BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: KATAKA

S.A. No. 38 (ET) of 2022

(Arising out of order of the learned Addl. CST (Appeal), Rourkela in Appeal No. AA- 88 (ET) Range /2018-19, disposed of on 16.06.2022)

Present: **Shri G. Sharma, Chairman**

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

-Versus-

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

For the Appellant : Sri B.P. Mohanty, Advocate &
Sri K.K. Panda, Advocate
For the Respondent : Sri S.K. Pradhan, Addl. S.C. (CT)

Date of hearing: 28.09.2026 *** Date of order : 16.10.2026

O R D E R

Challenging the legality and propriety of order dated 16.06.2022 passed by the Addl. Commissioner of Sales Tax (Appeal), Rourkela (hereinafter referred to as 'First Appellate Authority') in Appeal No. AA- 88 (ET) Range /2018-19, this appeal has been filed by M/s. Siemens Ltd. (hereinafter referred to as 'Dealer').

2. The brief facts relevant for disposal of this appeal run thus–

The Dealer is engaged in resale of medical equipments, transformer (self manufacture in India) and other electrical goods besides execution of works contract. Basing on the Audit Visit Report

(AVR), the Joint Commissioner of Sales Tax, Sundargarh Range, Rourkela (in short, 'Assessing Authority') initiated the assessment proceeding u/s. 9C of the Odisha Entry Tax Act, 1999 (for brevity, 'OET Act') for the period 01.04.2013 to 30.09.2015. On examination of the books of account, the Assessing Authority treated the medical equipments and training kits to be scheduled goods as per Sl. No. 9 of Part-II of the Schedule rejecting the claim of unscheduled goods and levied ET at the appropriate rate besides imposed penalty on the differential amount of ET due to wrong application of tax rate as per AVR, thereby determined the tax liability at ₹85,66,012.00 including interest for the period under assessment. Being aggrieved with the order of assessment, the Dealer preferred first appeal before the learned First Appellate Authority. The First Appellate Authority adjusted an amount of ₹30,660.00 towards ET paid and deleted the interest, thereby reduced the demand to ₹84,59,571.00 by allowing the appeal in part, hence this appeal.

3. Learned Counsel appearing on behalf of the Dealer submitted that medical equipments and training kits do not specifically find place under Entry 9 of Part-II of the Schedule under the OET Act, therefore, the fora below have erroneously levied ET on those goods resorting to Entry 9 of Part-II, which is not sustainable in law. He argued that as per Entry 77 of Schedule B under the OVAT Act, there is mention of medical equipment/devices and medical implants, whereas there is no mention of medical equipments and training kits in the Schedule under the OET Act, as such, the Legislature in its wisdom has kept away the goods, i.e. medical equipments and training kits, from the net of taxation under the OET Act, accordingly, pleaded that the impugned levy of ET is without jurisdiction, beyond the statute and liable to be deleted in the interest of justice. Supporting the submission, learned

Counsel for the Dealer relied on the decision of the Hon'ble High Court in the case of ***Hindustan Liver Ltd. v. Sales Tax officer & Another*** (**W P (C) No. 11400 of 2005**, decided on 21.01.2010).

4. Per contra, the learned Addl. Standing Counsel (CT) appearing for the State supported the orders of the fora below to be just and proper. He submitted that there is nothing wrong on the part of the fora below to hold that the medical equipments, tools and tackles are covered under Sl. No. 9 of Part-II of the Schedule under the OET Act inasmuch as equipment is a tangible long term asset such as manufacturing machinery. He argued that Legislation on its own wisdom has put machinery and equipment, by not naming any particular goods that means whatever comes within the definition of 'machinery and equipments' and this being a broader entry, it cannot be restricted to a particular category. Placing reliance on the decisions of the Hon'ble High Court of Orissa in the case of ***Orissa Agro Industries Corporation Ltd. v. State of Orissa***, **[1993] 90 STC 571 (Orissa)**; ***State of Orissa v. IPITATA Refractory Ltd.***, [1993] 91 STC 561 (Orissa); and orders of this Tribunal passed in **S.A. Nos. 116 (ET) & 41 (ET) of 2013-14**, dated 19.08.2023 (***State of Odisha v. M/s. Bonai Industrial Co. Ltd.***); and **S.A. No. 213 (ET) of 2018**, dated 16.05.2023 (***M/s. Millenium Products & Services v. State of Odisha***), learned Addl. Standing Counsel (CT) for the Revenue pleaded for dismissal of appeal having no merit.

