BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL, CUTTACK.

S.A. No.300(ET) of 2005-06

(Arising out of the order of the learned Asst.CST, Cuttack-I Range, Cuttack in first appeal case No.AA-(ET)35/CUIE/2004-2005, disposed of on 14.10.2005)

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

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

-Vrs. –

M/s. Bharat Petroleum Corpn. Ltd., Sikharpur, Cuttack. ..... Respondent.

For the Appellant : : Mr. D. Behura, ld.S.C.(C.T.)
: Mr. S.K. Pradhan, ld. ASC (C.T.)
: Mr. N. Panda, ld. Advocate

For the Respondent : : Mr. J.S. Shah, Executive Accounts-Finance.

Date of Hearing : 13.07.2023 * Date of Order : 05.08.2023**

O R D E R

The State is in appeal challenging the order dated 14.10.2005 of the learned Assistant Commissioner of Sales Tax, Cuttack-I Range, Cuttack (in short, ld. FAA') passed in First Appeal Case No. AA-(ET)35/CUIE/2004-2005 allowing refund of ₹52,71,355.00 as against demand of ₹28,94,162.00 raised under

section 7(4) of the Odisha Entry Tax Act (in short, OET Act) by the Sales Tax Officer, Cuttack-I East Circle, Cuttack (in short, 'ld. assessing authority') for the assessment year 2000-2001.

2. The facts in brief are as follows:-

M/s Bharat Petroleum Corporation Ltd, Sikharpur, Cuttack is a Govt. of India undertaking trading petroleum products inside the state of Odisha. The dealer-appellant was assessed under Section 7(4) of the OET Act for the assessment year 2000-2001 by the learned assessing authority raising the demand of Rs.28,94,162.00. The first appeal as preferred by the dealer-assessee resulted in refund of ₹52,71,355.00.

3. The State being not satisfied with the aforesaid order of the ld.FAA filed second appeal before this forum endorsing the grounds of appeal stating that the learned assessing authority was right in determining GTO and TTO at ₹695.98 crore and ₹555.86 crore respectively resulting thereby demand of ₹28,94,162.00. It is also argued that the addition of ₹3.49 crore and ₹1.21 crore in GTO and TTO towards unaccounted for purchase of motor spirits and HSD respectively at assessment is justified. Re-determination of GTO and TTO at ₹614.32 crore and ₹474.20 crore by the ld. FAA which gave rise to refund of ₹52,71,355.00 is alleged as illegal and arbitrary. The State

appeals for restoration of order of the assessment setting aside the order of the ld. FAA.

4. Mr. N. Panda, ld. Advocate on behalf of the dealer-assessee filed cross objection supporting the order of the ld. FAA. It is submitted that deletion of ₹3.49 crore towards purchase of motor spirits and ₹1.21 crore towards excess purchase of HSD added to the GTO by the ld. assessing authority at first appellate stage is legally justified.

5. Heard the rival submissions. The order of assessment and the order of the ld. FAA coupled with the materials on record are gone through at length. On perusal of the order of assessment, it is revealed that the respondent-Corporation Limited (Hereafter called as dealer-respondent) has submitted returns disclosing GTO of ₹530,93,68,266.89 for year under appeal. The purchases of scheduled goods made from M/s. Indian Oil Corporation Limited for ₹123,32,19,447.66 and ₹30,46,86,486.00 from M/s. Hindustan Petroleum Corporation Ltd. totaling to ₹153,79,05,933.66 are alleged to have not been included in the GTO returned. Besides this, the learned assessing authority alleged the dealer-respondent to have effected excess purchases of motor spirits for ₹3,49,12,401.20 and HSD for ₹1,21,30,372.75 for M/s. Indian Oil Corporation

Ltd. during the year under appeal. Further, as admittedly acceded to by the dealer-respondent in the order of assessment, there was no entry tax paid in respect of purchases of schedule goods other than petroleum products such as pump, accessories and spare parts of pumps, electrical goods, readymade garments, flanges, steel plates, pipes and pipe fittings Sc valves, AC seals, nuts and bolt, refrigerators etc. involving ₹3,26,42,085.50. The said escaped turnover has been included in the GTO at assessment. The GTO was determined at ₹695,98,01,446.51 at assessment as discussed above. After deduction of ₹140,12,28,933.42 towards purchases on which entry tax has been paid earlier, the TTO stood determined at ₹555,85,72,513.09. Entry tax levied @1% on ₹552,34,99,899.77, @2% on ₹3,45,58,675.72 and @12% on ₹5,13,937.60 worked out to ₹5,59,87,845.08 in total. The dealer-respondent having earlier paid entry tax of ₹5,30,93,683.00, an amount of ₹28,94,162.00 was required to be paid as determined and demanded by the learned assessing authority at assessment.

