

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

S.A. No. 207 of 2009-10

(Arising out of order of the learned DCST, Cuttack-I Range,
Cuttack in First Appeal Case No. AA- 481/CUIW/2006-07,
disposed of on dated 10.02.2009)

Present: **Shri A.K. Das, Chairman**
Smt. Sweta Mishra, 2nd Judicial Member
&
Shri S.M. Dash, Accounts Member-III

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

-Versus-

M/s. I.B.P. Co. Ltd.,
C/o. IOC Ltd.,
Orissa State Office, 304, Bhoi Nagar,
Bhubaneswar ... Respondent

For the Appellant : Sri D. Behura, S.C. (CT) &
Sri M.S. Raman, Addl.SC (CT)
For the Respondent : Sri N. Mohanty, Advocate &
Sri N. Panda, Advocate

Date of hearing: 29.09.2021 *** Date of order: 08.10.2021

O R D E R

This appeal is directed at the instance of the
State challenging the order dated 10.02.2009 passed by the
learned Deputy Commissioner of Sales Tax, Cuttack-I
Range, Cuttack (hereinafter called as 'first appellate
authority') in First Appeal Case No. AA- 481/CUIW/2006-07

reversing the order of assessment dated 31.01.2007 of the Sales Tax Officer, Cuttack-I West Circle, Cuttack (in short, 'assessing authority') passed u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') for the assessment period 2004-05 raising demand of ₹85,56,690.00.

2. The facts of the case in nutshell are that the dealer-respondent is a public sector enterprise carrying on business in buying and selling of petroleum products like petrol, diesel, SKO, lubricants etc. effecting purchase from inside the State i.e. from other inter oil companies in addition to stock transfer of such items from outside branches. During the period under assessment, the assessing authority disallowed the claim of set off to the tune of ₹12,43,619.90 from the total claim made towards set off of ET to the tune of ₹16,98,659.57 regarding purchase of HSD from M/s. I.O.C. Ltd.. The assessing authority on scrutiny of books of account found that the dealer ha made payment of ET on inter-State purchase of HSD to the tune of ₹4,55,03,697.73 but because of failure of the dealer to submit document to the effect that the I.O.C. Ltd. who sold HSD to the dealer-Company, had not claimed set off of entry tax paid relating to the stock of goods transferred to the

Company, limited the same to the extent of ₹4,55,039.69. In course of scrutiny also, learned assessing authority observed that the dealer had purchased SKO from I.O.C. Ltd. for ₹11,47,29,689.39 availing exemption of tax payable at the first point of purchase and sale by submitting declaration in pursuance of SRO No. 556/91 dated 27.07.1991, but actually no such PDS sale had been made and the item kerosene was not included in the exemption list of item as per the above SRO for which there is contravention of provision of Sec. 5(2)(A)(a)(ii) of the OST Act. He further observed that the dealer had sold MS, HSD, SKO to I.O.C. Ltd. inside the State of Odisha. The dealer availing exemption on such item on the ground that inter oil companies transaction on the above items is exempted from levy of tax on the first point of sale, again claimed exemption by re-selling the same items to I.O.C. Ltd. which is not proper as it is taxable at the second point of sales which the dealer did not do so towards tax compliance. Therefore, on the above grounds, the assessing authority raised extra demand of ₹85,56,690.00.

2(a). The dealer-respondent challenging the aforesaid findings of the assessing authority preferred

appeal before the first appellate authority which was disposed of on 10.02.2009 deleting the tax demand raised by the assessing authority on the following findings.

- (i) The I.O.C. Ltd. had not claimed set off of entry tax on sale of HSD to I.B.P. Ltd. since no OST is payable on sale of MS and HSD to other oil marketing companies as per the Circular No. 14834 dated 10.07.2001 issued by the Commissioner of Commercial Taxes, Odisha.
- (ii) In view of SRO No. 556/91 dated 27.07.1991 that SKO purchased from I.B.P. Ltd. has been sold entirely through PDS, therefore, the same is not taxable.
- (iii) There is nothing on record to show that the corporation has an evil motive to defraud the revenue by suppressing any fact as it is a public sector enterprise carrying on the business with a motive of service to public and accruing profit to the State exchequer.
- (iv) The demand raised by the assessing authority only will lead to legal complicity without any statutory support in favour of the revenue. Therefore, the demand on this score is not sustainable.

2(c). The State being aggrieved with this finding of the first appellate authority preferred the second appeal on

the sole ground that the SKO is not included in the SRO No. 556/91 dated 27.07.1991 for claiming exemption of tax giving declaration form. Therefore first appellate authority was not correct in its approach in reducing the tax demand to nil.

3. It was urged by the learned Standing Counsel (CT) for the State that Government in SRO No. 556/91 dated 27.07.1991 exempted first point sales of petrol, HSD, light diesel oil, powerline, aviation spirit, lubricants and liquid petroleum gas when such sales are made between four oil companies, viz. I.O.C. Ltd., H.P.C. Ltd., B.P.C. Ltd. and I.B.P. As per entry No. 93 of List-C SKO excluding kerosene sold through PDS (Public Distribution System) is taxable @ 4%. Therefore, the company himself having used the declaration form to avail exemption from tax, the assessing authority rightly imposed tax on the purchase value of SKO from I.O.C. Ltd. inside the Odisha, i.e. on value of ₹11,47,29,689.39. He submitted to set aside the impugned order of the first appellate authority on this aspect and confirm the order of assessing authority making the purchase of SKO as taxable.

4. Per contra, learned Counsel for the dealer-respondent in terms of cross-objection refuting the contention raised by the learned Standing Counsel (CT) for the State urged that there is no legality or impropriety in the impugned order of the first appellate authority deleting the tax demand raised by the assessing authority. The SKO purchased from I.O.C. Ltd. inside the State of Odisha being PDS commodity, is exempted from tax. The learned Counsel for the dealer-respondent relying on the order of this Tribunal passed in S.A. Nos. 691-693 of 2008-09 dated 22.11.2013 in case of M/s. Indian Oil Corporation Ltd. Vs. State of Orissa, vehemently urged that the SKO purchased by the dealer-respondent is exempted from tax. Therefore, the first appellate authority rightly deleted the tax demand raised by the assessing authority. He submitted to dismiss the appeal confirming the order of the first appellate authority.

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 deleting the tax demand raised by the assessing authority in respect of SKO purchased by the dealer-respondent. There is no

dispute that kerosene sale 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 do 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 exempted from tax). 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 wherein it was held that SKO being PDS commodity is exempted from tax. The order of this Tribunal 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 present case, the document filed by the dealer-respondent shows that I.O.C. Ltd. in its letter to it (the respondent) has clarified that it has not claimed set off of entry tax on sale of HSD to I.B.P. Co. Ltd. since no OST is payable on sale of MS and HSD to other marketing company. He has also furnished the details of purchase of SKO (superior kerosene oil) from I.B.P.

Co. Ltd. The first appellate authority on consideration of the materials produced by the dealer-respondent and the notification rightly deleted the tax demand raised against it (the respondent). There is no illegality and impropriety warranting interference of this Tribunal.

6. In view of the foregoing discussions, the second appeal filed by the State being devoid of merit stands dismissed and the impugned order of the first appellate authority is hereby confirmed. Cross-objection filed by the dealer-respondent is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(Sweta Mishra)
2nd Judicial Member

I agree,

Sd/-
(S.M. Dash)
Accounts Member-III