

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A.No.113(C) of 2005-06

(Arising out of the order of the learned ACST, Cuttack-I Range,
Cuttack, in First Appeal Case No.AA-(C)11/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: **31. 01.2023**

ORDER

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(C)11/CUIE/2004-05 confirming the order of assessment passed u/r 12 (5) of the CST (O) Rules for the 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/r.12(5) of the CST (O) Rules for the year

2000-2001 by the learned STO raising extra demand of Rs.7,51,717.00 for having not accounted for Rs.46,89,350.97 in return figures coupled with non submission of 'C' forms for Rs.53,83,280.80 towards availment of concessional rate of tax.

3. The dealer appellant on being aggrieved against the order of assessment passed by the learned STO filed 1st appeal before the FAA. The ld. FAA observed that as against the claim of Rs.87,26,467.93 against form 'C', the dealer-company has submitted 'C' forms for an amount of Rs.1,22,63,249.90. Accordingly, there has been excess claim of Rs.35,36,781.97 towards concessional rate of tax which attracts tax @4%. Further, the goods sold by issuance of Govt. statutory waybills to the tune of Rs.11,52,569.00 which were of out of accounts were reckoned as interstate trade. Thus, the GTO and NTO as declared in the revised returns was added by Rs.46,89,350.97. Further, the submission of the dealer-company as to claim of branch transfer for Rs.6,00,000.00 and Rs. 53,83,280.80 as interstate sale at concessional rate of tax was not supported by the statutory declarations in form 'F' & 'C'. The company appellant failed to furnish the required statutory declarations in the fora below. Levy of surcharge on the portion of tax due not covered by declarations for which state Act is applied is adjudged as justified by the ld.FAA. Accordingly, the ld.FAA dismissed the appeal filed by the dealer-company and confirmed the order of assessment passed by the Ld. STO.

4. The dealer company being not satisfied with order of the ld.FAA filed appeal at this forum. Sri S. B. Agrawal, the learned counsel of the dealer-company submitted the grounds of appeal which is summarized as under.

(i) Rejection of books of accounts by enhancing the turnover by the assessing officer by Rs. 46,89,350.97 is illegal and unwarranted.

(ii) Disallowance of concessional rate of tax against statutory form 'C' for an amount of Rs.53,83,280.80 is illegal, as proper opportunity has

not been extended to the dealer-company for submission of the declaration forms.

(iii) Disallowance of branch transfer for Rs.6,00,000.00 for want of declaration form 'F' is illegal. The assessing officer ought to have allowed deduction on the basis of other evidences.

(iv) Levy of tax on 33 drums of mobil oil amounting Rs.5,00,000.00 is held as illegal, as no opportunity has been extended to furnish the necessary documents.

(v) Levy of surcharge u/s 5-A of the OST Act read with CST(O)Rules is termed as illegal and without jurisdiction.

5. There is no cross objection filed by the State.

6. On the contrary, the learned Standing Counsel (C.T.) for the State vehemently opposes the contention of the dealer and submits that the Id.FAA has passed a reasoned order. So, he submits that the order of the Id. FAA needs no interference in this appeal.

7. Heard the contention submitted by the Ld. Counsel of the dealer-company vis-a vis the argument placed by the State presented by Sri D. Behura. Gone through the order of assessment, first Appeal order and the materials on record. It is virtually a fact that M/s Bharat Petroleum Corporation Ltd, Sikharpur, Cuttack being a Government of India undertaking is supposed to have no ulterior motive for willful suppression of sales or evasion of tax by way of concealment of turnover in the returns. But so far as law is concerned, it is the statutory duty of an assessee to support his returns by the facts of accounts.

(i) The Ld. FAA has observed that, as verified by the Ld. STO, the dealer-company has disclosed transactions for Rs.87,26,467.93 in return figures towards concessional rate of tax against Form 'C', but has submitted declaration in Form 'C' for Rs.1,22,63,249.90. In result, there has been excess claim of Rs.35,36,781.97 towards concessional rate of tax. Accordingly, the excess claim of Rs.35,36,781.97 is exigible to tax

@4%. The observation of the ld. FAA accepting the order of assessment in the regard is justified.

(ii) In the instant case, the dealer-company when confronted at assessment as regards the transactions carried out through Govt. waybills involving Rs.11,52,569.00 failed to offer any satisfactory explanation. Those transactions were not reflected in the return figures. The learned STO after verification had found 5 nos of waybills to have not been found place in the return figures. Therefore, the learned STO is justified in holding Rs.11,52,569.00 as interstate sale which was left by the assessee out of tax net. The fora below has rightly thus observed that since there is evidence of transactions in the utilized Govt. waybills and the same having not been added in the return figures, enhancement of GTO and NTO adding Rs.11,52,569.00 on this core is justified.

(iii) That the ld. Counsel of the dealer-company holds Rs.6,00,000.00 out of Rs.11,52,569.00 transacted through Govt. waybill as branch transfer. There was no statutory declaration form 'F' submitted either at assessment or in the fora below. As a result, disallowance of the claim of branch transfer by the FAA is justified.

(iv) As to the submission of the Ld. Counsel of the dealer appellant for disallowance of Rs.53,83,280.80 without affording adequate opportunity of being heard, it is of the considered views that the dealer-appellant has failed to submit the wanting 'C' forms either at the fora below or at this forum in the 2nd appeal. The Ld. FAA is thus right in justifying the order of assessment in relation to disallowance of concessional rate of tax in the instant case.

(v) Holding levy of surcharge against the portion of transaction covered under state rate as settled in case of Deputy Commissioner of Sales Tax -Vrs- Aysha Hosiery Factory Pvt. Limited (1992) 85 STC 106 (SC) by the Ld.FAA is justified.

In view of the discussion made in the foregoing paras, we opine that the dealer-appellant fails to substantiate its claims of concessional

rate of tax, branch transfer and other grounds of appeal by way of submission of statutory declaration form 'C' and 'F' along with the evidence of dispatch of goods which are mandatory in law.

8. In the result, the appeal filed by the dealer-appellant fails. The order passed by the Ld. FFA is confirmed.

Dictated & Corrected by me

Sd/-
(Bibekananda Bhoi)
Accounts Member-II

I agree,

I agree,

Sd/-
(Bibekananda Bhoi)
Accounts Member-II

Sd/-
(G.C. Behera)
Chairman

Sd/-
(S.K. Rout)
2nd Judicial Member