

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

SPECIAL JURISDICTION (INCOME TAX)

ORIGINAL SIDE

RESERVED ON: 13.09.2024
DELIVERED ON: 25.09.2024

CORAM:

THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

ITAT/85/2024

(IA NO: GA/2/2024)

PRINCIPAL COMMISSIONER OF INCOME TAX – 1, KOLKATA

VERSUS

BOTHRA SHIPPING SERVICES PRIVATE LIMITED

ITAT/86/2024

(IA NO: GA/2/2024)

PRINCIPAL COMMISSIONER OF INCOME TAX – 1, KOLKATA

VERSUS

BOTHRA SHIPPING SERVICES PRIVATE LIMITED

Appearance:-

Mr. Tilak Mitra, Adv.

Mr. Soumen Bhattacharjee, Adv.

.....For the Appellant.

Mr. J.P. Khaitan, Sr. Adv.
Ms. Arati Agarwal, Adv.
Ms. Rosy Banerjee, Adv.

.....For the Respondent.

JUDGMENT

(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)

1. These appeals have been preferred by the revenue challenging the common order dated 25.04.2023 passed by the Income Tax Appellate Tribunal “C” Bench, Kolkata (tribunal) in ITA Nos. 2324/Kol/2019 for the assessment year 2015-2016 and ITA No. 175/Kol/2021 for the assessment year 2016-2017. The following common substantial questions of law have been raised by the revenue in these appeals:-

- A. *Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in allowing deduction u/s 80IA(4) of the Income Tax Act, 1961 for an entity which is not eligible for such deduction.*
- B. *Whether the order of the Ld. ITAT, Kolkata Bench is perverse to the extent in observing that the instant case is covered under Hon’ble High Court of Gujarat’s order in the case of CIT Vs. Ranjit Projects Private Limited [2018] 408 ITR 274 despite the fact that the circumstances of both the cases are entirely different as in the instant case the assessee never had an agreement either with the Government or even with the entity having such an agreement with the Government wherein in the case of Ranjit Projects Private Limited, the assessee had an agreement directly with a wholly Government owned company incorporated pursuant to State Government’s resolution.*

- 2.** We have heard Mr. Tilak Mitra, assisted by Mr. Soumen Bhattacharjee, learned advocates appearing for the appellant and Mr. J.P. Khaitan, learned Senior Advocate assisted by Ms. Arati Agarwal and Ms. Rosy Banerjee, learned advocates appearing for the respondent.
- 3.** Since the facts are identical in both the appeals and the substantial questions of law raised by the revenue is also identical, we refer to the facts for the assessment year 2015-2016 which would cover the other assessment year as well. The revenue is aggrieved by the impugned order passed by the learned tribunal setting aside the disallowance of deduction claimed under Section 80IA(4) of the Income Tax Act, 1961 (the Act). The facts which are necessary for the disposal of the appeal are as hereunder:-
- 4.** The Government of Andhra Pradesh (AP) entered into an agreement with Kakinada Sea Port Limited (KSPL) vide concession agreement dated 19.03.1999 for operation of existing berth, develop and operate one more berth and operation, maintenance and management of common facilities of the entire port through private participation. KSPL was appointed as a nodal agency by AP to take over the existing port and also develop, operate and maintain further infrastructural facilities including new berth. AP entered into a supplementary agreement dated 28.01.2009 giving permission to KSPL to develop new berth, accordingly berth no 5 was developed by KSPL. KSPL entered into an agreement with the assessee on 19.04.2012 for the development of 8 MMTPA Mechanised Port Handling System for unloading and rail dispatch in Kakinada Deep Water Port at berth no. 5 and its backup area.

