SUPREME COURT OF INDIA

Indo Burma Petroleum Corp. Ltd.

Vs.

Commissioner VAT Delhi & Ors.

C.A.No.5103 of 2016

(Kurain Joseph and R.F.Nariman,JJ.,)

13.05.2016

JUDGMENT

Uday Umesh Lalit,J.,

SLP(Civil)No.15206 of 2012

1. Leave granted.

2. These appeals by special leave challenge correctness of the common judgment and order dated 27.02.2012 passed by the High Court of Delhi at New Delhi in Sales Tax Appeal No.20 of 2012 and other connected matters. Apart from lead matter i.e. Sales Tax Appeal No.20 of 2012 filed by Indo Burma Petroleum Corporation Ltd., the High Court also dealt with Sales Tax Appeal Nos.6, 7, 10, 14, 16, 23, 25 and 27 of 2012 filed by Hindustan Petroleum Corporation Limited, Sales Tax Appeal Nos.8, 11, 17, 18, 21, 22, 28 and 30 of 2012 filed by Indain Oil Corporation Limited and Sales Tax Appeal Nos.9, 12, 13, 15, 19, 24, 26 and 29 of 2012 filed by Bharat Petroleum Corporation Limited. These petroleum companies had filed Sales Tax Appeals under Section 81 of the Delhi Value Added Tax Act, 2004 ("the Act" for Short).

3. On 01.06.2006 rates of Petrol and High Speed Diesel were increased by Rs.4/- and Rs.2/- respectively from the midnight of 5/6th June, 2006. This increase in rates would have resulted in ad valorem increase in Value Added Tax (VAT) at the rate of 0.66 paise per litre of Petrol and 0.22 paise per litre of High Speed Diesel. With a view to grant some relief in the price rise to the customers, the Government of National Capital Territory of Delhi issued a Memorandum dated 20.06.2006 which was to the following effect:

> **"GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI OFFICE OF THE COMMISSIONER, VALUE ADDED TAX DEPARTMENT OF TRADE AND TAXES, BIKRIKAR BHAWAN, I.P. ESTATE, NEW DELHI**
>
> No.F1[13/Pll/VAT/Act/2006/2069 Dated 20th June, 2006

MEMORANDUM

In pursuance of the ordinance dated 20.06.2006 [copy enclosed] promulgated by the Lt. Governor of the National Capital Territory of Delhi, Value Added Tax shall not be charged with immediate effect on the incremental prices [including the duties and levies charged thereon by the Central Government] of petrol and diesel as has been announced by the Government of India with effect from 6th June, 2006. Therefore, diesel and petrol shall be sold in the National Capital Territory of Delhi by not taking into account the component of the Value Added Tax on the increased price with immediate effect, meaning thereby that VAT shall continue to be charged on the pre-revised prices of diesel and petrol till further notification in this regard.

[HANS RAJ]
ADDITIONAL COMMISSIONER [POLICY]"

4. On 21.06.2006 an Ordinance was promulgated by the Lieutenant Governor inserting a proviso to the definition "Sale Price" in Section 2(1) (zd) of the Act. Said Section after such insertion of the proviso reads as under:

"(zd) "sale price" means the amount paid or payable as valuable consideration for any sale, including-

(i) the amount of tax, if any, for which the dealer is liable under Section 3 of this Act;

(ii) in relation to the delivery of goods on hire purchase or any system of payment by installments, the amount of valuable consideration payable to a person for such delivery including hire charges, interest and other charges incidental to such transaction;

(iii) in relation to transfer of the right to use any goods for any purpose (whether or not for a specified period) the valuable consideration or hiring charges received or receivable for such transfer;

(iv) any sum charged for anything done by the dealer in respect of goods at the time of, or before, the delivery thereof;

(v) amount of duties levied or leviable on the goods under the Central Excise Act,1944 (1 of 1944) or the Customs Act, 1962 (52 of 1962), or the Punjab Excise Act, 1914 (1 of 1914) as extended to the National Capital Territory of Delhi whether such duties are payable by the seller or any other person; and

(vi) amount received or receivable by the seller by way of deposit (whether refundable or not) which has been received or is receivable whether by way of separate agreement or not, in connection with, or incidental to or ancillary to the sale of goods;

(vii) in relation to works contract means the amount of valuable consideration paid or payable to a dealer for the execution of the works contract; less –

(a) any sum allowed as discount which goes to reduce the sale price according to the practice, normally, prevailing in trade;

(b) the cost of freight or delivery or the cost of installation in cases where such cost is separately charged; and the words "purchase price" with all their grammatical variations and cognate expressions, shall be construed accordingly; Provided that an amount equal to increase in the prices of petrol and diesel (including the duties and levies charged thereon by the Central Government) taking effect from the 6th June 2006 shall not form part of the sale price of petrol and diesel sold on and after the date of promulgation of this Ordinance till such date as the Government may, by notification in the Official Gazette, direct: Provided further that the first proviso shall not take effect till the benefit is passed on to the consumers. Explanation:-A dealer's sale price always includes the tax payable by it on making the sale, if any."

