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M/S. BIRLA CORPORATION LTD.

v.

STATE OF RAJASTHAN AND ORS.

MARCH 11, 1999

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[S.P. BHARUCHA, S.S. MOHAMMED QUADRI
AND R.C. LAHOTI, JJ.]

Rajasthan Tax on Entry of Motor Vehicles into Local Areas Act, 1988 :

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S. 4(2)—Entry tax—Reduction to the extent of amount of tax paid under law relating to general sales tax—Held, not applicable to the tax paid on sale or purchase of specified goods or in specified circumstances under the Central Sales Tax Act—Central Sales Tax Act, 1956 s. 2(i)—Constitution of India—Seventh Schedule—List I, Entry 92A and List II, Entry 54.

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The appellant assessee, manufacturer of cement, purchased in the State of Tamil Nadu dumpers for its use in the State of Rajasthan and paid tax under the Central Sales Tax Act. On entry of the dumpers into the State of Rajasthan entry tax was demanded under the Rajasthan Tax on Entry of Motor Vehicles Into Local Areas Act, 1988. The assessee claimed rebate under s. 4(2) of the Act, but the assessing authority raised a demand without giving the assessee the benefit of rebate. The assessee filed a writ petition before the High Court. The writ petition was transferred to the Rajasthan Taxation Tribunal where it was dismissed. Aggrieved, the assessee filed the present appeal.

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Dismissing the appeal, this Court

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HELD : Section 4(2) of the Rajasthan Tax on Entry of Motor Vehicles Into Local Areas Act, 1988 provides for a reduction to the extent of the amount of tax paid under the law relating to general sales tax. Section 2(i) of the Central Sales Tax Act while defining 'sales tax law' makes a clear distinction between a general sales tax law that provides for the Levy of tax on the sale or purchase of goods generally and a special sales tax law that provides for the levy of tax on the sale or purchase of specified goods or in specified circumstances.. Tax under the Central Sales

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Tax Act would clearly fall within the second category. That this is so would

also be borne out by reference to Entry 54 of List II of the Seventh Schedule to the Constitution which empowers the State to levy taxes on the sale or purchase of goods and Entry 92A of List I which empowers the Centre to levy taxes on the sale or purchase of goods when the same takes place in the course of inter-State trade or commerce. [1998-G-H]

Orissa Cement Ltd. v. State of Orissa and Anr., [1970] 3 SCC 869, held inapplicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 760 of 1997.

From the Judgment and Order dated 27.9.96 of the Rajasthan Taxation Tribunal, Jodhpur in D.B.C.W.P. No. 2275 of 1994.

B. Sen and Praveen Kumar for the Appellant.

S.K. Jain and A.P. Dhamija for the Respondents.

The Judgment of the Court was delivered by

BHARUCHA, J. The assessee manufactures cement at Chittorgarh in the State of Rajasthan. It purchased dumpers for the purpose of its operations in the State of Rajasthan. The purchase was made in the State of Tamil Nadu. Tax was paid thereon under the provisions of the Central Sales Tax Act. When the dumpers were transported into Rajasthan, entry tax was demanded thereon under the provisions of the Rajasthan Tax on Entry of Motor Vehicles Into Local Areas Act, 1988 ('the said Act'). The assessee claimed rebate of the tax under the Central Sales Tax Act that it had paid on the dumpers, invoking the provisions of Section 4(2) of the said Act. Upon a demand being raised by the assessing authority, without giving to the assessee the benefit of such rebate, the appellant filed a writ petition in the High Court of Rajasthan for a direction to the taxing authorities to give the same. The writ petition having been transferred to the Rajasthan Taxation Tribunal, it was dismissed by the judgment and order which is under challenge.

The said Act provides for the levy of tax on the entry of motor vehicle into local areas of the State of Rajasthan for use and sale therein. The incidence of tax is provided for under Section 3 which states that a tax on the purchase value of motor vehicles shall be levied and collected if entry of the motor vehicles is effected into the local areas of the State for use or

A sale therein at such rate or rates as had been notified for motor vehicles under the Rajasthan Sales Tax Act, 1954. For our purposes, the relevant provision is Section 4(2). Section 4 provides for deduction in tax liability and sub-section (2) thereof reads thus :

B "4(2) The amount of tax leviable under this Act shall subject to such conditions as may be prescribed, be reduced to the extent of the amount of tax paid, if any, under the law relating to General Sales Tax as may be in force in any other State or Union Territory by an importer who, not being a dealer registered under the provisions of the Rajasthan Sales Tax Act, 1954 (Act No. 2 of 1954), had purchased the motor vehicle in that State for his own use."

The question is whether "the law relating to General Sales Tax as may be in force in any other State or Union Territory" includes the Central Sales Tax Act.

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The Central Sales Tax Act defines sales tax law and general sales tax law in Section 2(i) thus :

E "2(i) 'sales tax law' means any law for the time being in force in any State or part thereof which provides for the levy of taxes on the sale or purchase of goods generally or on any specified goods expressly mentioned in that behalf, and "general sales tax law" means the law for the time being in force in any State or part thereof which provides for the levy of tax on the sale or purchase of goods generally."

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There is a clear distinction, therefore, between a general sales tax law that provides for the levy of tax on the sale or purchase of goods generally and a special sales tax law that provides for the levy of tax on the sale or purchase of specified goods or in specified circumstances. Tax under the Central Sales Tax Act would clearly fall within the second category. That this is so would also be borne out by reference to Entry 54 of List II of the Seventh Schedule of the Constitution which empowers the State to levy taxes on the sale or purchase of goods and Entry 92A of List I of the Seventh Schedule which empowers the Central to levy taxes on the sale or purchase of goods when the same takes place in the course of inter-State trade or commerce.

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Our attention has been invited by learned counsel for the appellant to the judgment of this Court in *Orissa Cement Ltd. v. State of Orissa and Anr.*, [1970] 3 SCC 869. The Orissa Sales Tax Act, 1947 gave the assessee a rebate if he made prompt payment of the tax due. The question was whether that stimulus was a part of the manner of collection, in which event, by reason of Section 9(3) of the Central Sales Tax Act, it would be available to an assessee thereunder. This Court held that the rebate was offered to facilitate and expedite collection. It was intended to stimulate the collection. It was, therefore, a part of the process of collection and, by reason of Section 9(3), was available to an assessee making payment of tax due under the Central Sales Tax Act within the time prescribed in the relevant provision of the Orissa Sales Tax Act. We do not think that this judgment can be of any assistance here. The basis of that judgment was a provision of the Central Sales Tax Act, namely, Section 9(3); no such basis is available in the present case.

The issue of constitutionality of Section 4(2) of the said Act was not raised in the writ petition filed by the appellant and we do not express any opinion thereon.

The appeal is dismissed with costs.

R.P.

Appeal dismissed.