

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

**S.A. No. 7 (C) of 2018
S.A. No. 8 (C) of 2018
&
S.A. No. 9 (C) of 2018**

(Arising out of orders of the learned Addl. CST (Appeal), North Zone,
Sambalpur in Appeal No. AA /SU – 241/2000-01,
AA- RL-II-C-2/2001/02 & AA- RL-II-C-15/02-03,
disposed of on 25.01.2017)

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

M/s. Siemens Ltd.,
Sector-2, Rourkela, Sundargarh
At present – 43, Shantipalli, Rashbihari,
Bypass Connector, Kolkata-700 042 ... Appellant

-Versus-

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

For the Appellant : Sri Bibekananda Mohanti, Sr. Advocate
Sri A.K. Samal, Advocate
For the Respondent : Sri N.K. Rout, Addl. S.C. (CT)

Date of hearing : 10.07.2023 *** Date of order : 27.07.2023

ORDER

All these appeals relate to the same Dealer involving common question of facts and law, but for different years. Therefore, the appeals are heard analogously and disposed of by this composite order for the sake of convenience.

S.A. No. 7(C) of 2018 :

2. Dealer assails the order dated 25.01.2017 of the Addl. Commissioner of Sales Tax (Appeal), North Zone, Sambalpur (hereinafter called as 'First Appellate Authority') in F A No. AA /SU -241/2000-01 enhancing the demand raised in assessment order of the Asst. Commissioner of Sales Tax (Assessment), Sundargarh Range, Rourkela (in short, 'Assessing Authority').

S.A. No. 8(C) of 2018 :

3. Dealer is in appeal against the order dated 25.01.2017 of the First Appellate Authority in F.A. No. AA- RL-II-C-2/2001/02 enhancing the demand raised in assessment order of the Assessing Authority.

S.A. No. 9(C) of 2018 :

4. Dealer also assails the order dated 25.01.2017 of the First Appellate Authority in F.A. No. AA- RL-II-C-15/02-03 enhancing the demand raised in assessment order of the Assessing Authority.

5. Briefly stated, the facts of the cases are that –

M/s. Siemens Ltd. deals in electrical items exclusively. The assessments relate to the years 1999-2000, 2000-01 and 2001-02. The Assessing Authority raised tax and surcharge of ₹68,26,375.00 u/r. 12(5) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules') for the year 1999-2000. Similarly, the Assessing Authority raised tax and surcharge of ₹51,32,772.00 u/s. 12(5) of the CST (O) Rules for the year 2000-01. Also, the Assessing Authority raised tax and surcharge of ₹1,80,91,159.00 u/s. 12(5) of the CST (O) Rules for the year 2001-02.

Dealer preferred first appeals against the orders of the Assessing Authority before the First Appellate Authority. The First Appellate Authority enhanced the tax demands to ₹90,69,632.00 for the year 1999-2000, ₹1,55,20,447.00 for the year 2000-01 and ₹5,20,04,919.00 for the year

2001-02 and dismissed the appeals in ex parte proceeding. Being aggrieved with the orders of the First Appellate Authority, the Dealer prefers these appeals. Hence, these appeals.

The State files cross-objections supporting the orders of the First Appellate Authority enhancing the orders of assessment as just and proper.

6. The learned Sr. Counsel for the Dealer submits that the First Appellate Authority went wrong in observing the exempted sales to be intra-State sale and taxing the turnover under the OST Act. He further submits that the First Appellate Authority is not competent to compute intra-State sales under the CST Act. He further submits that the Dealer has filed both 'C' and 'E-I' form, so the First Appellate Authority should have computed the tax liability u/s. 6(2) of the CST Act. He further submits that the First Appellate Authority passed the impugned orders after lapse of one year of hearing and the same are not sustainable in the eye of law. So, he submits that the impugned orders of the First Appellate Authority are otherwise bad in law and thus, require interference in appeal. He relies on the decisions of the Hon'ble Apex Court in case of *Bharat Heavy Electrical Ltd. and others v. Union of India and others*, reported in (1996) 4 SCC 230; Hon'ble Court in cases of *M/s. Larsen & Toubro Ltd. v. State of Orissa* (STREV No. 469 of 2008, decided on 01.09.2021); and *M/s. Siemens Ltd. v. State of Odisha and others* (WP (C) No. 5510 of 2015, decided on 24.04.2023); and order of this Tribunal in **S.A. Nos. 15 of 2009-10 & 71(C) of 2008-09** dated 23.09.2021 (*M/s. Siemens Ltd. v. State of Odisha*).

