

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).6474-6798/2017

(Arising out Special Leave Petition(C) No(s). 14454-14778/2008)

STATE OF ORISSA & ORS.

APPELLANT (s)

VERSUS

M/S RELIANCE INDUSTRIES LTD. & ORS.

RESPONDENT (s)

WITH

CIVIL APPEAL NO(S).7124-7130/2017

(Arising out Special Leave Petition(C) No(s).30534-30540/2008)

O R D E R

CIVIL APPEAL NO(S).6474-6798/2017

(Arising out Special Leave Petition(C) No(s). 14454-14778/2008)

Delay condoned.

Impleadment and interventions applications allowed.

Leave granted.

The State is in appeal against the judgment of the High Court wherein the High Court has decided that the impugned levy is not compensatory in nature. Since the theory of compensatory stands legally discarded, these appeals are to be allowed. It is ordered accordingly.

CIVIL APPEAL NO(S).7124-7130/2017

(Arising out Special Leave Petition(C) No(s).30534-30540/2008)

Delay condoned.

Leave granted.

By the impugned judgment dated February 18, 2008 passed by the High Court of Orissa, the High Court has decided the issues in the following manner:

"28. To sum up, we are of the opinion that the State has the following three alternatives to impose a levy of tax which would not be violative of Article 301 meaning thereby it will not be treated as a hindrance in trade commerce and intercourse. They are:-

(i) If the levy imposed is compensatory in nature and facially or patently indicates the quantifiable data on the basis of which the compensatory levy or tax is sought to be levied and the Act facially indicates the benefits which is quantifiable or measurable and the proportionality of the quantifiable benefits and should be in the form of reimbursement/recompense for the quantifiable and measurable benefits to be provided to its payers or trades people.

(ii) If the tax is levied under clause(a) of Article 304 but subject to conditions given therein that such levy or tax on goods would not result in discrimination between the goods imported from other States and similar goods manufactured or produced within the State entering into a local area. However, the scope of clause(a) of Article 304 is limited to the extent that the State cannot impose tax on the goods imported from other States and are not manufactured or produced within that State;

(iii) If the tax is imposed following the provisions of clause(b) of Article 304 meaning thereby that the previous sanction of the President has been obtained in imposing the tax.

We may mention that certain aspects have been decided against the assesseees by the High Court and the assesseees have preferred the appeals. Those appeals shall be decided on their own merits. The Government has come in appeal challenging the conclusions and findings in Part (ii) above where the High Court has held that State cannot impose tax on the goods imported from other States and are not manufactured or produced within that State.

To this effect are the observations made in the following para 30:

"30. The State has taken the plea that the Orissa Entry Tax Act has been enacted under clause(a) of article 304 of the Constitution. Therefore, as discussed above, no tax can be imposed on those goods imported from outside the State which are not manufactured or produced in the State of Orissa. However, we do not find any discrimination in the provisions of the Act between the goods imported from outside the State and those manufactured or produced in the State of Orissa and are brought into the local area within a State. In this regard, the definition of only of goods given in clause (d) of Section 2 is relevant which shows that there is no discrimination between the goods produced or manufactured within the State of Orissa or imported from outside and are brought within the local area. The rate of tax imposed under the Act or the Rules are also applicable uniformly on the goods imported from outside or goods manufactured within the State which are brought into a local area. Therefore, it cannot be said that the Orissa Entry Tax Act is not made under clause (a) of article 304 of the Constitution. However, the State has no jurisdiction to impose tax on such goods imported from outside and are not manufactured within the State of Orissa. Therefore, the opposite parties may make scrutiny of the same and not realize entry tax on such goods but for this the Act cannot be declared ultra vires."

The aforesaid issue involved in these appeals stands decided by a Nine Judges Bench of this Court in "Jindal Stainless Ltd. & Anr. vs. State of Haryana & Ors." [2016(11) SCALE 1] in favour of the State. Accordingly, these appeals are allowed.

.....J.
[A.K. SIKRI]

.....J.
[ASHOK BHUSHAN]

NEW DELHI;
MARCH 28, 2017.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).
14454-14778/2008