5. On an application made by the assessee to the customs authorities, the Commissioner of Central Excise, Customs and Service Tax, Visakhapatnam granted permission for construction and operation of Mechanised Port Handling System vide permission letter dated 01.02.2013. After receiving the due permission, the assessee developed the aforementioned infrastructural facilities. On 11.08.2015, a certificate was issued by the port officer, Port Department, Government of AP stating that the 8 MMTPA Mechanised Port Handling System is an infrastructural facility and a part of Kakinada Deep Water Port, Kakinada. The assessee having developed the new infrastructural facility, maintained and operated it, claimed deduction under Section 80IA(iv) of the Act for both the assessment years. To be noted that in terms of the Clause 9 of the concession agreement between AP and KSPL, the coal terminal will be taken over by the Andhra Pradesh at the expiry of the concession period. To the said effect a letter was given by the KSPL dated 02.02.2021 which was signed and acknowledged by the assessee.
6. The assessing officer by order dated 30.10.2019 passed under Section 92CD(3) of the Act, disallowed the deduction claimed under Section 80IA(4) of the Act. The assessee moved the Dispute Resolution Panel (DRP) contending that the assessing officer erred in not considering that the assessee had produced the Port certificate granted by the specified authority which certified that the infrastructural facility developed by the assessee is an integral part of the port and the port certificate in itself would amount to agreement with Government thereby satisfying the condition prescribed in clause (b) of Section 80IA(4)(1). Further it was contended that the assessing

officer erred in denying the benefit under Section 80IA(4) by observing that the assessee does not have any agreement which specified authority without appreciating the facts that the agreement entered into by the assessee with KSPL was as per the parent concession agreement between KSPL and AP and with the knowledge of the Government of AP and therefore the assessee cannot be denied deduction under Section 80IA(4).

7. The assessee further contended that the assessing officer erred in denying the benefit in terms of the proviso to Section 80IA(4)(i) on the ground that there was no condition in the agreement for retransfer of the assets back to the Government of Andhra Pradesh or the specified authority, however such condition was deleted by the Finance Act, 2001 and therefore it is no longer available in the statute. Without prejudice it was contended that for the purposes of deduction under Section 80IA(4)(1), KSPL should be considered to be statutory authority as it is performing statutory functions on behalf of the Government of Andhra Pradesh. The Dispute Resolution Panel (DRP) by order dated 05.08.2019 rejected the contention raised by the assessee primarily on the ground that KSPL entered into an agreement with AP on 16.04.2001 and 28.01.2009. As per the agreement between the KSPL and the assessee, they were entrusted the work of development of the infrastructural facilities, but KSPL has not developed the facility and the assessee has not entered into any agreement with the Government or the authority and therefore they do not fulfil the second condition and not eligible for deduction under Section 80IA(4) of the Act. Further the DRP held that in case, it is considered that KSPL has given the job work to the assessee, then KSPL should be the owner of the infrastructural facility and

not the assessee and this being not the case as the agreement between KSPL and the assessee provides for developing the facilities and they are not supposed to handover the assets to the KSPL. Therefore, the DRP concluded that the assessee is not operating and maintaining the infrastructural facility on behalf of the KSPL in accordance with the agreement between KSPL and the Government of AP. Aggrieved by such finding rendered by the DRP, the assessee preferred appeals before the learned tribunal.

8. The assessee reiterated the stand taken by them before the assessing officer as well as the DRP by contending that the agreement entered into by the assessee with KSPL was as per the parent concession agreement between the KSPL and Government of AP and with the knowledge and consent of the Government and therefore they cannot be denied deduction. The assessee also relied on the port certificate granted by the authority which certified that the infrastructural facility developed by the assessee is an integral part of the port and the port certificate itself would amount to agreement with Government thereby satisfying the condition prescribed in clause (b) of Section 80IA(4)(i). The assessee placed reliance on the decisions rendered by the Coordinate bench of the tribunal.

9. Thus, the short question which will fall for consideration is whether the assessee satisfies the conditions prescribed in clause (b) of Section 80IA(4).

10. Clause (b) of Section 80IA(4)(i) would apply to any enterprise carrying on the business of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any infrastructure facility which fulfils all the following conditions namely, it has entered into an agreement with the Central Government or a State Government or a local authority or

any other statutory body for (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining a new infrastructure facility.

11. In the explanation under the said provision, the “infrastructural facility” would cannot a port, airport, inland water base, inland port or navigational channel in the sea as per clause (d) in the explanation. It is not in dispute that the assessee fulfils the condition in clause (a) of Section 80IA(4)(i) as it is a company registered in India. Thus, we are required to consider as to what are the terms and conditions in the agreements which have been entered into between the contracting parties.

