

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

S.A. No. 138 of 2008-09

(Arising out of the order of the learned ACCT, Balasore Range,
Balasore, in First Appeal case No. AA-90/BD/2007-08
disposed of on 07.12.2007)

**P r e s e n t: Shri G.C.Behera, Sri. S.K.Rout & Shri M.Harichandan,
Chairman. Judicial Member-II Accounts Member-I.**

M/s.O.C.C. Ltd. (Bhadrak Group of Projects)
Samarapur, Bhadrak. ... Appellant.

- V e r s u s -

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

For the Appellant ... Mr.S.C.Sahoo, Adv.
For the Respondent ... Mr.D.Behura, ASC

Date of hearing: **14.10.2022** * * * Date of Order: **27.10.2022**

ORDER

Challenge in this appeal is the order dated 07.12.2007 passed by the Asst. Commissioner of Sales Tax(Appeal), Balasore Range, Balasore (in short,ACST/FAA) in first appeal case No.AA.90/BD/2007-08, thereby confirming the order of assessment passed by the learned Sales Tax Officer, Balasore Circle, Balasore (in short, STO/AO) under Section 12(4) of the Odisha Sales Tax Act raising extra demand of Rs.55,962.00 relating to the year 2003-04.

2. The case at hand is that the dealer appellant is M/s.O.C.C. Ltd., a Government of Odisha undertaking engaged in execution of works contract in the jurisdiction of Bhadrak Circle, Bhadrak. It (appellant) has been registered in Bhadrak Circle, Bhadrak under Section 9 of the OST Act w.e.f. 28.11.2003. During the year under challenge, the appellant has executed various type of contract

works under different contractees. The details of payment received by it (appellant) are such as:

| | |
|---|-------------------|
| a) Executive Engineer, Salandi Canal Division | Rs.2,63,00,000.00 |
| b) Executive Engineer, R.W. Division | Rs. 61,46,454.00 |
| c) Executive Engineer, Minor Irrigation | Rs. 84,00,000.00 |

All total an amount of Rs.4,08,46,454.00 is received by the appellant from the aforesaid contractees for execution of works stated above. As the expenses shown towards labour and service charges have not been supported with muster rolls duly certified by the competent authority, the learned STO did not entertain the entire amount claimed towards labour and service charges. Accordingly, the learned STO allowed labour and service charges @32%, 42% and 62% respectively for structural works, road work and canal work instead of more claimed by the appellant. The learned STO did not consider the deductions towards payments made by the sub contractor on job work basis amounting to Rs.1,71,17,213.00 and treated the same as the turnover of the main contractor as per the guide line vide No.III (i) 94/98-2935/09.02.2001 of C.C.T. (O) Cuttack. This apart, the learned STO has also not considered the deduction of Rs.30,118.00 towards tax paid materials utilized in the contract work.

3. Being aggrieved with such order of assessment, the dealer preferred first appeal before the learned ACST (Appeal), Balasore Range, Balasore who confirmed the order of assessment.

4. Further, being dissatisfied with the order of the learned First Appellate Authority, the dealer has preferred the present second appeal as per the grounds stated in the grounds of appeal.

5. Cross objection has been filed in the instant case by the State respondent.

6. Heard the contentions and submissions of both the parties in this regard. Learned Counsel for the dealer appellant vehemently contended that the principles laid down in the case of M/s.Gannon Dunkerly & Co. Vrs. State of Rajasthan and Others has not been considered by the learned First Appellate Authority. Further contention on behalf of the dealer is that the deduction granted by the fora below relating to labour and service charges is illegal. It is also contended on behalf of the dealer that both the fora below have disallowed the first point tax paid materials worth Rs.30,118.00 from the total purchase of materials amounting to Rs.15,23,464.00 on the ground that the same have not been utilised in the work executed. Per contra, learned Standing Counsel for the revenue argued that as per the decision of the Hon'ble Apex Court in the case of M/s.Gannon Dunkerly & Co. where the dealer contractor has maintained books of accounts and those are found trust worthy, then the assessing authority shall assess the dealer as per books of accounts and where books of accounts are not found trust worthy, the assessing authority will assess to best of his judgment or as prescribed by the State Government. That learned Standing Counsel for revenue also gave emphasis stating that in this case the books of accounts maintained by the appellant are not found to be trust worthy hence the assessing officer completed the assessment basing the nature of work and allowed labour and service charges. That the payment to sub contractor by the appellant has rightly been disallowed as exempted claim, because the work of the sub contractor also involved with transfer of property in goods.

7. From the rival contentions of the parties, the sole question to be adjudicated upon in the instant case is whether deduction relating to labour and service charges allowed is proper and genuine. Prior to adjudication, let us have a glance to Rule 4-B of the Orissa Sales Tax (Amendment) Rules, 2010. A bare reading of the said rule entails that:

“In case of works contract, deduction of the expenditure incurred towards labour and service as provided in Section 5(2) AA of the Act shall be subject to production of evidence in support of such expenses to the satisfaction of the assessing authority. In the cases where a dealer executing works contract, fails to produce evidence in support of expenses incurred towards labour and service as referred to above, or such expenses are not ascertainable from the terms and conditions of the contract or the books of accounts maintained for the purpose are found to be not credible, expenses on account of labour and service shall be determined at the rate specified in the table below:

| Sl.No. | Nature of works contract | Percentage of labour service and like charges of the total value of the works. |
|--------|---|--|
| 1 | 2 | 3 |
| 1 | Structural works | 35% |
| 2 | Earth work, canal work, embankment work | 65% |
| 3 | Bridge work | 35% |
| 4 | Building work | 35% |
| 5 | Road Work | 45% |

So, it becomes evident that Rule 4B prescribes the deductions towards labour and service charges for different nature of works. The nature of work executed by the dealer assessee is squarely covered under Rule 4B of Orissa Sales Tax Amendment Rules, 2010. So in view of Rule 4B of OST Rules inserted by the Finance Department Notification dated 06.02.2010 bearing SRO No.40/2010 effective from dated 30.07.1999 and introduced by the State Government pursuant to the judgment of **Hon'ble High Court of Orissa in Larsen and Toubro , 12 STC 31 (Ori)**, deductions on labour and service charges should be allowed accordingly.

8. In the result, we are of the unanimous view to set aside the orders of fora below. The matter is remanded back to the learned assessing officer with a direction for reassessment pursuant to the provisions laid down in Rule 4B of the OST (Amendment) Rules,

2010 within a period of three months from the date of receipt of this order. Accordingly, the cross objection is disposed of.

Dictated and Corrected by me,

Sd/-
(Shri S.K.Rout)
Judicial Member-II

Sd/-
(Shri S.K.Rout)
Judicial Member-II

I agree,

Sd/-
(Shri G.C.Behera)
Chairman

I agree,

Sd/-
(Shri M.Harichandan)
Accounts Member-I