7. Per contra, the learned Standing Counsel (CT) for the State supports the findings of the First Appellate Authority and submits that the orders of the First Appellate Authority are reasoned orders and the same need no interference in appeal.

8. Having heard the rival submissions and on going through the materials on record, it transpires from the record that the Dealer claims

exemption of CST u/s. 6(2) of the CST Act on the ground that it had effected inter-State sale by transfer of documents of title to the goods.

The Dealer assails the impugned orders of the First Appellate Authority mainly on the grounds that (i) the First Appellate Authority has not verified the materials available on record; (ii) the First Appellate Authority has no jurisdiction to decide the intra-State sales in the CST proceeding; and (iii) the First Appellate Authority passed the orders after lapse of one year, i.e. 25.01.2017 though hearing was concluded on 12.01.2016.

9. The assessment order for the year 1999-2000 reveals that the Dealer had effected 6(2) sales to the tune of ₹6,83,54,370.34. The Dealer had shown issuance of credit notes for ₹2,14,543.00 in case of M/s. BHEL and ₹12,43,415.00 in case of M/s. NALCO. The Assessing Authority observed that the Dealer had submitted 'C' form and 'E-I' form for ₹4,72,578.00 against invoice No. 25 dated 25.06.1999. The Dealer had also furnished 'C' form for ₹3,53,38,292.00. The Assessing Authority further observed that the Dealer had submitted less amount of ₹82,348.04 in case of M/s. L&T. So, the Assessing Authority found that the actual turnover covering 'C' form was for ₹3,54,47,427.00. The Dealer had not submitted 'E-1' form to substantiate the claim of 6(2) sales. So, he taxed @ 4% on the turnover covered under 'C' form.

Besides this, the Dealer had only submitted 'E-I' form for an amount of ₹1,05,66,577.00 and he had not filed the 'C' form. So, the Assessing Authority disallowed the claim of exemption. The Dealer had also not submitted the required declaration form for the balance amount.

The Assessing Authority further observed that the Dealer had produced credit notes relating to M/s. BHEL for ₹2,14,543.00. He disallowed the credit notes for ₹12,43,415.62 in case of M/s. NALCO in

absence of documentary evidence. So, the Assessing Authority completed the assessment under best judgment principle and taxed at the appropriate rate along with surcharge u/s. 8(2)(b) of the CST Act. He allowed deduction of ₹4,72,578.00 towards exemption u/s. 6(2) of the CST Act. The Assessing Authority determined the GTO, NTO and computed the tax liability of the Dealer and accordingly raised demand of ₹68,24,375.00 for the year 1999-2000.

In appeal, the First Appellate Authority enhanced the tax demand to ₹90,69,632.00 disallowing the exempted sales for want of transfer of documents of title to the goods during its movement from one State to another.

9.1. Similarly, for the assessment year 2000-01, the Assessing Authority raised the tax demand of ₹51,32,772.00 after allowing deduction of ₹3,70,19,528.00 towards 6(2) sales. The First Appellate Authority enhanced the tax demand to ₹1,55,20,447.00 on the same ground as observed above. Also, for the assessment year 2001-02, the Assessing Authority raised tax demand of ₹1,80,91,159.00 after allowing deduction of ₹28,06,365.00 towards 6(2) sales. The First Appellate Authority enhanced the tax demand to ₹5,20,04,919.00 on the said ground.

10. So, we are required here to answer the issues raised by the party before this forum are as follows :-

- (i) Whether the First Appellate Authority was competent to pass the impugned orders after lapse of one year of hearing;
- (ii) Whether the First Appellate Authority was competent to treat the CST transaction as intra-State sales and thereby raised the demand under CST Act; and
- (iii) Whether the First Appellate Authority was right to enhance the assessments by disallowing the claim of 6(2) sales.