12. Before proceeding to do so, we take note of the submissions made by the learned senior standing counsel for the revenue contending that the court is to see the words of the statute and not the spirit and no inference and no analogy can be drawn. That court cannot import anything while interpreting the revenue statute. There is no presumption of tax; nothing is to be read in; nothing is to be implied in; and one can only look at the language used. Equitable considerations are wholly out of place while dealing with taxing statute and the words are to be taken as it stands. There is no equity in fiscal statute. The intentions of the legislature are to be primarily gathered from the words used in the statute. Tax and equity is a stranger. There is no scope of the equity in fiscal legislature. Taxing statute should be interpreted in accordance with its ordinary and natural being and so called equitable construction is not permissible. Fiscal legislature should be interpreted in accordance with the strict rules of interpretation. The hardship is not relevant in interpreting taxing statute. In support of the above contention, the learned senior standing counsel referred to the

decision in ***Bank of Chettinad Limited Versus Commissioner of Income Tax, Madras*** ¹, ***A.V. Fernandez Versus The State of Kerala*** ², ***Banarasi Debi Versus Income Tax Officer, District IV, Calcutta*** ³, ***Commissioner of Income Tax, Bombay Versus Maharashtra Sugar Mills Limited, Bombay*** ⁴, ***The Controller of Estate Duty, Gujarat Versus Shri Kantilal Trikamlal*** ⁵, ***Shrimati Tarulata Shyam and Others Versus Commissioner of Income Tax, West Bengal*** ⁶, ***Kapil Mohan Versus Commissioner of Income Tax, Delhi*** ⁷, ***Vikrant Tyres Limited Versus First Income Tax Officer, Mysore*** ⁸, ***Hansraj and Sons Versus State of Jammu and Kashmir and Others*** ⁹ and ***Government of Andhra Pradesh and Others Versus P. Laxmi Devi*** ¹⁰.

13. We wish to point out that there can be no dispute to the above legal proposition. But what is to be borne in mind is the object behind the introduction of the said provision namely Section 80IA. While interpreting the scope of the condition (b) of Subsection (4) of Section 80IA, in ***Commissioner of Income Tax Versus Ranjit Projects Private Limited*** ¹¹, it was held that rigid interpretation of the provision as canvassed by the revenue before the said court (as well as before us) would only result in the assessee's involved in genuine infrastructure development projects for and on behalf of the Government or local authorities would be denied the

¹ 1940 SCC Online PC 29

² (1957) SCC Online SC 23

³ (1964) SCC Online SC 48

⁴ 1971 (3) SCC 543

⁵ (1976) 4 SCC 643

⁶ (1977) 3 SCC 305

⁷ (1999) 1 SCC 430

⁸ (2001) 3 SCC 76

⁹ (2002) 6 SCC 227

¹⁰ (2008) 4 SCC 720

¹¹ (2018) 408 ITR 274

deduction merely on the ground that the State Government had created a nodal agency for working out of the finer details and nitty-gritty of such infrastructure developments. That the purpose of creating such nodal agencies as well as legislative intent of granting deduction to the assessee engaged in developing maintaining, or operating any infrastructure projects for Central Government or State Government or local statutory authority would frustrate.

14. The Hon'ble Supreme Court in ***Commissioner of Income Tax Versus Container Corporation of India Limited***¹² explained the object and scope of Section 80IA of the Act by observing that with the purpose of boosting the country's infrastructure specially the transport infrastructure, Finance Act, 1995 which came into effect April 01, 1996 brought an amendment to the provisions of Section 80IA of the Act. In the said decision, the Hon'ble Supreme Court upheld the views taken in the case of ***Commissioner of Income Tax Versus A.L. Logistics Private Limited***¹³. In the said decision, the Hon'ble Division Bench has held that the specific issue as to whether in the absence of a specific agreement with the Central/State Government, local authority or statutory body the assessee is entitled to claim the benefit under Section 80IA(4)(i) was considered and after analysing the terms and conditions of the agreement as well as the orders passed by the Government of India, it was held that the proposal of the said assessee was accepted by the Government on certain conditions which were duly complied with by the said assessee and therefore even if there may not be any specific agreement

¹² (2018) 404 ITR 397 (SC)

¹³ (2015) 374 ITR 609 (Mad)

but the sequence of events clearly show that the assessee therein is providing container freight station facility in accordance with the conditions laid down by the Government and therefore there is no need to insist on the specific execution of agreements. In fact, the above finding rendered by the tribunal was affirmed by the court in the case of **A.L. Logistics Private Limited**. We also note that the decision in the case of **Ranjit Projects Private Limited** has attained finality as the appeal filed by department before the Hon'ble Supreme Court in Special Leave Petition (Civil) Diary No. 8895 of 2019 was dismissed by order dated 08.04.2019.

