

**SECOND APPEAL ORDER DISPOSAL STATUS FOR ORDERS RECEIVED IN NOVEMBER-2020**

**FULL BENCH**

Sl No.	Name of Dealer R.C. No.	Range/Circle /AU	First Appeal No. & Date	Second Appeal Number & Date of Order	Act	Period	Second Appeal filed by State/	Amount Demanded /Refunded (BY 1ST Appellate Authority)	Grounds of Appeal	Result of Second Appeal Order
1	M/S UTKAL MINERALS AND ORES, KOIRA, SUNDARGARH	ROURKELA I CIRCLE	AA-256(RL-I)/2005-06, DT.28.09.2006	1798 OF 2006-07, DT. 05.11.2020	OST	2004-05	STATE	1052134	The assessment was completed u/s 12(4) of the OST Act with demand of Rs.10,52,134.00 on the basis of the fact that the commercial product was involved in manufacturing and sale of Iron Ore and fines from Iron Lumps. The dealer filed appeal before the FAA against the manufacturing activity. The FAA concluded that there is no distinct and different commodity of commercial identity resulted in crossing of Iron ore to make Iron Ores and fines from the lumps. The State file 2nd appeal against the order of the FAA alleging that the activity of the dealer is not crossing of the lumps but the act of manufacturing falling under the definition of section 2(ddddd) of the Act.	After considering the fact, the tribunal concluded that the crossing Iron ore lumps to smaller forms of ores and fines could not be treated as manufacturing activity. Hence the dealer is entitiled to the binifit of the section- 8 of the Act. Thus, the findings of the FAA donot suffer from any serious legal informity. In the result, the appeal by the state is dismissed and the order of the FAA is conformed.
2	M/S PARADEEP CARBONS LIMITED, PARADEEPGARH, JAGATSINGHPUR	JAGATSINGHPUR CIRCLE	AA.278/CUIIJ/2006-07, DT.09.08.2007	1193 OF 2007-08, DT.22.10.2020	OST	2004-05	PARTY	22941565	The assessment was completed u/s 12(4) of the OST Act with demand of Rs. 2,29,41,565.00. The dealer filed before the FAA who reduced the demand to the return figure made by the LAO. Being agrieved, the dealer filed 2nd appeal against the progressive tax benefit.	After considering the facts, the tribunal concluded that the progressive tax exemption worked out by the FAA to Rs. 775.17 lakh which is liable to be corrected and read as Rs. 673.78 lakh. The FAA has determined tax exemption of Rs. 210.20 lakh and as such progressive tax exemption availed by th dealer came to Rs. 883.98 lakh. which has been wrongly mentioned as Rs. 985.38 lakh and it should be corrected as Rs. 883.98 lakh. In the result, the appeal is partly allowed and the first appeal order is modified to the extent of miscalculation of progressive tax exemption benefit and the matter is remitted back to the FAA for recomputation of tax liability as per the observation.
3	M/S PARADEEP CARBONS LIMITED, PARADEEPGARH, JAGATSINGHPUR	JAGATSINGHPUR CIRCLE	AA.43/CUIIJ/2006-07, DT.09.08.2007	133(C) OF 2007-08, DT.22.10.2020	CST	2003-04	PARTY	REDUCED THE TAX DEMAND FROM RS.2,06,92,656/ TO RS.1,56,51,469/	The assessment was completed u/r 12"(4) of the CST Rules with demand of Rs. 2,06,92,656.00 after disallowing the claim of export sale. The dealer filed first appeal against the disallowance of his claim before the FAA who reduced the demand to Rs. 1,56,51,469.00. Being agrieved, the filed second appeal.	After considering the facts, the tribunal concluded that the progressive tax exemption worked out by the FAA to Rs. 355.84 and tax exemption of Rs. 775.17 lakh. The FAA has determined tax exemption of ( Rs. 122.10 lakh + 355.84 lakh = Rs. 477.94) and as such the progressive tax benefit comes to Rs. 673.78 lakh in stead of 775.17 lakh. In the result, the appeal is partly allowed and the first appeal order is modified to the extent of miscalculation of progressive tax exemption benefit and the matter is remitted back to the FAA for recomputation of tax liability as per the observation.

