

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

I.A. Nos.327-651 in
Petition(s) for Special Leave to Appeal (C) Nos.14454-14778/2008

STATE OF ORISSA & ORS. Petitioner(s)

VERSUS

M/S RELIANCE INDUSTRIES LTD. & ORS. Respondent(s)

(For stay, prayer for interim relief and office report)

Date: 03/02/2010 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA
HON'BLE MR. JUSTICE AFTAB ALAM

For Petitioner(s) Mr. Rakesh Dwivedi, Sr. Adv.
 Ms. Kirti Mishra, Adv.
 Ms. Mukti Chaudhary, Adv.
 Mr. Shantan Krishna, Adv.
 Ms. Preetika Dwivedi, Adv.

For Respondent(s) Dr. Debi Prasad Pal, Sr. adv.
 Mr. M.P. Jena, Adv.
 Mr. Ankur Saigal, Adv.
 Ms. Bina Gupta, Adv.
 Mr. Gaurav Singh, Adv.

Mr. Ashish Gopal Garg, Adv.
Ms. Shweta Garg, Adv.

Mr. S. Ganesh, Sr. Adv.
Mr. Mahesh Agarwal, Adv.
Mr. R. Gautam, Adv.
Mr. E.C. Agrawala, Adv.

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Mr. Ejaz Maqbool, Adv.
Ms. Garima Kapoor, Adv.
Mr. Wasif Gilani, Adv.

Ms. Indra Sawhney, Adv.

Mr. Janaranjan Das, Adv.
Mr. Swetaketu Mishra, Adv.
Mr. P.P. Nayak, Adv.

Ms. Kiran Suri, Adv.
Ms. Aparna Bhat, Adv.

Mr. Lakshmi Raman Singh, Adv.

Mr. U.A. Rana, Adv.
Ms. Mrinal, Adv.
Ms. Priyanka Dayal, Adv.
for M/s. Gagrat & Co., Advs.

Mr. R.F. Nariman, Sr. Adv.
Mr. Dhruv Agarwal, Sr. Adv.
Ms. Ranaja Roy Gawai, Adv.
Mr. Shailesh Suman, Adv.
Mr. Praveen Kumar, Adv.

Mr. Shambhu Prasad Singh, Adv.
Mr. Prashant Jha, Adv.
Mr. Prem Sunder Jha, Adv.

Mr. R.F. Nariman, Sr. Adv.
Mr. Jagdeep Dhankar, Sr. Adv.
Mr. Ravinder Shrivastava, Adv.
Dr. Debi Pal, Sr. Adv.
Mr. Sunil Kumar Jain, Adv.
Mr. Bibek A. Mohanti, Adv.
Mr. Aneesh Mittal, Adv.

Mr. Shambhu Prasad Singh, Adv.
Ms. Manjula Gupta, Adv.
Mr. Prashant Jha, Adv.

Mr. Satya Mitra Garg, Adv.

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Mr. R.S. Roy, Adv.
Mr. S.K. Patri, Adv.
Mr. Pranab Kumar Mullick, Adv.

Mr. Ajay Aggarwal, Adv.
Ms. Kanika Gomber, Adv.
Mr. Rajan Narain, Adv.

Mr. R.M. Patnaik, Adv.
Mr. H.P. Sahu, Adv.
Mr. V.K. Sidharthan, Adv.
Mr. M.P. Siddiqui, Adv.

Mr. Nikhil Nayyar, Adv.

Mr. Azim H. Laskar, Adv.
Mr. Choudury Sastyajit Misra, Adv.
Mr. Sachin Das, Adv.
Mr. Abhijit Sengupta, Adv.

Mr. Farrukh Rasheed, Adv.
Mr. V.N. Raghupathy, Adv.

Mr. Shambhu Prasad Singh, Adv.
Ms. Punam Kumari, Adv.

Mr. Shailesh Sumam, Adv.

Mr. Rameshwar Prasad Goyal, Adv.

Mr. S. Ravi Shankar, Adv.

Mr. Shibashish Misra, Adv.

Mr. Sanjeeb Panigrahi, Adv.
Mr. Siddhartha Chowdhury, Adv.

Ms. Kanchan Kaur Dhodi, Adv.

Mr. K.K. Lahiri, Adv.
Mr. Gaurav Kejriwal, Adv.

