BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 15 of 2009-10
&
S.A. No. 71(C) of 2008-09

(Arising out of orders of the learned ACST (Appeal), Sundargarh Range, Rourkela in First Appeal Case Nos. AA- 57 (RL-II) of 2007-08 disposed of on dated 31.12.2008; AA- 25 (RL-II-C) of 2007-08 disposed of on 31.07.2008 respectively and the order dated 22.03.2021 passed by the Hon'ble High Court of Orissa in W.P. (C) No. 22449 of 2017)

Present: **Shri A.K. Das, Chairman**
Smt. Sweta Mishra, 2nd Judicial Member
&
Shri S. Mishra, Accounts Member-II

M/s. Siemens Ltd.,
Sector-2, Rourkela ... Appellant

-Versus-

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

For the Appellant : Sri B. Mohanti, Sr. Advocate &
Sri A.K. Samal, Advocate
For the Respondent : Sri D. Behura, SC (CT) &
Sri M.S. Raman, Addl. SC (CT)

Date of hearing: 03.09.2021 *** Date of order: 23.09.2021

O R D E R

Pursuant to the direction of the Hon'ble High Court of Orissa dated 22.03.2021 passed in W.P. (C) No.

22449 of 2017, both the second appeals are heard analogously and disposed of by this common order.

2. The Company-appellant has preferred S.A. No. 15 of 2009-10 assailing the order dated 31.12.2008 passed by the learned Asst. Commissioner of Sales Tax (Appeal), Sundargarh Range, Rourkela (hereinafter called as 'first appellate authority') in Appeal Case No. AA- 57 (RL-II) of 2007-08 confirming the order of assessment dated 17.02.2007 passed by the Sales Tax Officer, Rourkela-II Circle, Panposh, (in short, 'assessing authority') u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'the Act') raising tax demand of ₹49,80,455.00 for the assessment period 2003-04.

3. The relevant facts leading to the filing of the present appeal are that the appellant-dealer is a Limited Company having its registered Office at Worli, Mumbai and branches at various places across the country including the State of Odisha. The Company deals with supply of electrical and mechanical goods both under the intra-State and inter-State trade and commerce and also executes works contract. During the relevant period, the Company was awarded with a contract for route survey, design, supply, erection,

stringing, sagging, testing, commissioning, trial run, obtaining statutory approval and handing over of 33 KV double circuit overhead transmission lines in tower in ring main system from 132/33 KV Central Substation at Jurabaga, Lakhanpur Area of MCL to different projects of Ib Valley Area, Lakhanpur Area and Orient Area on Turn-key basis by M/s. Mahanadi Coal Fields Ltd. (MCL) vide agreement dated 01.11.2002 pursuant to Letter of Intent No. MCL/SAMB/E&M/2002-03/692 dated 25.07.2002 for a total contract value of ₹6,26,00,000.00. The assessing authority in order to complete the assessment for the year 2003-04 issued notice u/s. 12(4) of the OST Act to the appellant-Company, on whose behalf Sri S. Gupta, Manager Indirect Taxation (Eastern Region) appeared with books of account for necessary verification and submitted the statement of accounts, copies of work orders etc. for reference. The assessing authority on verification of books of account and document produced by the dealer-Company found that the dealer had not included the bills raised by him against MCL for ₹4,36,50,622.00 in his OST turnover treating the same as inter-State sales of goods in course of

execution of works contract which he held as intra-State sales and taxed at the appropriate rate of 12%.

3(a). The assessing authority further found that during the material period the dealer received gross payment of ₹49,11,521.00 from M/s. Cargil India Pvt. Ltd. for erection and commissioning of electrical equipments where the dealer utilized some materials in course of execution of works. The dealer also received gross payment of ₹2,92,55,284.00 from M/s. OHPC for renovation, repairing etc. which include payment towards supply and sale of electric equipments of ₹60,40,284.00 and civil works worth ₹21,14,000.00. The dealer also received ₹2,81,732.00, ₹1,01,614.00 and ₹7,38,263.00 from M/s. SAIL, RSP, Rourkela; M/s. NALCO; and M/s. Infosys Technologies Ltd. respectively for execution of certain works which also include the labour and service charges. On the failure of the dealer to produce detailed books of account regarding the materials utilized and payments made towards labour and services, the assessing authority determined the ratio of materials used and labour and service components in the following manner :-

15 : 85 on payment received from M/s. Cargil India Pvt. Ltd.; 68 : 32 on payment received from M/s. OHPC and 68 : 32 on payment received from M/s. SAIL, RSP, Rourkela; M/s. NALCO and M/s. Infosys Technologies Ltd.

