

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

S.A. No. 33(C) of 2016-17

(Arising out of the order of the learned Addl.CST(Appeal), North Zone,
Sambalpur, in First Appeal case No. AA-102-JHR/13-14
disposed of on --)

**P r e s e n t: Shri G.C.Behera, Sri. S.K.Rout & Shri M.Harichandan,
Chairman. Judicial Member-II Accounts Member-I.**

M/s.TRL, Krosaki Refractories Ltd.,
Belpahar, Jharsuguda.

... Appellant.

- V e r s u s -

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

... Respondent.

For the Appellant
For the Respondent

... Mr.U.Behera, Adv.
... Mr.D.Behura, SC

Date of hearing: **30.12.2022**

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Date of Order: **30.12.2022**

ORDER

The dealer has preferred this appeal against the order passed by the learned Addl. Commissioner of Sales Tax (Appeal), North Zone, Sambalpur (in short, ACST/FAA) in first appeal case No.AA.102-JHR/13-14, thereby confirming the order of assessment passed by the learned DCST, Jharsuguda Circle, Jharsuguda (in short DCST/AA) under rule 12(1)(b) of the CST (O) Rules raising demand of Rs.57,44,536.00 followed by a corrigendum order resulting in differential demand of Rs.6,43,887.00.

2. The case at hand is that the dealer appellant is a limited company and carries on business in manufacturing and sale of refractories. Basing on the audit visit report, the demand has been raised for the tax period from 01.04.07 to 31.03.09.

3. Against such demand, the dealer preferred first appeal before the learned Addl. Commissioner of Sales Tax, (Appeal), North Zone, Sambalpur, Odisha (FAA), who confirmed the demand.

4. Further being dis-satisfied with the order of the learned first appellate authority, the dealer has preferred the present second appeal as per the grounds stated in the grounds of appeal.

5. Cross objection has been filed in the instant case by the State respondent.

6. During course of argument, learned counsel for the dealer vehemently contended that without allowing sufficient and reasonable time to the appellant for production of declaration in Form-C and E-1, such demand was raised which is illegal.

7. Per contra, learned Standing Counsel for the revenue argued that the main ground of demand in the appeal order is due to non-submission of statutory declaration forms. The transaction in question relates to the period 4/07 to 3/09. Despite availing several opportunities, the dealer failed to produce wanting declaration forms even after lapse of more than five years from the due date of submission of the same. Hence, demanding of tax at appropriate rate in transaction not covered by statutory declaration forms by the appellate authority is just, proper and legally sustainable in the eye of law.

8. Heard the contentions and submissions of both the parties in this regard. The admitted fact is that the demand in question was raised as the dealer appellant could not be able to produce the declaration forms. Such aspect is well corroborated from the order of the learned first appellate authority who has categorically mentioned that the dealer company furnished 'C' declaration forms for an amount of Rs.9,05,02,972.00 against wanting declaration form for an amount of Rs.20,33,12,750.00 and could not furnish declaration

forms for an amount of Rs.11,29,08,778.00. The learned first appellate authority has also taken the view that on scrutiny of the declaration form bearing No.457639.00 amounting to Rs.9,64,108.00 being not original 'C' form, the same was rejected and taxed at the appropriate rate. Further observation of the learned first appellate authority is that the learned assessing officer assessed turnover of Rs.8,67,12,441.00 being the turnover relating to transit sale under Section 6(2) of the CST Act against which the dealer had not produced the declaration in 'C' form along with E-1 form. The dealer company produced E-1 form for an amount of Rs.2,69,72,854.00 without any corresponding 'C' form. The dealer also could not be able to segregate the 'C' forms connected with sale at concessional rate and sale under Section 6(2) CST Act. So, it becomes quite clear that due to wanting of statutory declaration forms, demand was raised against the dealer which is sustainable in the eye of law and the orders of fora below are passed according to the provision of law and the same need no interference. But fact remains that during the hearing of this appeal, the dealer appellant has submitted 19 nos. of declarations in Form-C in original covering an amount of Rs.9,29,44,975.97. If that is so, for the ends of justice, those are to be considered otherwise there will be violation of natural justice.

In view of the above analysis, we are of the considered view to remand the case to the learned assessing officer for reassessment giving due consideration to the declaration 'C' forms submitted by the dealer. Hence order.

9. In the result, the appeal preferred by the dealer is allowed and the orders of the fora below are hereby set aside and the case is remanded to the learned assessing officer for reassessment within a period of three months of receipt of this order after giving a reasonable opportunity to the dealer of being heard giving due consideration to the declaration 'C' forms submitted by the dealer. The 19nos. of original declaration 'C' forms submitted by the dealer be returned to

the dealer which will be submitted before the learned assessing officer during the time of reassessment. Accordingly, the cross objection is disposed of.

Dictated and Corrected by me,

(Shri S.K.Rout)
Judicial Member-II

(Shri S.K.Rout)
Judicial Member-II

I agree,

(Shri G.C.Behera)
Chairman

I agree,

(Shri M.Harichandan)
Accounts Member-I