

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

**S.A. No. 336 of 2008-09**

(Arising out of order of the learned ACST, Cuttack-I Range,  
Cuttack in First Appeal No. AA- 138/CUIE/2005-06,  
disposed of on dated 28.03.2008)

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

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

**O R D E R**

The dealer-assessee in the present second appeal has called in question the legality and propriety of the order dated 28.03.2008 passed by the learned Asst. Commissioner of Sales Tax, Cuttack-I Range, Cuttack (hereinafter called as 'first appellate authority') in Appeal No.

AA- 138/CUIE/2005-06 thereby reducing the tax demand to ₹2,32,83,229.00 from ₹3,04,07,217.00 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(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act').

2. The facts, in brief, are that the dealer-assessee is a Government of India undertaking, which carries on business in petroleum products like MS (Petrol), HSD, LDO, SKO, lubricants, furnace oil, bitumen, ATF & AV Gas etc. The Company is also registered under the OST Act having its place of business at Sikharpur, Cuttack. The dealer-assessee for the purpose of assessment was noticed u/s. 12(4) of the OST Act, pursuant to which, it appeared through one Ratan Kumar Agarwal, Asst. Manager (Finance) and produced the revised annual return under the OST Act for the year 2001-02 along with statement of rate-wise turnover consolidated for the year 2001-02, statement of product-wise and rate-wise turnover for the year, summary of sales to other Companies, sales journal for the month of August, 2001 and September, 2001 relating to the year under assessment.

2(a). The assessing authority on examination of the books of account for the year 2001-02, found that the dealer-assessee misutilized the way bills and could not furnish declaration in Form-IV for ₹3,29,04,937.00; that the Company also disclosed less sales turnover of ₹3,19,752.88 and ₹1,49,312.00 in respect of M/s. Shree Metalics Ltd. and M/s. Kalinga Iron Works respectively against Form-IV and that the dealer-assessee though claimed sales to other marketing companies to the tune of ₹71,73,66,344.00 could not furnish declaration forms for ₹63,44,25,586.00. Hence, it taxed the balance sale turnover of ₹8,29,40,758.00 at appropriate rate. The assessing authority further found that dealer-assessee effected purchase of SKO to the tune of ₹19,61,59,803.00 on the condition that the goods so purchased was for the purpose of resale in Odisha in the manner which would subject to levy of tax under the OST Act; that as such, the dealer-assessee was liable to pay tax on such sale turnover and that the dealer-assessee sold SKO for ₹19,02,71,695.00 as tax free goods under the Public Distribution System (PDS) for which the turnover was made exigible to tax by the assessing authority. The learned

assessing authority taking into account the above facts and figures raised extra demand of ₹3,04,07,217.00.

2(b). The dealer-assessee challenging the aforesaid demand raised by the assessing authority filed appeal before the first appellate authority on the grounds that levying tax on sale turnover of SKO for ₹19,02,71,695.50, which was sold under PDS was gross error of law as sale of SKO through PDS is tax free; that the assessing authority erroneously disallowed the claim of concessional sale against declaration in Form-IV amounting to ₹3,29,04,937.00; that the sale turnover of ₹3,19,752.88 and ₹1,49,312.00 relating to concessional sale against Form-IV made to M/s. Shree Metalics Ltd. and M/s. Kalinga Iron Works respectively was illegally added to the TTO; that the assessing authority also committed gross error of law in allowing set off of entry tax to the tune of ₹5,31,01,627.00 as against claim of ₹5,72,66,351.00 without assigning any reason; that by disallowing the claim of the dealer-assessee towards sales made to other oil marketing companies for non-submission of declaration forms was illegal and unwarranted; that addition of excess collection of ₹36,104.64 to the tax payable under the OST Act was also

contrary to law and that levy of surcharge of ₹31,79,282.00 u/s. 5-A of the OST Act was without jurisdiction. Learned first appellate authority on hearing the dealer-assessee and going through the materials on record, reduced the tax demand to ₹2,32,83,229.00 on the following findings :-

- (i) The dealer-assessee purchased SKO from other oil companies for ₹19,61,59,803.00 by utilizing prescribed declaration form in pursuance of SRO No. 556/91 dated 27.07.1991 for the purpose of resale in Odisha in a manner which would be subject to levy of tax under the OST Act. But, the stock of SKO for ₹19,02,71,695.00 was disposed of by way of tax free sale through PDS leading to contravention of the provisions for which the SKO for the said amount was taxable @ 4%;
- (ii) The dealer-assessee collected tax @16% on sale turnover of lubricants worth ₹9,02,616.00 instead of 12%. So, excess tax collection of ₹36,104.64 is to be added to the tax due;
- (iii) On verification of declaration in Form-IV amounting to ₹1,63,07,327.87, it is found that the concessional sale was for ₹1,56,80,122.95 excluding tax @ 4%. This sale turnover included sale of diesel for ₹10,61,045.00 for the period 01.04.2001 to 28.02.2002. The dealer-assessee is not entitled to sale diesel oil against Form-IV during the aforesaid period as per the Rate Chart of the OST Act;

