

**BEFORE THE DIVISION BENCH, ODISHA SALES TAX TRIBUNAL,  
CUTTACK.**

**S.A. No.48(C) of 2017-18**

(Arising out of the order of the learned JCST,  
Sundargarh Range, Rourkela in first appeal case  
No. AA 47 (RL-II-C) of 2015-16 disposed of on  
31.05.2017)

**Present:** **Shri S.K. Rout, 2<sup>nd</sup> Judicial Member**  
**&**  
**Shri B. Bhoi, Accounts Member-I**

M/s. Siemens Ltd., M-54,  
Basanti Colony, Rourkela,  
TIN-21922000069. .... Appellant.

**-Vrs. -**

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

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

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**Date of Hearing : 19.08.2023 \*\*\* Date of Order: 18.09.2023**  
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**O R D E R**

The dealer-assessee is in appeal against the order dated 31.05.2017 of the Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela (in short, 'ld. FAA') in First Appeal Case No. AA 47 (RL-II-C) of 2015-16 in not allowing exemption, concessional rate and branch transfer claimed under Section 6(2),3(a)(b) and 5(1) of the CST Act on account of non-submission of statutory declarations pertaining to the assessment under Section 12(1)(b) of the CST (O) Rules passed by the Deputy Commissioner of Sales Tax, Rourkela-II Circle, Panposh (in short, 'learned assessing authority').

2. M/s. Siemens Limited., M/54, Basanti Colony, Rourkela, TIN-21922000069 was assessed under Rule 12(1)(b) of the CST(O) Rules for the tax period from 01.04.2013 to 31.03.2014 by the learned assessing authority raising demand of ₹7,89,65,777.00 including interest of ₹1,42,39,730.00 for want of declaration forms as required under the CST Act and Rules made thereunder. The ld. FAA reduced the demand to ₹4,39,66,531.00 including interest of ₹79,28,391.00 on consideration of certain statutory declarations furnished by the dealer-company at the first appellate stage. The dealer-company being not satisfied with the order of the ld.FAA approached this forum for relief.

3. We feel it pertinent to endorse a brief account of the impugned case. The dealer-assessee has returned GTO at ₹199,68,38,397.00 during the tax period under appeal. The details of claims not supported with declaration Forms that led to the forums below to disallow exemption, branch transfer and concessional rate are as under in a tabular form:-

Declaration Form	Amount involved	Form submitted at assessment	Form submitted at 1 <sup>st</sup> appeal	Amount disallowed
'C' Form (interstate sale)	83,98,148.00	-	-	83,98,148.00
F Form	5,68,66,208.00	-	95,16,689.00	4,73,49,519.00
H Form	1,90,44,754.00	-	-	1,90,44,754.00
6(2) sale	<u>190,96,74,875.00</u> (a)Both C and E-1 Form submitted	14,97,32,679.00	49,75,70,632.00	Exempted sale
	(b)with C Form, but not E-1 Form	91,06,18,523.00	11,11,17,999.00	1,02,17,36,522.00
	(c) with E-1 Form, but not C Form	-	-	24,06,35,042.00

The broad break up of demand relates to the following alleged non compliances or disallowances:-

i.	Non submission of C Form	- ₹83,98,148.00
ii.	Non submission of F Form	-₹4,73,49,519.00
iii.	Non submission of H Form	-₹1,90,44,754.00
iv.	6(2) sales with E-1 Form, but not C Form	-₹24,06,35,042.00
v.	6(2) sale with 'C' Form, but not 'E1' Form	-₹1,02,17,36,522.00

4. Mr. B. P. Mohanty, Id. Advocate representing the dealer- assessee submits that the wanting declaration forms could not be furnished at the first appellate stage despite sincere efforts made to receive the same from the purchasing dealers. The forums below have not granted reasonable opportunities to produce the same and taxed arbitrarily. The wanting declaration Forms have been submitted in original before this Form as 'additional evidences' relying on the decision of the Hon'ble High Court of Odisha in case of **Tata Refractories Limited Vs. Commissioner of Sales Tax and Others** reported in 95 STC 34 (O). The contention of the Id. Advocate deserves consideration in view of the facts that the wanting declaration forms could not be received from the purchasing dealers despite all possible efforts for getting the same. When the dealer company has offered plausible explanation, the forums below were not justified in refusing allowance of time. It hurts the principle of natural justice. The contention of the dealer- assessee in this aspect is considerable. It is also contested that the alleged demand arose out of the provisional assessment under Rule 12(1) of the CST(O) Rule. Levy of interest is therefore not warranted.