(Arising out of impugned final judgment and order dated 18/02/2008
in WPC No. 10211/2007 18/02/2008 in WPC No. 10515/2007 18/02/2008
in WPC No. 10516/2007 18/02/2008 in WPC No. 10619/2007 18/02/2008
in WPC No. 10620/2007 18/02/2008 in WPC No. 10727/2006 18/02/2008
in WPC No. 10728/2006 18/02/2008 in WPC No. 10997/2006 18/02/2008
in WPC No. 11037/2007 18/02/2008 in WPC No. 111/2007 18/02/2008 in
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No. 114/2007 18/02/2008 in WPC No. 115/2007 18/02/2008 in WPC No.
116/2007 18/02/2008 in WPC No. 11622/2007 18/02/2008 in WPC No.
117/2007 18/02/2008 in WPC No. 11712/2007 18/02/2008 in WPC No.
11713/2007 18/02/2008 in WPC No. 11714/2007 18/02/2008 in WPC No.
11715/2007 18/02/2008 in WPC No. 11717/2007 18/02/2008 in WPC No.
118/2007 18/02/2008 in WPC No. 11826/2006 18/02/2008 in WPC No.
11827/2006 18/02/2008 in WPC No. 11865/2007 18/02/2008 in WPC No.
11908/2007 18/02/2008 in WPC No. 11909/2007 18/02/2008 in WPC No.
12036/2007 18/02/2008 in WPC No. 12131/2007 18/02/2008 in WPC No.
12207/2007 18/02/2008 in WPC No. 12268/2007 18/02/2008 in WPC No.
12274/2006 18/02/2008 in WPC No. 12346/2007 18/02/2008 in WPC No.
12375/2007 18/02/2008 in WPC No. 12376/2007 18/02/2008 in WPC No.
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12379/2007 18/02/2008 in WPC No. 12551/2007 18/02/2008 in WPC No.
12553/2007 18/02/2008 in WPC No. 12555/2007 18/02/2008 in WPC No.
12765/2007 18/02/2008 in WPC No. 13316/2006 18/02/2008 in WPC No.
13481/2007 18/02/2008 in WPC No. 13545/2007 18/02/2008 in WPC No.
13550/2007 18/02/2008 in WPC No. 13551/2007 18/02/2008 in WPC No.
13552/2007 18/02/2008 in WPC No. 13553/2007 18/02/2008 in WPC No.
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13888/2007 18/02/2008 in WPC No. 13928/2007 18/02/2008 in WPC No.
13935/2006 18/02/2008 in WPC No. 13981/2007 18/02/2008 in WPC No.
13982/2007 18/02/2008 in WPC No. 13983/2007 18/02/2008 in WPC No.
13984/2007 18/02/2008 in WPC No. 13985/2007 18/02/2008 in WPC No.
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14006/2007 18/02/2008 in WPC No. 14028/2007 18/02/2008 in WPC No.
14029/2007 18/02/2008 in WPC No. 14034/2007 18/02/2008 in WPC No.
14036/2007 18/02/2008 in WPC No. 14106/2007 18/02/2008 in WPC No.
14171/2007 18/02/2008 in WPC No. 14172/2007 18/02/2008 in WPC No.

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 7821/2007 18/02/2008 in WPC No. 8096/2007 18/02/2008 in WPC No.
 8098/2007 18/02/2008 in WPC No. 8185/2006 18/02/2008 in WPC No.
 8186/2006 18/02/2008 in WPC No. 8187/2006 18/02/2008 in WPC No.
 8188/2006 18/02/2008 in WPC No. 8443/2007 18/02/2008 in WPC No.
 8602/2007 18/02/2008 in WPC No. 861/2007 18/02/2008 in WPC No.
 8625/2006 18/02/2008 in WPC No. 8730/2007 18/02/2008 in WPC No.
 8874/2006 18/02/2008 in WPC No. 8917/2007 18/02/2008 in WPC No.
 8918/2007 18/02/2008 in WPC No. 9088/2007 18/02/2008 in WPC No.
 9477/2004 18/02/2008 in WPC No. 9514/2006 18/02/2008 in WPC No.
 9515/2006 18/02/2008 in WPC No. 9516/2006 18/02/2008 in WPC No.
 9792/2006 18/02/2008 in WPC No. 9946/2006 18/02/2008 in WPC No.
 9947/2006 PASSED BY THE HIGH COURT OF ORISSA AT CUTTACK)

STATE OF ORISSA & ORS.

Petitioner(s)

VERSUS

M/S RELIANCE INDUSTRIES LTD. & ORS.

Respondent(s)

(WITH APPN. FOR AMENDMENT OF THE PETITION AND CLARIFICATION/DIRECTION AND DIRECTIONS AND IMPLEADMENT AND IMPLEADMENT AS PARTY RESPONDENT AND MODIFICATION AND MODIFICATION OF COURT'S ORDER AND STAY/DIRECTION AND OFFICE REPORT)

WITH

SLP(C) NO. 30534-30540/2008

(WITH APPL. FOR C/DELAY IN FILING SLP AND OFFICE REPORT)

Date : 28/03/2017 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
 HON'BLE MR. JUSTICE ASHOK BHUSHAN

Counsel for the
 Parties:

Mr. Arvind P. Datar, Sr. Adv.
 Mr. S.K. Bagaria, Sr. Adv.
 Mr. Ejaz Mazbool, Adv.
 Mr. Rajesh Jain, Adv.
 Mr. C. George Thomas, Adv.
 Ms. Akriti Chaubey, Adv.
 Ms. Tanya Shree, Adv.
 Ms. Roohina Dua, Adv.
 Mr. Abhimanyu Bhandari, Adv.
 Ms. Qurratulain, Adv.
 Mr. Zain Mazbool, Adv.

Mr. Arvind Datar, Sr. Adv.
 Mr. Raghavendra Shankar, Adv.
 Mr. Abhay Anand Jena, Adv.
 Mr. Ranjit Raut, Adv.

Ms. Surbhi Kapoor, Adv.
Ms. Bina Gupta, Adv.
Mr. Subhranshu Padhi, Adv.

Mr. A.P. Dattar, Sr. Adv.
Mr. U.A. Rana, Adv.
Ms. Mrinal Ilkar Mazumdar, Adv.
Mr. Himanshu Mehta, Adv.
Mr. Avirat Kumar, Adv.
For M/s. Gagrat & Co.

Mr. S.K. Bagaria, Sr. Adv.
Mr. Syed Shahid Hussain Rizvi, Adv.
Mr. N.A. Usmani, Adv.

Mr. Shibashish Misra, Adv.

Mr. Ritin Rai, Adv.
Mr. Swetaketu Mishra, Adv.
Mr. V.K. Monga, Adv.

Mr. Bhargava V. Desai, Adv.
Ms. S. Mehrotra, Adv.

Mr. Gaurav Kejriwal, Adv.
Mr. Sujit Keshri, Adv.

Mr. L. Badari Narayan, Adv.
Mr. Aditya Bhattacharya, Adv.
Mr. Anandh K., Adv.
Mr. Abhishek Anand, Adv.
Mr. Victor Das, Adv.
Ms. Apeksha Mehta, Adv.
Mr. M.P. Devanath, Adv.

Mr. D.K. Singh, Adv.
Ms. Komal Mundhra, Adv.
Mr. Saurabh Agrawal, Adv.
Mr. Abhijit Sengupta, Adv.

Mr. Rajiv S. Roy, Adv.
Mr. Avrojjyoti Chatterjee, Adv.
Mr. Abhijit S. Roy, Adv.
Ms. Jayasree Saha, Adv.
Mr. P.K. Mullick, Adv.
Mr. S.K. Deuria, Adv.

Manali Singhal, Adv.
Mr. Santosh Sachin, Adv.
Mr. Abhijat P. Medh, Adv.
Ms. Vinita Sasidharan, Adv.
Mr. Deepak Singh Rawat, Adv.
Mr. Rohit Kaul, Adv.

Mr. Tejaswi Kumar Pradhan, Adv.
Mr. V.N. Raghupathy, Adv.
Mr. M. Paikaray, Adv.

Mr. Jagdeep Dhankar, Sr. Adv.
Mr. Kedar Nath Tripathy, Adv.
Mr. M.A. Aleem Majid, Adv.

Mr. Rajeev K. Pandey, Adv.
Mr. Rajeev M. Roy, Adv.

Mr. Siddhartha Chowdhury, Adv.

Mr. A.G. Garg, Adv.
Mr. Rakesh Garg, Adv.
Ms. Shweta Garg, Adv.

Mr. Kartik Kurmy, Adv.
Mr. Praveen Kumar, Adv.

Mrs. Kirti Renu Mishra, Adv.

Mr. Abhishth Kumar, Adv.

M/s. Mitter & Mitter Co.

Mr. Sunil Kumar Jain, Adv.

Mr. Vipin Nair, Adv.

Mr. C.N. Sree Kumar, Adv.

Mr. E.C. Agrawala, Adv.

Ms. Indra Sawhney, Adv.

Ms. Kiran Suri, Adv.

Mr. Lakshmi Raman Singh, Adv.

M/s. Gagrat & Co.

Mr. Prem Sunder Jha, Adv.

Ms. Manjula Gupta, Adv.

Mr. Satya Mitra Garg, Adv.

Mr. Pranab Kumar Mullick, Adv.

Mr. Asha Gopalan Nair, Adv.

Mr. Rajan Narain, Adv.
Mr. V.K. Sidharthan, Adv.
Mr. Nikhil Nayyar, Adv.
Ms. Punam Kumari, Adv.
Mr. Ajay Choudhary, Adv.
Mr. Rameshwar Prasad Goyal, Adv.
Mr. S. Ravi Shankar, Adv.
Mr. Shibashish Misra, Adv.
Ms. Shweta Garg, Adv.
Ms. Kanchan Kaur Dhodi, Adv.
Mr. Milind Kumar, Adv.
Mr. K.V. Bharathi Upadhyaya, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Leave granted.

The appeals are allowed in terms of the signed order.

Pending application(s), if any, stands disposed of
accordingly.

(Ashwani Thakur)
COURT MASTER

(Mala Kumari Sharma)
COURT MASTER

(Signed order is placed on the file)