amount of octroi payable shall be based on the total amount of octroi as shown in the entry pass less the total amount of octroi on goods taken outside the octroi limits as shown by the transport passes, but the eduction would be given only if such goods are not sold within the municipal limits and if they are exported within a period of six months from the date of import. The High Court held that the goods were re-exported by the I.O.C. from inside the local area to its retail outlet outside the local area for use or consumption by the ultimate consumer outside the local area and, therefore, octroi was not leviable even if the sale took place within the local area. Supreme Court, (in para 18 of the judgment) rejected the contention of the State that the earlier decisions of the Supreme Court were not concerned with the situation where the goods were sold within the octroi limits thereafter exported for consumption outside the said limits and there was nothing in those judgments to the effect that if the goods are brought into a local area for sale to a dealer who then transports the goods outside the local area for sale, no octroi is chargeable. It was further observed :

'If the goods were brought within the municipal limit for the purpose of sale (sale means passing of the title to the purchaser), then different considerations might have applied'.

25. Further referring to judgments which has also been relied by the petitioner in paragraphs no. 14 & 15 of the same judgment i.e. Kothari Brothers (Supra) held as under:

14. Burmah Shell case and H.M.M. Ltd. case deal with clear cases of entry and reexport. The

significant aspect in Parekh Automobiles Ltd. is the finding that title in goods passed to the dealer outside the local area and goods were clearly intended to be transferred for use and consumption outside the area and the sale to the dealer was in pursuance of the clear intention that the goods were to be despatched outside for such consumption. In H.M.M. Ltd., there was no sale, use, or consumption at all in the local area and the goods were exported after merely changing the container. The significant aspect in the Indian Oil Corporation's case was that dealer placed order for unascertained goods which were later on transported in tankers belonging to or hired by I.O.C. and the transport was at the risk of I.O.C. and appropriation of goods did not take place at the depot in the local area, but took place at the outlet of the dealers outside and title passed only after delivery. It was held that where the sale took place inside the local area to a dealer, and the vendee took the goods outside the local area for consumption, use or sale, entry tax was payable. Chandanmal Champalal's case related to a case of sale inside the local area for being taken out and the goods were actually taken out,

15. Petitioner's case is that he caused entry of the goods into the local area of Durg for the purpose of sale. He has no case that at the stage of entry, any goods were ear-marked for beingsold in Durg to dealers from outside. He has also no case that title in the goods passed to such dealers not within the local area, but outside the local area. He has no case that the sale to dealers was of unascertained goods or

> ***that appropriation of goods did not take place within the local area. Going by the averments in the writ petition, entry of goods to Durg was caused for the purpose of sale in Durg and it so happened that both dealers inside Durg and outside Durg purchased goods from the petitioner. Appropriation took place in Durg and the sale was of ascertained goods. It is not the contention of the petitioner that the transport of the goods from Durg to outside was by or at the risk of the petitioner. The transport was by the purchasers themselves who instead of dealing with the goods in Durg, chose to deal with them outside. Title in the goods also passed to such dealers within the local area of Durg. These circumstances show that the case falls within the third category described in paragraph 2 of the judgment in I.O.C.'s case, i.e., entry for sale by the assessee inside the local area and after completion of sale, vendee took those products outside the local area limits for sale, use or consumption and as such, entry tax would be payable. We, therefore, reject the contentions of the petitioner that entry tax is not payable.***

26. Aforesaid paragraphs squarely gives the answer to the contentions raised by the petitioner in the present writ petitions as well. Likewise when we take into consideration the subsequent decisions also of Madhya Pradesh High Court in the case of ***Parialdas Danchand, Satna vs. Sales Tax Officer, Satna and another {[2000] 33 VKM 497}***, in paragraph No.5 the M.P. High Court relying on the judgment of Kothari Brothers (supra) has held as under:

> ***"5. xxxxxxx Since in the present case also, the petitioner had in fact sold the goods but the goods had been taken outside the area by the pruchasing dealers, it could not be said that the***

> ***goods were not sold in the local area. In view of the fact that the controversy raised by the petitioner stands already settled by the decision of this Court in Kothari Brothers, Durg (supra), the petitioner is not entitled to any relief.XXXXXXXXX"***

27. In the instant case undoubtedly the products brought into the local area are getting consumed there itself in as much as the purchasers or consumers come and purchase these product from here. It could be that the product should be use by the consumers or further sold by others out side the local Area but that by itself cannot grant any exemption of the applicability of the provision of Entry Tax.

28. In the light of the aforesaid two authoritative decisions made by the Madhya Pradesh High Court, one by the Division Bench, other by the Single Bench and where factual matrix of the case and the grounds of challenge being similar to the grounds which has been raised by the petitioner in the present writ petition, this Court has no hesitation in reaching to the conclusion that the contentions put forth by the counsel for the petitioner also being similar would be governed by the decision so referred and the petition being devoid of merits deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

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