

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

**S.A. No. 84(C) of 2004-05**

(Arising out of order of the learned Asst. Commissioner of  
Sales Tax, Sundargarh Range, Rourkela,  
in First Appeal Case No. AA 74 (RL II-C) 2003-2004,  
disposed of on dated 01.07.2004)

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

M/s. Agarwal Steel Traders  
Vedvyas, Rourkela,  
Dist.- 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 D. Behura, S.C.  
Sri S.K. Pradhan, A.S.C.

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Date of hearing:23.03.2022 \*\*\* Date of order: 29.03.2022  
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**ORDER**

This is an appeal at the instance of the dealer-  
assessee assailing the order dtd.01.07.2004 passed by the  
Asst. Commissioner of Sales Tax, Sundargarh Range,  
Rourkela (hereinafter referred to as, the first appellate  
authority) in First Appeal Case No. AA 74 (RL II-C) 2003-  
2004, thereby confirming the order dtd.25.02.2003 passed  
by Sales Tax Officer, Rourkela II Circle, Panposh  
(hereinafter referred to as, the assessing authority) raising

tax demand of Rs.14,74,572.00 for the assessment period 1997-98 in the assessment framed u/r.12(8) of the Central Sales Tax (Orissa) rules, 1957 (hereinafter referred to as, the CST(O) Rules).

2. That the factual matrix of the case is that, the dealer-assessee was engaged in resale of iron and steel and the assessment for the material period was completed u/r.12(4) of the CST(O) Rules on 31.08.1998. Subsequently, on receipt of fraud case report bearing No.99 dtd.30.11.2002 from the STO, Vigilance, Sambalpur, where the allegation of suppression of sale of iron and steel to the tune of Rs.73,72,861.60 was made in course of interstate trade and commerce, the assessment was reopened u/r.10 of the CST(O) Rules and dealer was noticed. The dealer neither appeared before the assessing authority nor produced the books of account in spite of due service of notice by affixture. So the assessing authority completed the reassessment to the best of his judgment basing on the materials available on record. The learned assessing authority determined the escaped turnover at Rs.73,72,861.60 and in the absence of any deduction, the NTO was determined at same level. The assessing authority calculated the tax @ 8% on the said amount which came to Rs.5,89,828.00 on which penalty of Rs.8,84,743.50 was imposed.

3. The dealer being aggrieved with such demand raised by the assessing authority, preferred appeal before

the first appellate authority who also confirmed the order of assessment. The dealer-assessee being further aggrieved with the order of the first appellate authority filed the present second appeal.

4. It is pertinent to mention here that when the appeal was called on for hearing, the dealer-assessee did not appear in spite of due service of notice for which the matter was heard *ex parte* in presence of the learned Standing Counsel for the State. The dealer-assessee challenged the impugned orders of the forums below mainly on the ground that he was not given reasonable opportunity of hearing as there was no valid service of notice.

5. We have heard the learned Standing Counsel for the State in the absence of the dealer-assessee, gone through the impugned orders of the fora below, grounds raised in the memorandum of appeal vis-a-vis the materials on record. On perusal of the record, we find that the notice issued to the dealer-assessee returned to the STO by Process Server with an endorsement that addressee refused to receive the notice. Again another intimation was issued to the dealer-assessee which was also refused to be received by it. So, notice was served on the dealer-assessee by affixture in presence of witness. In the first appellate forum which is an extended forum of assessment the dealer-assessee though appeared through its advocate did not produce any documents for

verification by the first appellate authority. If at all it is accepted that there was no due service of notice on the dealer-assessee, it could have substantiate its claim and contention before the first appellate authority by producing the relevant documents. The dealer got sufficient opportunity before both fora below to explain the allegations made in the fraud case report dtd.30.01.2002 which he did not avail. So, the dealer-assessee cannot be said to have been deprived of reasonable opportunity of hearing and there is any violation of principle of natural justice. The dealer-assessee for the reasons best known to it did not produce the documents before the authorities below to dislodge the allegation made in the fraud case report. So both the fora below have rightly accepted the LCR and decided the matter accordingly. The first appellate authority also rightly negatived the contention raised by the dealer-assessee that it is not required to file 'C' form as the dealer failed to explain the allegation of sale suppression. The first appellate authority on scrutiny of the materials on record rightly took the view that the dealer-assessee sold established quantity of iron and steel out of his books of account. So in the absence of books of account the first appellate authority did not commit any illegality in accepting the fraud case report and the findings of the assessing authority that sale suppression stood established. Before the second appellate forum the dealer-assessee did not appear and produce the relevant

documents for verification by this authority. This Tribunal being the final court of fact and law, the dealer-assessee could have availed the opportunity of explaining the allegation made in the fraud case report regarding out of account sale of iron and steel but it did not avail such opportunity. So in the absence of any explanation from the side of the dealer, we also concur with the finding of the fora below that there was out of account sale of steel and iron and the sale suppression stood established. There is no illegality and impropriety in the impugned orders of the forums below warranting interference of this Tribunal.

6. In view of the discussion made above, the appeal filed by the dealer-assessee being devoid of any merit stands dismissed and the orders of both the fora below stand 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/-  
(M. Harichandan)  
Accounts Member-I