

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:
CUTTACK
S.A.No.1639 of 2005-06**

(Arising out of the order of the learned ACST, Cuttack-I Range,
Cuttack, in First Appeal Case No.AA-74/CUIE/2004-05,
disposed of on 26.09.2005)

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member
&
Shri B. Bhoi, Accounts Member-II

M/s. Bharat Petroleum Corporation Ltd.,
Sikharpur, Cuttack. ... Appellant.

-Versus -

State of Odisha, represented by the
Commissioner of Sales Tax, Odisha, Cuttack. ... Respondent.

For the Appellant: : Mr. S.B. Agarwal, Advocate.
For the Respondent : Mr. D. Behura, S.C. (CT).

Date of Hearing: **16.01.2023** *** Date of Order: **03.02.2023**

O R D E R

This appeal has been filed by M/s Bharat Petroleum Corporation Ltd, Sikharpur, Cuttack against the first appeal order dated 26.09.2005 passed by the Assistant Commissioner of Sales Tax, Cuttack-I Range, Cuttack (in short, 'learned FAA') in First Appeal Case No.AA-74/CUIE/2004-05 allowing the appeal in part and reducing the tax demand to Rs.8,70,370.00 from Rs.9,49,036.00 passed U/s.12 (4) of the Odisha Sales Tax Act (in short, OST Act) for the assessment year 2000-2001 by the Sales Tax Officer, Cuttack-I East Circle, Cuttack (in short, 'Ld. STO').

2. The facts in brief are as follows:-

M/s Bharat Petroleum Corporation Ltd, Sikharpur, Cuttack is a Govt. of India undertaking dealing in petroleum products.

The dealer-appellant was assessed U/s. 12(4) of the OST Act for the assessment year 2000-2001 by the learned STO raising the demand of Rs.9,49,036.00.

3. The dealer-appellant on being aggrieved against the order of assessment passed by the ld. STO preferred first appeal before the ld. FAA. The first appeal was basically filed by the dealer-appellant as a result of enhancement of Rs.28,08,613.03 over and above the revised GTO and TTO filed at assessment together with disallowance of concessional rate of tax against Rs.59,64,368.93 for want of non-submission of form IV. Enhancement to the extent of Rs.4,58,014.00 out of Rs.28,08,613.03 was deleted at the fora below on the pretext that the Ld. STO has failed to properly establish escapement of sales of lubricant and LPG effected through Govt. waybills in the wake of lubricant for Rs.10.10 crore and LPG for Rs.12.43 crore having been found place in the admitted turnover. The GTO and TTO of the dealer-appellant was re-determined at the stage of first appeal allowing the appeal partly and reducing the demand to Rs.8,70,370.00.

4. The dealer-appellant being not satisfied with the first appeal order preferred second appeal at this forum adducing the grounds of appeal as follows:-

(i) That rejection of books of accounts and enhancement of turnover by Rs.28,08,613.00 is illegal with the full set of books of account having been maintained by the appellant.

(ii) Disallowance of the claim of concessional rate of tax for want of non submission of declaration in form IV for Rs.59,64,368.93 and levy of tax thereon without providing opportunity to submit the same is illegal and unwarranted.

(iii) Levy of tax on excess disclosure of sales of HSD for Rs.23,50,599.03 against declaration form-IV is unjust and improper.

(iv) That there was no opportunity of being heard was advanced for which, there is sheer violation of principles of natural justice.

There is no cross objection filed by the state.

5. Heard the rival submissions. The order of assessment, first appeal order, grounds of appeal filed by the learned counsel of the dealer-appellant and the materials on record are examined at length.

6. The averments advanced by the learned counsel representing the dealer-appellant with regard to enhancement of turnover by Rs.28,08,613.00 (Rs.23,50,599.03+Rs.4,58,014.00) was looked into by the Id.FAA. As against claims of concessional rate of tax disclosed by the dealer-appellant, there was an amount of Rs.23,50,599.03 claimed in excess towards the value of HSD sold against form IV. This was rightly pointed out at the time of assessment by the Ld. STO. The Id. FAA has held the so called enhancement on this account as an audit assessment and found no justification to interfere. We are also at one with the observation made by the Id. FAA in this regard. As for enhancement of Rs.4,58,014.00, the Id. FAA observed that M/s Bharat Petroleum Corporation Limited, the dealer-appellant is a Government of India undertaking carrying on business on petroleum products both inside and outside the State. The transactions of the dealer-appellant are in voluminous. Maintenance of accounts is computer based. But, in the instant case, certain transactions carried through waybills involving Rs.4,58,014.00 were alleged as not accounted for at assessment. The Id. FAA going through the modus operandi of the dealer-appellant and the laxity on the part of the assessing officer to properly verify the transactions in question with reference to the admitted turnover on lubricant for Rs.10.10 crore and Rs.12.43 crore on LPG deleted Rs.4,58,014.00 from being added to the turnover for want of concrete proof. We are agreed to go by the observation of the Id. FAA on this score.

The Ld. STO on verification of the quantum of sale transactions declared against form IV came out with the findings that an amount of Rs.59,64,368.93 was found not covered by declaration form IV and thus, taxed the same at full rate discarding concessional rate of tax @ 4% as claimed for. The ld.FAA on having a hearing from the assessee and having no evidence adduced as to furnishing of required declarations at first appeal justified the assessment as appropriate. We, on the above observation, conclude that there is no ground to interfere, since disallowance of concessional rate of tax has been made basing on the books of accounts produced at assessment.

The ld. FAA re-determined the GTO & TTO computing the tax payable by the dealer-appellant at Rs.8,70,370.00 allowing the first appeal in part.

7. In view of the discussion narrated supra, we find no justification to interfere in the order passed in the first appeal and thus, it is confirmed. The second appeal filed by the dealer-appellant is hereby dismissed.

Dictated & Corrected by me

(Bibekananda Bhoi)
Accounts Member-II

I agree,

(Bibekananda Bhoi)
Accounts Member-II

(G.C. Behera)
Chairman

I agree,

(S.K. Rout)
2nd Judicial Member