3(b). The assessing officer also having found that dealer also effected resale of materials worth ₹6,08,826.00 in course of execution of works contract as tax suffered goods, and failed to submit any books of account in support such sale, calculated tax @ 12% on resale of goods worth ₹6,08,826.00 as the dealer was supplier of electrical goods and equipments.

3(c). The assessing authority determined the GTO at ₹8,59,17,213.00 and TTO at ₹5,34,43,830.00 and calculated tax as follows :-

OST @ 12% on ₹5,05,06,820.00

OST @ 8% on ₹29,37,010.00.

Accordingly, the assessing authority raised the demand of ₹49,80,455.00 for the material year.

4. The dealer-appellant challenging the aforesaid finding of the assessing authority raising extra demand of ₹49,80,455.00 preferred appeal before the first

appellate authority, who also vide its order dated 31.12.2008 confirmed the order of the assessing authority and dismissed the appeal. The dealer further being aggrieved with the order of the first appellate authority preferred S.A. No. 15 of 2009-10 before the Tribunal, which was disposed of on 08.08.2017 confirming the orders of both the forums below.

5. The dealer-appellant knocked the door of the Hon'ble High Court of Orissa challenging the order of this Tribunal passed in S.A. No. 15 of 2009-10 by filing a writ petition under Articles 226 & 227 of the Constitution of India vide W.P. (C) No. 22449 of 2017 which was disposed of on 22.03.2021 by the Hon'ble Court with the following observations :-

> "4. Considering that in relation to the above issue, the Tribunal appears to have placed reliance upon an earlier order of the Tribunal which has been set aside by this Court, this Court considers it appropriate to set aside the impugned order and remand the Second Appeal 15 of 2009-10 to the Tribunal for a fresh decision in accordance with law.
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> 5. The Tribunal will hear the remanded appeal along with the Second Appeal No. 71 (C) of 2008-09 filed by the Assessee under the Central Sales Tax

> Act. Both appeals shall be listed before the Full Bench of the Tribunal on 3rd May 2021 for directions. The remaining issues also shall be decided afresh by the Tribunal in accordance with law."

6. In view of the above direction of the Hon'ble Court in W.P. (C) No. 22449 of 2017, both S.A. No. 15 of 2009-10 and S.A. No. 71(C) of 2008-09 were taken up for hearing. The dealer-appellant has preferred S.A. No. 71(C) of 2008-09 challenging the impugned order dated 31.07.2008 passed by the first appellate authority in Appeal Case No. AA- 25 (RL-II-C) of 2007-08 modifying the order of assessment dated 17.02.2007 passed by the assessing authority u/r. 12(5) of the Central Sales Tax (Odisha) Rules, 1957 (in short, 'CST (O) Rules') for the assessment year 2003-04 thereby reducing the demand partly.

7. In course of hearing of both the second appeals, learned Senior Advocate of the dealer-Company challenging the impugned orders passed by both the fora below vehemently urged that the orders were passed under misconception of law without keeping in mind the judicial pronouncement of the Hon'ble Apex Court in case **of Bharat Heavy Electrical Ltd. and others Vs. Union of India and**

others, reported in (1996) 4 SCC 230 and the order passed by the Tribunal in S.A. Nos. 986 to 989 of 1989-90. It was argued that the movement of goods in question having commenced from outside the State and the dealer-assessee having paid CST on such goods, the assessing authority was not correct in its approach on levying tax on such inter-State sales. The findings of the assessing authority that purchase of electrical gods worth ₹4,36,50,622.00 by the dealer-appellant is not inter-State sale, but an intra-State sale is misconceived one and against the settled position of law for which such finding is unsustainable. Both the forums below did not properly examine the facts and circumstances of the case with reference to the law laid down by the Hon'ble Apex Court in BHEL's case (supra) and illegally rejected the claim of the appellant for exemption u/s. 6(2) of the CST Act. He further argued that both the forums below have not given any legally tenable reasoning for negativing the claim of the dealer-appellant for exemption u/s. 6(2) of the CST Act relating to the transaction worth ₹4,36,50,622.00, the movement of which commenced from outside the State. He

submitted to allow the appeal and set aside the orders of both the forums below.