5. The State filed cross objection holding the order of the Id.FAA as proper and justified. The State relies on the decision of the **Odisha Sale Tax Tribunal** passed vide order dated 23.05.2018 in S.A. No.4(C) for 2017-18 in case of **Gupta Trading Co. Vrs. The State of Odisha** wherein it is observed that payment of interest is automatic on the differential amount of tax accrued due to non-

submission of declaration form. The Hon'ble Supreme Court in case of **Royal Boot House Vrs. The State of Jammu & Kashmir** reported in (1984) 56 STC 2012 (SC) also held that, where the tax payable on the basis of a quarterly return is not paid before the expiry of the last date for filing such return, it is not necessary to issue any notice on demand but on the default being committed, the dealer becomes liable to pay interest under Section 8(2) of the Act on the amount of such tax from the last date for filing quarterly return prescribed under the Act. Further, in **CCT Vrs. Control Switch Gear Co. Ltd.** (2011) 10 VST 18 (ALL), it is observed that "Even though declaration form for claiming exemption/concession may be required to be filed during the course of assessment proceeding but, in case of non-furnishing thereof, tax has to be levied at normal rate which would become the admitted tax and interest under Section 8(1) of the UP Act would be leviable from the due date of return in which turnover was disclosed and exemption/concession has been claimed. There is no scope for consideration of legitimate expectation or hope or bona-fide plea under Section 8(1) of the Act." In view of above settled principle of law, the action of ld. STO in not levying interest on the amount of tax payable, in addition to tax, is not justified." Relying upon the above dictum of the Hon'ble Courts, the State harps on levy of interest as justified in the present facts and circumstances of the case.

6. The rival contentions taken by both the parties are gone through. It is a matter of fact that the purchasing dealers are to provide the declaration Forms to the selling dealers. Without the same being obtained from the purchasing dealers, the selling dealers are not at fault and as such, for the sake of natural justice, they ought to be afforded time for submission of the declaration Forms as has been observed in the decision of the Hon'ble High Court of Odisha in case of **Tata Refractories Limited Vs. Commissioner of Sales Tax and Others** (supra). In view of this, the additional

evidences furnished in shape of the declaration Forms at this forum are acceptable. The learned Advocate representing the dealer-assessee has furnished a bunch of original declaration Forms like 'C' Form, 'E-1/II' Form, 'F' Form and 'H' Form at this forum against the wanting declarations stated supra in a tabular form. Since they are in volume and the relevant books of accounts having not been produced, verification of the same can hardly be taken up at this forum. It is advisable that the ld. assessing authority could allow the benefits of concession or exemption etc. as claimed for on detail verification of the original declaration Forms with reference to the relevant books of accounts as may be produced by the dealer-assessee.

7. As regards levy of interest under Rule 8(1) of the CST (O) Rules, the decision of the Hon'ble Apex Court rendered in case of ***Indodan Industries Limited Vs. State of U.P. reported in (2010) 27 VST 1(SC)*** is relied upon wherein the Hon'ble Court observes as under:-

“The levy of interest for delayed payment of tax is given the status of 'tax due'. The interest is compensatory in nature in the sense that when the assessee pays tax after it becomes due, the presumption is that the department has lost the revenue during the interregnum period (the date when the tax became due and the date on which the tax is paid). The assessee enjoys that amount during the said period. It is in this sense that the interest is compensatory in nature and in order to recover the lost revenue, the levy of interest is contemplated under the statute.”

Under the above settled principle of law, the dealer company is liable to be visited with levy of interest if found on verification to the effect that it has made delayed payment of admitted tax. The contention of the dealer company in this respect deserves no consideration.

8. In view of the above account of discussion, the appeal filed by the dealer company is partly allowed. The order of the ld.FAA is

set aside. The impugned case is remanded to the learned assessing authority with direction to verify the declarations forms as may be furnished by the dealer company in original with reference to the wanting declarations quoted in a tabular form above and the relevant books of accounts. The said exercise ought to be completed within four months from the date of receipt of this order.

**Dictated and corrected by me.**

**Sd/-  
(Bibekananda Bhoi)  
Accounts Member-I**

**Sd/-  
(Bibekananda Bhoi)  
Accounts Member-I**

**I agree,**

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