

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5287 OF 2007

M/s. Indian Oil Corporation Ltd.

...Appellant(s)

Versus

Commr. of Sales Tax & Ors.

...Respondent(s)

ORDER

The fundamental issue which arises for determination in a pending statutory Appeal No.AA-174/CUIE/2006-07/CT before the Assistant Commissioner of Sales Tax, Cuttack-I Range:Cuttack, Orissa, is whether sale of Superior Kerosene Oil by the appellant-Indian Oil Corporation Ltd. (IOC) to another oil company via PDS route is exempted from sales tax in terms of notification dated 1st July, 2000 issued by the Finance Department, Government of Orissa.

Before the Assistant Commissioner of Sales Tax, Cuttack-I, an application for stay was moved. It was refused. Aggrieved by the decision refusing stay, the interim matter was carried to the Commissioner of Commercial Taxes, Cuttack, Orissa. Stay was refused also by the Commissioner. Hence, a Writ Petition came to be filed by the appellant Company. By the impugned order, the High Court directed the appellant IOC

to pay a sum of Rs.75 lakhs pending hearing and final disposal of the appeal by the Assistant Commissioner of Sales Tax. Hence this Civil Appeal.

Normally, this Court does not interfere in interim matters particularly when the matter concerns levy of tax. However, this is a peculiar case for two reasons, i.e., IOC Ltd. is a public sector company in a priority sector which is obliged to sell kerosene via PDS route. The demand is for Rs.1.94 Crores (approx.) and, in the circumstances, we are of the view that to call upon IOC at this stage to deposit a huge amount of Rs.1.94 Crores (approx.) would have a serious effect on the PDS sales. On the other hand, we are satisfied that IOC is a substantial company. It is in a sound financial position and it can discharge its liability at a later date, if need be.

In the circumstance, we are of the view that ends of justice would be met if the Assistant Commissioner of Sales Tax, Cuttack is directed to hear and dispose of the First Appeal pending before him within a period of three months from today.

Before concluding, we may also record that IOC through its counsel has given an undertaking to this Court that in the event of the Department succeeding in the appeal pending before the Assistant Commissioner of Sales Tax, Cuttack, it

will pay the tax due with interest in accordance with the provisions of the Orissa Sales Tax Act, 1947.

Before concluding, we may point out that, according to the Department, the transactions in question do not constitute PDS sales. This question will also have to be gone into by the Assistant Commissioner of Sales Tax, Cuttack, in the pending First Appeal. We express no opinion in that regard.

Pending First Appeal, however, no coercive steps to be taken.

Civil Appeal is disposed of accordingly. No order as to costs.

**.....J.
(S.H. KAPADIA)**

**.....J.
(B. SUDERSHAN REDDY)**

**New Delhi,
August 07, 2008.**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4933 OF 2008
(Arising out of S.L.P.(C) No.5658/2007)

M/s. Bharat Petroleum Corp. Ltd.

...Appellant(s)

Versus

Commr. of Sales Tax & Ors.

...Respondent(s)

ORDER

Leave granted.

The fundamental issue which arises for determination in a pending statutory Appeal No.AA-302/CUIE/2006-2007/CT before the Assistant Commissioner of Sales Tax, Cuttack-I Range: Cuttack, Orissa, is whether sale of Superior Kerosene Oil by the appellant-Bharat Petroleum Corporation Ltd. (BPCL) to another oil company via PDS route is exempted from sales tax in terms of notification dated 1st July, 2000 issued by the Finance Department, Government of Orissa.

Before the Assistant Commissioner of Sales Tax, Cuttack-I, an application for stay was moved. It was refused. Aggrieved by the decision refusing stay, the interim matter was carried by the appellant herein in revision to the Commissioner of Commercial Taxes, Cuttack, Orissa. The Revisional Authority partly allowed the Revision Petition and

directed the appellant to pay a sum of Rs.65 lakhs. Being aggrieved, a Writ Petition came to be filed by the appellant Company. By the impugned order, the High Court directed the appellant-BPCL to pay a sum of Rs.20 lakhs pending hearing and final disposal of the appeal by the Assistant Commissioner of Sales Tax. Hence this Civil Appeal.

Normally, this Court does not interfere in interim matters particularly when the matter concerns levy of tax. However, this is a peculiar case for two reasons, i.e., BPCL Ltd. is a public sector company in a priority sector which is obliged to sell kerosene via PDS route. The demand is for Rs.1.34 Crores (approx.) and, in the circumstances, we are of the view that to call upon BPCL at this stage to deposit a huge amount of Rs.1.34 Crores (approx.) would have a serious effect on the PDS sales. On the other hand, we are satisfied that BPCL is a substantial company. It is in a sound financial position and it can discharge its liability at a later date, if need be.

In the circumstance, we are of the view that ends of justice would be met if the Assistant Commissioner of Sales Tax, Cuttack is directed to hear and dispose of the First Appeal pending before him within a period of three months from today.

Before concluding, we may also record that BPCL through

its counsel has given an undertaking to this Court that in the event of the Department succeeding in the appeal pending before the Assistant Commissioner of Sales Tax, Cuttack, it will pay the tax due with interest in accordance with the provisions of the Orissa Sales Tax Act, 1947.

Before concluding, we may point out that, according to the Department, the transactions in question do not constitute PDS sales. This question will also have to be gone into by the Assistant Commissioner of Sale Tax, Cuttack, in the pending First Appeal. We express no opinion in that regard.

Pending First Appeal, however, no coercive steps to be taken.

Civil Appeal is disposed of accordingly. No order as to costs.

**.....J.
(S.H. KAPADIA)**

**.....J.
(B. SUDERSHAN REDDY)**

**New Delhi,
August 07, 2008.**