

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

S.A. No. 1800 of 2005-06

(Arising out of order of the learned ACST, Cuttack I Range,
Cuttack in First Appeal No. AA – 73/CUIE/2004-05,
disposed of on 14.10.2005)

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

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

... Appellant

-Versus-

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

... Respondent

For the Appellant : Sri M.L. Agarwal, S.C. (CT)
For the Respondent : Sri S.B. Agarwal, Advocate

Date of hearing : 02.11.2022 *** Date of order : 10.11.2022

ORDER

The State is in appeal against the order dated 14.10.2005 of the Asst. Commissioner of Sales Tax, Cuttack I Range, Cuttack (hereinafter called as ‘First Appellate Authority’) in F A No. AA – 73/CUIE/2004-05 enhancing refund against the assessment order of the Sales Tax Officer, Cuttack I East Circle, Cuttack (in short, ‘Assessing Authority’).

2. The facts of the case, in short, are that –

M/s. Bharat Petroleum Corporation Ltd. is a Govt. of India undertaking and deals in petroleum products in the State of Odisha. The assessment period relates to 1999-2000. The Assessing Authority enhanced the turnover by ₹1.00 crore after adding ₹6,45,743.00 towards supply of

lubricants and ₹10.00 lakh towards sales turnover of the item i.e. 'hexane' and computed the tax liability of the Dealer by allowing refund of ₹5,12,849.00 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 deleted the enhancement, which resulted in allowance of refund of ₹25,59,849.00 in appeal. Being aggrieved with the order of the First Appellate Authority, the State prefers this appeal. Hence, this appeal.

The Dealer files cross-objection supporting the order of the First Appellate Authority as just and proper.

3. The learned Standing Counsel (CT) for the State submits that the finding of the learned First Appellate Authority deleting the enhancement of ₹1.00 crore is erroneous and contrary to the provisions of law and facts involved. He further submits that the First Appellate Authority arbitrarily recorded a finding of deletion of ₹1.00 crore from the GTO only because the Dealer is a Govt. of India undertaking and is subject to CAG Audit. He further submits that the finding of the First Appellate Authority is not sustainable in the eyes of law and the same warrants interference in appeal.

4. On the contrary, learned Counsel for the Dealer supports the finding of the First Appellate Authority and submit that the Dealer is a Govt. of India undertaking and it has no malafide intention to evade the tax liability. He further submits that it is not humanly possible to produce all the documents as the turnover figure is high. So, he submits that the Assessing Authority enhanced the GTO arbitrarily without any cogent finding only on the basis of the five waybills. He further submits that the order of the First Appellate Authority is correct in its prospective and the same requires no interference in appeal.

5. Having heard the rival contentions of the parties and on going through the orders of the fora below vis-a-vis the materials on record, it is not in dispute that the Dealer is a Govt. of India undertaking and it deals in selling petroleum products. It is also not in dispute that the Dealer did not produce any books of account before the Assessing Authority with a plea that it is not humanly possible to produce all the relevant documents before him.

Record also reveals that the Assessing Authority assessed the tax liability by taking five waybills i.e. three waybills relating to receipt of 'Hexane' from outside the State and two waybills relating to supply of lubricants to inside the State. The Assessing Authority also found that the Dealer has sold furnace oil amounting to ₹90,695.00 to M/s. Hotel Kalinga Ashoka against Form-IV, which was disallowed.

The Dealer could not offer any satisfactory explanation regarding the transactions covered under the aforesaid waybills. So, the Assessing Authority enhanced the GTO by ₹1.00 crore. On computation, the Assessing Authority calculated the total tax liability at ₹76,28,02,336.00. The Dealer had already paid ₹76,33,15,186.00 u/r. 36 of the OST Rules. Accordingly, the Assessing Authority allowed refund of ₹5,12,849.00 in assessment.

6. The First Appellate Authority upheld the finding of the Assessing Authority relating to the transactions covered under five waybills and also the disallowance of ₹90,695.00 on account of concessional sale against Form-IV. But, the First Appellate Authority also recorded a finding deleting the enhancement of ₹1.00 crore that the Dealer is a Govt. of India Company and the same was open by the CAG of India, who surveyed the accounts for the entire branches throughout India and the Dealer has got a huge turnover importing huge amount of goods. The First Appellate Authority further observed that the Dealer must have been utilizing huge set of waybills. On

such finding, the assessment was reduced by allowing more refund of ₹25,59,849.00.

7. The First Appellate Authority has confirmed the finding of the Assessing Authority out of account transactions of the Dealer basing on five waybills, but showed unnecessary sympathy only because the Dealer is a Govt. Organization with huge turnover. The First Appellate Authority should not have shown any discrimination to the Dealer than any other dealer. The First Appellate Authority should not have taken a lenient view to the Dealer only because it is a Govt. of India undertaking especially in the matter of taxation when he found some unaccounted for and unjustified transactions. So, it is erroneous on the part of the First Appellate Authority in deleting the enhancement on this score. Therefore, the same requires interference in appeal.

8. On further perusal of the record, it reveals that both the fora below have recorded finding that the Dealer has huge turnover and it is not possible humanly to verify each and all transactions of the Dealer. On such finding, the Assessing Authority preferred to make assessment by taking only five waybills and assessed the tax liability by applying best judgment principle. There is no fixed formula to adopt best judgment principle, but the same should be made on the basis of some guess work, which should not be wild and capricious.

Basing only on five waybills, the Assessing Authority found irregularity of ₹16,45,743.00 (₹10,00,000.00 + ₹6,45,743.00) and enhanced the turnover by ₹1.00 crore, which is about six times and the same is not in a higher side considering the volume and nature of business. Therefore, the decision of the Assessing Authority enhancing the turnover by ₹1.00 crore cannot be termed as wild and capricious. As such, we do not find any impropriety or illegality in the order of the Assessing Authority.

9. On the foregoing discussions, we are of the considered view that the order of the First Appellate Authority requires interference in appeal and the order of the Assessing Authority is liable to be restored. Hence, it is ordered.

10. In the result, the appeal stands allowed and the impugned order of the First Appellate Authority is hereby set aside. Consequently, the order of the Assessing Authority is restored. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

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

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

I agree,

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

I agree,

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