

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.7227 of 2013

***M/s. Gulf Oil Corporation Ltd. and
another*** ***Petitioners***

Mr. P. Patnaik, Advocate

-versus-

State of Orissa and others ***Opposite Parties***

Mr. S.S. Padhy, Additional Standing Counsel

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK**

**ORDER
18.07.2022**

Order No.

07. 1. The challenge in the present petition is to an order dated 24th January 2008 of re-computation passed by the Sales Tax Officer (STO), Rourkela-I Circle determining the tax liability of the Petitioners under the Central Sales Tax Act, 1956 (CST Act) after adjustment of the admitted tax paid at the time of filing of return. Challenge in the petition is also to subsequent order dated 30th January 2012 passed by the Additional Commissioner of Sales Tax (ACST) (North Zone) dismissing the revision petitions filed by the Petitioners. In other words, the ACST, who passed the said order dated 30th January 2012, declined to interfere with the order of re-computation passed by the STO.

2. While directing notice to issue in the present petition on 22nd October 2014, this Court stayed the operation of the above orders subject to the Petitioners' depositing 50% of the demanded amount before the Opposite Parties in two equal installments on or before

22nd January, 2015. Learned counsel appearing for the Petitioners confirms that the above order has been complied with.

3. The background facts are that Rourkela Factory of Gulf Oil Corporation Ltd. was demerged and transferred to M/s. IDL Explosives Ltd., a 100% subsidiary of the erstwhile Gulf Oil Corporation Ltd. under a scheme of arrangement sanctioned by an order dated 15th March 2011 of the Andhra Pradesh High Court. The Petitioners are stated to be a manufacturer of explosives, detonators and accessories holding license under the Explosives Act, 1884.

4. The Petitioners had a manufacturing unit in the State of Odisha and it was registered under the Orissa Sales Tax Act, 1947 (OST Act) as well as the CST Act. The Petitioners state that it sent goods to various branches/agents in other States taking into account the market conditions in the respective States. The branch/agents which took physical delivery of such goods stored them in their godowns. The Petitioners and its agents regularly supplied and sold goods to government undertakings like National Minerals Development Corporation (NMDC), Coal India Ltd. (CIL). Because of greater bargaining power, the CIL is said to have fixed rates at which explosives, detonators etc. would be supplied to itself and various subsidiaries companies. In turn, the said branches/agents sold the quantity of explosives to the subsidiary companies out of the stock lying with them “and collected and remitted the sales tax under the local Sales Tax Acts of the concerned States”. The Petitioners then claimed exemptions on the stock transfer of goods to the

branches/agents. By an order dated 15th July 1986, for the year 1982-83, the Tribunal remanded the matter to the STO for reassessment in the light of the observations made in that order.

5. This reassessment was completed on 29th July 1994 holding the dispatches made by the Petitioners to be inter-State sales. Then the 1st Appellate Authority reversed this finding by an order dated 30th January 1995 holding the dispatches made by the Petitioners to the consignment agents to be stock transfers. By the common order dated 25th October 1996, the Tribunal disposed of the second appeal filed by the State of Odisha. The reference made to this Court for the years 1977-78 to 1983-84 in SJC Nos.2 to 8 of 1989 were disposed of by an order dated 11th February 1992 and the matter was remanded to the Tribunal for a fresh disposal. The Tribunal by its order dated 15th May 1992, modified the second appeal orders. The re-assessments for the aforementioned years 1977-78 to 1983-84 were completed by treating the transactions as inter-State sales and the assessments were confirmed in the first appeal. Again, the Assessee went before the Tribunal with second appeals which were disposed of on 25th October 1996 taking the view that the movement of consignments was by way of stock transfers and not inter-state sale. Accordingly, the Petitioners were held entitled to claim deduction under Section 6-A of the CST Act in respect of transactions with CIL.

