

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

**S.A. No. 138(C) of 2006-07**

(Arising out of order of the learned Asst. Commissioner of  
Sales Tax (Appeal), Sundargarh Range, Rourkela,  
in First Appeal Case No. AA 29(RL II-C) 2006-2007,  
disposed of on dated 25.09.2006)

Present: **Shri A.K. Das, Chairman**  
**Shri S.K. Rout, 2<sup>nd</sup> Judicial Member**  
**&**  
**Shri S. Mishra, Accounts Member-II**

M/s. The Vipra Industries (P) Ltd.,  
Manidakudar, Rourkela,  
Sundargarh. ... 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 S.K. Pradhan, A.S.C. (CT)

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Date of hearing: 14.02.2022 \*\*\* Date of order: 17.02.2022  
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**ORDER**

The dealer-appellant has called in question the  
legality and propriety of the order dtd.25.09.2006 passed  
by the Asst. Commissioner of Sales Tax (Appeal),

Sundargarh Range, Rourkela (hereinafter referred to as, the learned FAA) in First Appeal Case No. AA 29(RL II-C) 2006-2007, thereby allowing the appeal in part and reducing the tax demand of Rs.11,74,866.00 raised by the learned Sales Tax Officer, Rourkela II Circle, Panposh (hereinafter referred to as, the learned AA) in its order dtd.31.03.2006 to Rs.5,44,819.00 for the assessment period 2004-05, invoking power u/r.12(4) of the Central Sales Tax (Orissa) Rules. 1957 (hereinafter referred to as, the CST(O) Rules).

2. The facts of the case leading to filing of the present second appeal in nutshell are that, the dealer carries on business in manufacturing and sale of calcium carbide and silico manganese. The learned AA initiated the assessment proceeding for the assessment period 2004-05 to assess the dealer-assessee u/r.12(4) of the CST(O) Rules. In pursuance of the statutory notice issued to the dealer, it appeared and produced the books of account for verification. The learned AA during verification of the books of account with reference to the return filed by the dealer, ascertained that the dealer sold finished goods worth of Rs.2,90,34,870.00 in course of interstate trade and commerce as against which the dealer furnished declaration in form 'C' covering a turnover of Rs.1,90,95,013.00 which was taxed by the learned AA at a concessional rate of 4% and the balance amount of

Rs.96,30,098.00 was taxed at the appropriate state rate. Accordingly, the learned AA raised the tax demand of Rs.11,74,866.00.

3. The dealer-appellant being aggrieved with the order of the assessment, preferred appeal before the learned FAA on the sole ground that it was not given sufficient opportunity to submit the 'C' declaration forms for the rest of amount. In the first appeal, the dealer-appellant filed six numbers of 'C' declaration forms which were accepted by the learned FAA relying on the judgment reported in 95 STC 343 in case of Tata Refractories Ltd. Vs. Commissioner of Sales Tax and others. Accordingly, the learned FAA recalculated the tax demand raised by the learned AA and reduced the tax demand to Rs.5,44,899.00.

4. The dealer-appellant being further aggrieved with the order of the learned FAA has preferred the present second appeal. When the appeal was called on for hearing, none appeared on behalf of the dealer-appellant in spite of due service of notice for which this Tribunal was to proceed with hearing of the appeal exparte as the matter relates to the year 2004-05.

5. We have heard the learned Standing Counsel (C.T.), gone through the impugned order, grounds of appeal vis-a-vis the materials on record. On perusal of the

memorandum of appeal, we find that the dealer-appellant has challenged the impugned order of the learned ACST on the ground that he was not given ample opportunity to file the 'C' declaration form. In course of hearing of the appeal, the dealer-appellant neither appeared personally nor through any of his authorised representative to justify his claim of concessional rate of tax in respect of the turnover covered under 'C' declaration form. The record reveals that both the fora below have given ample opportunity to the dealer-appellant to produce the 'C' declaration form which he did not avail. So both the fora below cannot be faulted with for laches of the dealer-appellant in submitting 'C' declaration form. The learned FAA has rightly accepted six number of 'C' declaration forms submitted by the dealer-appellant and recalculated the tax demand raised by the learned AA reducing it to Rs.5,44,819.00. There is no illegality or impropriety in the impugned order of fora below warranting interference of this Tribunal. The learned FAA after giving due opportunity to the dealer-appellant has decided the appeal partly allowing the same. The allegation of the dealer-appellant that he was not given due opportunity to produce 'C' declaration form is against the materials on record.

6. In view of the discussion made above, the second appeal filed by the dealer-appellant being devoid of merit

stands dismissed. The impugned order of the learned ACST is hereby confirmed.

Dictated & Corrected by me

Sd/-  
(A.K. Das)  
Chairman

Sd/-  
(A.K. Das)  
Chairman

I agree,

Sd/-  
(S.K. Rout)  
2<sup>nd</sup> Judicial Member

I agree,

Sd/-  
(S. Mishra)  
Accounts Member-II