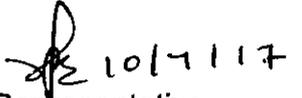


OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES: ODISHA :
CUTTACK.

Memo No.I (ARA)01/2016 5442 /CT.

Dated 10/4 /2017.

Copy of the following Advanced Ruling Application forwarded to the DCCT (IT &Policy) for information and necessary action. He is requested to upload the A.R.A. No. 02/2015-16 in the website of Commercial Tax Organization(O) ,Cuttack.


Deputy State Representative.

17

BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL: CUTTACK.

A.R.A. No.02/2015-16

P r e s e n t : Shri S.C.Mishra.
Chairman.

Mr.R.Ekka.
Judicial Member-II.

Shri R.K.Rout.
Accts. Member-II.

M/s.Indian Oil Corporation Limited,
Odisha State Office, A/2, Chandrasekhar,
Bhubaneswar.

... Appellant

- V e r s u s -

State of Odisha, represented by the
Commissioner of Sales Tax, Odisha,
Cuttack.

... Respondent

For the Appellant

...

Mr.N.Panda, Id. Advocate &

Mr.V.Agrawal, Manager(F).

For the Respondent

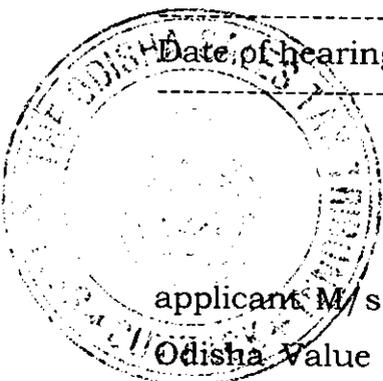
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Mr.S.Mishra, Id. Addl. S.C.

Date of hearing: 09.02.2017

Date of Order: 08.03.2017

ORDER



This is an application for Advance Ruling filed by the applicant M/s.Indian Oil Corporation Ltd., under Section 78-A(1) of the Odisha Value Added Tax Act, 2004 (in short, the OVAT Act) read with Rule 117-A of the Odisha Value Added Tax Rules, 2005 (in short, the OVAT Rules) seeking necessary clarification whether input tax credit is available on purchase of Bio-diesel which will be subsequently blended with HSD.

2. The brief facts of the case are that the applicant M/s.Indian Oil Corporation Ltd. Contended that Bio-diesel is blended with HSD i.e. High Speed Diesel for sale in the market which attracts VAT @26%. HSD is a Schedule-C product which is not eligible for ITC. However, Bio-diesel is a Schedule-B product and ITC is eligible for its purchase and sale.

3. Heard the learned Counsel for the applicant and the learned Addl. Standing Counsel (C.T.) for the Revenue. At the time of

hearing the learned Counsel for the applicant submitted that as per Section 20(3) of the OVAT Act regarding availment of input tax credit it specifies the following:-

Input tax credit shall be allowed for the purchases made within the state from a registered dealer holding a valid certificate of registration in respect of goods intended for the purpose of-

- i) Sale or resale by him in the State;
- ii) Use as inputs or as capital goods in the manufacturing or processing of goods, other than those specified in Schedule A and Schedule C and Schedule D for sale;
- iii) Sale of goods subject to levy of tax at zero rate under Section 18;
- iv) For use as containers for packing of goods, other than those exempt from tax under this Act, for sale or resale; or
- v) Transfer of stock of taxable goods other than by way of sale, to any place outside State:

That, in the circumstances, Bio-diesel is a Schedule B goods under OVAT Act on which ITC is available.

On the other hand, Addl. Standing Counsel (C.T.) appearing for the Revenue submitted that Bio-diesel is an unspecified goods under OVAT Act and subjected to 13.5% tax rate goods and it is blended in HSD and sold as HSD, which is Schedule "C" goods on which ITC is not available. As per Section 20(1) of the OVAT Act, ITC is admissible other than goods specified in Schedule C goods, those are goods like Petrol, High Speed Diesel, Light Diesel Oil, ATF etc. For better application of fact the provision of Section 20(1) of OVAT Act is reproduced here under:-

" 20 Input Tax Credit:-

- (I) Subject to the provision of this Act, for the purpose of calculating the net tax payable by a registered dealer for any tax period, an input tax credit as determined under this Section shall be allowed to such registered dealer against the tax paid or payable in respect of all sales or

purchases taxable under this Act, other than sales or purchases of goods specified in Schedule C and Schedule D”

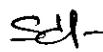
The learned Counsel on behalf of the Revenue has further contended that when Bio Diesel is mixed with HSD and sold as HSD, it is sold as schedule C goods. As per Section 15 of the OVAT Act, the point of sale in a series of sale in respect of Schedule C goods shall be the point as notified by Government of Odisha. Govt. in Finance Department notified that VAT shall be levied at first point of sale in a series of sales by successive dealers inside the State. (SRO No.-199/2005 w.e.f.01.04.2005). In explanation-II it is clarified that, sale by one oil company to another shall not be deemed as first point of sale.

From the aforesaid discussion, it is clear that when Bio-Diesel is mixed with HSD, it may be one of the input of HSD but it is sold as HSD, which is subject to tax on point of sale. Therefore, tax paid on Bio-diesel if any cannot qualify of ITC, as on sale of HSD, there is no ITC. As such, Bio-Diesel is blended with HSD and sold as HSD, which is Schedule- 'C' goods on which ITC is not available.

4. The application for advance ruling is disposed of accordingly.

Dictated and Corrected by me,


(Shri R.K.Rout)
Accounts Member-II

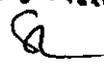

(Shri R.K.Rout)
Accounts Member-II

I agree,


(Shri S.C.Mishra)
Chairman.

I agree,


(Mr. R. Ekka)
Judicial Member-II

True Copy Attested

Personal Assistant