

**BEFORE THE DIVISION BENCH: ODISHA SALES TAX TRIBUNAL,  
CUTTACK.**

**S.A.No. 2(C)/2017-18**

(From the order of the Id.Addl. CST(Appeal), South Zone,  
Berhampur, in Appeal No. AA(CST) 53/2015-16, dtd.30.01.2017,  
modifying the assessment order of the Assessing Authority)

**Present: Sri S. Mohanty  
2<sup>nd</sup> Judicial Member**

**Sri R.K. Pattnaik  
Accounts Member-III**

M/s. Hindustan Petroleum Corporation Ltd.,  
771 Anandapur, Opp.E.M. Bye Pass  
Kolkata.

... Appellant

**-Versus-**

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

.... Respondent

For the Appellant : Mr. Madhusudan Lila, A/R.  
For the Respondent : Mr. S.K. Pradhan, A.S.C. (CT)

(Assessment period : 04/2012 to 03/2014)

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Date of Hearing: 29.08.2018      Date of Order: 29.08.2018

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**ORDER**

The present appeal is directed against the order of the learned First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur (in short, FAA/ACST) in Appeal Case No.AA(CST) 53/2015-16 dtd.30.01.2017 arised out of the order of assessment passed by the Assessing Authority/Deputy Commissioner of Sales Tax, Bhubaneswar-II Circle, Bhubaneswar (in short, Id.AA) for the assessment period from 01.04.2012 to 31.03.2014 U/r.12(3) of the Central Sales Tax, Orissa Rules, 1957 (in short, CST(O) Rules.

2. On the basis of Audit Visit Report in an assessment u/r.12(3) of the CST(O) Rules for the tax period 04/2012 to 03/2014 of the assessee-dealer- M/s. Hindustan Petroleum Corporation Ltd., the AA found that the dealer had effected inter-state sale of petrol, diesel, superior kerosene oil, lubricants, LPG, Aviation Turbine Fuel (ATF), Bitumen and Furnace Oil on concessional rate of tax for Rs.95,15,948/- in the year 2012-13 and Rs.17,62,70,349/- in the year 2013-14, but in course of the assessment, the dealer could furnish the declaration Form 'C' for sale of Rs.95,15,948/- and Rs.17,20,44,801/- for the year 2012-13 and 2013-14 respectively. Hence, the concessional rate of tax for the rest sale amount of Rs.42,25,548/- was denied. In consequence thereof the balance tax due found from the dealer after imposing tax at full rate was assessed at Rs.6,66,104.55. Besides tax due, penalty u/r.12(3)(g) CST (O) Rules, 1957 at Rs.13,32,209.10 was also imposed.

3. In appeal before the Id.JCST, Sundargarh Range, Rourkela preferred by the dealer, the FAA confirmed the calculation of balance tax due by denying any concession in rate of tax for want of declaration form but while doing so he deleted the penalty and instead imposed interest. As a result, the total demand was reduced to Rs.8,15,940/-. Thereafter, the assessee-dealer preferred this second appeal on the ground that, sufficient time was not provided to furnish the rest declaration forms. Thus, this appeal.

4. At the hearing of the appeal, the dealer furnished two declaration Forms 'C' issued for an amount of Rs.28,70,040.70 vide Sl.No.95C-2007618 and other for Rs.14,24,368.10, Sl.No.95C-2007619. Declaration Forms in original are verified, Xerox copy of the forms are received and kept in record. There is no restriction for the dealer to furnish the declaration form at this second appellate stage.

When the dealer raised claim of concessional rate of tax, but could not furnish the declaration Forms, a presumption is drawn that, it is not within the capacity of the assessee-dealer but with the purchasing dealer, who is required to issue forms. Larned Addl. Standing Counsel did not object to the prayer for acceptance of the forms but argued for proper verification of its genuineness. In the circumstances mentioned above, when the parties are agreed on the point of acceptance of the declaration Form 'C' at this stage, which is otherwise not debarred under law, we are of the view that the declaration Form need to be accepted on proper verification by the AA. In the result, it is ordered.

The matter is remanded to the AA for acceptance on verification of the two number of declaration Form 'C' on production by the dealer and thereafter, the AA will do well to re-compute the tax liability payable if any. The AA is requested to complete the whole exercise within a period of 3 months hence.

The appeal is accordingly allowed on contest.

Dictated & corrected by me,

Sd/-  
(S. Mohanty)  
2<sup>nd</sup> Judicial Member

Sd/-  
(S. Mohanty)  
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I agree,

Sd/-  
(R.K. Pattnaik)  
Accounts Member-III

