BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 184 (ET) of 2009-10

(Arising out of order of the learned ACST, Cuttack I Range, Cuttack in First Appeal No. AA(ET) – 125/CUIE/2005-06, disposed of on 29.09.2009)

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

M/s. Indian Oil Corporation Ltd.,
Orissa State Office, 304, Bhoi Nagar,
Bhubaneswar-22 ... 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)

Date of hearing : 26.12.2022 *** Date of order : 24.01.2023

O R D E R

Dealer assails the order dated 29.09.2009 of the Asst. Commissioner of Sales Tax, Cuttack I Range, Cuttack (hereinafter called as 'First Appellate Authority') in F A No. AA(ET) – 125/CUIE/2005-06 confirming the assessment order of the Sales Tax Officer, Cuttack-I Range, Cuttack (in short, 'Assessing Authority').

2. Briefly stated, the case of the Dealer is that –

M/s. Indian Oil Corporation Ltd. is a Govt. of India Enterprise and it engages in sale of petroleum products such as MS, HSD, SKO, lubricants, furnace oil, LDO, bitumen, hexen, wax and ATF. The assessment period

relates to 2002-03. The Assessing Authority in assessment raised tax demand of ₹1,84,45,684.00 u/s. 7(4) of the Odisha Entry Tax Act, 1999 (in short, 'OET Act').

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority confirmed the assessment order and dismissed the appeal. 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 the Dealer has produced the copy of chalan showing payment of ET as per challan No. 822371 dated 28.03.2003 on inter-State purchase non-petroleum products of ₹89,75,378.00 during the year 2002-03. He further submits that the Dealer has already filed revised return showing payment of ET. So, he submits that the same requires further consideration by this forum. He further submits that the Assessing Authority accepted the quantum of lubricant in the revised return, but did not accept the rate disclosed by the Dealer and took the rate prevailing in the market @ ₹68.06 per litre arbitrarily. So, he submits that the orders of the Assessing Authority and First Appellate Authority are contrary to law and the same require interference in appeal.

4. On the contrary, 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. He further submits that the Assessing Authority had given 39 chances to the Dealer, but the Dealer did not cooperate, which shows callous attitude of the Dealer. He further submits that the Dealer had furnished a list of receipt of the goods including 8446.156 quantity of lubricant. He further submits that the Dealer could not explain the receipt of lubricant for ₹70,37,864.00 under 10 nos. of waybill at South Eastern Railway, Bandhamunda. So, he submits

the Assessing Authority and the First Appellate Authority have added the same in the turnover of the Dealer, which requires no interference in appeal.

5. On hearing the rival submissions and on careful scrutiny of the materials available on record, it transpires that the Dealer had brought lubricant of ₹70,37,864.00 on the strength of 10 nos. of waybills from the checkgate to South Eastern Railway, Bandhamunda, Rourkela directly during the year 2002-03. The Dealer could not explain the same. So, the Assessing Authority added the same to turnover.

The IOCL had also brought scheduled goods other than petroleum products like air compressor, petrol pump, fire extinguisher, computers, chemicals etc. for an amount of ₹1,81,70,613.00 through 36 nos. of waybills. The Assessing Authority further found that the Dealer could not explain whether the said goods were brought on the strength of the aforesaid waybills. So, the Assessing Authority observed that the turnover of the goods other than petroleum products have never been included in the turnover of the petroleum product. Therefore, on such finding, the Assessing Authority added the same in the turnover of the Dealer. Accordingly, the Assessing Authority determined the GTO for the year 2002-03 at ₹2040,64,73,688.00 and TTO at ₹1430,57,49,774.00. Out of the TTO, turnover of ₹1417,55,52,107.00 was taxed @ 1% and the balance amount of ₹130,19,76,667.00 @ 2%. Finally, the Assessing Authority raised tax of ₹1,84,45,684.00 after allowing deduction towards ET paid.

The First Appellate Authority observed that the Dealer has brought the scheduled goods such as, air compressor, petrol pump, fire extinguisher etc. into Odisha by utilizing Govt. waybills. 31 nos. of waybills of the boarder checkgates reflect the said entries. The aforesaid goods have not been shown in the return. The First Appellate Authority further observed that the sale price shown in the return under the OST Act did not tally with the sale price shown in the ET return. The Dealer had filed revised return, but it has not assigned any reason for the same. The First Appellate

Authority further found that the Dealer had received goods both under 'C' and 'F' forms. The Dealer has not produced the account of 'C' and 'F' forms. The Dealer has not produced the account of receipt of crude petroleum, which were received through Paradeep. Thus, the First Appellate Authority confirmed the order of the Assessing Authority in totality and dismissed the appeal.

6. During hearing of the appeal, the Dealer claimed that it had purchased inter-State non-petroleum product of ₹89,75,378.00 during the financial year 2002-03 for consumption in Odisha and paid ET under Chalan No. 822371 dated 28.03.2003 and the same has been reflected in the entry tax return. The Dealer produced the xerox copy of the chalan showing deposit of ₹2,26,343.00 towards ET payment from December, 1999 to December, 2002 along with the statement. The Dealer also filed copy of revised return in Form-E6 before this forum in support of its claim. So, without expressing any opinion on its merit, we feel it proper to send it back to the Assessing Authority for due verification and allowance of the said claim in accordance with law.

7. As regards enhancement of turnover of ₹70,37,864.00 towards inter-State purchase of lubricants by Railway Authority, Bandhamunda, Rourkela, the assessment order reveals that the Dealer has furnished the detail list of receipt of purchase goods within the local area disclosing 8446.156 KL of lubricant @ ₹48,607.00 for value of ₹41,05,42,302.00. The assessment order further transpires that the Dealer has disclosed the same quantum of lubricant, but disclosed the rate @ ₹68.06 per litre for total value of ₹57,48,45,377.00. The Assessing Authority determined the rate of lubricant @ ₹68.06 per litre as per the prevailing market value.

The assessment order reveals that the Assessing Authority added ₹70,37,864.00 towards purchase of lubricant on 10 nos. of waybill on the ground that the Dealer could not explain the same in absence of detail waybill utilization account. The Dealer could not furnish satisfactory

explanation at this stage. So, the contention of the Dealer on this score merits no consideration.

8. For the foregoing discussions, the Dealer has produced chalan showing payment of ET for purchase of non-petroleum products worth of ₹89,75,378.00, but could not explain the discrepancy of lubricant received under 10 nos. of waybills. So, we do not find any illegality in the order of the Assessing Authority and the First Appellate Authority relating to adding of turnover of ₹70,37,864.00 towards the purchase of lubricant and the same calls for no interference in appeal. But, in respect of the addition of turnover of ₹89,75,378.00, we are of the unanimous view that the same requires further examination by the Assessing Authority and on such circumstance, we feel it proper to remit the matter to the Assessing Authority for assessment afresh. Hence, it is ordered.

9. Resultantly, the appeal is allowed in part and the impugned order of the First Appellate Authority is hereby modified to the extent indicated above. The matter is remitted back to the Assessing Authority for reassessment in accordance with law 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)
2nd Judicial Member

I agree,

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