

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

S.A. No. 1335 of 2007-08

(Arising out of order of the learned ACST, Sundargarh Range,
Rourkela in First Appeal No. AA- 54 (RLII)/2007-08,
disposed of on 26.11.2007)

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member &
Shri M. Harichandan, Accounts Member-I

M/s. Vipra Industries (P) Ltd.,
Mandiakudar, Rourkela ... Appellant

-Versus-

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

For the Appellant : N o n e
For the Respondent : Sri D. Behura, S.C. (CT)

Date of hearing : 22.09.2022 *** Date of order : 17.10.2022

O R D E R

The Dealer assails the order dated 26.11.2007 of the Assistant Commissioner of Sales Tax, Sundargarh Range, Rourkela (hereinafter called as 'First Appellate Authority') in F A No. AA- 54 (RLII)/2007-08 wherein the First Appellate Authority has confirmed the assessment order of the Sales Tax Officer, Rourkela II Circle, Panposh (in short, 'Assessing Authority').

2. The case of the Dealer, in short, is that –

M/s. Vipra Industries (P) Ltd. is a Private Limited Company and engaged in manufacture and sale of calcium carbide. The assessment period relates to 2001-02.

The Dealer effected purchases and sales both inside and outside the State during the year 1997-98 to 08.05.2001. The Dealer purchased raw materials worth ₹43,63,812.00 and ₹1,12,93,211.00 through declaration ID 96 (free of tax) and Form-IV (on payment concessional rate of 4%) respectively and sold finished products worth ₹5,72,80,103.50 (₹4,18,83,167.50 through declaration Form-IV without collection of tax + ₹1,53,96,936.00 free of tax without covered by Form-IV) inside State. He also effected sales worth ₹10,98,64,861.64 free of tax (₹9,84,49,254.00 covered by 'C' form + ₹1,14,15,607.64 not covered by 'C' form) during the aforesaid period.

Basing on the A.G. (Audit) objection, the Assessing Authority raised tax demand of ₹12,89,104.00 u/s. 12(8) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') against the Dealer.

Dealer preferred first appeal. The First Appellate Authority confirmed the order of the Assessing Authority and dismissed the appeal. Being aggrieved with dismissal of the appeal, the Dealer prefers this appeal. Hence, this appeal.

3. The State files no cross-objection.

4. The Dealer did not appear at the time of hearing of this appeal. Hence, the case is taken up *ex parte* and disposed of on merit on the materials on record.

5. The Dealer has challenged the order of the First Appellate Authority confirming the assessment on the ground that it is not a speaking order. The order of the First Appellate Authority is contrary to the provisions of law and facts involved. The Dealer is entitled to get the benefit of the Entry 48 of List-C. He further took a ground that the Dealer is entitled to the exemption of tax benefit under the IPR for a specific period. So, he claims that the tax should be assessed at the concessional rate of 4% at the time of its tax exemption period. He has also taken a ground that each year of assessment is a separate and self-contained unit. Each assessment and the

account of each year must be judged with reference to the materials pertaining to that assessment year. The learned Assessing Authority cannot assess the assessment from 1997-98 to 2001-02. The assessment basing on the A.G. (Audit) relying on Finance Department Letter No. 9797/F dated 15.03.1999 is contrary to the provisions of law. He relies on the decision of Hon'ble Allahabad High Court in the case of Sarsowati Devi, reported in 34 STC page-8.

6. Per contra, learned Standing Counsel (CT) for the State submits that the Dealer is entitled to the benefit as per Entry 48 of List-C subject to declaration in Form-IV. He further submits that the Dealer is entitled to avail the benefit of tax exemption under various IPR for specific time period on purchase of raw materials at concessional rate of tax and sale of finished products at concessional rate of tax against Form-IV or Form-C during the exemption period. He further submits that the Dealer fails to produce the declarations in Form-IV and Form-C regarding purchase and sale to avail such benefit. So, he submits that the learned Assessing Authority has rightly assessed the tax liability of the Dealer and the First Appellate Authority also rightly confirmed the order of assessment, which warrants no interference.

7. On careful scrutiny of the materials available on record, we formulate the following question for adjudication in the appeal :-

“Whether in the facts and circumstances of the case the authorities below are justified in computing the tax liability allowing tax exemption benefit under IPR ?”

8. Provisions of Entry 48 of List-C of the Rate Chart is reproduced herein below for better appreciation :-

“Goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for use by him in the manufacture or processing or packing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power subject to the production

of true declaration by the purchasing RD or his authorised agent in Form-IV.

ST 4%”

9. On careful scrutiny of the materials available on record, it reveals that the Dealer is entitled to sales tax exemption of ₹98,20,000.00 on purchase of machineries, spare parts, packing materials and raw materials and sale of finished products within the period from 07.12.1997 to 06.12.2003. It further reveals that the Dealer has effected purchase and sale both inside the State and outside State during the year 1997-98 to 08.05.2001 as follows :-

- (i) The Dealer has purchased raw materials worth of ₹43,63,812.00 and ₹1,12,93,211.00 through declaration Form ID 96 (free of tax) and Form-IV (on payment of concessional rate of 4%) respectively.
- (ii) The Dealer sold ₹4,18,83,167.50 through declaration Form-IV without collection of tax inside the State.
- (iii) The Dealer also sold finished products for ₹1,53,96,936.00 free of tax without covered by Form-IV inside the State.
- (iv) The Dealer also effected sale for ₹9,84,49,254.00 covered by Form-C during the above period.
- (v) The Dealer also effected sale to the tune of ₹1,14,15,607.64 not covered by Form-C during the period in dispute.

The Assessing Authority assessed the purchase and sale @ 12% in absence of Form-IV and Form-C as per the table given in assessment order at page-3. The Assessing Authority assessed the total tax and surcharge for a sum of ₹79,08,334.05 leaving balance of ₹19,11,665.95 towards the ceiling limit fixed. The Assessing Authority also computed the requirement sale of ₹1,38,52,651.81 to meet balance tax amount of the ceiling limit. Accordingly, the Assessing Authority computed the sale of finished goods for a sum of ₹2,80,30,515.68 backed by Form-IV without collection of tax and computed the tax liability @ 4% and surcharge @ 15%. The same

comes to a sum of ₹12,89,103.71 which was irregularly exempted to the Dealer.

10. The Dealer fails to produce the document, i.e. Form-IV or Form-C, before the Assessing Authority. So, in absence of any material evidence, i.e. Form-IV and Form-C, the learned Assessing Authority has rightly computed the tax liability of the Dealer. The finding of the First Appellate Authority on this score also suffers from no illegality or irregularity in confirming the order of assessment.

11. None appears for the Dealer at the time of hearing of the appeal nor any declaration in Form-IV or Form-C is available before this forum to support the plea of the Dealer. In view of such facts, the issue formulated above is answered against the Dealer and in favour of the State.

12. On the foregoing discussions, we came to irresistible conclusion that the finding of the Assessing Authority and the order of confirmation by the First Appellate Authority suffer from no illegality so as to call for an interference in appeal. Hence, it is ordered.

13. Resultantly, the appeal stands dismissed *ex parte* being devoid of any merit and the impugned order of the First Appellate Authority confirming the assessment order of the Assessing Authority is hereby upheld.

Dictated & Corrected by me

**Sd/-
(G.C. Behera)
Chairman**

**Sd/-
(G.C. Behera)
Chairman**

I agree,

**Sd/-
(S.K. Rout)
2nd Judicial Member**

I agree,

**Sd/-
(M. Harichandan)
Accounts Member-I**