IN THE HIGH COURT OF ORISSA AT CUTTACK

OJC No.7637 of 2000

M/s. Binayaka Aluminium (P) Ltd., Cuttack and another .... ***Petitioners***

Mr. Sanjeev Udgata, Advocate

-versus-

National Aluminium Company Ltd., Bhubaneswar and others .... ***Opposite Parties***

Mr. B. K. Sharma, Advocate for NALCO

CORAM:
THE CHIEF JUSTICE
JUSTICE A. K. MOHAPATRA

ORDER
25.01.2022

Order No.

16. 1. This matter is taken up by video conferencing mode.

2. The short point involved in the present petition concerns the liability of the Petitioner to pay Entry Tax on purchase of raw materials from National Aluminium Company Ltd. (NALCO)-Opposite Party No.1.

3. The Petitioner No.1 states that it has set up a small-scale industrial unit at village Bandalo in Kotsahi Grampanchayat, District-Cuttack under the Industrial Policy Resolution, 1996 (IPR 1996) for manufacture of Aluminium circles, sheets, utensils, etc. It has also got a registration under the Orissa Sales Tax Act, 1947 (OST Act.). For the purposes of its industry, the Petitioner No.1

used to purchase Aluminium ingots from NALCO from its plant in Angul, Odisha. It is stated that Aluminium ingot is one of the goods specified in Part-I of the Schedule to the Orissa Entry Tax Act, 1999 (OET Act). It is stated that in terms of Rule 3 (4) of the Orissa Entry Tax Rules, 1999 (OET Rules), Aluminium ingots used as raw material, on first entry in a local area, other than a municipality or municipal corporation or notified area council (NAC), shall not be exigible to Entry Tax.

4. It is further pointed out that by a Circular dated 25th May, 2000, the Additional Commissioner of Commercial Taxes (General) Orissa (ACCT) directed NALCO, the Rourkela Steel Plant and other manufacturers to allow the benefit of the concession granted under Rule 3 (4) of the OET Rules to the purchasing manufacturers after obtaining the written undertaking to the effect that they satisfy the norms and further that they would be liable to pay the Entry Tax in the event it is found that they are not entitled to the benefit.

5. The Petitioner No.1 by its letters dated 7th and 28th June, 2000 intimated NALCO that its factory was not situated either in a municipality or NAC, but in a Grampanchayat and, therefore, no Entry Tax should be charged. The Petitioner No.1 also furnished an undertaking as required by the Circular dated 25th May, 2000 to NALCO.

6. The Petitioner No.1 states that notwithstanding the furnishing of the above undertaking, NALCO proceeded to collect Entry Tax on the purchase of Aluminium ingots by the Petitioner No.1. In an additional affidavit dated 4th April, 2001, the Petitioner No.1 has set out in para 3, the details of the Entry Tax collected by the NALCO @ 1% on sale of Aluminium ingots as under:

"Sl. No.	Invoice No./Dated	Bill amount	Entry Tax Collected
1.	OEC0078 27.5.2000	Rs.8,57,170/-	Rs.8486.83
2.	OEC0159 7.7.2000	Rs.8,88,145/-	Rs.8793.51
3.	OEC0192 27.7.2000	Rs.9,31,910/-	Rs.9226.84
4.	OEC0194 28.7.2000	Rs.5,60,334/-	Rs.5547.86
5.	OEC0251 4.9.2000	Rs.8,73,289/-	Rs.8646.42
6.	OEC0298 28.9.2000	Rs.7,34,047/-	Rs.7267.80
			Rs.47,969.26"

7. It is therefore contended that the aforementioned sum of Rs.47,969.26 collected from the Petitioner No.1 as Entry Tax ought not to have been collected and that the aforementioned sum is in fact refundable to the Petitioner.

8. Despite notice in the petition having been issued way back on 24th August, 2000, the State of Odisha has not filed a reply. Only NALCO has filed a preliminary counter affidavit and a further reply to the Petitioner's additional affidavit in both of which, the contention of the Petitioner No.1 is not contested. In fact there is a categorical statement in paras 4 to 6 of the preliminary counter affidavit of the NALCO as under:

"4. That in response to the Opp. Party no.1's letter vide Annexure-1/B, the C.T.O., Dhenkanal Circle vide his letter No.7246 dated 27.7.2000 accepted the form of undertaking to be submitted by the manufacturing buyers for exemption of entry tax, a copy of which is annexed herewith as Annexure-1/C.

5. That it is submitted on behalf of NALCO that it has no objection whatsoever from accepting the declaration from the petitioner in the form as approved by the C.T.O., under cover of his letter under Annexure-1/C and also to give force to the letter of the Additional Commissioner dated 25.5.2000 vide Annexure-1/A, subject to the direction of this Hon'ble Court, in order to safe-guard itself from any adverse orders or demand from the entry tax officer and/or fixing of any liability on Opp. Party no.1 for having acted upon the declaration submitted by the buying dealer.

In other words, NALCO submits that since it would be acting in terms of the direction of the Addl. Commissioner and the approval of the C.T.O., Dhenkanal, the NALCO submits that acceptance of the declaration of undertaking from the buying dealers may not be treated as any default nor should any liability at all be cast upon NALCO in the event such a declaration or undertaking submitted by the buying dealer is otherwise found not tenable in law.

"6. That is most respectfully submitted that NALCO has no adverse interest, whatsoever, contrary or in conflicts with the interest of the petitioner but seeks the intervention of this Hon'ble Court to the limit of extending safe-guarding the interest and/or preventing the possibility of any adverse action and/or demand against NALCO in the event of its acceptance of the undertaking by the buying dealers."

9. Additionally, in reply to the additional affidavit of the Petitioner No.1, NALCO has confirmed that the Entry Tax collected by it from the Petitioner No.1 has been deposited by it to the State of Odisha.

10. As already noted, for more than two decades now, no reply has been filed by the State of Odisha to the present petition and, therefore, the Court proceeds on the basis that the averments of the Petitioner No.1 remain uncontroverted by the State of Odisha. The assertion of Petitioner No.1 that it has fulfilled the requirements of the Circular dated 25th May, 2000 of the ACCT, and has furnished the requisite undertaking and further its assertion that since its factory is located in the Grampanchayat area, and is exempted from payment of Entry Tax, has remained uncontroverted and in fact accepted by NALCO.

11. The Court directs that on the strength of the present order, it will be open to the Petitioner No.1 to apply to the Opposite Party-State to seek refund of the aforementioned sum of Rs.47,969.26, which has been collected from it by NALCO and deposited with the Government of Odisha. Since there is no dispute that the aforementioned sum has in fact been collected from Petitioner No.1, there should be no difficulty in the refund being made to the Petitioner No.1 by the State Government on the strength of the present order.

12. If the application for refund is made by the Petitioner No.1 to the Government of Odisha not later than 14th February, 2022, it will be processed and the aforementioned sum together with whatever interest is due thereon in terms of the OET Act and Rules will be

refunded to the Petitioner No.1 by the Government within a period of four weeks thereafter and in any event, not later than 15th March, 2022. If there is any delay in making the refund, the State Government would be liable to pay the Petitioner No.1 an additional simple interest of 6% per annum for the period of delay.

13. The writ petition is disposed of in the above terms.

14. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020, modified by Notice No.4798, dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos. No.514 and 515 dated 7th January, 2022.

(Dr. S. Muralidhar)
Chief Justice

(A. K. Mohapatra)
Judge

M. Panda