8. Per contra, learned Standing Counsel (CT) for the State, supporting the impugned orders passed by both the forums below, vehemently urged that the appellant procured the goods by way of purchase from outside the State of Odisha by issue of way bill, which effected the movement of goods and there involved two sales; i.e. first sale from outside the State dealer to the appellant-contractor and the subsequently sale by the contractor-appellant to the contractee (MCL) inside the State of Odisha. The second sale effected by the dealer-appellant in favour of the contractee-MCL is taxable under the OST Act and the assessing authority is competent to calculate the tax on such sale. Both the forums below did not commit any illegality in passing the impugned orders as the same were passed basing on the settled position of law and the relevant statute. The goods in question were brought from outside the State of Odisha to the customer site, i.e. MCL, and thereafter erection and installation was undertaken by the contractor with commissioning and trial run. Though the goods were brought from outside the State of Odisha, the

same were transferred by the contractor- Siemens Ltd. to the contractee- MCL after erection and commissioning. Such transfer of goods in favour of the contractee is an intra-State sale and the same is exigible to tax under the OST Act. He, relying on the decision reported in **[2008] 15 VST 401 (Ori.) in case of M/s. Voltas Ltd. Vs. State of Orissa**, argued that whether the sale is an inter-State sale or intra-State sale is to be determined from the fact whether the transfer of documents of title to the goods is an event prior to the event of taking delivery of the goods. If the transfer of documents of title to the goods is an event prior to the event of taking delivery of goods, the sale is in course of inter-State trade u/s. 6(2) of the CST Act, otherwise it is an intra-State sale. The burden is on the dealer-assessee to prove that the transfer of documents of title to the goods is earlier than taking delivery of goods. He also relied upon the decisions reported in the case of **Commercial Tax Officer Vs. Bombay Machinery Store, reported in 2020 SCC OnLine SC 415; and Indian Hume Pipe Company Ltd. Vs. State of Rajasthan and others, reported in (2019) 14 SCC 584.**

9. We have heard the learned Counsel for both the parties, gone through the materials on record vis-a-vis

the grounds taken in the appeal memo and the case cited by the parties to substantiate their contentions. In view of rival contentions of the parties, the whole dispute centres round the fact whether the electrical goods valued at ₹4,36,50,622.00 brought from outside the State by the contractor- M/s. Siemens Ltd. for the purpose of execution of turn-key contract is an inter-State sale or intra-State sale.

10. Before addressing the issue involved in the present appeal, we feel it just and proper to narrate some undisputed facts for better appreciation of the issue involved in the second appeal. There is no dispute that during the material period, the appellant-Company was awarded with a contract by M/s. MCL (a subsidiary of Coal India Ltd.), Sambalpur for route survey, design, supply, erection, stringing, sagging, testing, commissioning, trial run, obtaining statutory approval and handing over of 33 KV double circuit overhead transmission lines in tower in ring main system from 132/33 KV Central Substation at Jurabaga, Lakhanpur Area of MCL to different projects of Ib Valley Area, Lakhanpur Area and Orient Area on Turn-key basis vide agreement dated 01.11.2002 pursuant to Letter of

Intent No. MCL/SAMB/E&M/2002-03/692 dated 25.07.2002 for a total contract value of ₹6,26,00,000.00.

10(a). The contract was a works contract. The dealer-assessee brought electrical goods worth ₹4,36,50,622.00 from outside Odisha on payment of CST. All the goods in question were delivered at the site provided by the MCL for execution of the contract. The delivery of the goods was taken in course of execution of works contract and on receipt of such goods the dealer-Company executed civil and structural works followed by necessary erection, commission and testing work as per the terms of the contract, the turnover of which has been declared and assessed at Dhenkanal Circle, Angul.

