IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4756 OF 2017
(Arising out of S.L.P.(Civil) No.22195/2008)

M/s Bharti Airtel Ltd. .. Appellant(s)

Versus

Assessing Authority, Orissa Entry Tax & Anr. .. Respondent(s)

CIVIL APPEAL NO.4755/2017 @ SLP(C) No.8199/2008

CIVIL APPEAL NO.4757/2017 @ SLP(C) No.27883/2009

CIVIL APPEAL NO.4758/2017 @ SLP(C) No.10879/2013

O R D E R

Leave granted.

In these appeals filed by the assessees, there is a challenge to the judgment dated 18th February, 2008 whereby a batch of writ petitions were dismissed. A number of issues were raised and the High Court after discussing those issues summed up its findings in paragraph 28 of the impugned judgment which are as follows:

> **"28. To sum up, we are of the opinion that the State has the following three alternatives to impose a levy or 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."

The plea of the State on the challenge predicated on Article 304(a) of the Constitution of India was noted and dealt with in paragraph 30 of the judgment and we reproduce the same as well:

"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 bought into the local area within a State. In this regard, the definition of entry 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."

From the aforesaid, it becomes clear that some of the issues were decided against the State, though the overall conclusion was the dismissal of the writ petitions. The State against those findings also preferred appeals. Those appeals have been allowed by us in today's date by a separate order as the said issues stand concluded in favour of the State by a Nine Judge Bench in the case of Jindal Stainless Steel vs. State of Haryana reported in 2016 (11) SCALE 1.

In these appeals preferred by the assessees, the

assessees have challenged the findings contained in sub-para (ii) of Paragraph 28 wherein the High Court has held that Entry Tax is levied under clause (a) of Article 304 but subject to conditions given therein that such levy of 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. On the aforesaid basis the Court has held that the Entry Tax was not discriminatory in nature.

It is clear from the reading of the judgment that the Court had gone by the rate of Entry Tax which was imposed and the benefit of VAT which was given and the rate whereof was also identical.

The Nine Judge Bench in Jindal Stainless Steel (supra) has dealt with the aforesaid issues as well. We may record that the argument before the Court was as to whether the grant of exemption of equivalent goods by giving the benefit of VAT/Sales Tax on such goods of equivalent rate was permissible or not and whether such provision was discriminatory. The Court held that this would not be discriminatory. While answering this aspect the Court accepted the submission of the State that so long as the intention behind the grant of

exemption/adjustment/credit is equivalent to the fall of the fiscal burden on the goods within the State and those from outside the Court, there will not be any discrimination.

It is argued by learned counsel for the appellant that this Court went by the concept of "burden" and equalizing of said burden. It is submitted that since the law is now clarified, the validity of the provisions of Orissa Entry Tax are to be considered in the aforesaid prospect. We find that in some of the cases, particularly in the writ petition filed by M/s Vedanta Aluminium Ltd. this issue was specifically raised in the High Court out of which SLP(C) No.8199 of 2008 arises. But the High Court did not decide it. Instead the High Court in the impugned judgment has gone by the rate of Entry Tax vis-a-viz the rate of VAT/Sales Tax. Since, in order to decide the question proper pleadings are required, which are not before us, it may not be possible for this Court to decide the issue. In these circumstances, we permit the appellants/assessees to file fresh writ petitions with adequate material in the High Court. These petitions shall be filed within four weeks. The interim order passed in these cases shall continue for a period of four weeks. We make it clear that if

the applications for stay are filed before the High Court, the High Court shall be competent to decide these applications on their own merits and would not influenced by continuation of stay granted by this Court as these stay orders were granted before answering the reference by the Nine Judge Bench and we have continued the same for four weeks only to enable the assessees to approach the High Court in the meantime.

The interim orders dated 03.02.2010 were passed in these cases directing the appellants to pay 33% of the tax. We find that in many other cases coming from other States, interim stay was given subject to deposit of 50% of the tax amount. We, therefore, modify the aforesaid interim orders by directing the appellants to pay 50% of the demand Arrears in this manner shall be calculated and paid within a period of two weeks. The aforesaid order of stay, subject to payment of 50%, shall remain in operation for a period of four weeks as aforesaid.

We also request the High Court to take up these petitions, when filed, expeditiously and make an endeavour to decide the same within a period of six months.

With these observations, these appeals stand disposed of.

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

.....J.
[ASHOK BHUSHAN]

NEW DELHI,
MARCH 29, 2017.

ITEM NO.104,35,123 & 169 COURT NO.8 SECTION III

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 22195/2008

(Arising out of impugned final judgment and order dated 18/02/2008 in WP No. 12274/2006 passed by the High Court of Orissa at Cuttack)

M/S BHARTI AIRTEL LIMITED Petitioner(s)

VERSUS

ASSISSING AUTHORITY ORISSA ENTRY TAX&ANR Respondent(s)
(with appln. (s) for permission to file addl. documents and interim relief and office report)

SLP(C) No.8199/2008
(With interim relief and office report)

SLP(C) No.27883/200
(With interim relief and office report)

SLP(C) No.10879/2013
(With interim relief and office report)

Date : 29/03/2017 These petitions were called on for hearing today.

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

For Petitioner(s) **Mr. V. Lakshmikumaran, 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.Tushar Jarwal, Adv.
Mr. Rahul Sateeja, Adv.
Mr. Sunil Kumar Jain, Adv.

Mr. A.K. Ganguli, Sr.Adv.
Mr. Nikhil Nayyar, Adv.
Mr. Divyanshu Rai, Adv.

For Respondent(s) **Mr.Rakesh Dwivedi, Sr.Adv.**
Mrs. Kirti Renu Mishra,Adv.
Ms. S. Pathak, Adv.
Ms. Apurva Upmanyu, Adv.

Mr. Suvendu Suvasis Dash, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The appeals are disposed of in terms of the signed order.

(USHA BHARDWAJ)
AR-CUM-PS

(MALA KUMARI SHARMA)
COURT MASTER

Signed order is placed on the file.