11. As regards issue No. (i), the record reveals that the First Appellate Authority passed the impugned orders on 25.01.2017. The order sheet of LCR of the First Appellate Authority further reveals that the last date of posting was 21.09.2006. The First Appeal records for the years 1999-2000 and 2000-01 further reveal that it contains Hariza of the Dealer with an endorsement of the First Appellate Authority that “Partly heard. Adjourned to 12.01.2016”. Thereafter, the impugned orders were passed on 25.01.2017. So, it transpires that the impugned orders of the First Appellate Authority passed beyond the reasonable period after hearing, i.e. after lapse of one year, even if the cases were at all taken for hearing on 12.01.2016. Therefore, the orders of the First Appellate Authority are not sustainable in the eyes of law and thus, the same are sufficient for interference in appeal.

12. As regards issue No. (ii), the First Appellate Authority disallowed the claim of exempted sales holding as intra-State sales under OST Act, but assessed the turnover under the CST Act. Once the First Appellate Authority treated the alleged transaction as intra-State sales, he should have deleted the turnover from the CST Act and should have directed the Assessing Authority to add the alleged transaction under the OST Act and levy tax accordingly. So, the First Appellate Authority went wrong in computing tax liability of the Dealer on the disallowed exempted sales under the CST Act while holding the same to be intra-State sales to levy tax under the OST Act.

13. It is not in dispute that the goods were brought from one State to another State. The Dealer has also filed some ‘C’ and ‘E-I’ form to that effect. In some cases, the Dealer has filed ‘C’ form and some other cases the Dealer has filed ‘E-I’ form. Basing on such documents and return filed by the Dealer, the Assessing Authority and the First Appellate Authority assessed the tax liability under the CST Act. So, the finding of the First Appellate Authority is factually wrong to include the turnover under the OST Act by observing it as intra-State sales.

14. In case of exempted sale, the Dealer is required to file statutory declaration forms, i.e. 'C' & 'E-I' form, to take the benefit of 6(2) sale. If the Dealer only files 'C' form, the Dealer is entitled to get the concessional rate of tax and in other cases, if the Dealer fails to file any declaration form or only files 'E-I' form, the Dealer has to pay the appropriate tax in absence of such statutory form. Accordingly, the Assessing Authority has rightly computed the tax at the appropriate rate in absence of such statutory forms and for the amount against which the Dealer has filed both 'C' & 'E-I' form. The impugned order reveals that the Dealer has filed 'E-I' form before the First Appellate Authority. During hearing of the second appeals, the Dealer has made a prayer to allow him opportunity to submit wanting declaration forms, if any. As the matter is required to be remitted to the Assessing Authority for disposal as per law, so we feel it proper to allow an opportunity to the Dealer to file the wanting declaration forms, if any, before the Assessing Authority, who shall complete the assessment within four months from the date of receipt of this order.

15. So, for the foregoing discussions, we do not find any illegality in the finding of the Assessing Authority to compute appropriate tax for the amount against which both 'C' and 'E-I' forms have been filed, for the amount against which only 'C' forms have been filed and the amount against which the Dealer has filed no statutory form or only filed 'E-I' form. The First Appellate Authority went wrong in observing the exempted sale as intra-State sale and went on computing the tax liability under the OST Act is factually wrong, as such, the same requires interference in appeal.

16. Resultantly, all the appeals stand allowed. The impugned orders of the First Appellate Authority are hereby set aside. The matters are remitted to the Assessing Authority for disposal in accordance with law keeping in view the observations made supra within a period of four months from the date of receipt of this order. The Dealer shall file all the relevant documents

and statutory forms before the Assessing Authority or else the orders of the Assessing Authority passed earlier in this regard will stand. Cross-objections are disposed of accordingly.

Dictated & Corrected by me

**Sd/-
(G.C. Behera)
Chairman**

**Sd/-
(G.C. Behera)
Chairman**

I agree,

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

I agree,

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