Niranjan SwaIn and 8 ors. Vs. State of Orissa and Three ors.

Niranjan SwaIn and 8 ors. Vs. State of Orissa and Three ors.

SooperKanoon Citation : sooperkanoon.com/534952

Court : Orissa

Decided On : Jul-21-2009

Reported in : 2009(II)OLR706

Judge : B.P. Das and; I. Mahanty, JJ.

Appellant : Niranjan SwaIn and 8 ors.

Respondent : State of Orissa and Three ors.

Advocate for Pet/Ap. : Mr. P. Mohanty

Judgement :
ORDER

1. Heard Mr. P. Mohanty, learned Counsel for the petitioners and Mr. R.P. Kar, learned Additional Standing Counsel for the Revenue.

2. The case of the petitioners is that they are the traditional fishermen and small traders of sea-fish and residents of Puri Municipality. They catch fish from the Bay of Bengal and after catching fish, they carry the same to the Railway Station for being dispatched to West Bengal and other States. Some fish are also utilized inside the Puri Municipality. According to the petitioners, in course of transit of fish to outside the State by trains, Entry Tax is levied by the O.P.-Sales Tax Authorities at the Platform of Puri Railway Station. The petitioners allege that levy and collection of Entry Tax at the Railway Platform, i.e., at the point of exit, wherefrom the fish are dispatched to outside the State of Orissa, is illegal and arbitrary and is

in violation of the provisions of law.

3. Mr. P. Mohanty, learned Counsel for the petitioners, draws our attention to the provisions of Sections 2(d) and 3(1)(2) of the Orissa Entry Tax Act, 1999.

4. It will, therefore, be profitable to quote the aforesaid provisions of law, which are as follows:

2(d) 'Entry of goods' with all its grammatical variations and cognate expressions, means entry of goods into a local area from any place outside that local area or any place outside the State for consumption, use or sale therein.

3. Levy of tax:

(1) There shall be levied and collected a tax on entry of the schedule goods into a local area for consumption, use or sale therein at such rate not exceeding twelve percentum of the purchase value of such goods from such date as may be specified by the State Government and different dates and different rates may be specified for different goods and local areas subject to such conditions as may be prescribed.

[Provided that the State Government may direct that in such circumstances and under such conditions and for such period as may be prescribed, a dealer shall pay in lieu of tax payable under this Act a sum fixed in the prescribed manner, and in such a case the tax shall be deemed to have been compounded.]

(2) The tax leviable under this Act shall be paid by every dealer in scheduled goods or any other person who brings or causes to be brought into a local area such scheduled goods whether on his own account or on account of his principal or customer or takes delivery or is entitled to take delivery of such goods on such entry.

Provided that no tax shall be levied under this Act on the entry of scheduled goods into a local area, if it is proved to the satisfaction of the assessing authority that such goods have already been subjected to entry tax or that the entry tax has been paid by any other person or dealer under this Act.

Explanation:Where the goods are taken delivery of on their entry into a local area or brought into the local area by a person other than a dealer, the dealer who takes delivery of the goods from such person or makes carriage of the goods shall be deemed to have brought or caused to have brought the goods into the local area.

5. A prayer has been made in this case to declare such collection of Entry Tax made as per Annexure-1 series, which are copies of receipts issued by the Sales Tax Officer towards the amount of Entry Tax collected from the petitioners to be illegal.

6. Learned Counsel for the petitioners in order to fortify his point draws our attention to the decision of a Full Bench of this Court rendered in the Puri Fish Merchants Association and Anr. v. Puri Municipal Council and Ors. (1988) 70 STC 65 (Ori) : 1988(I) OLR 126 (Orissa), dealing with levy and collection of Octroi. There is no dispute that levy of Octroi has been abolished on and from 1st December, 1999 after coming into force of the Orissa Entry Tax Act. Similarly provision was there in Section 131(1)(kk) of the Orissa Municipal Act authorizing the local bodies to collect Octroi. In Puri Fish Merchants Association (supra), the merchants purchased fish, both marine and freshwater, from vendors and fishermen within the limits of Puri Municipality and thereafter transported them mostly to their commission agents in Howrah for onward consumption. In that case, the Puri Municipality in exercise of its powers under Section 131(1)(kk) of the Orissa Municipal Act imposed Octroi duty on fish and prawn either caught from the sea or brought from outside.

7. Taking into consideration Section 131 (1)(kk) of the Orissa Municipal Act and relying upon various decisions of the apex Court, the Full Bench of this Court came to the conclusion that imposition and collection of Octroi from the petitioners by Puri Municipal Council and its Officers at the time of booking of the goods at the railway station or at any point of exist was illegal and directed the Municipal Authorities to refund the tax, if any, collected in this regard from the petitioners. The Full Bench had also approved and followed the decision of this Court in I.T.C. Ltd. v. Puri Municipal Council (1978) 46 CLT387. It is pertinent to mention here

that the judgment of this Court in I.T.C. Ltd. was taken in appeal to the apex Court by the Puri Municipal Council and the apex Court by the judgment rendered in Puri Municipal Council and Ors. v. India Tobacco Company Ltd. : (1996) 103 STC 24 (SC) dismissed the appeal and affirmed the judgment of this Court holding that:.On the pleas of the municipality, the tax cannot be allowed to assume the character of a possessory tax or an exit tax. That would be against the text and content of the taxing provisions and their culpable part. Xxx

9. This being the position of law, there is no scope to disagree with the contentions advanced by Mr. Mohanty for the petitioners. Accordingly, we allow the writ petition and declare that collection of Entry Tax at the point of exists is illegal and accordingly, direct the O.Ps. to refund the money, if any, collected towards Entry Tax from the petitioners. The direction for refund is given in terms of the interim order passed by us in Misc. Case No. 11017/2006 on 20.9.2006 to the effect that any collection of Entry Tax shall be subject to the result of this writ petition. The aforesaid refund shall be made on proper application and identification.

10. Issue urgent certified copy.

11. Let a free copy of this order be supplied to the learned Additional Standing Counsel for the Revenue.