

Neutral Citation - 2023:AHC-LKO:80754

Court No. - 17

Case :- SALES/TRADE TAX REVISION No. - 216 of 2010

Revisionist :- M/S Bharat Petroleum Corporation Ltd.Lucknow Thru Managerfi

Opposite Party :- Commissioner Of Commercial Tax U.P. Lucknow

Counsel for Revisionist :- Rahul Srivastava,Parv Agrawal,Yogesh Chandra Srivastava

Counsel for Opposite Party :- C.S.C.

Alongwith

(1) Case :- SALES/TRADE TAX REVISION No. - 221 of 2010

Revisionist :- M/S Hindustan Petroleum Corporation Limited Lucknow

Opposite Party :- Commercial Tax Tribunal U.P. Lucknow And Ors.

Counsel for Revisionist :- Sandeep Dixit,Pradeep Agrawal,Pramod Kumar Singh

Counsel for Opposite Party :- C.S.C.

(2) Case :- SALES/TRADE TAX REVISION No. - 220 of 2010

Revisionist :- M/S Hindustan Petroleum Corporation Limited Lucknow

Opposite Party :- Commercial Tax Tribunal U.P. Lucknow And Ors.

Counsel for Revisionist :- Sandeep Dixit,Pradeep Agrawal,Pramod Kumar Singh

Counsel for Opposite Party :- C.S.C.

(3) Case :- SALES/TRADE TAX REVISION No. - 219 of 2010

Revisionist :- M/S Hindustan Petroleum Corporation Limited Lucknow

Opposite Party :- Commercial Tax Tribunal U.P. Lucknow And Ors.

Counsel for Revisionist :- Sandeep Dixit,Pradeep Agrawal,Pramod Kumar Singh

Counsel for Opposite Party :- C.S.C.

(4) Case :- SALES/TRADE TAX REVISION No. - 218 of 2010

Revisionist :- M/S Bharat Petroleum Corporation Ltd. Thru Manager Finance

Opposite Party :- Commissioner Of Commercial Tax U.P. Lucknow

Counsel for Revisionist :- Rahul Srivastava, Yogesh Chandra Srivastava

Counsel for Opposite Party :- C.S.C.

(5) **Case :-** SALES/TRADE TAX REVISION No. - 217 of 2010

Revisionist :- M/S Bharat Petroleum Corporation Ltd. Lucknow Thru Manager

Opposite Party :- Commissioner Of Commercial Tax U.P. Lucknow

Counsel for Revisionist :- Rahul Srivastava, Parv Agrawal, Yogesh Chandra Srivastava

Counsel for Opposite Party :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri Shubham Agarwal, Sri Pradeep Agarwal and Sri Yogesh Chandra Srivastava, learned counsels for the revisionists as well as Sri Sanjay Sarin, learned Standing Counsel appearing for the opposite party.

2. All the revisions involve common questions of law and fact and also with the consent of learned counsel for the parties, same are decided by this common judgment.

3. The revisionists in the present revisions are petroleum companies involved in refining and marketing of petroleum products. In the State of Uttar Pradesh they do not have a refinery and therefore they take supply of petroleum products from M/s Indian Oil Corporation Ltd. (*hereinafter referred to as "the IOC"*), which has a refinery at Mathura.

4. It has been urged by learned counsels for the revisionists that purchase orders are received from the customers outside the State of U.P. and accordingly the revisionists have placed in indents to IOC with instructions to dispatch the goods outside the State of U.P. The IOC have dispatched the goods to the destination of the customer situated outside the State of U.P. on which it has charged central sales tax @ 4% from the revisionists. The revisionists have also furnished

Form-C to the IOC who has in turn deposited the amount of Central Sales Tax with the Department in State of U.P.

5. From the assessment year 1998-99 the assessing officer passed the assessment order on 29.04.2004, accepting the books of accounts, but treated the sale made by the revisionist to its dealers outside the State of U.P. as a inter State sale in the hands of revisionists.

6. Aggrieved by the order of the Assessing Officer, the revisionists had filed an appeal before the joint Commissioner (Appeal) which was also dismissed by order dated 20.12.2004 and the order passed by the Assessing Officer was confirmed.