11. The Hon'ble Apex Court in case of Larsen & Toubro Limited and another Vs. State of Karnataka and others, reported in [2013] 65 VST 1 (SC), summarised the legal position relating to the works contract at pages- 45 and 46 of the judgment as follows :-

> "(i) For sustaining the levy of tax on the goods deemed to have been sold in execution of a works contract, three conditions must be fulfilled : (one) there must be a works contract, (two) the goods should have been involved in the execution of a works contract and

(three) the property in those goods must be transferred to a third party either as goods or in some other form.

(ii) For the purposes of article 366(29A)(b), in a building contract or any contract to do construction, if the developer has received or is entitled to receive valuable consideration, the above three things are fully met. It is so because in the performance of a contract for construction of building, the goods (chattels) like cement, concrete, steel, bricks, etc., are intended to be incorporated in the structure and even though they lost their identity as goods but this factor does not prevent them from being goods.

(iii) Where a contract comprises of both a works contract and a transfer of immovable property, such contract does not denude it of its character as works contract. The term "works contract" in article 366(29A)(b) takes within its fold all genre of works contract and is not restricted to one specie of contract to provide for labour and services alone. Nothing in article 366(29A)(b) limits the term "works contract".

(iv) Building contracts are species of the works contract.

(v) A contract may involve both a contract of work and labour and a contract for sale. In such composite contract, the distinction between contract for sale of goods and contract for work (or service) is virtually diminished.

(vi) The dominant nature test has no application and the traditional decisions which have held that the

substance of the contract must be seen to have lost their significance where transactions are of the nature contemplated in article 366(29A)(b). Even if the dominant intention of the contract is not to transfer the property in goods and rather it is rendering of service or the ultimate transaction is transfer of immovable property, then also it is open to the States to levy sales tax on the materials used in such contract if such contract otherwise has elements of works contract. The enforceability test is also not determinative.

(vii) A transfer of property in goods under clause (29A)(b) of article 366 is deemed to be a sale of the goods involved in the execution of a works contract by the person making the transfer and the purchase of those goods by the person to whom such transfer is made.

(viii) Even in a single and indivisible works contact, by virtue of the legal fiction introduced by article 366(29A)(b), there is a deemed sale of goods which are involved in the execution of the works contract. Such a deemed sale has all the incidents of the sale of goods involved in the execution of a works contract where the contract is divisible into one for the sale of goods and the other for supply of labour and services. In other words, the single and indivisible contract, now by the Forty-sixth Amendment has been brought on par with a contract containing two separate agreements and States have now power to levy sales

tax on the value of the material in the execution of works contract.

(ix) The expression "tax on the sale or purchase of goods" in entry 54 in List II of the Seventh Schedule when read with the definition clause (29A) of article 366 includes a tax on the transfer of property in goods whether as goods or in the form other than goods involved in the execution of works contract.

(x) Article 366(29A)(b) serves to bring transactions where essential ingredients of "sale" defined in the Sale of Goods Act, 1930 are absent within the ambit of sale or purchase for the purposes of levy of sales tax. In other words, transfer of movable property in a works contract is deemed to be sale even though it may not be sale within the meaning of the Sale of Goods Act.

(xi) Taxing the sale of goods element in a works contract under article 366(29A)(b) read with entry 54, List II is permissible even after incorporation of goods provided tax is directed to the value of goods and does not purport to tax the transfer of immovable property. The value of the goods which can constitute the measure for the levy of the tax has to be the value of the goods at the time of incorporation of the goods in works even though property passes as between the developer and the flat purchaser after incorporation of goods."

Similar view was also expressed by the Hon'ble Apex Court in the case of Kone Elevator India Pvt. Ltd. Vs. State of Tamil Nadu and others, reported in [2014] 7 SCC 1.

