ITEM NO.43 COURT NO.5 SECTION III

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).21040/2008

(From the judgment and order dated 16/05/2008 in WPC No. 3691/2007 of The HIGH COURT OF ORISSA AT CUTTACK)

M/S INDIAN OIL CORP.LTD. Petitioner(s)

VERSUS

COMMR.OF SALES TAX & ANR. Respondent(s)

(With prayer for interim relief and office report)

WITH
SLP(C) NO. 19799 of 2008 – With appln. for permission to file lengthy list of dates and with prayer for interim relief

Date: 09/04/2009 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE S.H. KAPADIA
HON'BLE MR. JUSTICE AFTAB ALAM

For Petitioner(s) Mr. Shyam Diwan, Sr.Adv.
Mr. Hrishikesh Baruah, Adv.
Mr. Anjun V. Bobde, Adv.
Mr. Balvir Dosanjh, Adv.
Mr. Jagjit Singh Chhabra,Adv.

Mr. Saurav Agrawal, Adv.
Mr. Amit Pawan, Adv.

For Respondent(s) Mr. M. Chandrasekharan, Sr.Adv.
Mr. Tara Chandra Sharma, Adv.
Mr. Rupesh Kumar, Adv.
Ms. Neelam Sharma, Adv.
Ms. Pankhuri, Adv.

Mrs. Kirti Renu Mishra,Adv.

UPON hearing counsel the Court made the following
O R D E R

SLP(C) No. 21040 of 2009

Leave granted.

The Civil Appeal stands allowed with no order as to costs.

SLP(C) No. 19799 of 2008

Stand over for two weeks.

(S. Thapar)
PS to Registrar

(Madhu Saxena)
Court Master

The signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2438 OF 2009
(Arising out of SLP(C) No.21040 of 2008)

M/S INDIAN OIL CORPORATION LIMITED ...APPELLANT (S)

VERSUS

COMMISSIONER OF SALES TAX & ANOTHER ...RESPONDENT(S)

O R D E R

Leave granted.

Appellant-Indian Oil Corporation is inter alia engaged in the business of refining and selling of petroleum products including High Speed Diesel (HSD) and Superior Kerosene Oil (SKO). Appellant-corporation is a registered dealer in the State of Orissa for the purpose of Central Sales Tax Act, 1956 (for short, "CST Act").

Appellant-corporation sells HSD and SKO by despatching the said goods from various refineries like Jamnagar Refinery, Vizag Refinery and Chennai Refinery to Haldia Port, West Bengal. Since, Big Ocean Tankers cannot be sent to the Haldia Port, West Bengal, the entire load of SKO and HSD which are carried by the Big Ocean Tankers are unloaded in the appellant-corporation's Terminal at Paradeep Port, Orissa. Out of the said stock a certain portion of the goods is used for local sales inside the State of Orissa and sales tax under Orissa Sales Tax Act, 1947 is paid. The remaining portion is moved to Haldia Port in West Bengal by way of Small Tanker Vessels on "stock transfer" basis.

During the assessment year 2001-02 the appellant-corporation moved HSD and SKO from Paradeep Port, Orissa to Haldia Port, West Bengal in the total quantity of

2,69,846.277 KL of SKO and 4,40,150.791 KL of HSD respectively. The ownership and title of the goods remained with appellant-corporation as can be seen from the Bill of ladings. The appellant-corporation furnished a declaration in terms of Form-F declaring that the movement of the subject-goods stood occasioned by stock transfer and not by inter-State Sale.

The Assessing Authority vide its order dated 31.3.05 held that the appellant-corporation could not provide any evidence in support of Form-F and consequently the Assessing Authority recorded a finding of escapement of turnover from tax. Aggrieved by the decision of the Assessing Authority, the appellant-corporation preferred statutory appeal before the first appellate authority which dismissed its appeal vide order dated 15.2.06 on the ground that no relevant documentary evidence has been produced to prove that the goods stood despatched to outside the State on stock transfer basis. Being aggrieved, the appellant-corporation preferred Second Appeal to the Tribunal. Similarly, the appellant-corporation approached the Commissioner for stay of the recovery which was granted vide its order dated 12.6.06.

No sooner the Commissioner granted stay of the recovery, the Assessing Authority gave notice to the appellant-corporation on 29.12.06 seeking to reopen the assessment on the ground that a portion of the total turnover had escaped assessment. Vide order dated 19.2.07, the Assessing Authority passed re-assessment order rejecting the request for adjournment made by the representative of the appellant-corporation. The Assessing Authority held that the entire transaction in relation to the movement of goods from appellant-corporation's Terminal at Paradeep Port, Orissa to Haldia Port, West Bengal amounted to inter-State sale(s). Suffice it to state that against the reopening of assessment, the appellant-corporation moved the High Court in Writ Petition (C) No.3691 of 2007 seeking to challenge the reopening of assessment by the Assessing Authority raising

additional tax demand of Rs.299,05,07,587/- including penalty of Rs.179,43,04,552/-. By the impugned judgment dated 16.5.08 the Division Bench of the Orissa High Court dismissed the said writ petition hence this civil appeal by way of petition for special leave is filed by the appellant-corporation.

At the outset, we may state that Section 6A of Central Sales Act, 1956 is in two parts. The first part mandates that the burden of proof is on the dealer to prove that the movement of the goods to any other place of his business is occasioned otherwise than by way of sale(s). The second limb of Section 6A of the CST Act stipulates that the dealer is permitted to discharge the burden of proof by furnishing declaration as prescribed in Form-F along with evidence of despatch of such goods. Under Section 6A(2) of the CST Act it is inter alia provided that if the Assessing Authority is satisfied after making such enquiry as he may deem necessary that the particulars contained in the declaration are true he may, at the time of the assessment of tax, make an order to that effect and thereupon the movement of goods to which the declaration related shall be deemed to have been occasioned otherwise than as a result of sale(s). In this case, as stated above, appellant-corporation had furnished Form-F. In the said writ petition what was submitted by the appellant-corporation was that the notice for re-assessment was wholly without jurisdiction and that the Assessing Authority could not have reopened the assessment in invoking Rule 10 and Rule12(8) of the Orissa Rules in relation to transactions for which Form-F was furnished. Further, the High Court has failed to consider the challenge to the order of re-assessment by the appellant-corporation on the ground that it was a case of change of opinion. Lastly, we find merit in the contention advanced on behalf of the appellant-corporation that looking to the magnitude of the matter including the demand the Assessing Authority ought to have given more time to the appellant-corporation for producing the relevant documents. In this case the impugned order of re-assessment dated

19.2.07 is virtually an ex-parte order.

In the aforestated circumstances, we set aside the impugned judgment of the High Court dated 16.5.08 in Writ Petition (C) No.3691 of 2007 as also the order of re-assessment dated 19.2.07 passed by the Assessing Authority. Accordingly, we remit this case to the Assessing Authority with the direction to give full opportunity to the appellant-corporation and decide the re-assessment proceedings including the jurisdictional fact as to whether reopening of assessment was at all maintainable, in accordance with law. The Assessing Authority will also consider the effect of Form-F declaration submitted by the appellant-corporation.

Accordingly, the civil appeal stands allowed with no order as to costs.

....................J.
[S.H. KAPADIA]

New Delhi,
April 09, 2009

....................J
[AFTAB ALAM]