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4	M/S BISWA RANJAN SAMAL, KEONJHAR	KEONJHAR CIRCLE	AA-654KJ/16-17(VAT), DT.29.09.2016	310(V) OF 2016-17, DTD.05.11.2020	OVAT	01.04.2009 TO 31.03.2014	STATE	ENHANCED THE REFUNDABLE AMOUNT FROM RS.37,633/- TO RS.24,99,993/-	The assessment was completed u/s 42 of the OVAT Act. with refund of Rs. 37,633.00. The dealer filed second appeal before the FAA who enhanced the refund to Rs. 24,99,993.00 on account of payment excess of Rs. 24,99,933.00 than tax liability during the assessment period. Being aggrieved, the state filed second appeal against the order of the FAA. CO filed by the dealer in support of the order of the FAA.	After considering the facts, the Tribunal concluded that the state could not substantiate how the order of the FAA is unjust and improper. The FAA allowed the said refund after allowing the deduction @ 45% towards labour and service charges and appropriate rate of deduction towards other charges following Rule 4B of the OST Rules. In the result, the appeal filed by the state is dismissed and the order of the FAA is confirmed.
5	M/S VEDANT ALUMINIUM LIMITED, KALAHANDI	KALAHANDI CIRCLE	AA-100(KA) OF 2008-09, DT.18.03.2009	62 (ET) OF 2009-10, DT.11.11.2020	OET	2004-05	PARTY	948819	The assessment was completed u/s 7(4) of the OET Act with demand of Rs. 9,48,819.00. The dealer filed first appeal before the FAA who confirmed the assessment order on the basis of utilization statement of waybills.	After considering the facts, the Tribunal concluded that, the imported goods are liable to entry tax as per the provisions of law due to arrival of the goods at its destination for consumption, use or sale. The dealer should be given reasonable opportunity of hearing in order to clarify the errors detected by the authorities. In the result, the appeal is allowed and the order of the FAA is set aside for recomputation of tax liability after providing the dealer a reasonable opportunity to submit all such material evidences in support of his claim.
6	M/S BARGARH DIARY, BARGARH	BARGARH CIRCLE	AA-48/BGH/VAT/2010-11, DT.30.04.2012	96(VAT) OF 2012-13, DT.03.11.2020	OVAT	01.04.2008 TO 31.05.2009	PARTY	3796085	The assessment was completed u/s 43 of the OVAT Act with demand of Rs.37,96,085.00 including tax of Rs. 12,65,361.67 and penalty u/s 43(2). The dealer filed first appeal before the FAA who dismissed the dealer's appeal and confirmed the assessment order. The dealer filed second appeal on the grounds that the pouch of drinking water is not falling under Entry - 36 of the schedule A of the act and could not be treated as a sealed container. Therefore it is not sale suppression.	After considering the facts, the Tribunal concluded that the dealer can't be said to have had self assessment u/s 39 of the Act. Which ultimately resulted in initiation of proceeding u/s 43. The sale suppression is ascertained as out of account transactions of huge scale was detected, as such penalty u/s 43(2) is duly levied. The dealer was not provided due opportunity of hearing by the FAA. in spite of the default of the dealer, the FAA did not leave any option but to decide the matter on merit. In the result, the appeal is partly allowed and the order of the FAA is set aside for fresh determination of tax liability
7	M/S V.L.ACCESS INDIA PVT. LTD., BHUBANESWAR	BHUBANESWAR IV CIRCLE	AA-106221422000055/BHIV/2013-14, DT.20.01.2015	127(VAT)OF 2015-16, DTD.21.10.2020	OVAT	01.04.2011 TO 31.03.2013	PARTY	REDUCED FROM RS.37,68,813/- TO RS.23,88,695/-	The assessment was completed u/s 42 of the OVAT Act with tax and penalty of Rs. 37,68,813.00. The dealer filed first appeal against the imposition of penalty u/s 42(5) of the Act. The FAA adjusted the payment made after receipt of the audit visit notice but confirmed the penalty of Rs. 23,88,695.00 which is not tenable in law. The state contended by the way of CO that the dealer did not comply section 33(4) of the Act. The dealer filed second appeal against the imposition of penalty confirmed by the FAA.	After considering the facts, the Tribunal concluded that the imposition of penalty u/s 42(5) is not justified as the dealer filed revised return before receiving audit visit notice. The delay in filing return on account of final payment not being received in time. In the result, the appeal is allowed and the appeal is set aside to the extent as to delete penalty. The assessment of the dealer is reduced.

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**DIVISION & SINGLE BENCH**

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1	M/S KUSUM POWERMET PVT. LTD., KEONJHAR	JAJPUR RANGE	AA-107/2008-09, DTD.25.01.2018	48(V)/2018, DTD.03.11.2020	OVA T	01.04.2006 TO 31.03.2007	STATE	REDUCED THE DEMAND TO RS.1,15,939/- FROM 31,31,013/-	The assessment was completed u/s 42 of the OVAT Act. With demand of Rs. 31,31,013.00 which was reduced by the FAA to Rs. 1,15,939.00. The state filed second appeal on the grounds that dolomite and iron ores are taken by the FAA as raw materials in manufacturing of spong iron.	After considering the facts, the Tribunal concluded that the dealer is entitled for ITC on dolomite which has been used as a necessary consumable without which the manufacturing process cannot be undertaken, and hence treated as a raw material for manufacturing of sponge iron. The appeal is dismissed and the impugned order is hereby confirmed. The appeal is disposed of in favour of the dealer.