

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

S.A. No. 53 of 2008-09

(Arising out of order of the learned ACST, Cuttack-I Range,
Cuttack in First Appeal No. AA- 386/CUIE/2006-07,
disposed of on dated 28.01.2008)

Present: **Shri A.K. Das, 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 ... 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) &
Sri S.K. Pradhan, Addl. SC (CT)

Date of hearing: 04.08.2022 *** Date of order: 17.08.2022

O R D E R

This is an appeal u/s. 23(3) of the Odisha
Sales Tax Act, 1947 (in short, 'OST Act') against the order
dated 28.01.2008 passed by the learned Asst. Commissioner
of Sales Tax, Cuttack-I Range, Cuttack (hereinafter called as
'first appellate authority') in Appeal No. AA- 386/CUIE/

2006-07 wherein it confirmed the extra demand of ₹1,21,93,307.00 raised by the Sales Tax Officer, Cuttack-I East Circle, Cuttack (in short, 'assessing authority') for the period 2001-02 in the assessment framed u/s. 12(8) of the OST Act.

2. The facts relevant for adjudication of the present second appeal are that the dealer-assessee, which is a Government of India undertaking, carries on business in buying and selling of HSD, petrol, motor spirit, SKO, lubricants, furnace oil, light diesel oil, bitumen, hexen, wax, aviation turban fuel etc. by way of effecting stock transfer from outside the State branches and after purchasing from other Government Sector Enterprises carrying on business inside the State. The dealer-Company had been assessed u/s. 12(4) of the OST Act for the period in question, where tax demand of ₹155,19,06,649.61 was raised. Subsequently, the assessing authority having found that the sale of SKO to the tune of ₹27,71,20,626.00 has escaped assessment, it reopened the case u/s. 12(8) of the OST Act and issued notice to the dealer-assessee for reassessment. Pursuant to such notice of the assessing authority, the Asst. Manager (Finance) appeared before the assessing authority and

furnished detail sales of SKO to other Marketing Companies. It was explained by the dealer-Company that the SKO sold to other Companies was meant for sale through PDS and, therefore, it was exempted from tax. The dealer-Company furnished the confirmation letter issued by the purchasing company to substantiate the plea that the SKO had been sold through PDS.

2(a). The assessing authority considering the explanation furnished by the dealer and the materials on record held that the State Government in exercise of the powers conferred u/s. 7 and 8 of the OST Act exempted the sale of commodity as per SRO No. 556/91 in which the SKO has not been included and, therefore, the SKO is to be taxed at the first point of sale; that as per Sl. No. 18 of the Tax Free List, kerosene sold through PDS is tax free as the SKO sold other than PDS is taxable @4% vide entry No. 93 of List-C of the Rate Chart; that the purchasing companies like M/s. Bharat Petroleum Corporation Ltd. and M/s. Hindustan Petroleum Corporation Ltd. have sold some quantity of SKO through PDS and some other quantity to other Oil Company; that the certificate issued by the two purchasing companies to the effect that all the purchases of

SKO was sale through PDS is not correct and that the dealer-Company contravened the provisions of the OST Act by selling SKO to other Oil Company as tax free instead of collecting tax on the same. The assessing authority with the above findings raised extra demand of ₹1,21,93,307.00.

2(b). The dealer-assessee being dissatisfied with the extra demand raised by the assessing authority, filed appeal before the first appellate authority, who also confirmed the order of assessment holding that SKO sold to other companies is taxable @ 4% at the first point of sale. The dealer-assessee being further dissatisfied with the order of the first appellate authority confirming the order of the assessing authority raising extra demand of ₹1,21,93,307/- preferred the present second appeal.

3. It was vehemently argued by the learned Counsel for the dealer-assessee that both the forums below committed grave error of law in taxing the SKO sold to other companies meant for PDS even though the same was not taxable. The forums below under misconception of law and on erroneous interpretation of the entry at Sl. No. 18 of the List-C of the Rate Chart has levied tax on sale of HSD, which is against the law laid down by this forum in S.A. No. 207 of

2009-10, decided on 08.10.2021, which has not been taken into consideration while calculating the tax liability of the dealer-assessee. Learned Counsel for the dealer-assessee submitted to allow the appeal and set aside the impugned orders of the forums below on the above submissions.

