

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

**S.A. No. 54 of 2008-09**

(Arising out of order of the learned ACST, Cuttack I Range,  
Cuttack in First Appeal No. AA – 352/CUIE/2005-06,  
disposed of on 18.01.2008)

Present: **Shri G.C. Behera, Chairman**  
**Shri S.K. Rout, 2<sup>nd</sup> Judicial Member &**  
**Shri M. Harichandan, Accounts Member-I**

M/s. Indian Oil Corporation Ltd.,  
Orissa State Office, 304, Bhoi Nagar,  
Bhubaneswar ... Appellant

-Versus-

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

For the Appellant : Sri N. Mohanty, Advocate &  
Sri N. Panda, Advocate

For the Respondent : Sri D. Behura, S.C. (CT)

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Date of hearing : 19.12.2022 \*\*\* Date of order : 17.01.2023  
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**ORDER**

Dealer is in appeal against the order dated 18.01.2008 of the Asst. Commissioner of Sales Tax, Cuttack I Range, Cuttack (hereinafter called as 'First Appellate Authority') in F A No. AA – 352/CUIE/2005-06 reducing the assessment order of the Sales Tax Officer, Cuttack-I Range, Cuttack (in short, 'Assessing Authority').

2. The case of the Dealer, in short, is that –

M/s. Indian Oil Corporation Ltd. is a Govt. of India Enterprise and it carries on business of buying and selling HSD, petrol, motor spirit, SKO, lubricants, furnace oil, light diesel oil, bitumen, hexen, wax, aviation turbine fuel etc. after effecting stock transfer from outside the State branches and from other Govt. sector enterprises inside the State. The assessment period relates to 2002-03. The Assessing Authority in assessment raised tax demand of ₹2,61,07,485.00 u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act').

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the assessment to ₹2,35,41,411.00 and allowed the appeal in part. Being further aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

The State files no cross-objection.

3. The learned Counsel for the Dealer submits that sale of kerosene through PDS is exempted as per Entry No. 18 of List-A, but the Assessing Authority and the First Appellate Authority levied tax on the same, which is illegal and arbitrary. He further submits that no reasonable opportunity was given to the Dealer to file the required declaration forms. He further submits that the claim of set off of entry tax would be available against the sales tax payable for sale of HSD, which is included in Entry No. 101 of the List-C of the Rate Chart. He further submits that the same has been clarified in the Letter No. 14834 of 10.07.2007 of Commissioner of Commercial Taxes, Odisha. He further submits that the Assessing Authority and First Appellate Authority lost sight of all the facts and arbitrarily levied tax liability on the Dealer, which needs interference in this appeal. In support of his contention, he relies on the orders of this Tribunal passed in S.A. Nos. 691 to 693 of

2008-09 and S.A. No. 207 of 2009-10. He also relies the Notifications and circulars.

4. Per contra, learned Standing Counsel (CT) for the State submits that the orders of the First Appellate Authority and the Assessing Authority are justified and the same require no interference in this appeal.

5. On hearing the rival submissions and on careful scrutiny of the materials available on record, it transpires that the Assessing Authority computed the tax at different rates, raised the tax liability including surcharge after allowing due set off. The First Appellate Authority did not consider the sale of kerosene through PDS for want of proper declaration forms. The First Appellate Authority confirmed the finding of the Assessing Authority regarding levy of tax on SKO @ 4%. The First Appellate Authority recorded a finding that M/s. Atlanta Infrastructure Ltd. is not eligible to purchase HSD on the strength of Form-IV and confirmed the finding of the Assessing Authority. The appellate order further transpires that the First Appellate Authority has accepted the wanting declaration filed for ₹30,37,591.00 against disallowance of ₹37,60,085.00.

6. The record shows that the First Appellate Authority considered the material evidence filed by the Dealer and allowed the claim. So, it cannot be said the First Appellate Authority did not allow due opportunity to the Dealer and the same contention of the learned Counsel of the Dealer must fail.

7. Entry No. 18 of List-A of the OST Rate Chart provides exemption of tax on sale of kerosene through PDS w.e.f. 01.07.2000. This Tribunal has recorded a specific finding that the PDS kerosene includes the kerosene supplied by the refineries/fractionators to OMCs as well as supplies made by OMCs to one another in S.A. Nos. 691 to 693 of 2008-09 dated 22.11.2013 relating to the instant Dealer for other assessment years. Considering the

same, this Tribunal reiterated the same view on 08.10.2021 in S.A. No. 207 of 2009-10. Keeping in mind the consistent view of this Tribunal, we are of the unanimous view that levy of tax by the Assessing Authority and confirmed by the First Appellate Authority on the sale turnover of SKO effected to other OMCs for PDS is unjustified. Accordingly, the findings of the Assessing Authority and the First Appellate Authority relating to levy of tax on sale of kerosene through PDS need interference in this appeal. Hence, it is ordered.

8. Resultantly, the appeal is allowed in part and the impugned order of the First Appellate Authority is hereby set aside to the extent indicated above. The Assessing Authority requires to recompute the tax liability of the Dealer keeping in view the observations made above within a period of three months from the date of receipt of this order.

**Dictated & Corrected by me**

**Sd/-  
(G.C. Behera)  
Chairman**

**Sd/-  
(G.C. Behera)  
Chairman**

**I agree,**

**Sd/-  
(S.K. Rout)  
2<sup>nd</sup> Judicial Member**

**I agree,**

**Sd/-  
(M. Harichandan)  
Accounts Member-I**