Mr. Milind Kumar, Adv.
Ms. K.V. Bharathi Upadhyaya, Adv.
Mr. Anil K. Kher, Adv.
Mr. Bhargava V. Desai, Adv.
Mr. Rahul Gupta, Adv.
Mr. Nikhil Sharma, Adv.
Mr. Dharmendra Kumar Sinha, adv.
Mr. L.N. Rao, Sr. Adv.
Mr. Vipin Nair, Adv.
Mr. P.B. Suresh, adv.
for M/s. Temple Law firm, Advs.
Mr. Amitabh Bagchi, Adv.
Mr. S.K. Das, Adv.
Mr. Ajay Choudhary, Adv.
Mr. U.U. Lalit, Sr. Adv.
Ms. Manali Singhal, Adv.
Mr. Abhijat P. Medh, Adv.
Mr. K. Raj, Adv.
Mr. Santosh Sachin, Adv.

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

Interlocutory application qua M/s. Bhushan Steel
and Strips Limited:

The Department has submitted a list containing the names of traders as also names of manufacturers, who are, according to the Department, in arrears of tax, which is the subject-matter of challenge before us, as on 30th September, 2009.

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In this case concerning M/s. Bhushan Steel and Strips Limited, according to the Department, as on 30th September, 2009, an amount of Rs.38.79 crores approximately is due and payable under the impugned law. At this stage, we are of the view that the assessee should deposit, under protest, with the Department a sum of Rs.7.50 crores out of Rs.38.79 crores before 31st March, 2010. This amount is calculated by us on the footing that the assessee has already paid till date an amount of Rs.8.42 crores.

As far as current liability commencing from 1st October, 2009, is concerned, the assessee will pay the Entry tax on an ad-hoc figure of Rupees thirty lakhs per month. This amount is payable as per Paragraph (30) of the judgement of the Orissa High Court, which is under challenge.

As far as the item, which is not covered by Paragraph (30) of the impugned judgement, is concerned, liberty is given to the assessee to move a separate interlocutory application.

Before concluding, it may be mentioned that the State of Orissa will file an affidavit undertaking to refund the amount in the event of

the State losing it's case with interest to be fixed at the final hearing of the matter. Such an undertaking will be given by the Chief Secretary of the State. We make it clear that the amount, which we are directing the assessee to pay, shall be ...6/-

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treated as a deposit and not as a tax till hearing and final disposal of the matter. This will not prevent the State from utilizing the said amount.

The interim order passed by this Court on 30th October, 2009, to the extent indicated above, stands modified.

Subject to above, this interlocutory application is, accordingly, disposed of.

Interlocutory application qua M/s. Bhushan Energy:

The Department has submitted a list containing the names of traders as also names of manufacturers, who are, according to the Department, in arrears of tax, which is the subject-matter of challenge before us, as on 30th September, 2009.

In this case concerning M/s. Bhushan Energy, according to the Department, as on 30th September, 2009, an amount of Rs.10.32 crores approximately is due and payable under the impugned law. At this stage, we are of the view that the assessee should deposit, under protest, with the Department a sum of Rs.2.50 crores out of Rs.10.32 crores before 31st March, 2010.

As far as current liability commencing from 1st October, 2009, is concerned, the assessee will pay the Entry tax on an ad-hoc figure of Rupees ten lakhs per month. This amount is payable as per Paragraph (30) of the judgement of the Orissa High

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Court, which is under challenge.

As far as the item, which is not covered by Paragraph (30) of the impugned judgement, is concerned, liberty is given to the assessee to move a separate interlocutory application.

Before concluding, it may be mentioned that the State of Orissa will file an affidavit undertaking to refund the amount in the event of the State losing it's case with interest to be fixed at the final hearing of the matter. Such an undertaking will be given by the Chief Secretary of the State. We make it clear that the amount which we are directing the assessee to pay shall be treated as a deposit and not as a tax till hearing and final disposal of the matter.

The interim order passed by this Court on 30th October, 2009, to the extent indicated above, stands modified.

Subject to above, this interlocutory application is, accordingly, disposed of.

Interlocutory application qua M/s. Vedanta Alumina Limited:

The Department has submitted a list containing the names of traders as also names of manufacturers, who are, according to the Department, in arrears of tax, which is the subject-matter of challenge before us, as on 30th September, 2009.