15. In **Commissioner of Income Tax Versus Continental Warehousing Corporation and Another** ¹⁴ one of the substantial question which was considered was whether the tribunal erred in holding that the assessee therein was entitled to deduction under Section 80IA(4) which was contrary to the circular of the Central Board of Direct Taxes No. 10 of 2005. The said question was decided against the revenue and in favour of the assessee on the following lines:-

39. A perusal thereof would indicate as to how the Legislature had in mind deduction in respect of profits and gains from industrial undertakings or enterprises engaged in the infrastructure development etc. We are concerned with sub-section (4) and as it read at the relevant time. It says that this section applies to any enterprise carrying on the business of developing or operating and maintaining any infrastructure facility which fulfills all the conditions, namely, it is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act, it has entered into an agreement

¹⁴ (2015) 374 ITR 645 (Bom)

with the Central Government or a local authority or any other statutory body for developing or operating and maintaining or developing, operating and maintaining a new infrastructure facility and it has started or starts operating and maintaining the infrastructure facility on or after 1st day of April, 1995. The explanation defines the infrastructure facility to mean, inter alia, a port, airport, inland waterway, inland port or navigational channel in the sea. The word "inland port" was always there in clause (d). What was there prior to its substitution by Finance Act of 2007 with effect from 1st April, 2008, were the words "or inland port". Now the word "or" is deleted, but the words are "inland port or navigational channel in the sea". Thus, an "inland port" was always within the contemplation of the Legislature and it is treated specifically as a infrastructural facility. Therefore, to that extent Mr. Dastur is right in his submission.

16. While considering the judgments relied on by the learned senior standing counsel for the department with regard to how the words in fiscal statute should be interpreted, we are obliged to take note of the decision of the Hon'ble Supreme Court in **Government of Kerala and Another Versus Mother Superior Adoration Convent** ¹⁵ wherein the Hon'ble Supreme Court held that there is another line of authority which states that even in tax statutes an exemption provision should be liberally construed in accordance with the object sought to be achieved if such provision is to grant incentive for promoting economic growth or otherwise has some beneficial reason behind it and in such cases, the rationale of the judgments following **Union of India Versus Wood Papers Limited** ¹⁶ does not apply. It was pointed out that the legislative intent is not to burden the subject to tax so that some specific public purpose is furthered. The Hon'ble Supreme

¹⁵ (2021) 5 SCC 602

¹⁶ (1990) 4 SCC 256

Court referred to the decision in **Commissioner of Income Tax Versus Straw Board Manufacturing Company Limited** ¹⁷ wherein it was held that in taxing statute, provision for concessional rate of tax should be liberally construed. Decision in **Bajaj Tempo Limited Versus Commissioner of Income Tax** ¹⁸ was referred to wherein it was held that the provision granting incentive for promoting economic growth and development in taxing statute should be liberally construed and restrictions placed on it by way of exception should be construed in a reasonable and purposive manner so as to advance the objective of the provision. The decision in **State of Jharkhand Versus Tata Cummins Limited** ¹⁹ was also referred which related to a matter dealing with a tax exemption for setting up an industry in a backward area wherein it was held as follows:-

"16. Before analysing the above policy read with the notifications, it is important to bear in mind the connotation of the word "tax". A tax is a payment for raising general revenue. It is a burden. It is based on the principle of ability or capacity to pay. It is a manifestation of the taxing power of the State. An exemption from payment of tax under an enactment is an exemption from the tax liability. Therefore, every such exemption notification has to be read strictly. However, when an assessee is promised with a tax exemption for setting up an industry in the backward area as a term of the industrial policy, we have to read the implementing notifications in the context of the industrial policy. In such a case, the exemption notifications have to be read liberally keeping in mind the objects envisaged

¹⁷ (1989) Supp 2 SCC 523

¹⁸ (1992) 3 SCC 78

¹⁹ (2006) 4 SCC 57

by the industrial policy and not in a strict sense as in the case of exemptions from tax liability under the taxing statute."