7. Against the order passed by the Joint Commissioner (Appeals) a second appeal was filed under Section 10 of the U.P. Trade Tax Act before the Trade Tax Tribunal which was subsequently transferred to the Commercial Tax Tribunal, Lucknow after coming into force of the U.P. VAT Act, and vide order dated 31.07.2010, the appeal was dismissed.

8. It is in the aforesaid circumstances that the present revision has been preferred assailing all the above orders wherein according to the revisionists the inter-State sale of petroleum products has been wrongly assessed to tax where the same transaction was previously taxed at the hands of Indian Oil Corporation treating the said sale to be interstate sale.

9. It has been further submitted by the learned counsel for the revisionists that the assessment orders for the same assessment year cannot be dealt differently and where Central Sales Tax has already been levied on one transaction and the Central Sales Tax has been paid at the rate of 4% by IOC, then the same transaction cannot be taxed again at the hands of revisionists again holding it to be inter-State sale of revisionists. It is further submitted that Form-C was also submitted to the IOC and all the said documents were produced before

the Assessing Authority and despite the above the Assessing Authority proceeded to levy Central sales Tax on the said transaction.

10. Learned Standing Counsel on the other hand has opposed the revisions and submits that the facts of the case are totally contrary to what have been stated by learned counsel for the revisionists. It is stated that sales in the present case were made by the Indian Oil Corporation, Mathura to Bharat Petroleum Corporation Ltd to the office at Mathura and further the goods were sold outside the State of U.P. by the BPCL, hence, on the other hand it is submitted that they were two separate and distinct transactions. The BPCL has to pay Central Sales Tax on the goods which are sold by the BPCL to their dealers outside the State of U.P. He submits that entire exercise was undertaken on the basis of survey where all the facts demonstrate that it was intra-State sale by the IOC to the BPCL and goods were duly received by the BPCL at Mathura itself.

11. It has been stated that even the name of consignee was indicated by the IOC as BPCL, Mathura and not any party outside the State of U.P. Money was paid by the dealer of the BPCL to the BPCL itself and BPCL subsequently made payment to the IOC. The documents with regard to sale to the dealer in Rajasthan were duly examined by the Assessing Authority and it was found that sale was made by the BPCL, Mathura unit and not by IOC. It is stated that goods which were delivered on the basis of indent sent by the BPCL indicates that the filled tankers were received by the BPCL outside the gates of the IOC refinery and according to the 'Bilty' the consignee name is indicated as M/s BPCL and not of any dealer outside State of U.P.

12. Heard learned counsel for the parties and perused the record.

13. The proceedings in the present case are the result of a Survey conducted by the SIB, Agra which submitted its report on 24.08.1999. The said survey was conducted in the presence of Manager of the revisionist and was in relation to the Assessment Year 1999-2000.

Copy of the report was submitted to the revisionists and explanation and documents were sought from them on various dates and lastly on 18.04.2004. The revisionists were asked to produce all the invoices which were issued by its Mathura dispatch unit to the IOC as well as the copies of invoices where products were sold to the dealers outside the State of U.P. and the sale ledger with regard to aforesaid transactions.

14. It has been stated that on the basis of survey it was found that name of seller is not disclosed to the IOC on the documents submitted to it and the sale invoice given by the IOC Mathura refinery, is made on the Mathura Unit of the revisionists and even all the vehicles on which the goods are transported, the documents indicate the receiver to be BPCL, Mathura and consignee is indicated to be outside the State of U.P. Even the money is transferred by the seller to the BPCL, Mathura unit and the seller also sends the authority letter alongwith its copy of Mathura unit of BPCL. It has been stated that even 'Bilty' clearly indicates name of consigner as BPCL and accordingly, on the basis of said facts revisionists were asked to produce relevant documents, failing which above transactions would be treated as intra-State sale on which Sales Tax would be levied.