In this case concerning M/s. Vedanta Alumina Limited, according to the Department, as on

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30th September, 2009, an amount of Rs.19.76 crores approximately is due and payable under the impugned law. Therefore, as against the sum of Rs.19.76 crores, M/s. Vedanta Alumina Limited shall deposit, under protest, with the Department a sum of Rs.3.50 crores before 31st March, 2010. This amount is calculated by us on the footing that the assessee has already paid till date an amount of Rs.44 crores.

As far as current liability commencing from 1st October, 2009, is concerned, the assessee will pay the Entry tax on an ad-hoc figure of Rs.7.50 lakhs per month. This amount is payable as per Paragraph (30) of the judgement of the Orissa High Court, which is under challenge.

As far as the item, which is not covered by Paragraph (30) of the impugned judgement, is concerned, liberty is given to the assessee to move a separate interlocutory application.

Before concluding, it may be mentioned that the State of Orissa will file an affidavit undertaking to refund the amount in the event of the State losing it's case with interest to be fixed at the final hearing of the matter. Such an undertaking will be given by the Chief Secretary of the State. We make it clear that the amount which we are directing the assessee to pay shall be treated as a deposit and not as a tax till hearing and final disposal of the matter.

The interim order passed by this Court on 30th October, 2009, to the extent indicated above, stands modified.

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Subject to above, this interlocutory application is, accordingly, disposed of.

Interlocutory application qua Reliance Industries Limited:

As far as M/s. Reliance Industries Limited is concerned, we are directing the Company to pay as deposit, under protest, the full amount of Rs.62 lakhs outstanding as on 30th September, 2009. It is comparatively on the lower side. Hence, we are directing the Company to pay the said sum of Rs.62 lakhs before 31st March, 2010. As regards monthly liability, which has accrued after 30th September, 2009, the assessee will continue to pay taxes on month-to-month basis, as per the Returns filed and to be filed.

Subject to above, the interlocutory application is, according, disposed of.

In re: Rest of the interlocutory applications:

In this batch of interlocutory applications, the Department has furnished to this Court names of traders in List-A and names of manufacturers in List-B, excepting M/s. Bhushan Steel and Strips Limited, M/s. Bhushan Energy, M/s. Vedanta Alumina Limited and M/s. Reliance Industries Limited, whose cases we have dealt with separately, who are required to pay Entry tax upto 30th September, 2009. Both these lists are covered

by Paragraph (30) of the impugned judgement.
lists read thus:

The

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"OUTSTANDING AS OF 30TH SEPTEMBER, 2009

LIST A

Sl.No.	Name of the Dealer	Outstanding Due not paid [Rupees in Lakhs]
1	M/s. Greaves Cotton Limited	15.25
2.	Navdurga Motors Private Limited	5.82
3.	Durga Auto Centre	36.25
4.	Gajara Differential Gears (P) Ltd.	1.10
5.	Gajara Gears Ltd.	3.41
6.	Khandelwal Steel & Pipes	17.67
7.	Shalimar Chemicals Works Ltd.	46.86
8.	M/s. Glaxosmithkline Consumer Healthcare Ltd.	129.90
9.	M/s. Sainik Mining & Allied Services Ltd.	36.87
10.	M/s. Supreme Sales	73.01
11.	M/s. Shree Ganeshlaxmi Bhandar	4.91
12.	M/s. Utkal Auto Syndicate & Navdurga Auto Pvt.	1.44
13.	M/s. Gannon Dunkerly Ltd.	1.07
14.	M/s. Kalinga Commercial Corporation	0.24
15.	M/s. Priti Oil Ltd.	0.28
16.	M/s. Kripal Spring India Ltd.	2.15
17.	M/s. Neelam Industries	0.04
18.	Bharat Motors Ltd.	129.11
19.	M/s. Shree Marbles	14.85
20.	M/s. Shree Bharat Motors Ltd.	173.11
21.	M/s. Freedom Automobiles Pvt. Ltd.	43.08
22.	M/s. Maheshwari Ispat Pvt. Ltd.	5.01
23.	Singhals Marbles Shoppee	0.93
24.	Almonard Ltd.	20.59
25.	Bharati Airtel Ltd.	985
26.	M/s. Samal Mozaics	21.58
27.	M/s. Jayashree Plywood	5.09
28.	M/s. Seetal Automobiles	72.69
29.	Nobel Ply House	2.4
30.	Vishwa Infrastructures & Services (P) Ltd.	11.18
31.	Kirloskar Oil Engines Ltd.	15.84
32.	M/s. P.K. Marbles & Tiles	0.35
33.	M/s. Swapna Motors Pvt. Ltd.	91.86
34.	Reliance Communications Infrastructure Ltd.	44.12
35.	Reliance Communications Ltd.	58.07
36.	Sri Hanuman Mosaic and Marbles	4.54