(The proviso for the sake of convenience has been highlighted in italics.)

5. On 24.11.2006 Delhi Value Added Tax (Amendment) Act, 2006 came into force. While repealing the Ordinance, Section 2 of the Amendment Act provided as under:

"2. Amendment of Section 2:- In the Delhi Value Added Tax Act, 2004 [Delhi Act 3 of 2005] [hereinafter referred to as "the Principal Act"], in Section 2, in sub-section (1), in clause [zd], before the Explanation occurring at the end thereof, the following provisos shall be inserted, namely –

"Provided that an amount equal to increase in the prices of petrol and diesel [including the duties and levies charged thereon by the Central Government] taking effect from the 6th June, 2006 shall not form part of the sale price of petrol and diesel sold on and after the date of the commencement of the Delhi Value Added Tax [Amendment] Act, 2006 till such date as the Government may, by notification in the Official Gazette direct:

Provided further that the first proviso shall not take effect till the benefit is passed on to the consumer."

6. On 30.11.2006 there was partial roll back of prices of Petrol and High Speed Diesel which had been enhanced with effect from 06.06.2006. The prices were again rolled back and brought to pre 06.06.2006 status w.e.f. 16.02.2007.

7. The appellant oil companies filed their VAT Returns with the Tax Authorities on the footing that by reason of the continued operation of the first proviso to Section 2(1)(zd) they were permitted to recover VAT only on the amount of sale price currently charged, as

reduced by the amounts of Rs.4/- per litre on Petrol and Rs.2/- per litre on High Speed Diesel. In other words, even after the partial roll back which came into effect on 30.11.2006 and complete roll back w.e.f. 16.02.2007 the appellants continued to deduct amounts of Rs.4/- per litre on Petrol and Rs.2/- per litre on High Speed Diesel from the prevailing sale price and charged/recovered VAT in respect of sale price so reduced by Rs.4/- and Rs.2/- as stated above.

8. On 05.06.2007 following Gazette Notification was issued by the Government of NCT:

> "Notification No.F.3[8]/Fin.[T&E]/2007-08/ Dated 5th June, 2007 In exercise of the powers conferred by first proviso to clause [zd] of sub-section [1] of Section 2 of the Delhi Value Added Tax Act, 2004[Delhi Act 3 of 2005], the Lt. Government of the National Capital Territory of Delhi, hereby, directs that the date of publication of this notification in the Official Gazette, to be the date from which the proviso referred to above shall cease to be effective. By order and in the name of the Lt. Governor of the National Capital Territory of Delhi.
>
> [Ajay Kumar Garg]
>
> Dy. Secretary Finance [T& E]"

9. In October 2007, Notices of default under Section 32 of the Act were issued to the appellants. Notice dated 22.10.2007 issued to the appellants in the lead matter i.e. Indo Burma Petroleum Company Ltd. stated as under:

> " The exemption of VAT which was allowed vide notification dated 24/11/2006 was only in respect of that portion of price of petrol & diesel which was incremental to the price of petrol & diesel prevalent as on 5/6/2006. However, it has been observed that the oil company even after reduction in the price of petrol & diesel has not paid VAT on an amount equal to the prices by which the price of petrol & diesel were increased on 6/6/2006 which is not as per law."

10. The Notices as aforesaid having called upon the appellants to pay VAT and penalty, objections were taken by each of the appellants under Section 74 of the Act which were rejected by the Additional Commissioner III, Department of Trade and Taxes, Government of National Capital Territory of Delhi vide Common order dated 04.08.2008. It was observed:

> "The amendment clearly says that to extend relief from the increase made in the price level of 05-06-2006 Govt. declared to forgo the VAT on the increased portion taking effect from 06-6-2006. The base price fixed by the Govt. in deciding the exemption was the price level prevailing on 05.05.2006. The amendment was made only to stop the prices from further increase. The Govt. had no intention to allow any relief on the price level prevailing on 05.06.2006 and if any intention would have been there then such an amendment should have been made prior to 06.06.2006. Now, with the

reduction in price on 30-11-06 and 16-02-07 the prices came down to the level of 05.06.2006 and with prices coming at the level it is implied that, the exemption allowed in VAT would cease as this would not be in conformity with the intentions of the legislature. The notification dated 05-06-2007 issued by the Govt. was done only to end the prevailing confusion among the petroleum dealers. Once the price decreased on 16-02-07 and brought at par with price on 05-06-2006, the notification issued by the Govt. would deem to have become inoperative. The penalty imposed upon the dealers are consequential to the tax imposed."