17. The Hon'ble Supreme Court took note of the Hon'ble Five Judges Bench of the Hon'ble Supreme Court in **Commissioner of Customs Versus Dilip Kumar and Company** ²⁰. The Hon'ble Supreme Court after taking note of the ultimate conclusion arrived at in the case of **Dilip Kumar and Company** held as follows:-

26. It may be noticed that the five-Judge Bench judgment did not refer to the line of authority which made a distinction between exemption provisions generally and exemption provisions which have a beneficial purpose. We cannot agree with Shri Gupta's contention that sub silentio the line of judgments qua beneficial exemptions has been done away with by this five- Judge Bench. It is well settled that a decision is only an authority for what it decides and not what may logically follow from it (see Quinn v. Leathem as followed in State of Orissa v. Sudhansu Sekhar Misra, SCR at pp. 162-63: AIR at pp. 651-52. para 13).

27. This being the case, it is obvious that the beneficial purpose of the exemption contained in Section 3(1)(b) must be given full effect to, the line of authority being applicable to the facts of these cases being the line of authority which deals with beneficial exemptions as opposed to exemptions generally in tax statutes. This being the case, a literal formalistic interpretation of the statute at hand is to be eschewed. We must first ask ourselves what is the object sought to be achieved by the provision, and construe the statute in accord with such object. And on the

²⁰ (2018) 9 SCC 1

assumption that if any ambiguity arises in such construction, such ambiguity must be in favour of that which is exempted. Consequently, for the reasons given by us, we agree with the conclusions reached by the impugned judgments 2 of the Division Bench and the Full Bench.

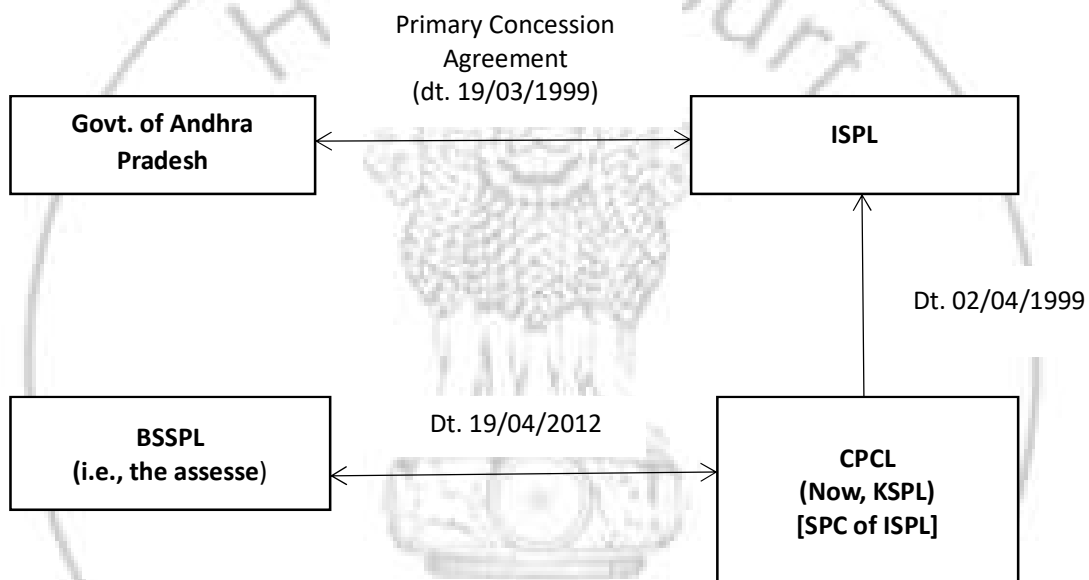
18. Undoubtedly the benefit of deduction provided for under Section 80IA(4) of the Act is for a beneficial purpose, the purpose being to promote industrial undertakings or enterprises engaged in infrastructural developments etc. Therefore, the interpretation to be given to the said provision should advance the object for which the provision was introduced and not to frustrate it. With the above legal principle in mind, we are now required to examine the factual position which in our view has been elaborately dealt with by the learned tribunal.