6. The ld.FAA in the first appeal order observed that the instant firm is a statutory company of Government of India selling petroleum products inside the state of Odisha. It maintains computerized accounts being fed in their regional

office at Calcutta. It is also averred in the first appeal order that purchases and sales are in volumes and thus, it is not practically possible to submit the entire transactions at the time of assessment. The ld.FAA has therefore observed that tax amount is sought to be ascertained from the statements furnished, since the dealer is a Government of India Company having a huge turnover and paying a good amount of tax. It is also observed that the assessing officer is duty bound as per law to see the taxability of the dealer-respondent based on returns filed vis-à-vis tax compliance thereon. The ld.FAA attaches concern to the effect that the learned assessing officer has held the return figures disclosed at ₹530.90 crore for the year under appeal besides ₹153.90 crore shown separately towards purchases within the state of Odisha. This is in sharp contrast to a statement of revised returns that portrayed total turnover at ₹597.38 crore which includes ₹140.12 crore towards purchases within the local area. Accordingly, the ld.FAA finds reason in rejection of the books of accounts by the learned assessing authority.

The ld.FAA observes that the learned assessing authority has taken the original return figures i.e. ₹530.93 crore as GTO at assessment denoting purchases outside the state of Odisha. An

amount of ₹153.80 being purchases within the local area was added to the GTO. On examination of the purchase statement together other ancillary documents by the ld.FAA, it is held that the dealer-respondent itself has filed revised returns at ₹597.38 crore stating that it included an amount of ₹140.12 crore towards purchase of petroleum products inside the state of Odisha. The ld.FAA therefore considered it proper to aver that when there are evidences of purchases of ₹153.80 crore inside the state of Odisha, the differential figure i.e ₹13.67 crore (₹153.80-₹140.12) can be added in the estimation of turnover over and above the revised return figure of ₹597.38 crore.

As to the allegation of excess purchases of motor spirits to the tune of ₹3.49 crore and an amount of ₹1.21 crore towards HSD from M/s. Indian Oil Corporation Limited contained in the order of assessment, the ld.FAA observes that the said observation bears no meaning with the purchase figures as ascertained with respect to purchases within the State of Odisha having been disclosed at ₹153.80 crore. The observation of the learned assessing officer holding the so called excess purchases being not included in the purchase turnover is not convincing. The ld.FAA deleted the impugned amount of ₹3.39 crore and an amount of ₹1.21 crore from the ambit of the GTO.

As to the purchases of non-petroleum products categorized as 'Machinery and Equipments' involving ₹3.26 crore which have been admitted by the dealer-respondent as not included in the original or revised returns, the order of assessment levying entry tax thereon has been affirmed by the ld.FAA.

The ld.FAA re-determined the GTO at ₹614,32,49,766.81 in terms of the above discussion. After allowing deduction of ₹140,12,28,933.42 towards value of the schedule goods purchased from the registered dealers on payment of entry tax, the TTO stood determined at ₹474,20,20,833.39. Entry tax levied @1% on ₹470,69,48,220.07, @2% on ₹3,45,58,675.72 and @12% on ₹5,13,937.60 worked out to ₹4,78,22,328.22 in total. The dealer-respondent having earlier paid entry tax of ₹5,30,93,683.00, an amount of ₹52,71,355.00 was refundable to the dealer-respondent.

7. On a minute examination of the order of assessment vis-à-vis order of the ld. FAA and the materials on record, we are, as observed in the first appeal order, of the view that M/s. Bharat Petroleum Corporation Limited is a Government of India Company registered under the Company Act, 1956. Transactions are in huge and tax compliances thereof are in crore. It maintains

commercial accounting and is audited by C.A. firm. It being a Government of India Company, fraudulency of transactions ushering ulterior motive is inconceivable. But, the tax administration/assessing authority is endowed with statutory authority to act as delegated under the tax laws examining the accounts as adduced and to draw inference in case of any deficiency detected in course of examination/audit of accounts. In the present case, the learned assessing authority took into account the original return figures i.e. ₹530.93 crore at assessment despite the fact that there was revised returns filed for ₹597.38 crore at the time of assessment. The ld.FAA is justified in accepting the revised returns as per the provision of law and allowed differential amount of ₹13.68 crore as an addition to GTO, as the original returns depict ₹153.80 crore towards purchases inside the state of Odisha as against disclosure of ₹140.12 crore on such purchases in the revised returns. Further, as for the excess purchase of motor spirits to the tune of ₹3.49 crore and ₹1.21 crore towards HSD form M/s. Indian Oil Corporation Limited, the observation of the ld.FAA is convincing and thus, acceptable purportedly for the reason being that the allegation of the learned assessing authority on this score is unfounded being devoid of any factual supports. The

basis of alleging excess purchases has not been substantiated in black and white. Presumption of inferences is done away with in the present facts and circumstances of the case with the dealer-respondent having disclosed ₹153.80 crore towards purchases inside the state of Odisha. This apart, addition of ₹3.26 crore towards machinery and spare parts other than petroleum products to the GTO as rightly determined by the forums below is affirmed, as the dealer-respondent has admitted to have not accounted for the same in the returns.

8. Under the aforesaid facts and in the circumstances, we are unanimously of the view that the second appeal filed by the Revenue is dismissed and the order of the ld.FAA stands confirmed. Cross objection is disposed of accordingly.

Dictated and corrected by me.

Sd/-
(Bibekananda Bhoi)
Accounts Member-II

Sd/-
(Bibekananda Bhoi)
Accounts Member-II

I agree,

Sd/-
(G.C. Behera)
Chairman

I agree,

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