12. In view of the aforesaid legal position, it is now crystal clear that State govt have power to levy tax on value of goods element in works contract under Article 366(29A)(b) read with Entry No. 54 of List-II even after incorporation of the goods in the contract. The value of the goods which can constitute the measure for the levy of the tax has to be the value of the goods at the time of incorporation of the goods in works. There is no dispute at bar so far as the proposition of law laid down by the Hon'ble Apex Court in the aforesaid decision. However, the dispute in the present case is whether the electrical goods brought by the dealer-appellant from outside Odisha which has been subjected to CST is an inter-State sale or an intra-State sale. If the sale is held to be an inter-State sale, the same is not exigible to sales tax under the OST Act, but if the sale is held to be intra-State sale then it is exigible to OST. The Hon'ble Apex Court in BHEL's case ibid at para-33 of the judgment observed that whether a particular sale is an inter-State sale or an intra-State sale is essentially a

question of fact. It must be said, at the same time, that it is not a pure question of fact in as much as the facts of a given case have to be examined in the light of the provisions contained in Section 3 of the Central Sales Tax Act. In the present case, electrical goods worth at ₹4,36,50,622.00 were brought from outside Odisha as per the contract executed between MCL and the dealer-appellant and those electrical goods undisputedly were as per the specification of the contract and were subjected to CST. The goods so brought were also delivered at the site of MCL and were incorporated into the works contract executed by the dealer-appellant. Now, the question arises whether under these circumstances, the sale is said to be intra-State sale or inter-State sale. In a similar situation, the Hon'ble High Court of Orissa in the case of M/s. Larsen & Toubro Ltd. Vs. State of Orissa in STREV No. 469 of 2008 relying on the judgment of the Hon'ble Apex Court in the case of BHEL ibid in paras-18 to 20 of the judgment dated 01.09.2021 observed as follows :-

> "18. On the same basis, as far as the present case is concerned, merely because the component parts were brought from different places outside Orissa

and assembled in Orissa, it cannot be said that it was an intra-State sale and that a colourable device was deployed to avoid paying sales tax under the OST Act. This is contrary to the facts. The documents placed on record clearly show that components either manufactured in the Petitioner's own facilities outside Orissa or brought from outside Orissa were transferred to Orissa for erection, testing and commissioning of the 100 TPD Rotary Kiln.

19. There was no occasion for the Tribunal to have gone into a lengthy discussion whether it amounted to a works contract when the focus ought to have been on whether it was an intra-State sale as contended by the State. The goods were indeed supplied in course of inter-State trade, and received by TRL in Orissa. The movement of the goods originated from outside the State. This was not an intra-State sale by any stretch of imagination.

20. Consequently, the Court is unable to agree with the conclusion reached by the authorities at all levels, i.e. STO, ACST and the Tribunal and accordingly all their orders in this regard are hereby set aside. Question No.1 is answered in the negative by holding that the Full Bench of the Tribunal erred in treating the transactions as intra-State sales despite those transactions having been exigible under Section 6(2) of the CST Act. Question No.1 is accordingly answered in favour of the Petitioner-assessee and against the Department."

13. The goods having been brought from outside the State of Odisha and having been subjected to CST, the same cannot be again subjected to OST, which in our considered opinion, amounts to double taxation. The revenue did not dispute that the goods were brought as per the contract entered into between the parties and those goods were delivered at the site of MCL and incorporated into the works executed by the dealer-appellant. The works contract having been subjected to OST at Dhenkanal which is also not in dispute, the goods incorporated in the works contract cannot be again subjected to OST. The reasoning given by the assessing authority holding the sale as intra-State sale is not tenable in the eye of law and the finding is against the principles laid down by the Hon'ble Apex Court in the BHEL's case (supra). The decisions on which the learned Standing Counsel (CT) has placed reliance have no application to the facts and circumstances of the present case. In case of Commercial Taxes Officer (supra) the dispute was whether tax authorities can impose a limit or timeframe within which delivery of the respective goods has to be taken from a carrier when the goods are delivered to a carrier for

