

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.**

S.A.No. 73(C)/2019

&

S.A.No. 74(C)/2019

(Arising out of order of the Id.JCST (Appeal), CT & GST
Territorial Range, Bhubaneswar, in First Appeal Case Nos. AA-
107221722000099 & AA-107221722000100,
disposed of on dtd.28.01.2019)

Present: Sri S.K. Rout
2nd Judicial Member

M/s. GE T&D India Limited,
Formerly known as M/s. Alstom T&D India Limited,
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. D. Behura, S.C. & S.K. Pradhan, A.S.C.

(Assessment Period : 01.07.2013 to 30.09.2013 & 1.4.2013 to 30.6.2013)

Date of Hearing: 22.04.2022 *** Date of Order: 07.05.2022

ORDER

Both these appeals are taken up together for disposal by
this common order as the facts and law involved in both these
appeals are similar.

2. Challenge in S.A.No.73(C)/2019 is the order dtd.28.01.2019
passed by the learned First Appellate Authority/Joint
Commissioner of Sales Tax, (Appeal), CT & GST Territorial

Range, Bhubaneswar (in short, JCST) passed in First Appeal Case No. AA-107221722000099 as against the order of assessment dtd.18.02.2017 passed under Rule 12(1)(b) of the Central Sales Tax (Orissa) Rules, 1956 (in short, CST(O) Rules) for the period 01.07.2013 to 30.09.2013 by the learned Assessing Officer/Sales Tax Officer, Bhubaneswar-IV Circle, Bhubaneswar (in short, AO/STO) raising a demand of Rs.18,40,711/-. Likewise challenge in S.A.No.74(C)/2019 is the order dtd.28.01.2019 passed by the learned First Appellate Authority/Joint Commissioner of Sales Tax, (Appeal), CT & GST Territorial Range, Bhubaneswar (in short, JCST) passed in First Appeal Case No. AA-107221722000100 as against the order of assessment dtd.18.02.2017 passed u/r.12(1)(b) of the CST(O) Rules, 1956 for the period 1.4.2013 to 30.6.2013 by the learned STO, Bhubaneswar-IV Circle, Bhubaneswar (in short, AO) raising a demand of Rs.47,80,902/-.

3. The case at hand is that, the dealer-appellant is engaged in resale of electrical and electronic goods and execution of works contract in various states for the period in question i.e. 2013-14. The dealer-company had regularly filed the monthly return as required u/s.33 of the OVAT Act, 2004 disclosing the liability under the OVAT Act and the CST Act, 1956. The dealer effected both intra-state and inter-state sale during the period under assessment.

4. In S.A.No.73(C)/2019, the dealer-company had disclosed turnover against CST Act during the said tax period at

Rs.72,60,639/- against Form 'C' with CST collection of Rs.1,45,213/- out of which Form 'C' of Rs.72,60,639/- was submitted during the assessment proceeding and accordingly NTO was disclosed by the dealer at Rs.72,60,639/- in the return. It is also observed that, during the period the dealer had declared a turnover of Rs.4,59,97,281/- u/s.3(b) of the 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 under section 6(2) of the CST Act i.e. (i) a subsequent interstate 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 interstate sale. The dealer had also made efforts to collect the 'C' and 'E-1' declaration forms from its buyers and sellers but could not submit Form 'C' and 'E-1' worth of Rs.92,28,974/-. It is evident from the assessment order that the dealer has collected CST of Rs.1,45,213/- during the period towards interstate sale against Form 'C'. Accordingly, the assessing authority has determined the GTO at Rs.5,34,03,133/- and NTO at Rs.4,40,28,946/- and calculated tax of Rs.6,88,345/- @2% on Rs.3,44,17,250/- due to production of Form 'C' & 'E-1' of Rs.92,28,974/- & Form 'C' of Rs.72,60,639/- towards transit sale & interstate sale respectively and calculated tax of Rs.12,97,579/- @13.5% on Rs.96,11,696/- due to non-production of Form 'C' and 'E-1'. Thus, the total tax due for the period amount of Rs.1,45,213/- at the time of filing of periodical return in Form 1,

balance tax due of Rs.18,40,711/- was demanded against the dealer in the assessment order.

5. In S.A.No.74(C)/2019, the dealer-company had disclosed turnover against CST Act during the said tax period at Rs.1,55,83,388/- against Form 'C' with CST Collection of Rs.3,11,668/- out of which Form 'C' of Rs.1,55,83,388/- was submitted during the assessment proceedings and accordingly NTO was disclosed by the dealer at Rs.1,55,83,388/- in the return. It is also observed that during the period the dealer had declared a turnover of Rs.9,19,00,903/- U/s.3(b) of CST Act towards sales in transit and claimed exemption u/s.6(2) of the CST Act. The above transaction were effected in compliance with all the conditions set out u/s.6(2) of the CST Act i.e. (i) a subsequent interstate 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 interstate sale. The dealer had also made efforts to collect the 'C' & 'E-1' declaration forms from its buyers and sellers but could not be able to submit Form 'E1' worth of Rs.8,86,188/-. It is evident from the assessment order that the dealer has collected CST of Rs.3,11,668/- during the period towards interstate sale against Form 'C'. Accordingly, the assessing authority has determined the GTO at Rs.10,77,95,954/- and NTO at Rs.10,65,98,098/- and calculated tax of Rs.16,17,074/- @2% on Rs.8,08,53,685/- due to production of Form 'C' of Rs.6,61,56,485/- and of Rs.1,55,83,388/- towards transit sale and interstate sale respectively along with production of 'E-1' form an amount of Rs.8,86,188/- and calculated

tax of Rs.34,75,496/- @13.5% on Rs.2,57,44,413/- due to non-production of Form 'C' & 'E-1'. Thus, the total tax due for the period was calculated for Rs.50,92,570/- under CST Act and after adjustment of tax paid amount of Rs.3,11,668/- at the time of filing of periodical return in Form-I, balance tax due of Rs.47,80,902/- was demanded against the dealer in the assessment order.

6. Being aggrieved with the assessment orders of the learned AO, the dealer preferred First Appeal before the learned FAA/JCST, wherein the order of assessment was modified to some extent.

7. Further being aggrieved with the orders of the learned FAA, the dealer has preferred the present set of appeals.

8. Cross objections are filed by the State-respondent in both these appeals.

9. Heard the contentions and submissions of both the parties in this regard. From the submission made by the learned Counsel for the dealer, it becomes clear that the wanting 'C' and 'E-1' forms were not filed before the learned FAA during the hearing of the first appeals. But now those wanting 'C' and 'E-1' forms have already been filed by the dealer before this forum. If that is so, to my considered view, the cases should be remanded back to the learned AO for verification and re-computation of tax. Learned Standing Counsel appearing for the Revenue also conceded to the claim of the dealer.

10. In the result, both the second appeals are remanded back to the learned AO for fresh assessment on verification of declaration forms 'C' and 'E-1' filed by the dealer and the orders passed by the learned FAA are hereby set-aside. The cross objections are disposed of accordingly.

Dictated and Corrected by me,

Sd/-
(S.K. Rout)
2nd Judicial Member

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