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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ SALES TAX APPEAL NOS.9, 12,13,15,19,24,26 & 29 /2012

Reserved on: 17th February, 2012

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Date of Decision:27th February, 2012

BHARAT PETROLEUM CORPORATION LIMITED

...Appellant

Through Mr. S.K. Bagaria, Sr. Advocate with Mr.
Ashok K. Bhardwaj, Mr. A.P. Vinod & Mr.
Manish Hirani, Advocates.

VERSUS

COMMISSIONER VAT DELHI & OTHER.....Respondents

Through Mr. H.C. Bhatia, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

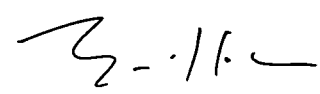
HON'BLE MR. JUSTICE R.V. EASWAR

SANJIV KHANNA, J.:

For detailed order see Sales Tax Appeal No. 6/2012 titled

Hindustan Petroleum Corporation Limited versus

Commissioner VAT Delhi and Other pronounced today.


(SANJIV KHANNA)
JUDGE


(R.V. EASWAR)
JUDGE

FEBRUARY 27, 2012

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ SALES TAX APPEAL NOS. 6, 7, 10, 14, 16, 23, 25, 27/2012

% Reserved on: 17th February, 2012
Date of Decision: 27th February, 2012

HINDUSTAN PETROLEUM CORPORATION LIMITED

...Appellant

Through Mr. S.K. Bagaria, Sr. Advocate with Mr.
Ashok K. Bhardwaj, Mr. A.P. Vinod & Mr.
Manish Hirani, Advocates.

VERSUS

COMMISSIONER VAT DELHI & OTHER.....Respondents

Through Mr. H.C. Bhatia, Advocate.

SALES TAX APPEAL NOS. 8, 11, 17, 18, 21, 22, 28 & 30/2012

INDIAN OIL CORPORATION LIMITED

...Appellant

Through Mr. S.K. Bagaria, Sr. Advocate with Mr.
Ashok K. Bhardwaj, Mr. A.P. Vinod & Mr.
Manish Hirani, Advocates.

VERSUS

COMMISSIONER VAT DELHI & OTHER.....Respondents

Through Mr. H.C. Bhatia, Advocate.

SALES TAX APPEAL NOS. 9, 12, 13, 15, 19, 24, 26 & 29 /2012

BHARAT PETROLEUM CORPORATION LIMITED

...Appellant

Through Mr. S.K. Bagaria, Sr. Advocate with Mr.
Ashok K. Bhardwaj, Mr. A.P. Vinod & Mr.
Manish Hirani, Advocates.

VERSUS

COMMISSIONER VAT DELHI & OTHER.....Respondents

Through Mr. H.C. Bhatia, Advocate.

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SALES TAX APPEAL NO.20/2012

INDO BURMA PETROLEUM CORPORATION LIMITED
...Appellant
Through Mr. S.K. Bagaria, Sr. Advocate with Mr.
Ashok K. Bhardwaj, Mr. A.P. Vinod & Mr.
Manish Hirani, Advocates.

VERSUS

COMMISSIONER VAT DELHI & OTHER.....Respondents
Through Mr. H.C. Bhatia, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

SANJIV KHANNA, J.:

Indian Oil Corporation Limited, Hindustan Petroleum Corporation Limited, Bharat Petroleum Corporation Limited and Indo-Burma Petroleum Corporation Limited have filed the present appeals under Section 81 of the Delhi Value Added Tax Act, 2004 (Act, for short) impugning the order dated 1st December, 2011 passed by the Appellate Tribunal Value Added Tax (tribunal, for short). It is submitted that the present appeals raise substantial questions of law as interpretation of proviso to Section 2(1)(zd) of the Act is required and the interpretation placed by the tribunal is vitiated and incorrect.

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2. The facts are not in dispute. The appellants are Government undertakings marketing petrol, diesel and petroleum products.

3. Value Added Tax (VAT, for short) on ad valorem rate is payable on the said products.

4. On 1st June, 2006, Government of India increased rates of petrol and high speed diesel by Rs.4/- and Rs.2/- respectively from midnight of 5/6th June, 2006. This increase would have caused and resulted in ad valorem increase in VAT @ 0.66 paise per litre of petrol and 0.22 paise per litre of diesel.

5. With a view to grant some relief in the price rise to the consumers, who had to pay the enhanced price of petrol and diesel, Government of NCT of Delhi issued Memorandum No. F.1(13)/PII/VAT/Act/2006/2069 dated 20th June, 2006 to the following effect:

"In pursuance of the ordinance dated 20.06.2006 (copy enclosed) promulgated by the Lt. Governor of the National Capital Territory of Delhi, Value Added Tax shall not be charged with immediate effect on the Incremental prices (including the duties and levies charged thereon by the Central Government of petrol and diesel as has been announced by the Government of India with effect from 6th June 2006.