transmission in course of inter-State sale. The Hon'ble Court while deciding the issue held that when the statute does not fix a timeframe for delivery, fixing of timeframe by the order of the Tax Administration of the State would be impermissible. Similarly, in case of Indian Hume Pipe Company Ltd. (supra) the issue was whether the works contract given to the assessee is divisible in nature in the facts of the case and hence, the imposition of tax and penalty made u/s. 7-AA of the Rajasthan Sales Tax Act, 1954 is justified and sustainable in the eye of law. The Hon'ble Apex Court relying on the decisions in the case of L&T Ltd. Vs. State of Karnataka, reported in (2014) 1 SCC 708; and Kone Elevator (India) (P) Ltd. Vs. State of Tamil Nadu, reported in (2014) 7 SCC 1, at para-21 of the judgment observed that a single and indivisible contract is now brought on at par with a contract containing two separate agreements and the State Governments have power to levy sales tax on the value of material in execution of the works contract. But, in the present case there is no dispute whether the goods used in execution of works contract are exigible to tax or not. The dispute is whether the goods brought from outside the State for execution of the works

contract which have been subjected to CST is again exigible to OST or not. The materials on record show that the dealer-appellant received the goods as lien at the site of the MCL and incorporated the goods in execution of the works contract. Those goods having been subjected to CST, the same is not again exigible to tax under the OST Act.

14. It is pertinent to mention here that this Tribunal while disposing of the S.A. Nos. 988 to 991 of 1997-98 rendered the findings at para-11, which were confirmed in STREV No.1 of 2002 and W.P. (C) Nos. 11127 & 11128 of 2010 by the Hon'ble High Court of Orissa vide order dated 12.12.2018, are as follows :-

> "11. In this back ground the rival contentions are now examined and the case laws relied upon by them are also referred to. In view of the settled position of law as mentioned above the contention of the Revenue taken in favour of the indivisible nature of the contract become indefensible. Similarly, the averment that there can be no sale under the C.S.T. Act, possible in "Works Contract" is also not tenable. It is an admitted position of law that State Legislature has no competence to levy taxes on the sale or purchase of goods where such sale or purchase takes place in course of inter-state trade and commerce. The same principle of law is also

applicable in case of works contract. In this regard, the judgment of Hon'ble High Court of Punjab & Haryana in case of Thomson Press (I) Ltd. Vrs. State of Haryana (100 STC 417), which Revenue has also relied upon is significant. It is held therein that the aforesaid constitutional embargo will equally apply to a case where an indivisible works contract is made divisible by a legal fiction and once the contract occasions the movement of the end-product from the State to another, the inputs or the goods involved in the execution of the works contract shall also be deemed to have moved from one State to another in pursuance of the contract and hence, cannot be made exigible to tax under the State law. The case on hand is one of such cases of works contract which clearly contains the covenant that occasioned the movements of the imported equipments as well as the indigenous equipments and spares from outside the State of Orissa to Rourkela which undisputedly constituted the inter-state sales falling under Sec. 3 & 5 of the C.S.T. Act, and, therefore, beyond the purview of the levy under the O.S.T. Act. The passing of property of goods through accretion/accession in a particular State as contended on behalf of the Revenue, is not the criteria for determining whether a sale is an inter-state sales or not. The Hon'ble Supreme Court in case of Union of India Vrs. K.G. Khosla & Co. Ltd. (43 STC 457) had observed that it is immaterial whether the property in the goods

passes in one State or another. It may pass in either State and yet the sale can be an inter-state sale. In view of the settled position of law, the decision of the authorities below holding the transactions in the instant case as inter-state sale on the ground that the property in the goods passed to the purchaser i.e. SAIL (RSP) in the State of Orissa goes counter to the principles of law laid-down by the Hon'ble Supreme Court. Therefore, the contentions taken on behalf of the Revenue that pre-delivery inspection and issue of dispatch clearance were immaterial since the property passed only on acceptance of the goods at Rourkela, that the pre-meditated sales cannot constitute a subsequent sale during the transit of the goods from one State to another and hence the transaction did not fall Under Section 3(b) & 6(2) of the C.S.T. Act, as claimed by the appellant company, are found equally untenable. It is true that pre-mediated sale cannot constitute a subsequent sale during the transit of the goods from one State to another as has been held by the Hon'ble High Court (Madras) in case of M/s. Sundaram Industries Vrs. State of Madras (86 STC 514). But with clear stipulation of a covenant in clause 10 of the contract for manufacture and supply of Equipments and spares by the assessee-Contactor as well as the Sub-Supplies and their consequent movements from outside the State of Orissa to RSP at Rourkela, the present case on hand is found distinguishable from