15. The Counsel for the revisionists submitted that the transaction relating to the sale of petroleum products by the revisionist to its dealers outside the State of UP undoubtedly would be taxable under the Central Sales Tax Act, but confined his submissions only on the ground that once the sale by the Indian oil Corporation to the revisionist has been assessed to be interstate sale, then the same transaction cannot be taxed at the hands of the revisionist and treated to be interstate sale again. He submitted that once the tax has been collected on the said transaction, the same transaction cannot be taxed again. The 2nd ground urged by him is with regard to the assessment year 2000-01 where as per the notification dated 15.01.2000 sale of petroleum products between the oil companies has been exempted

from sales tax, and consequently once the central sales tax has been levied and collected from the Indian Oil Corporation then again levy of central sales tax would amount to double taxation and unjust enrichment and consequently would be unreasonable and arbitrary.

16. The arguments of the revisionists requires due consideration.

17. In the present case petroleum products were purchased from the Mathura refinery of the Indian Oil Corporation. The sale by the Indian Oil Corporation to the revisionist was considered as interstate sale and taxed under the provisions of the Central Sales Tax Act. Again the sale by the revisionist is being taxed under the Central Sales Tax Act treating it to be inter-State sale. Both the said sales cannot be taxed simultaneously under the Central Sales Tax Act treating them to be inter-State sale. Though the Tribunal in the impugned judgment has noticed the arguments raised by the revisionists on this account, but have failed to consider it and take it to the logical conclusion. In this regard this court in the case of **IBP Company Limited Through Its Authorized Representative vs Commissioner Of Commercial Taxes U.P. Lucknow, SALES/TRADE TAX REVISION No. - 76 of 2009** in similar circumstances held as under:-

"9. It is the case of the Revisionist that he has sold petroleum products so purchased within the State of U. P. The products so purchased by the Oil Companies and other dealers have been further sold by them and have deposited tax on the sale of petroleum products to various dealers other than to Oil Companies on full rate of tax of 25% and 21% respectively as well as on concessional rate of tax as applicable on such sale. It is urged that once tax has been deposited either on the sale point or by the Oil Company on the subsequent sale to other Indian Oil Corporation or to dealers, there was no occasion for the assessing authority to assess and make the revisionist liable to pay tax for sale at the first point of sale treating their sale of goods to the other oil company as the first point of sale. In support of his submissions learned counsel for the revisionist has relied upon

Section 3A(1-c) of U.P. Trade Tax Act which reads as under:- "Section 3A Rates of tax:

(1) Except as provided in Section 3D the tax payable by a dealer under this Act shall be levied

(a).....

(b)....

(c) On the other turnover in respect of goods other than those referred to in clause (a) or clause (b) at the point of sale by manufacturer or importer at the rate of ten percent."

10. It is further submitted that in exercise of power under Section 3A(1) (d), notification no.100 dated 15.1.2000 was issued prescribing rate of tax. Notification dated 15.1.2000 reads as follows:- "Provided that if the sale is by any of the undertaking registered as dealer in the name and style of M/s Indian Oil Corporation Limited, Bharat Petroleum Limited, Hindustan Petroleum Corporation Ltd. and Indo Burman Petroleum Company Limited. The tax shall be levied at the point of sale by such dealer to a person other than any of the aforesaid dealer."

11. Relying upon the proviso of the said notification it has been submitted by learned counsel for the revisionist that if the sale is by any of the undertaking registered as dealer in the name and style of M/s Indian Oil Corporation Limited, Bharat Petroleum Limited, Hindustan Petroleum Corporation Ltd. and Indo Burman Petroleum Company Limited, the tax shall be levied at the point of sale by such dealer to a person other than any of the aforesaid dealer.

12. It has further been submitted by learned counsel for the revisionist that once tax has been realized on the sale of the said products may be at the subsequent sale of the same product by the other Oil Company and the tax having been realized and deposited with the State Government it was not open for the State to levy tax on the revisionist at first point of sale in as much as that would amount to

unjust enrichment and double taxation considering that on the subsequent sale tax has already been deposited with the State Government. In support of his submission learned counsel for the revisionist submits that for the subsequent assessment order i.e. 2004-05, 2005-06 and 5 2006-07 the matter came up before this Court in a bunch of writ petitions the leading being writ petition No.5215 of 2007 (M/s Indian Oil Corporation Limited Vs. State of U.P. and another) where it is noticed that the petitioners writ petition was also part of the bunch at serial No. 5 and 8 and this Court while while deciding the bunch of said controversy has notices as follows:-

“These writ petitions, which have been filed by the Government of India Undertakings, namely, Indian Oil Corporation Limited, Hindustan Petroleum Corporation Ltd. And I.B.P. Company Ltd. And are controlled by the Ministry of Petroleum and Natural Gas, challenge the order of assessment of trade tax and in some cases the notice issued under Section 21 (2) of the Act. The petitioners Indian Oil Corporation (IOC), Hindustan Petroleum Corporation (HPC) and Bharat Petroleum Corporation (BPC) are having their own refineries, where petroleum product, including motor spirit and diesel oil are being manufactured. The IOC is having its refinery in Mathura and two other undertakings are having their refinery outside the State of U.P. The IBP has merged with Indian Oil Corporation Ltd. w.e.f. 1.4.2004. The petitioners challenge the validity of the order passed by the Trade Tax authorities, under Section 21(2) of the U.P. Trade Tax Act and also the tax assessed in regular proceedings of the Act raising various pleas, apart from challenging the validity and competence of the State Government to issue any Government Order and direction for realizing the tax at the rate of 25% and 21% respectively, on the ground that in view of Section 3A (1-c) of the U.P. Trade Tax Act, Notification No.3433 dated 25.11.2004 is invalid as the aforesaid provisions give power for review of tax liability only at the rate of 10%. Besides this, it has also been pleaded that in terms of Section

3(1) (a) (b) of United Provinces Sales of Motor Spirit, Diesel Oil and Alcohol Taxation Act, 1939 the expression “first sale” having been defined under the said provisions, no other meaning could be given to the said expression, by virtue of the provisions of U.P. Trade Tax Act, which, therefore, also, later on, was amended. The aforesaid expression ‘first sale’ says that ‘in case of dealers registered as M/s Indian Oil Corporation Ltd., M/s Bharat Petroleum Corporation Ltd., M/s Hindustan Petroleum Corporation Ltd. And M/s Indi Burma Petroleum Company Ltd., the sale at the stage when such dealers make sale of motor spirit or diesel oil to a dealer other than the said dealers for the first time in the State of Uttar Pradesh:- and In case of any other dealer, who has not purchased the said goods from any of the dealers referred to by name in clause (a) of this explanation the sale at the stage at which such dealer sells motor spirit or diesel oil for the first time in the State of Uttar Pradesh.’ 6 On the pleadings of the parties and issues raised, the question which can be formulated for decision are as follows:- 3- Demand of tax by the assessing authority in respect of sale of motor spirit and diesel oil made by the petitioner company to other oil marketing companies is illegal, invalid and void in view of the provisions of U.P. Sales of Motor Spirit, Diesel Oil and Alcohol Taxation Act. 4- Tax has already been paid by the Oil Companies on the sale of same motor spirit and diesel oil at a much higher price on which the tax is sought to be levied from the selling oil companies to the other oil companies. Demanding tax on the same product is against the scheme of single point taxation which is not permissible in view of the decision of the Supreme Court of India in the case of **State of Karnataka Vs. Ayyanahalli Bakappa & Sons. Reported in 1988 vol.71 Sales Tax Cases Page 202 at page 204** and 42 STC page 1-IOC Ltd. Vs. State. During the course of argument, a specific query was put to the State on the p leading of the petitioners that it being an admitted position that the tax which is single point tax, having been realized from the other companies after the sale being made by the petitioners to them, whether for the same

period the petitioners can be forced/compelled to make payment of tax merely because the State Government interprets the aforesaid provisions in a manner so as to make the petitioners' companies liable for payment of the tax even when they sell their products to other companies, to which learned Additional Advocate General Shri J. N. Mathur responded, saying that if the tax has already been realized by the State Government in respect of the same goods where the tax could have been realized either by the petitioners' companies or by other dealers, who are purchasers from the petitioners' companies, obviously, tax cannot be realized from both of them."

13. Considering the aforesaid controversy, this Court answered the question raised therein in following manner:- "The State Government has also specifically and clearly stated before us that no amount shall be recovered from the petitioners oil companies for the period before 1st August, 2007, as the amount of tax for the aforesaid period already stands deposited on their subsequent sale by the other oil companies and that of –course after 1st September, 2007 the petitioners are depositing the tax as demanded by the State Government. It is only for the month of August, 2007 when the tax has been deposited twice, namely, once by the petitioners and again from the other oil companies to whom the sale was made by the petitioners' company. 7 Since it being not in dispute that the State Government could not have realized the tax twice for the sane goods, and being admitted to the Additional Government Advocate, who has fairly and candidly conceded and rather stated that the amount which has been so collected by the State Government for the month of August, 2007 can be adjusted from future payment to be made by the petitioners,.....

14. In light of the above, the controversy has been answered by this Court in the aforesaid case of M/s Indian Oil Corporation Limited Vs. State of U.P. and another and the Court had noticed that for the period in question the amount of tax was already deposited on the subsequent sale by the Indian Oil Corporation and the said fact of

deposition of the tax was not dispute by the State Government. The Court has noticed that the tax could not be realized twice for the same goods and directed the State Government to adjust the amount of tax paid by the petitioners' company on the sale of Motor Spirit and Diesel Oil to the other Oil Companies in the month of August, 2007, on their monthly returns in a phased manner."

18. Considering the facts of the present case, as well as the judgement cited in support of the aforesaid contention of case files interference is clearly made out. In the case of ***English Electric Co. of India Ltd. v. Dy. CTO, (1976) 4 SCC 460 : 1977*** it was held as under:-

"15. The appellant in the present case sent the goods direct from the Madras branch factory to the Bombay buyer at Bhandup, Bombay. The railway receipt was in the name of the Bombay branch to secure payment against delivery. There was no question of diverting the goods which were sent to the Bombay buyer. When the movement of goods from one State to another is an incident of the contract it is a sale in the course of inter-State sale. It does not matter in which State the property in the goods passes. What is decisive is whether the sale is one which occasions the movement of goods from one State to another. The inter-State movement must be the result of a covenant, express or implied, in the contract of sale or an incident of the contract. It is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement. It is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It will be enough if the movement is in pursuance of and incidental to the contract of sale.

16. *When a branch of a company forwards a buyer's order to the principal factory of the company and instructs them to despatch the goods direct to the buyer and the goods are sent to the buyer under those instructions it would not be a sale between the factory and its branch. If*

there is a conceivable link between the movement of the goods and the buyer's contract, and if in the course of inter-State movement the goods move only to reach the buyer in satisfaction of his contract of purchase and such a nexus is otherwise inexplicable, then the sale or purchase of the specific or ascertained goods ought to be deemed to have been taken place in the course of inter-State trade or commerce as such a sale or purchase occasioned the movement of the goods from one State to another. The presence of an intermediary such as the seller's own representatives or branch office, who initiated the contract may not make the matter different. Such an interception by a known person on behalf of the seller in the delivery State and such person's activities prior to or after the implementation of the contract may not alter the position."

19. The said issue having been urged before the Tribunal, the same should have been considered in its proper perspective, and by not considering the same, the Tribunal has failed to exercise the jurisdiction vested in it. The Tribunal ought to have considered whether it is the same transaction on which the Indian Oil Corporation has paid Central Sales Tax, then, whether same transaction be liable to be subjected to tax again, treating it to be a inter-state sale of the revisionists on which the central sales tax has already been paid by IOC.

20. In view of above, the orders impugned in the aforesaid revisions are set aside. The matters are remanded to the Tribunal for fresh consideration in the light of observations made in this judgment.

21. The revisions are **allowed**.

22. With regard to the assessment year 2000-01 it requires consideration as to whether, as per the Government Order dated 15/01/2000, tax at all levels can be levied on the transactions. For the aforesaid issue also, the matter is remitted back to the Commercial Tax Tribunal for decision afresh. The Tribunal is directed to conclude the proceedings expeditiously within a period of 4 months from the

date a certified copy of the order is produced. The revisionists undertake to cooperate in the said proceedings and would not take any unnecessary adjournments.

Order Date :- 09.11.2023

A. Verma

(Alok Mathur, J.)