(iv) The dealer-assessee could not furnish declaration for ₹8,29,40,758.00, which includes declaration to the tune of ₹7,72,32,167.00 pertaining to M/s. IBP Co. Ltd. and in first appeal, the dealer furnished declaration forms for ₹8,59,50,691.87 obtaining the same from I.B.P. Co. Ltd., as a result, there is excess submission of declaration form to the tune of ₹87,18,524.87, which is to be added to the GTO. The dealer is liable to pay tax @ 4% on sale turnover of ₹27,71,20,626.00;

(v) The dealer-assessee sold HSD (diesel oil) collecting concessional rate of tax @ 4% against declaration in Form-IV for ₹1,60,51,068.00, but it is not entitled to sell diesel at the concessional rate during the period 01.04.2001 to 28.02.2002. Hence, such sale turnover is taxable at the appropriate rate; and

(vi) The dealer-assessee is liable to pay tax on sale of kerosene oil for ₹27,71,20,626.00 @ 4% and on sale turnover of lubricants and other petroleum products for ₹94,42,881.00 made to South Eastern Railway, Angul.

3. The dealer-assessee being further dissatisfied with the aforesaid demand raised by the assessing authority reducing it to ₹2,32,83,229.00, filed the present second appeal mainly on the grounds that the SKO for ₹19,02,71,695.00 meant for PDS sold to other oil companies is liable to be excluded from the TTO; that sale of

HSD to registered manufacturers against Form-IV for ₹1,71,12,113.00 is liable to be excluded from the TTO as sale of HSD at concessional rate of 4% against Form-IV was withdrawn by the Government w.e.f. 01.03.2002; that the dealer is entitled to sale of HSD against Form-IV during the period 01.04.2001 to 28.02.2002 at the concessional rate of 4%; that OET set off of ₹41,64,724.00 claimed in the revised return should be allowed and the said amount should be deleted from the TTO; and that the surcharge has been wrongly calculated by the assessing authority.

4. 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. It was further vehemently urged that both the forums below have also illegally disallowed the claim of

the dealer for sale of HSD at the concessional rate of 4% against Form-IV even though the same was withdrawn by the Government of Odisha w.e.f. 01.03.2002. The forums below have also illegally disallowed the claim of set off of OET for ₹41,64,724.00 and calculated the surcharge wrongly. 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.

5. 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.

6. 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 purchased 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 issue 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 Odisha 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 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. It reveals from the impugned order of the first appellate authority that the dealer assessee purchased SKO from other oil companies to the tune of ₹19,61,59,803.00 by utilizing prescribed declaration form in pursuance of SRO No. 556/91 dt.27.07.1991 for the purpose of resale in Odisha and SKO to tune of ₹19,02,71,695.10 was disposed of by way of tax free sale through PDS. The forums below while levying tax on the SKO sold by the dealer-Company 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.

7. In view of the foregoing analysis, we are of the unanimous view that SKO 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.

8. Now coming to the claim of the dealer for concessional sale of diesel for ₹1,71,12,113.00 against Form-IV, which was disallowed by the forums below, we are of the considered opinion that both the fora committed error of law in disallowing such claim in toto for the entire period as benefit of concessional rate of tax was withdrawn only w.e.f 1<sup>st</sup> March, 2002 vide Notification No.16/2002. The HSD sold by the dealer-assessee to different manufacturing unit upto 28.02.2002 against Form-IV is exigible to tax at the concessional rate of 4%. Therefore, the impugned order on that count is unsustainable in the eyes of law.

9. So far as the impugned orders of the forums below levying tax @ 12% on lubricants and petroleum products supplied to South Eastern Railway, Bandhamunda and Angul for ₹94,42,881.00, it is claimed by the dealer-assessee lubricants and other products were purchased by South Eastern Railway directly from the depot of appellant at Vizag for which State Office of the Corporation has no information. Therefore, it should not have been added to GTO for the purpose of levying tax. On perusal of the impugned orders of the forums below, we find that such issue was not dealt with or adjudicated upon and no material is there on record to adjudicate such issue at this forum. Similarly, claim of set off of entry tax of ₹41,64,724.00 has been disallowed without assigning any cogent reason which needs fresh adjudication by the forums below. The forums below have also calculated surcharge @ 15% and 10%, which is contrary to the provisions contained u/s. 5-A of the OST Act. The impugned order on this count is also not legally sustainable.

10. For the foregoing reasons and discussions, 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 the dealer-assessee afresh giving it an opportunity of hearing to substantiate its claim by producing relevant materials and keeping in view the observation made herein above within a period of four 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)  
2<sup>nd</sup> Judicial Member

I agree,

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