

(1999) 01 AHC CK 0101

Allahabad High Court

Case No: Sales Tax Revision No's. 1232 and 1233 of 1990

Indian Oil Corporation Ltd.

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision: Jan. 20, 1999**Citation:** (2000) 118 STC 15**Hon'ble Judges:** M.C. Agarwal, J**Bench:** Single Bench**Advocate:** Bharati Ji Agrawal, for the Appellant; Surya Prakash, for the Respondent**Final Decision:** Allowed

Judgement

M.C. Agarwal, J.

These two revision petitions u/s 11 of the U.P. Trade Tax Act, 1948 are directed against a common order dated March 29, 1990 passed by the Sales Tax Tribunal, Agra and pertain to assessment years 1982-83 and 1984-85 under the U.P. Sales Tax Act.

2. I have heard Sri Bharat Ji Agrawal, learned counsel for the revisionist and Sri Surya Prakash, learned Standing Counsel for the Commissioner.

3. The only point pressed in these revision petitions is about the classification of a commodity known as "water methanol mixture" produced by the revisionist, Indian Oil Corporation Ltd. The department's contention was that it was methyl alcohol taxable as such while according to the assessee it was a different commodity than methyl alcohol and was taxable as unclassified item.

4. Water methanol mixture is a product which is used as fuel for boosting the power of aircraft engines at certain stages. It is produced by a special technology by mixing water in methyl alcohol in the proportion of 43.8 per cent of methanol and 56.2 per cent of distilled water at a temperature of 16.60° F. The controversy came before this Court in the case of the present revisionist for an earlier year and this Court held that the water methanol mixture is not methyl alcohol and is not taxable as

such but is taxable as an unclassified item. The judgment is reported in [1999] 113 STC 35 All : 1998 UPTC 1067 (Indian Oil Corporation Ltd. v. Commissioner of Sales Tax, U.P., Lucknow) which refers to a judgment of the Bombay High Court also in Commissioner of Sales Tax v. Indian Oil Corporation Ltd. [1978] 41 STC 471 ALL in which it was held that methanol mixed with distilled water in certain proportion tested in the laboratory and sold it for specific purpose of using it as power augmentation fluid mainly in aeroplane engines brings into existence a new product. The learned counsel for the revisionist also refers to a judgment of the honourable Karnataka High Court in Indian Oil Corporation Ltd. v. Additional Commissioner of Commercial Taxes, Zone-1, Bangalore [1998] 111 STC 107 ALL in which it was held that this product would fall within the description of motor spirit.

5. There is no other authority or opinion to the contrary. The learned Standing Counsel referred to the affidavit annexed to this revision petition wherein according to him it is admitted that water methanol mixture is methyl alcohol. The affidavit reads as under :

"That the applicant respectfully submits that water methanol mixture (WMM) is now methyl alcohol and is a mixture of power boost methanol with demineralised water in the ratio of 55:45 and is supplied for being used in certain types of aircrafts. It has no other use. A certificate of Chief Aviation Manager of the applicant dated March 13, 1990 is filed herewith as annexure 2 to this affidavit."

6. Patently the word "now" is wrong and because of a typing error "now" is written in place of "not". The paragraph read as a whole clearly shows that the contention of the revisionist is what has been stated above. Since the controversy has already been settled by this Court and there is no authority or opinion to the contrary, I hold that the Tribunal's order treating the commodity as methyl alcohol is erroneous and the contention of the dealer that it was taxable as an unclassified item should have been accepted.

7. The other point in this revision petition is about the levy of interest and the learned counsel for the revisionist stated that the revisionist does not challenge the levy of interest on any amount that may be found due after giving effect to this judgment.

8. The revision petitions are, therefore, allowed and setting aside the Tribunal's order about the classification of water methanol mixture, it is held that the said commodity is taxable, on the admission of the assessee, as unclassified goods. The Tribunal shall pass order accordingly on the assessee's appeal in accordance with Section 11(8) of the U.P. Trade Tax Act, 1948.