19. In terms of the concession agreement entered into by the Government of Andhra Pradesh and International Sea Ports Limited, Singapore (ISPL) dated 19.03.1999 and two supplementary agreements entered between the Government of Andhra Pradesh and KSPL dated 25.08.2003 and 28.01.2009 would show that the parties recognised that ISPL is in the process of promoting Special Project Company (SPC) which will be a body corporate to be incorporated under the Indian Companies Act, 1956. The prior approval of the Government of the Andhra Pradesh will be taken on the shareholding pattern of the promoters in the SPC and the Government of Andhra Pradesh will communicate its approval within a time frame. Under the agreement, the parties agreed that the concessionaire shall be entitled to subrogate all its right and obligations under the agreement in

the form of an instrument and in favour of the said body corporate to which the Government of Andhra Pradesh consented. Further before granting the subrogation, the concessionaire was required to inform the Government of Andhra Pradesh in respect thereof and all necessary steps to be carried out by the parties to give effect to the subrogation within 30 days from the date of such information.

20. The agreement further states that after the subrogation, the new body corporate (SPC) shall be recognised by the Government of Andhra Pradesh for all legal and operational purposes and it was further agreed that ISPL shall cause to provide suitable required letter from the new body corporate (SPC) consenting to the arrangement and for smooth implementation and the SPC shall be successors to the rights, duties and obligations under the agreement. Thus, in terms of the above condition the SPC was created in the name of Cocinada Port Company Limited (CPCL) incorporated by ISPL who assigned all its rights, title benefits in the concession agreement to CPCL by assignment deed dated 02.04.1999. Subsequently the name of CPCL was changed as Kakinada Sea Ports Limited (KSPL) on 18.09.2001 and necessary fresh certificate of incorporation was issued by the Registrar of Companies, Andhra Pradesh. Thus, it is clear that in the primary concession agreement will include their respective successors and assigns intending to be legally bound under the agreement. Thus, KSPL as SPC is responsible for discharge of terms and conditions stated in the primary concession agreement as an assignee of ISPL.

21. Further it is seen that the subrogation which was granted to KSPL as SPC was approved by the Government of Andhra Pradesh. Subsequently an agreement was entered into between KSPL and the assessee for establishment of 8 MMTPA Mechanised Coal Handling System for unloading and rail despatch in the Kakinada Deep Water Port at berth no. 5 and its backup area vide agreement dated 19.04.2012. For better clarity, the arrangement between parties is explained in the flowchart as hereunder:-



22. Thus, it is clear that the assessee has developed the Mechanised Coal Handling System in terms of the agreement entered into by it with KSPL and KSPL is none other than a Special Purpose Company of ISPL, who had entered into an agreement with the Government of Andhra Pradesh.

23. Furthermore, the assessee has obtained approval from the customs authorities in the year 2013. The port authorities of the Government of Andhra Pradesh have issued a certificate dated 11.08.2015 certifying that the infrastructural facilities developed by the assessee is part of Kakinada

deep water port, Kakinada. Thus, a cumulative reading of all the terms and conditions more particularly in the primary concession agreement, it is clear that KSPL is the nodal agency formed for the purpose of carrying out the rights, duties and obligations under the concession agreements. These agreements provide for subrogation of rights to a body corporate with the consent of the Government of Andhra Pradesh and also with the prior approval of the shareholding pattern and in accordance with the said condition the special project company namely KSPL was setup which was recognised by the Government of Andhra Pradesh for all legal and operational purposes as successors of ISPLs rights duties and obligations under the agreements. In this sequence of events the assessee entered into an agreement dated 19.04.2012 with KSPL for establishment of the said infrastructural facility. The tribunal referred to the CBDT Circular No. 10 of 2005 dated 16.12.2005 whereby the CBDT relaxed the second condition prescribed under Section 80IA (4) thus leading to the only condition that is to obtain the certificate from the concerned authority that the infrastructural facility forms part of the port. In terms of the said condition, the assessee has obtained a certificate dated 11.08.2015 issued by the port authority of the Government of Andhra Pradesh certifying that the infrastructural facility developed for handling of coal through Mechanised Coal Handling System constructed and owned by the assessee are part of the infrastructural facility of the Kakinada deep water port which has been put to use from 13.10.2013. Though the second condition was relaxed by the CBDT Circular, the assessee had placed on record, a letter issued by KSPL which is to the effect that on expiry of the concession period, the

structures, building constructed by or belonging to KSPL or their subcontractors, sub lessees, assignees free from all encumbrances and liability shall automatically become property of Government of Andhra Pradesh without any obligation to reimburse therefrom.

