

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 75(C)/2019**

(Arising out of order of the ld. JCST (Appeal), Bhubaneswar
Range, Bhubaneswar, in First Appeal Case No. AA-
107221722000097, disposed of on dtd.28.01.2019)

**Present: Smt. Sweta Mishra
2nd Judicial Member**

M/s. GE T & D India Limited,
Formerly known as M/s. Alstom T&D India Ltd.,
Plot No. M-6, 2nd Floor, Samant Vihar,
Bhubaneswar. Appellant

-Versus-

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

For the Appellant : Mr. R.C. Samantaray, Advocate
For the Respondent : Mr. S.K. Pradhan, A.S.C. (C.T.)

(Assessment Period : 01.01.2014 to 31.03.2014)

Date of Hearing: 19.03.2021 *** Date of Order: 19.03.2021

ORDER

This appeal is directed against the order of the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar (in short, FAA/JCST) in First Appeal No. AA-107221722000097 dtd.28.01.2019 in modifying the assessment order passed by the learned Sales Tax Officer/Assessing Authority, Bhubaneswar-IV Circle, Bhubaneswar (in short, STO/AA) for the assessment period from 01.01.2014 to 31.03.2014 u/s.12(1)(b) of the Central Sales Tax (Odisha) Rules, 1957 (in short, CST (O) Rules).

2. The brief facts of the case is that :

The dealer-appellant, in the instant case, is engaged in re-sale of electrical and electronics goods and execution of works contract in various states. For the relevant year i.e. for the year 2013-14, the dealer-company had regularly filed the monthly return as required u/s.33 of the OVAT Act, 2004 thereof, disclosing the liability under the OVAT Act and the CST Act, 1956. The dealer effected both inter-state and intra-state sales during the period under assessment. The assessment in this case was completed u/r.12(1) of the CST(O) Rules. The dealer-company had disclosed turnover of Rs.39442742/- u/s.3(b) of CST Act towards sales in transit and claimed exemption u/s.6(2) of the CST Act. The above transactions were effected in compliance with all the conditions set out u/s.6(2) of the CST Act viz., (i) a subsequent inter-state sale, (ii) effected by transfer of documents of title to the goods during the movement of goods from one state to another, (iii) Pursuant to an earlier inter-state sale. The dealer has also made efforts to collect the 'C' & 'E-1' declaration forms from its buyers and sellers but could not submit 'C' Form only of Rs.2,33,91,284/- and failed to produce 'C' & 'E-1' form worth of Rs.1,60,51,458/- against transit sale. The dealer has not collected any CST during the period. Accordingly, the Assessing Authority has determined the GTO and NTO at Rs.3,94,42,742/- and calculated tax of Rs.4,67,826/- @2% on Rs.2,33,91,284/- due to production of Form 'C' towards transit sale and calculated tax of Rs.21,66,947/- @13.5% on Rs.1,60,51,458/- due to non-production of Form 'C' and 'E-1' towards transit sale. Thus, the total tax due for the period was

calculated for Rs.26,34,773/- under the CST Act. Since the dealer has paid no tax at the time of filing of periodical return and was demanded against the dealer in the assessment order.

3. Being aggrieved with the order of assessment, the dealer preferred first appeal before the learned First Appellate Authority/JCST (Appeal), Bhubaneswar Range, Bhubaneswar, who in turn, modified the assessment order and the dealer was required to pay total amount of Rs.33,81,647/- including interest as per provision of the Act.

4. Being further aggrieved with the order of the learned FAA/JCST, the dealer knocked the door of this Tribunal by way of filing this second appeal with the contention that, the order passed by the learned FAA/JCST is unjust, improper and not based on facts and law.

5. Cross objection has been filed by the State-Respondent in this case.

6. Learned Advocate appearing on behalf of the dealer has challenged the order passed by the learned First Appellate Authority. He has vehemently argued that, the order of the learned FAA appears to be unjust and improper. The impugned orders of appeal and assessment passed by the forums below are not just and proper under the facts and in the circumstance of the case. No adequate opportunity was given to the dealer-appellant to submit the statutory declaration forms i.e. 'C' and 'E-1'. The statutory forms are being collected from different locations and the dealer-appellant has no control over it. The learned FAA did not provide adequate opportunities to furnish the relevant documents and details, which were highlighted at the time of hearing. The imposition of penalty

on the dealer-appellant is grossly unwarranted. The learned Advocate for the dealer has filed one petition for additional evidence. Copy of the petition was served to the learned Addl. Standing Counsel. The petition was heard from both the sides and the petition was allowed. The learned Advocate for the dealer has prayed to allow the appeal filed by the dealer and to set-aside the order of the learned FAA.

7. On the other hand, during the course of hearing learned Addl. Standing Counsel, Mr. Pradhan for the State argued that, the grounds raised in the appeal petition are misconceived and liable to be dismissed in toto. The dealer-appellant was given sufficient opportunities in the forums below. Hence, his plea is not acceptable. The order of the learned FAA appears to be just and proper. There is no reasonable merit in the second appeal filed by the dealer-appellant, which is not sustainable in the eyes of law. The dealer-appellant failed to comply the statutory provisions as stated u/r.12(7) of CST (R&T) Rules and Rule 7(A) of the CST(O) Rules. Hence, the learned FAA has rightly determined the tax liability as per the statute and the grounds taken by the dealer-appellant are without any legal foundation. He has cited one order of this Tribunal bearing S.A.No.4(C)/2017-18 dtd.23.05.2018 in case of **Gupta Trading Co. –Vrs. State of Odisha**, in which it was observed that, payment of interest is automatic on the differential amount of tax accrued due to non-submission of declaration form. So, he has prayed to dismiss the appeal filed by the dealer and to confirm the order of the learned FAA.

8. Heard the learned Advocate, Mr. R.C. Samantaray appearing on behalf of the dealer and learned Addl. Standing Counsel, Mr. S.K. Pradhan on behalf of the State. Gone through the grounds of appeal, cross objection filed by the State-respondent, the impugned orders of appeal and assessment and arguments of both the sides at the time of hearing. In view of the facts and circumstances of the case and after analysing the points raised in this appeal, I am of the considered opinion that, the points raised by the learned Advocate for the dealer is quite satisfactory and this is a fit case, where the matter should be remanded back to the learned Assessing Officer to re-compute the tax liability of the dealer. Accordingly, it is ordered.

9. The appeal filed by the dealer is allowed on contest. The order of the learned First Appellate Authority is hereby set-aside. The matter is remanded back to the learned AO and he is to consider the additional evidence filed by the dealer after verifying the genuineness of the documents thoroughly and accordingly re-compute the tax liability of the dealer after giving the dealer a reasonable opportunity of being heard within a period of three months from the date of receipt of this order. The cross objection filed by the State-respondent is disposed of accordingly.

Dictated and Corrected by me,

Sd/-
(S. Mishra)
2nd Judicial Member

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