

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

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member
&
Shri B. Bhoi, Accounts Member-II

S.A. No. 5 (C) of 2017-18

(Arising out of order of the learned Joint Commissioner of
Sales Tax, Sundargarh Range, Rourkela,
in First Appeal Case No. AA 3(RL-II-C) of 2015-16,
disposed of on dated 28.01.2017)

S.A. No. 6 (C) of 2017-18

(Arising out of order of the learned Joint Commissioner of
Sales Tax, Sundargarh Range, Rourkela,
in First Appeal Case No. AA 15(RL-II-C) of 2015-16,
disposed of on dated 28.01.2017)

M/s. Siemens Ltd.,
Qr. No.M/54, Basanti Colony,
Rourkela. ... Appellant

-Versus-

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

For the Appellant : Mr. B.P. Mohanty &
Mr. K.K. Panda, Advocate
For the Respondent : Mr. N.K. Rout, A.S.C.

Date of hearing: 08.06.2023 *** Date of order: 13.06.2023

ORDER

Both these appeals are disposed of by this composite
order as the same involve common question of fact and law in

between the same parties challenging the orders dtd.28.01.2017 passed by the same authority.

S.A. No.5(C) of 2017-18

The dealer prefers this appeal challenging the order dtd.28.01.2017 passed by the learned Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela (hereinafter referred to as, JCST/first appellate authority) in First Appeal Case No. AA 3(RL-II-C) of 2015-16, thereby enhancing the demand against the order of provisional assessment passed by the learned Sales Tax Officer, Rourkela II Circle, Panposh (hereinafter referred to as, learned STO/Assessing Officer) u/r.12(1) of the Central Sales Tax (Orissa) Rules, 1957 (hereinafter referred to as, CST(O) Rules) for the tax period 01.04.2009 to 31.03.2010 raising an extra demand of ₹3,74,56,840.00.

S.A. No.6(C) of 2017-18

The dealer prefers this appeal challenging the order dtd.28.01.2017 passed by the learned Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela (hereinafter referred to as, JCST/first appellate authority) in First Appeal Case No. AA 15(RL-II-C) of 2015-16, thereby allowing the appeal in part and reducing the demand to ₹2,18,98,142.00 against the order of provisional assessment passed by the learned Sales Tax Officer, Rourkela II Circle, Panposh (hereinafter referred to as, learned STO/Assessing Officer) u/r.12(1) of the Central Sales Tax (Orissa) Rules, 1957 (hereinafter referred to as, CST(O) Rules) for the tax period 01.04.2010 to 31.03.2011 raising an extra demand of ₹3,53,98,241.

2. The factual aspect of both these cases are that the dealer-appellant in the instant case deals in electrical goods,

appliances, equipment and spares and accessories thereof, computer and its spares and peripherals, solar collector and spares thereof wet cell batteries, fire fighting equipment, fire extinguisher, hardware, tools and implements, aluminium sorts, ingot, bars, doors, shutters, UPS, refractory bricks, tiles and blocks, air cooler, water cooler, refrigerators. Apart from this, the dealer-company purchase for deemed sale of goods like construction materials such as cement, sand, chips, bricks, steel rods and bars, fabricated steel, structural and electrical goods, appliances, machineries and spares in course or execution of works contract. It effects sales of such goods both in course of intra-state and inter-state trade and commerce. Learned STO in course of scrutiny of returns found that the dealer-appellant failed to furnish declarations in form 'C' and 'E-I' with reference to its claim of exemption u/s.6(2) of the CST Act and form 'F' towards dispatch of goods otherwise than by way of sale. So proceeding u/r.12(1) of the CST(O) Rules was initiated by issuance of statutory notice to the dealer-appellant in form II-B for production of books of account and declaration forms. After verification of all these documents, the demands as mentioned above were raised against the dealer-appellant.

3. Against such tax demands, the dealer-appellant preferred first appeals before the learned Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela who enhanced the assessment in in First Appeal Case No. AA 3(RL-II-C) of 2015-16 and allowed the appeal in part and reduced the assessment in First Appeal Case No. AA 15(RL-II-C) of 2015-16.

4. Further, being dissatisfied with the orders of the learned first appellate authority, the dealer-appellant has preferred these second appeals before this Tribunal as per the grounds stated in the grounds of appeal.

5. In both these cases cross objections are filed by the State-respondent.

6. Heard the contentions and submissions of both the parties. Perused the materials available on record vis-a-vis the grounds of appeal and the orders of the first appellate authority including the order of assessment. On scrutiny it reveals that due to non-submission of required declaration forms, the learned assessing officer rightly raised the demands which were also further adjudicated upon by the learned first appellate authority for which in one case he enhanced the assessment order and in another case he reduced the demand as the dealer-assessee produced some declaration forms. In view of such, orders passed by the learned first appellate authority are genuine as per the norms of law. But fact remains that during the course of hearing of these second appeals, the dealer-assessee has filed some 'C' and 'E-I' forms which were later on received by the dealer and the same are produced before this forum. So, the forms filed by the dealer-assessee before this forum should be taken into consideration for the ends of justice. In view of the present scenario of these cases, we feel it proper to remit the cases to learned assessing officer for reassessment giving due consideration to the forms form 'C' and 'E-I' filed by the dealer-assessee.

7. In the result, the appeals preferred by the dealer-appellant are partly allowed and the orders of the fora below

are hereby set aside. The cases are remitted back to the learned assessing officer for reassessment after giving due consideration to the forms 'C' and 'E-I' filed by the dealer. Such reassessment should be completed within a period of three months from the date of receipt of this order after giving an opportunity to the dealer of being heard. The dealer is also instructed to produce the original 'C' and 'E-I' forms before the learned assessing officer during the course of reassessment which are returned to it (dealer). The cross objections are disposed of accordingly.

Dictated & corrected by me

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

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

I agree,

Sd/-
(G.C. Behera)
Chairman

I agree,

Sd/-
(B. Bhoi)
Accounts Member-II