

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

S.A. Nos. 13 & 14 of 2021

(Arising out of orders of the learned JCST, Angul Range, Angul
in Appeal Nos. AA/58/AL/2009-10 & AA/59/AL/2009-10,
disposed of on 27.02.2015)

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

M/s. SIEMENS Ltd.,
Boinda, Angul ... 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 S.K. Pradhan, Addl. SC (CT) &
Sri S. Das, Addl. SC (CT)

Date of hearing : 04.01.2024 *** Date of order : 16.01.2024

ORDER

Both the second appeals relate to the same party and for the different periods involving common question facts and law. Therefore, they are taken up for disposal by this composite order for the sake of convenience.

2. In **S.A. No. 13 of 2021 & S.A. No. 14 of 2021**, the Dealer assails the orders dated 27.02.2015 of the Joint. Commissioner of Sales Tax, Angul Range, Angul (hereinafter called as 'First Appellate Authority') in F A Nos.

AA/58/AL/2009-10 & AA/59/AL/2009-10 confirming the assessment orders of the Sales Tax Officer, Angul Circle, Angul (in short, 'Assessing Authority').

3. The facts of the cases, in short, are that –

M/s. SIEMENS Ltd. executes works contract under M/s. NALCO; M/s. Grid Corporation Ltd., Bhubaneswar; Power Grid Corporation of India Ltd. and MKCG Medical College & Hospital, Berhampur. The assessments relate to the years 2002-03 and 2003-04. The Assessing Authority raised tax demands of ₹1,31,08,897.00 for the year 2002-03 and ₹20,85,787.00 for the year 2003-04 u/s. 12(8) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') in *ex parte*.

Dealer preferred first appeals against the orders of the Assessing Authority before the First Appellate Authority. The First Appellate Authority confirmed the orders for reassessment. Being aggrieved with the orders of the First Appellate Authority, the Dealer prefers these appeals. Hence, these appeals.

The State files cross-objections & additional cross-objections.

4. The learned Sr. Counsel for the Dealer only pressed the preliminary issue of ante dated orders of the Assessing Authority and passing of orders by the First Appellate Authority after eighteen months of hearing. He further submits that he reserves the right to submit on merit in the event of refusal of preliminary issue. He contends that the Assessing Authority passed ante dated orders on 03.10.2008, which were communicated on 03.11.2008 inspite of application of the Dealer on 04.10.2008 and 23.10.2008 for supply of copies of assessment orders. He further submits that the First Appellate Authority heard the appeals on 19.08.2013 and passed the impugned orders on 27.02.2015 after elapse of eighteen months, which reveals the non-application of mind on the part of

the First Appellate Authority in disposing of the appeals. So, he submits the orders of the forums below are not sustainable in law and liable to be set aside in the ends of justice.

5. Per contra, the learned Addl. Standing Counsel (CT) for the State supports the findings of the Assessing Authority and First Appellate Authority and submits that the Dealer was avoiding the process of assessment by way of filing time petitions every now and then and the Assessing Authority and the First Appellate Authority passed the orders on best judgment principle in absence of books of account. He further submits that the Appellate Authority should not ordinarily interfere in the orders passed on best judgment principle unless it is perverse or gross irregularity or illegality is found.

6. Heard the rival submissions of the party, gone through the orders of the First Appellate Authority and Assessing Authority vis-a-vis the materials available on record.

In course of hearing of appeals, learned Sr. Counsel for the Dealer raised a preliminary ground with contention that the Assessing Authority had not given due opportunity of hearing on 03.10.2008 and passed the ante dated orders for both the years under dispute. He further raised that the First Appellate Authority concluded the hearing on 19.08.2013 and issued the impugned orders vide Memo Nos. 136(3)/CT & 135(3)/CT dated 27.02.2015 after elapse of 18 (eighteen) months. Though the Dealer had taken the plea of reopening of 12(8) proceedings without applying his independent mind, but he did not press the same during the course of hearing.

He also contended that he reserves the right to argue on merit in the event of refusal of preliminary ground. So, in view of such circumstances, we shall proceed to examine the materials available on

record to find out if the Assessing Authority passed the ante dated orders and the First Appellate Authority passed the orders without applying his mind after a long delay and they did not provide sufficient opportunity to the Dealer to redress his grievance.

The remarks column of the order sheet dated 03.10.2008 reveals that that the Dealer had sought for time. The order sheet is silent regarding filing of time petition by the Dealer. The assessment orders u/s. 12(8) of the OST Act were passed *ex parte* on 03.10.2008 and demand notices were issued. The relevant order sheet dated 04.10.2008 reveals that the Dealer has filed an application. The remarks column of the said order sheet also reveals that the Dealer has filed a petition on 23.10.2008. The endorsements made on the assessment orders for the years 2002-03 & 2003-04 reveal vide issue Nos. 9562 & 9563 respectively dated 03.11.2008.

Bare reading of impugned orders of the First Appellate Authority reveal that the appeal orders were passed on 27.02.2015 though the hearing was completed on 19.08.2013. It transpires from the impugned orders and the relevant order sheet of the assessment record that the Assessing Authority has passed an ante dated order and the First Appellate Authority passed the orders after elapse of eighteen months, which are not sustainable in the eye of law. So, we feel it proper to remit the matters to the Assessing Authority for reassessment as per law.

Further, we are not expressing any opinion on merit. The Assessing Authority shall complete the reassessments within three months from the date of receipt of this order. Hence, it is ordered.

The manner of disposal by the Assessing Authority and First Appellate Authority are questionable and we feel it proper to send a copy of this order to the Commissioner of CT & GST for his information and necessary instruction.

7. Resultantly, the appeals are allowed and the impugned orders of the First Appellate Authority are hereby set aside. The matters are remitted to the Assessing Authority for reassessment within a period of three months from the date of receipt of this order as per law keeping in view the observations made supra. Cross-objections & additional 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-I**