5. On perusal of record, it transpires that the Dealer did not admit the ET liability on purchase of medical equipments and training kits on the ground of unscheduled goods, whereas the fora below held the medical equipments, tools and tackles to be covered under Entry 9 of Part-II of the Schedule under the OET Act, and levied ET thereon along with penalty.

It is felt apposite to refer the relevant entries of goods under the OET Act and OVAT Act, which are under :-

Entry 9 of Part-II of the Schedule under the OET Act refers to –

> "Machinery and equipments including earthmovers, excavators, bulldozers and road-rollers and spare parts and components used in manufacturing, mining, generation of electricity, or for execution of works contract or for any other purpose."

The goods mentioned in Entry 77 of Schedule B under the OVAT Act are –

> "Medical equipment/devices and medical implants"

From the aforesaid entries, it is crystal clear that there are specific entries of 'medical equipment/devices and medical implants' find place under the OVAT Act, which goods the Dealer deals in, whereas under the OET Act, there is no such entry of those goods under the OET Act.

In the case of ***Hindustan Lever Ltd.*** cited supra, as relied on by the Dealer, wherein the Hon'ble Court taking into consideration the definition of 'Scheduled goods" *vis-a-vis* the entries made in the OST Act and OET Act, have been pleased to observe that –

> "7. Entry 25 of Part-I of the Schedule of Orissa Entry Tax Act, 1999 refers to "Toilet soap, detergents and cosmetic products". The entries made in the Orissa Sales Tax Act and Orissa Entry Tax Act cannot be treated to be the same and similar, as the generic entry in Orissa Sales Tax is "soap and detergent" whereas in Entry 25 of Part-I of the Schedule of Entry Tax Act, 1999, it confines to "Toilet soap, detergent and cosmetic products".
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> 9. Section 2(m) of the Orissa Entry Tax Act, 1999 deals with 'Scheduled goods', which means the goods specified in the Schedule to this Act. So, neither this Court nor the Assessing Authority and much less the Assistant Commissioner of Commercial Taxes (Law), who has filed the counter-affidavit

> before this Court can subtract/add anything to the Schedule and give a new meaning to the same.
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> 13. In Entry Tax Act, tax can be levied on the goods mentioned in the Schedule. As there is no mention of "washing soap" in the entry in the Schedule under the Orissa Entry Tax Act, the assessing authority has fallen into error by taking the generic entry "soap and detergent" from the Orissa Sales Tax Act and levying tax under the Entry Tax Act."

Having regard to the above backdrop of the matter *vis-a-vis* the settled law, this Tribunal is of the humble opinion that in the present case, there being no such entry of 'medical equipments and training kits' in the Schedule under the OET Act, holding the Dealer liable to pay ET on such unscheduled goods by the fora below resorting to Entry 9 of Part-II of the Schedule as 'machinery and equipments' cannot withstand the test of law in view of the decision of the Hon'ble Court to the effect that ET can be levied on the goods mentioned in the Schedule and further nobody can subtract/add anything to the Schedule and give a new meaning to the same. Therefore, this forum feels it proper to interfere with the orders of the fora below and direct for deletion of ET along with penalty levied on the turnover of medical equipments and training kits for the period under assessment by the Assessing Authority on remand.

6. In the result, the appeal filed by the Dealer stands allowed and the impugned order of the First Appellate Authority is hereby modified to the above extent. The matter is remanded back to the Assessing Authority for recomputation of tax liability of the Dealer as per law keeping in view the observations made supra within a period of three months from the date of receipt of this order.

Dictated & Corrected by me

Sd/-
(G. Sharma)
Chairman

Sd/-
(G. Sharma)
Chairman