> the former wherein the Bangalore manufacturer supplying goods to Tuticorin buyer, neither figured in the contract nor the movement of goods from Bangalore to Tuticorin was ever contemplated by the parties to the contract. In the instant case one cannot deny that goods dispatched after inspection and clearance, were not the goods manufactured to any special specification and there was no inextricable link between the movement and the sale. Therefore, the conclusion drawn by the forums below that the supplies were in the nature of local sales, is not well founded. On the contrary, the supplies of equipments and spares are being in the nature of inter-State sales, the question whether these are sales U/s. 3(a) or U/s. 3(b) or U/s. 6(2) becomes irrelevant to the assessment under U/s. 12(4) of the O.S.T. Act, 1947."

15. So far as the case laws cited by the learned Standing Counsel (CT) for the State in case of Voltas Ltd. (supra), the facts and circumstances of the case are quite distinct and distinguishable from the facts and circumstances of the present case. In STREV No. 27 of 2004, the Hon'ble High Court of Orissa by order dated 07.02.2019 taking note of the decision in Voltas Ltd. ibid confirmed the order passed by this Tribunal in S.A. Nos. 1863-1864 of

1996-97 wherein this Tribunal in the similar facts and situation in para-4 of the judgment held as under :-

> "4...
>
> xxx xxx xxx
>
> Now the question is whether the State Government tax the goods used in course of execution of works contracts that were sold in course of inter-State trade ? This question was raised before the Hon'ble Supreme Court in Gannon Dunkerley & Co. Vs. State of Rajasthan, (88 STC 204). The Hon'ble Court decided that State legislature has no competence to tax deemed sales which constitute sale in course of inter-State trade. The constitutional restrictions hold good in these deemed sales as well as in general sales. These deemed sales are not outside the definition of sale or purchase and are always within entry 54 of the 7th Schedule. Therefore, although there is no specific amendment to the provisions made under the Central Sales Tax Act, these restrictions also hold good in case of sales in course of execution of works contract and therefore goods sold in course of inter state trade cannot be taxed under the State Act. We, therefore, find that the learned Assistant Commissioner of Sales Tax, Cuttack-II Range, Cuttack, is not justified in confirming the imposition of tax under the Orissa Sales Tax Act in these cases."

16. In view of the discussions made above, we are of the considered opinion that both the fora below have erred in law and facts in treating the electrical goods worth ₹4,36,50,622.00 brought from outside the State as intra-State sale and imposing OST on the same. So far as S.A. No. 71(C) of 2008-09 which has been filed against the order dated 31.07.2008 passed by the first appellate authority reducing the demand raised in the order of assessment by the assessing authority u/r. 12(5) of the CST (O) Rules for the year 2003-04 to ₹5,05,688.00 from ₹5,20,374.00, the same is to be recomputed keeping in mind the observations made herein above.

17. So far as other contentions raised by the learned Sr. Advocate for the appellant-Company regarding apportionment of labour and service charges vis-a-vis the materials used in the execution of works contract and disallowance of exemption claimed for re-selling of materials worth ₹6,08,826.00 which had already suffered from tax at the first or subsequent point, the assessing authority shall give an opportunity to the dealer-appellant for production of the relevant documents to substantiate his claim.

18. Resultantly, both the appeals are allowed and the impugned orders passed by the first appellate authority as well as assessing authority under the OST Act as well as CST Act are hereby set aside. The matters are remanded to the assessing authority with a direction to recompute the tax liability of the dealer-appellant as per the observations made in the preceding paragraphs after giving opportunity of hearing to the dealer-appellant to produce all such documents as required to claim the exemption u/s. 6(2) of the CST Act as well as other deductions which he is entitled to under law for the material period under dispute and complete the assessments afresh preferably within three months of receipt of this order.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(Sweta Mishra)
2nd Judicial Member

I agree,

Sd/-
(S. Mishra)
Accounts Member-II