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LIST-B

Sl.No.	Name of the Dealer	Outstanding Due not paid [Rupees in Lakh]
1	Jindal Steelness Limited	363.00
2.	M/s. Tata Refractories Ltd.	26.58
3.	M/s. Global Coal & Mining (P) Ltd.	1.44
4.	M/s. Indian Metals & Ferro Alloys Ltd.	293.75
5.	Bonai Industrial Company Limited.	1.44
6.	M/s. Pee Grade & Co. (P) Ltd.	2.35
7.	M/s. Hindalco Industries Ltd.	22.00
8.	M/s. Joyti Transformers & Electrical Pvt. Ltd.	0.47
9.	Balasore Allos Ltd.	9.89
10.	Birla Tyres	121.02
11.	Emami Paper Mills Ltd.	26.04
12.	M/s. Utkal Polyweave Industries Pvt.	27.22

	Ltd.	
13.	Oripol Industries Ltd.	5.94
14.	M/s. Ganesh Saw Mill and Ganesh Traders	3.87
15.	M/s. Krip Alloy Steel Pvt. Ltd.	0.83
16.	M/s. Kripal Drinks Ltd.	0.02

Having regard to the outstanding amounts in List-A and List-B, mentioned hereinabove, we are of the view that each of the assesseees will, without prejudice to its rights, deposit with the Department one-third of the outstanding amount indicated in List-A and List-B as on 30th September, 2009, before 31st March, 2010. Each of such assesseees will also continue to deposit with the Department the outstanding amount on the basis of the current liabilities, which has accrued after 30th September, 2009, at the rate of 33 1/3rd% of the amount due in the monthly Returns which each of the assesseees has been filing with the Department.

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It needs to be clarified that this order is confined to cases falling under Paragraph (30) of the impugned judgement.

As far as the item, which is not covered by Paragraph (30) of the impugned judgement, is concerned, liberty is given to the assesseees to move separate interlocutory applications.

Before concluding, it may be mentioned that the State of Orissa will file an affidavit undertaking to refund the amount in the event of the State losing its case with interest to be fixed at the final hearing of the matter. Such an undertaking will be given by the Chief Secretary of the State. We make it clear that the amount which we are directing the assesseees to pay shall be treated as a deposit and not as a tax till hearing and final disposal of the matter.

The interim order passed by this Court on 30th October, 2009, to the extent indicated above, stands modified.

In the traders' list [List-A], there are two Companies, namely Reliance Communications Infrastructure Limited and Reliance Communications Limited. There is a substantial difference regarding the outstandings between the figures supplied by the State and the figures supplied by the Companies. We are directing the assesseees to move the State within one week from today and get the figures reconciled.

Subject to above, these interlocutory applications are, accordingly, disposed of.

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Before concluding, we may state that, in the pending cases before the Constitution Bench, number of intervention/impleadment applications have been filed. All such applications, both for impleadment and intervention, shall be confined to the constitutional validity of the impugned law. We make it clear that such applicants, who have moved by way of impleadment/intervention applications, would not be entitled to an unconditional stay. They will not be entitled to the benefit of this order passed today. The State would be entitled to move against each of such applicants in accordance with law. This

clarification is required to be given as we are informed by the learned senior counsel appearing for the Department that number of assesseees, who have not moved this Court by filing special leave petitions/civil appeals, are also refusing to pay Entry tax. The order passed today is confined only to the parties whose names are mentioned in List-A and List-B hereinabove. The intervention and impleadment applications, however, will remain on the file of this Court, they will not be dismissed, but they will remain confined only to the question of constitutional validity of the impugned law and in each of such cases, it is made clear that there is no stay on recovery.

[T.I. Rajput]
A.R.-cum-P.S.

[Madhu Saxena]
Court Master