IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.161 of 2017

NTPC Ltd. having its Registered Office at NTPC Bhawan, Scope Complex, 7 Institutional Area, Lodhi Road, New Delhi- 110003 and Regional Office at 2nd Floor, Lok Nayak Jaiprakash Bhawan, New Dak Buglow Road, Patna-800001.

... ... Appellant/s

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Bailey Road, Patna.
2. Deputy Commissioner of Commercial Taxes, West Circle, Muzaffarpur.
3. Assistant Commissioner of Commercial Taxes, West Circle, Muzaffarpur.
4. Commercial Taxes Officer, West Circle, Muzaffarpur.

... ... Respondent/s

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with

Miscellaneous Appeal No. 160 of 2017

NTPC Ltd. having its Registered Office at NTPC Bhawan, Scope Complex, 7 Institutional Area, Lodhi Road, New Delhi- 110003 and Regional Office at 2nd Floor, Lok Nayak Jaiprakash Bhawan, New Dak Buglow Road, Patna-800001.

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Versus

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2. Deputy Commissioner of Commercial Taxes, West Circle, Muzaffarpur.
3. Assistant Commissioner of Commercial Taxes, West Circle, Muzaffarpur.
4. Commercial Taxes Officer, West Circle, Muzaffarpur.

... ... Respondent/s

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with

Miscellaneous Appeal No. 162 of 2017

NTPC Ltd. having its Registered Office at NTPC Bhawan, Scope Complex, 7 Institutional Area, Lodhi Road, New Delhi- 110003 and Regional Office at 2nd Floor, Lok Nayak Jaiprakash Bhawan, New Dak Buglow Road, Patna-800001.

... ... Appellant/s

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Bailey Road, Patna.
2. Deputy Commissioner of Commercial Taxes, West Circle, Muzaffarpur.
3. Assistant Commissioner of Commercial Taxes, West Circle, Muzaffarpur.
4. Commercial Taxes Officer, West Circle, Muzaffarpur.

... ... Respondent/s

with
Miscellaneous Appeal No. 163 of 2017

NTPC Ltd. having its Registered Office at NTPC Bhawan, Scope Complex, 7 Institutional Area, Lodhi Road, New Delhi- 110003 and Regional Office at 2nd Floor, Lok Nayak Jaiprakash Bhawan, New Dak Buglow Road, Patna-800001.

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Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Bailey Road, Patna.
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3. Assistant Commissioner of Commercial Taxes, West Circle, Muzaffarpur.
4. Commercial Taxes Officer, West Circle, Muzaffarpur.

... ... Respondent/s

Appearance :
(In Miscellaneous Appeal No. 161 of 2017)
For the Appellant/s : Mr. D.V.Pathy, Advocate
For the Respondent/s : Mr. Ajeet Kumar, GA-9
(In Miscellaneous Appeal No. 160 of 2017)
For the Appellant/s : Mr. D.V.Pathy, Advocate
For the Respondent/s : Mr. Ajeet Kumar, GA-9
(In Miscellaneous Appeal No. 162 of 2017)
For the Appellant/s : Mr. D.V.Pathy, Advocate
For the Respondent/s : Mr. Ajeet Kumar, GA-9
(In Miscellaneous Appeal No. 163 of 2017)
For the Appellant/s : Mr. D.V.Pathy, Advocate
For the Respondent/s : Mr. Ajeet Kumar, GA-9

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE NANI TAGIA
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-12-2024

The appeals arise from the orders of assessment as confirmed by the Tribunal in the years, 2008-09, 2009-10, 2010-11 and 2011-12.

2. The issue raised is identical and the Tribunal has rejected the appeals by a common order for all the assessment

years. We refer to the orders produced in M.A. No. 161 of 2017.

3. Before the Tribunal, the assessee had two contentions, one regarding the entry tax rate of Light Diesel Oil (LDO) which according to the assessee came under the residuary Entry no. 23, whereas the Assessing Officer taxed it @ 16% being included in Entry no. 22, which refers to 'Diesel and Petrol'. The other issue was with respect to 'steel structures' said to have been purchased by the petitioner which in the return was shown as exigible to tax at 4% being 'iron and steel'. The Tribunal found that even before the lower authorities, the petitioner had admitted the mistake of application of lower rate on the 'steel structures', which were meant for power plants to be used for power generation. The said issue, hence, does not arise before us and was not argued by the learned Counsel.

4. Insofar as the classification to Light Diesel Oil (LDO), following question arise before us:

> *(i) Whether, LDO is taxable under 8% as covered under Entry no. 23 of the Bihar Entry of Goods into Local Areas for Consumption, Use or*

Sale Therein Act, 1993 or under Entry no. 22 taxable at 16%?

5. Entry no's 22 and 23 from S.O. 95 dated 31st July, 2008 are extracted hereunder:

Sl. No.	Description of goods	Rate (in percent)
Entry no. 22	Diesel and Petrol	16%
Entry no. 23	All other petroleum products except those specified in S.No 22&26	8%

6. The Tribunal looked into every contention raised by the appellant, which was of common parlance test and the user test. Before us also the learned Counsel for the appellant argued that LDO is not put to use as High Speed Diesel or even Diesel which are all used for different purposes.

7. From the above entries extracted, we find that diesel and petrol takes in every such component, whether it be LDO, High Speed Diesel or diesel alone and as the Tribunal found the user test is not at all significant. Under common parlance test also, all these derivatives of diesel come under the common definition of diesel.

8. We find absolutely no reason to interfere with

the order of the Tribunal and answer the question of law in favour of the revenue and against the assessee.

9. The appeal stands dismissed.

(K. Vinod Chandran, CJ)

Nani Tagia, J: I agree

(Nani Tagia, J)

aditya/-

AFR/NAFR	
CAV DATE	04.12.2024
Uploading Date	11.12.2024
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