6. The Petitioners contend that the Supreme Court by its judgment dated 16th November 2007, held that the deeming provision should be given its full effect and that the assessment could be reopened

only in the instances of fraud, misrepresentation or collusion. Once Form-F is accepted, the inter-State transfer of goods is deemed to be a stock transfer. The contention of the Petitioners is that if the transactions are declared to be inter-State sales, then Form-C should have been accepted. It is also contended that opportunity ought to have been given to the Petitioners to produce such 'C' Forms and that in such event, Opposite Party No.2 has no jurisdiction to deal with an assessment order as an appellate authority.

7. A counter affidavit has been filed by the Deputy Commissioner of Commercial Taxes stating that by an order dated 16th November 2007, the Supreme Court had already settled the issue once and for all. The Petitioners' prayer that 'F' Form should be accepted as 'C' Form was rejected by the Supreme Court. It is pointed out the Petitioners have been frustrating the above order for the last ten years by coming back to the Court eight times on various issues. The re-computation order dated 24th January 2008 was passed by the Assessing Authority in obedience to the above order dated 16th November, 2007 of the Supreme Court. It bifurcated the turnover of the Petitioners into two parts i.e. transactions with 'C' Form and those without 'C' Forms. The turnover without 'C' Form was taxed at the State rate and those with 'C' Form at the concessional rate under Section 8 (2) of the CST Act. These 'C' Forms were given by the Petitioners itself. It is pointed out that the Petitioners have been unable to collect 'C' Forms from various States for transactions soon 1977 onwards and in the meanwhile, the CST regime has got subsumed in the GST regime. Once the Petitioners' appeal was dismissed by the Supreme Court on 16th November 2007 holding

the transactions to be inter-state sales and not branch transfer under Section 6-A of the CST Act, the consequences had to follow. The counter affidavit sets out in a tabular column in para-9, the basis of re-computation.

8. The Opposite Party State has pointed out that earlier W.P.(C) Nos.2503 to 2510 of 2008 had been filed by the Petitioners in this Court which were dismissed by this Court on 10th April 2008 as withdrawn leaving all questions open and clarifying that the said dismissal would not prevent the Petitioners “from approaching any other forum in accordance with law”. Thereafter an Article 32 petition was filed directly by the Petitioners in the Supreme Court being Writ Petition (Civil) No.515 of 2008. Again, this petition was withdrawn by the Petitioners and the Supreme Court passed an order on 17th November 2008 recording the statement of counsel for the Petitioners that “an appropriate petition will be filed before the High Court”.

9. For the second time, on 7th October 2009, Writ Petitions (Civil) Nos.11866-11873 of 2009 were filed by the Petitioners in this Court. Those were dismissed on 7th October 2009, referring to the earlier order dated 10th April 2008, and noting therefore that “nothing remains to be decided in the present writ petition”. A review petition was thereafter filed which was dismissed by this Court on 22nd March, 2010. Special Leave Petitions were filed in Supreme Court, which were dismissed by the Supreme Court on 20th August 2010, granting liberty to the Petitioners to approach the “appropriate authorities”.

10. Then on 20th September 2010, the Assessee filed revision petitions against the re-computation order. After noting all of the above proceedings, the revisional authority i.e. the ACST by order dated 30th January 2012 on upheld the re-computation orders.

11. With the above long line of litigation, the Court is satisfied that the present attempt by the Petitioners to reopen the proceedings after repeated rounds of failed litigation, should not be permitted as it is an abuse of the process of Court.

12. All the issues raised by the Petitioners have already been conclusively decided against them by the aforementioned order of the Supreme Court and it is therefore not open to this Court to reopen these issues time and again. It was equally not opened to the authorities below to revisit the issues. All that the impugned orders do is to re-compute the tax liability on the basis of the order of the Supreme Court.

13. Consequently, this Court is not inclined to interfere with either of the impugned orders. The writ petition is accordingly dismissed. The interim order passed earlier in the present writ petition stands vacated. The amount already paid by the Petitioners pursuant to the interim order passed by this Court would be adjusted while making the further payment of the demanded amounts.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge