

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.**
S.A.No. 33(C)/2013-14

(From the order of the 1d.JCST, Sundargarh Range, Rourkela, in Appeal No. AA.9(RLI-C) of 2012-2013, dtd.23.05.2013, setting-aside the assessment order of the Assessing Officer)

Present: Sri S. Mohanty
2nd Judicial Member

M/s. Sree Rampur Steels (Pvt.)Ltd.,
At/P.O. Koira, Dist. Sundargarh. ... Appellant

-Versus-

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

For the Appellant : Mr. R. Pal, Advocate
For the Respondent : Mr. S.K. Pradhan, ASC (C.T.)

(Assessment Year : 2009-2010)

Date of Hearing: 29.11.2018 Date of Order: 29.11.2018

ORDER

Concession in rate of tax for non-submission of declaration Form 'C' as against inter-state sale and for non-submission of declaration Form 'H' as against export sale when denied to the dealer, the dealer challenged the order of learned First Appellate Authority/Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela (in short, FAA/JCST) in this second appeal on the plea that sufficient opportunity was not provided by the fora below to procure and furnish the declaration forms to avail the rebate in tax.

2. The instant dealer was subjected to assessment u/r.12(3) of the CST (O) Rules, for the assessment year 2009-10 by the Assessing Authority/Sales Tax Officer, Rourkela-I Circle (in short, AA/STO), who in turn, during assessment found the dealer incapable

of furnishing declaration Form 'H' against export sale amounting to Rs.2,49,711.77 and as well as incapable to furnish declaration Form 'C' for inter-state sale of Rs.10,00,223.38. As a result, the AA denied the concession in rate of tax on the above amount of export sale and inter-state sale thereby in imposition of full rate of tax, the dealer was asked to pay balance/additional tax to the tune of Rs.29,993/-. The order was challenged by the dealer before the FAA on the plea that, sufficient opportunity was not given to the dealer for production of the declaration form. However, the first appeal by the dealer was also decided denying the dealer's claim of concession in rate of tax for the reason that, the dealer could not furnish declaration form even at the stage of first appeal. The FAA while confirming the order of the Sales Tax Officer/Assessing Authority, Rourkela-I Circle, Uditnagar (in short, AA) has held that, the Assessing Authority has not applied his mind to adhere each word together contained in relevant CST(O) Rules and remanded the matter to the AA for assessment afresh.

3. Being aggrieved the dealer preferred the second appeal on the self-same ground i.e. sufficient opportunity was not provided to him for production of the declaration forms.

4. The appeal is heard without cross objection from the side of the Revenue.

5. In course of the hearing of the appeal, learned Counsel appearing for the dealer fairly submitted that, the dealer is unable to procure and furnish the declaration forms to avail the concession. In that case, this Tribunal has no hesitation to confirm the order of the fora below like, the dealer is not entitled to concession in rate of tax since in absence of the declaration forms. However, the impugned order as it revealed, the FAA by a one line order remanded the matter to the AA, which is reproduced here for better appreciation :

"But while assessing the sale turnover of export sale and sale in course of inter-state trade and commerce which were not supported with 'H' Form and 'C' Form the Ld.STO has not applied his mind to adhere each word together contained in relevant C.S.T.(O) Rules".

With the observation above, the FAA remanded the matter to the AA. The order of the FAA was passed way back on dtd.23.05.2013. We are unaware about the present position of the remand assessment but it is submitted by the learned Counsel for the dealer that, the remand assessment is still pending. The remand assessment as per the order of the FAA makes no sense from the observation above. We are agree with the argument advanced by the learned Counsel for the dealer that, once the order of the AA confirmed that, there was no scope for the FAA to remand the matter on a vogue notion that rules have not been followed. If that is, the FAA should have mentioned the rule what is not followed by the authority. However, this being not a ground in appeal by the dealer in this appeal, in such view of the fact, it is held that, while disposing the appeal, a direction should be given to the AA to complete the remand assessment within a stipulated period and to raise demand of tax in accordance to the assessment by him. In the wake of above narrative, it is ordered.

The order of the FAA to the extent of confirming the order of the AA by raising demand of tax without concession for want of declaration forms by the dealer is confirmed. The AA is directed to decide the remand assessment and raise demand accordingly in the light of observation above.

Dictated and Corrected by me,

Sd/-
 (S. Mohanty)
 2nd Judicial Member

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 (S. Mohanty)
 2nd Judicial Member