24. In terms of the said condition, the Mechanised Coal Handling Terminal Installation of the assessee are to be taken over by the Government of Andhra Pradesh at the expiry of the concession period. The learned tribunal was also right in coming to the conclusion that the permission obtained from the customs authority by the assessee vide a letter dated 01.02.2013 is deemed to be the approval granted by the competent authority of the Central Government and in this regard, the learned tribunal rightly took note of the decision in the case of **A.L. Logistics Private Limited** (supra) which was affirmed by the Hon'ble Supreme Court in **Container Corporation of India Limited** (supra).

25. One more condition in the concession agreement dated 19.03.1999 would be of relevance namely condition no. 7.3 which deals with "Sharing of Income to Concessionaire"; the said condition states that the concessionaire (ISPL) shall share with Government of Andhra Pradesh, income to concessioner on the basis of sharing percentage as given in the table 7.1. This undoubtedly is a very relevant condition which would also buttress the case of the assessee.

26. As mentioned above, clause 9 deals with the transfer of assets which provides for all the lands leased, existing improvements etc. will automatically become the property of the Government of Andhra Pradesh

free from all encumbrances without any obligation of the Government to reimburse thereof. One more clause in the concession agreement which would be relevant, is clause (3) which deals with covenants. Under which clause 3.1 deals with permission to build and operate, whereunder the Government of Andhra Pradesh nominated the concessioner (ISPL) as its nominated agency for maintenance of harbour and common use facilities and carrying out harbour improvement works etc. with the condition that the Government of Andhra Pradesh will continue to be the port conservator but delegate all powers related to operation and maintenance of channel and harbour as given in Annexure B to the concessionaire and concessionaire (ISPL) will be responsible for all such powers delegated to them. Under Annexure B, the Government of Andhra Pradesh authorised concessionaire (ISPL) to undertake the following in respect of deep water port of Kakinada which includes the port premises as defined in the agreement and the navigation channel and the navigation area etc. The Government of Andhra Pradesh authorised ISPL to appoint its own nominee to discharge all functions of the port conservator but limited to the deep water port at Kakinada port and the nominee shall have among other powers the following:-

- 1 Power to make port rules/general port administration rules.*
- 2 Power to make rules regarding navigation and shipping.*
- 3. Power to give and enforce directions for certain specified purposes.*
- 4. Power to cut warps & ropes and Power to Removal of obstructions within limits of DWP.*

- 5. Power to Recover of expenses of removals.*
- 6 Power to make rules regarding non-payment of dues, fines and recovery procedures including distraint and sale on refusal, etc*
- 7. Power to take necessary action in respect of Fouling of government moorings.*
- 8. Power to take necessary action in respect of Raising or removal or wreck impeding navigation within limits of DWP.*
- 9. Power to board vessels and enter buildings.*
- 10. Power to require/appoint crews to prevent or extinguish fire, pollution prevention/mitigation-containment of damages due to pollution threats to damages etc.*
- 11. Indemnity against act or default of port-officials or pilot.*
- 12. Power to make Rules for the safety of shipping and port operations.*
- 13 Power to appoint its own labour, agents, pilots, etc to carry out all port related activities at the DWP including amongst others, stevedoring, handling, storing, marine operations, security, etc*
- 14. Power to issue port clearances*
- 15. Authority to interact with all Govt / statutory agencies directly as the authorised licensee.*
- 16. Powers to board, inspect and authorise inspection of vessels*
- 17. Other authorities to discharge the obligations of this concession agreement*
- 18. Power to enforce all the above rules / authorities*

27. Among all powers conferred as mentioned above, it is relevant to note that under clause 13 power has been granted to appoint its own labour, agents, pilots etc. to carry out all port related activities at deep water

port, Kakinada including amongst others handling, storing, marine operations, security etc. Further in terms of the clause 17, the nominee of ISPL among other powers the other authorities to discharge the obligations of the concession agreements.

28. In the light of the above factual discussion, we have no hesitation to hold that the learned tribunal was fully justified in allowing the assessee's appeal and the impugned order does not call for any interference.

29. In the result, the appeals are dismissed and the substantial questions of law are answered against the revenue and in favour of the assessee.

(T.S. SIVAGNANAM, CJ.)

I Agree.

(HIRANMAY BHATTACHARYYA, J.)

(P.A.- SACHIN)