4. Per contra, learned Standing Counsel (CT) for the revenue supporting the impugned orders of the forums below vehemently urged that the authorities have passed the impugned orders strictly in accordance with law and there is no illegality or infirmity in such orders of the forums below.

5. The crux of the dispute that arises for consideration in the present appeal is whether the first appellate authority was correct in its approach in confirming the tax demand raised by the assessing authority in respect of SKO sold by the dealer-respondent. There is no dispute that kerosene sold through PDS is exempted from tax inside the State of Odisha. The dispute is with regard to SKO which does not find place in SRO No. 556/91 dated 27.07.1991. As per entry No. 18 of List-A, kerosene was tax free from 10.08.1990 to 21.04.1993 and in the same entry kerosene of all varieties made tax free from 27.04.1993 to

30.06.2000. Further under the said entry No.18 of List-A, kerosene sold through PDS was made tax free w.e.f. 01.07.2000. The controversy arose due to entry No. 93 of List-C wherein the item 'kerosene' excluding kerosene sold through PDS was subjected to tax @ 4%. The Government of India in the Ministry of Petroleum and Natural Gas vide its letter No. 20023/2/2011-PP dated 23.07.2013 clarified that Public Sector Oil Marketing Companies to procure the quantity of PDS kerosene and domestic LPG not only from own refineries, but also from standalone refineries including private refineries, fractionators, from other OMCs as well as through direct imports. The end use certificates are being submitted by the OMCs to refineries including standalone refineries/fractionators, for procurement of SKO for sale under PDS system with bulk LPG for sale as domestic LPG. It was further clarified that the entire chain of supply of PDS kerosene includes purchase of SKO by OMCs from the refineries/OMCs/allocation of SKO quota by MoP&NG and sale of kerosene through the PDS system. In view of such clarification of the Government of India, the controversy to the effect that SKO is not PDS commodity is set at rest. SKO being PDS commodity as clarified by the Government of

India, it is not taxable in view of entry No. 18 of List-A (Goods subjected to exemption from tax). Besides that PDS kerosene is a separate category of kerosene having blue colour which is specifically meant for PDS purpose and cannot be sold for other purpose. It is pertinent to mention here that similar question came before **the Full Bench of this Tribunal in S.A. Nos. 691-693 of 2008-09 in case of the present appellant disposed of on 22.11.2013 and in S.A No.207 of 2009-10 disposed of on 08.10.2021 in case of State of Orissa Vs. M/s. I.B.P Co. Ltd. wherein it was held that SKO being PDS commodity is exempted from tax.** The order of this Tribunal passed in **S.A. Nos. 691-693 of 2008-09** was subjected to challenge in **STREV No. 50 of 2014** which was disposed of on 09.12.2014 confirming the order of the Tribunal. Therefore, the contention raised by the learned Standing Counsel (CT) for the State is not legally tenable. In the instant case, the assessing authority inspite of certificate of the purchasing company that all the SKO purchased by them were sold through PDS levied tax @ 4% on sale turnover of SKO. The first appellate authority also agreed with the view of the assessing authority in making the SKO sold to other

companies by the dealer-assessee taxable under the OST Act. The forums below while levying tax on the SKO sold by the dealer-Company to the tune of ₹27,71,20,626.00 did not take into consideration the certificate issued by the purchasing company and the clarification issued by the Government of India vide Letter No. 20023/2/2011-PP dated 23.07.2013, wherein it has been clarified that PDS kerosene includes supplies made by Oil Marketing Companies to one another for ultimate sale through PDS. The assessing authority's finding that the SKO was not sold through PDS is not based on any materials on record, but only based on assumption and presumption, for which the same is not sustainable. The first appellate authority also having simply confirmed the order of the assessing authority without properly examining that SKO sold by the dealer-assessee, which is a Government of India undertaking to other companies, was sold through PDS or not, the said order is also not maintainable.

6. In view of the foregoing analysis, we are of the unanimous view that SKO to the tune of ₹27,71,20,626.00 sold by the dealer-Company to other Oil Marketing Companies for sale through PDS is not taxable in

view of entry No. 18 of List-A of the Rate Chart. Accordingly, the appeal is allowed, the impugned orders of the forums below are hereby set-aside and the matter is remitted back to the assessing authority to recompute the tax liability of dealer assessee keeping in view the observation made herein above within three months from the date of receipt of copy of this order.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

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

I agree,

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