11. The matters were carried in appeal by the appellants, namely Appeal Nos.134-147/ATVAT/08-09 and other connected matters. The Appellate Tribunal in its common judgment and order dated 01.12.2011 dismissed the appeals as regards the main issue but set aside the demand of penalties. It was observed, as under:

"17.... Tax is to be paid as per Section 4 of the Act on the taxable turnover. Taxable turnover is to be computed as per Section 5 r/w Section 2(1)(zm) of the Act. Section 2(1)zm) talks about the 'sale price'. 'Sale price' is defined by Section 2(1)(zd) as a valuable consideration for any sale including amount of tax payable under the Act. (emphasis in bold) Thus if a State Govt. wants to give relief against the price increased by the Central Government the it could only do so by not charging tax on the increased portion but for doing so it had to exclude the increased portion from the purview of the expression 'valuable consideration for any sale'. In our considered view purpose of the Govt. of NCT of Delhi in introducing the proviso in question, when considered from the plain language of the proviso, was to direct the appellant dealers to continue to pay the VAT as if there was no increase in the prices by the Central Govt. In our considered view, the act of the Govt. of NCT of Delhi in introducing the proviso in question, by no stretch of imagination, could goad the appellants to embark upon an exercise in reducing the basic price for calculating the VAT, as argued by the Ld. Counsel for the appellants because simple meaning of this proviso is that oil companies were not required to include the increased component as a part of sale consideration under Section 2(1)(zd) of the Act. When the increased component was not to be a part of sale consideration under Section 2(1) (zd) of the Act, the obviously the appellants were not to charge VAT on the same as per the definition of the term 'sale price' which came to be controlled by introduction of the proviso in question. When there was no effect of the increased component, in the liability to pay Vat then it was immaterial when there was complete roll back or when the Notification was issued as per this proviso. Thus in our considered view, the submission of the Ld. Counsel for the appellants that the meaning of this proviso was that appellants shall continue to follow the deduction till another notification was issued which was in fact issued in June 2007 and oil companies stopped taking benefit of the proviso after this notification in June 2007, is without any merit."

12. The appellant-companies being aggrieved in so far as the interpretation placed on the first proviso to Section 2(1)(zd) of the Act was concerned, preferred appeals under Section 81 of the Act before the High Court. The High Court took the view that upon the partial roll back

w.e.f. 30.11.2006 and upon the complete roll back w.e.f. 16.02.2007 benefit of the proviso ceased to be partly or fully applicable. According to the High Court the proviso simply protected and gave exemption in respect of enhanced ad valorem VAT payable on account of increase in petrol and diesel from 06.06.2006 and the benefit under the proviso ceased to operate partly and fully on and w.e.f. partial and complete roll back respectively. These appeals by special leave challenge the correctness of the decision of the High Court. We have heard Mr. S. Ganesh, learned Senior Advocate in support of the appeals and Mr. Arvind Datar learned Senior Advocate for the respondents.

13. According to the appellants, the benefit in terms of the proviso in question was to the extent of VAT chargeable and payable in respect of the amount of increase and the benefit so quantified must be made available regardless of any variation or decrease in the rates of Petrol and High Speed Diesel. For example, if the price before the increase in rates is taken to be x and the price were to be x+4 as a result of increase w.e.f. 06.06.2006, the benefit of VAT payable in respect of the element of increase i.e. 4 must be available even if upon partial roll back the price were to be x+1 or upon full roll back the price were to be x itself. If the logic is accepted, upon full roll back, according to the appellants the VAT would be payable on x-4.

14. In our view, the proviso ought to be given normal and natural meaning keeping in mind the context, object and reasons for its enactment and incorporation. The idea was to protect the interest of the consumers by giving exemption in respect of enhanced ad valorem VAT payable on account of increase in prices of diesel and petrol from 06.06.2006. On the element of increase no additional ad valorem VAT was payable and according to the proviso the increased component was not to be part of sale consideration. Consequently VAT was not to be charged in respect of such increased component, as per definition of the term "sale price" which came to be controlled by introduction of the proviso. When there was no increased component and therefore no liability to pay VAT in respect of such increased component, benefit under the proviso ceased to be applicable. The proviso cannot be given operation beyond the element of increase, so much so that even after complete roll back, the benefit in respect of that amount must operate. That certainly was not the intent. The idea was to grant benefit only in respect of that element of VAT respecting increase in rates and not beyond. If that component of increase ceased to be in existence, the benefit of proviso also ceased to be in operation.

15. We, therefore, affirm the view taken by the High Court and the Appellate Authority and are not persuaded to take a different view in the matters. Affirming the judgment of the High Court, these appeals are dismissed without any order as to costs.