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Therefore Diesel and Petrol shall be sold in National Capital Territory of Delhi by not taking into account the component of the Value Added Tax on the increased price with immediate effect, meaning thereby that VAT shall continue to be charged on the pre-revised prices of diesel and petrol till further Notification in this regard."

(emphasis supplied)

6. Thereafter, on 21st June, 2006 an ordinance was promulgated by the Lieutenant Governor inserting a proviso to the definition of the word "sale price" in Section 2(1)(zd). The said Section after insertion of the proviso reads:-

"(zd) "sale price" means the amount paid or payable as valuable consideration for any sale, including-

(i) the amount of tax, if any, for which the dealer is liable under section 3 of this Act;

(ii) in relation to the delivery of goods on hire purchase or any system of payment by installments, the amount of valuable consideration payable to a person for such delivery including hire charges, interest and other charges incidental to such transaction;

(iii) in relation to transfer of the right to use any goods for any purpose (whether or not for a specified period) the valuable consideration or hiring charges received or receivable for such transfer;

(iv) any sum charged for anything done by the dealer in respect of goods at the time of, or before, the delivery thereof;

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(v) amount of duties levied or leviable on the goods under the Central Excise Act, 1944 (1 of 1944) or the Customs Act, 1962 (52 of 1962), or the Punjab Excise Act, 1914 (1 of 1914) as extended to the National Capital Territory of Delhi whether such duties are payable by the seller or any other person; and

(vi) amount received or receivable by the seller by way of deposit (whether refundable or not) which has been received or is receivable whether by way of separate agreement or not, in connection with, or incidental to or ancillary to the sale of goods;

(vii) in relation to works contract means the amount of valuable consideration paid or payable to a dealer for the execution of the works contract; less –

(a) any sum allowed as discount which goes to reduce the sale price according to the practice, normally, prevailing in trade;

(b) the cost of freight or delivery or the cost of installation in cases where such cost is separately charged;

and the words "purchase price" with all their grammatical variations and cognate expressions, shall be construed accordingly;

Provided that an amount equal to increase in the prices of petrol and diesel (including the duties and levies charged thereon by the Central Government) taking effect from the 6th June 2006 shall not form part of the sale price of petrol and diesel sold on and after the date of promulgation of this Ordinance till such date as the Government may, by notification in the Official Gazette, direct:

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Provided further that the first proviso shall not take effect till the benefit is passed on to the consumers.

Explanation:-A dealer's sale price always includes the tax payable by it on making the sale, if any;"

(The proviso for the sake of convenience has been highlighted in italics.)

7. On 30th November, 2006, there was partial roll back of prices enhanced with effect from 6th June, 2006. The prices were again rolled back to pre 6th June, 2006, with effect from 16th February, 2007.

8. The contention of the appellants, which has been rejected by the tribunal, is that the proviso inserted to Section 2(1)(z) should be interpreted in the manner that the benefit of reduction of 0.66 paise per litre of petrol and 0.22 paise per litre of diesel continued even after partial roll back on 30th November, 2006 and full roll back with effect from 16th February, 2007. In other words, the appellants submitted that even when the prices of petrol and diesel were restored back to the prices as on 5th June, 2006, the appellants were entitled to reduction in VAT @

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0.66 paise and 0.22 paise per litre of petrol and diesel on the VAT payable on ad valorem basis.

9. The aforesaid contention of the appellants is based upon the expression "an amount equal to increase in prices of petrol and diesel" and the stipulation in the proviso that the benefit thereunder shall continue till such date as the Government may by notification in the official gazette direct. In this connection, it is submitted that a notification dated 5th June, 2007 was issued in the official gazette and as per the said notification, the Lieutenant Governor had directed that from the said date, the proviso shall ceased to be effective. Thus, the appellants submit that benefit of 0.66 paise on petrol and 0.22 paise on diesel on the ad valorem VAT continued till 5th June, 2007.

10. We may reproduce below the reasoning given by the tribunal to reject the said contention raised by the appellants:-

"17. Tax is to be paid as per Sec. 4 of the Act on the taxable turnover. Taxable turnover is to be computed as per Sec. 5 r/w Sec. 2(1)(zm) of the Act. Sec. 2(1)(zm) talks about the 'sale price'. 'Sale price' is defined by sec. 2(1)(zd) as a **valuable consideration for any sale** including amount of tax payable under the Act. (emphasis in bold) Thus if a state Govt. wants to give relief against the price

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increased by the Central Govt. the it could only do so by not charging tax on the increased portion but for doing so it had to exclude the increased portion from the purview of the expression '**valuable consideration for any sale**'. In our considered view purpose of the Govt of NCT of Delhi in introducing the proviso in question, when considered from the plain language of the proviso, was to direct the appellant dealers to continue to pay the VAT as if there was no increase in the prices by the Central Govt. In our considered view, the act of the Govt. of NCT of Delhi in introducing the proviso in question, by no stretch of imagination, could goad the appellants to embark upon an exercise in reducing the basic price for calculating the VAT, as argued by the Ld. Counsels for the appellants because simple meaning of this proviso is that oil companies were not required to include the increased component as a part of sale consideration under sec. 2(1)(zd) of the Act. When the increased component was not to be a part of sale consideration under sec. 2(1)(zd) of the Act, the obviously the appellants were not to charge VAT on the same as per the definition of the term 'sale price' which came to be controlled by introduction of the proviso in question. When there was no effect of the increased component, in the liability to pay VAT then it was immaterial when there was complete role back or when the Notification was issued as per this proviso. Thus in our considered view, the submission of the Ld. Counsels for the appellants that the meaning of this proviso was that appellants shall continue to follow the deduction till another notification was issued which was in fact issued in June 2007 and oil companies stopped taking benefit of the proviso after

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this notification in June 2007, is without any merit....."

11. We are in agreement with the aforesaid conclusion for the reasons and discussion below.

12. The term 'sale price' has been defined to mean the amount paid or payable as valuable consideration which includes the amount of tax, if any, duty of central excise, customs duty etc. The last part of the main sub-section stipulates that words 'purchase price' and all their grammatical variations and cognate expressions, shall be construed accordingly. The proviso which was incorporated on 21st June, 2006, has to be given a normal and natural meaning keeping in mind the context, object and reason for its insertion and incorporation. Section 2(1)(zd) has to be read in entirety to understand the effect and purport of the proviso. Further, the proviso cannot be read in a piecemeal ignoring the middle part thereof and with reference to the first part and as the last part of the proviso. The central or the middle portion of the proviso specifically states that there was increase in prices of petrol and diesel by the Central Government with effect from 6th June, 2006. The proviso stipulates that an amount equal to the increase in prices of petrol and diesel with effect from 6th June,

2006 shall not form part of the sale prices of petrol and diesel sold on or after the date of promulgation of the ordinance. The intention and object was clear that there should not be ad valorem increase of VAT on account of increase in prices by the Central Government with effect from 6th June, 2006 and this enhancement shall not form part of the sale price of petrol and diesel. Therefore, when there was a partial and thereafter a complete roll back of the enhanced price and the prices of petrol and diesel were restored back to the pre 6th June, 2006 level with effect from 30th November, 2006 and 16th February, 2007, respectively, the benefit of the proviso obviously ceased to be partly or fully applicable and operate. The proviso only protected and gave exemption in respect of enhanced ad valorem VAT payable on account of increase in prices of diesel and petrol from 6th June, 2006 and this increase was not to form part of the prices of petrol and diesel. On this increase, no additional ad valorem VAT was payable. The proviso did not say that ad valorem VAT will not be payable and applicable on the pre 6th June, 2006 prices on petrol and diesel. VAT as was payable on the pre 6th June, 2006 prices, whether before or after 21st June, 2006. It continued to remain payable and was not effected.

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When from 16th February, 2007 the enhanced prices were completely rolled back, the VAT was payable as per the selling price. Benefit under the proviso ceased to be applicable with effect from the said date, as the prices increased with effect from 6th June, 2006, were rolled back. The enhancement of prices, in respect of which proviso was inserted, was withdrawn and thus the benefit under the proviso came to an end.

13. The notification dated 5th June, 2007 issued in terms of the proviso does not help the appellants. The proviso itself stipulated that the Government by a notification in the official gazette can withdraw the concession. Thus, the State Government had retained their right to ask the appellants to pay enhanced VAT on the basis of enhanced/increased sale price with effect from 6th June, 2006 by issue of a notification and an amendment to the Act was not necessary. The last part of the proviso was to operate and was applicable in a different situation. This does not mean that the proviso has to be read in a manner that it is applied even after the roll back of the prices of petrol and diesel to the pre 6th June, 2006 level.

14. We do not find that any substantial question arises for consideration in the present appeals and the same are accordingly dismissed. No costs.

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(SANJIV KHANNA)
JUDGE


(R.V. EASWAR)
JUDGE

FEBRUARY 27th, 2012
VKR