

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

S.A. No. 976 of 2004-05

(Arising out of the order of the learned ACST, Cuttack II Range,
Cuttack, in First Appeal case No. AA-345 CU-II-C/03-04
disposed of on 15.03.04)

**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.**

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

... Appellant.

- V e r s u s -

M/s.R.C.Samantaray, Partners,
Atharbanki, Paradeep.

... Respondent.

For the Appellant
For the Respondent

... Mr.M.L.Agarwal, SC.
... None.

Date of hearing: **11.10.2022** * * * Date of Order: **18.10.2022**

O R D E R

Challenge in this appeal is the order dated 15.03.2004 passed by the learned Asst. Commissioner of Sales Tax, Cuttack II Range, Cuttack (in short, ACST/FAA) in first appeal case No.AA.345-CU-II-C/2003-04 thereby setting aside the order of assessment for re-assessment passed under Section 12(4) of the OST Act by the learned Sales Tax Officer, Jagatsinghpur, Paradeep (in short, STO/AO) for the year 1999-2000 raising an extra demand of Rs.7,36,876.00.

2. The case at hand is that the dealer assessee undertook works contract with different principals like F.A. & CAO, RIP, Samal, S.E. Rly., Keonjhar, P.P.T., Paradeep, L & T, Paradeep and Indian Red Cross Society, Bhubaneswar. The gross payments received towards execution of works contract during the year under challenge was to the tune of Rs.2,73,81,032.00. The learned STO while completing the

assessment took this amount as the gross turnover and in the absence of books of accounts, deduction on account of labour and service charges was allowed @45%. Accordingly, the TTO was determined at Rs.1,50,15,567.60. Demand of Rs.7,36,876.00 has been raised including surcharge of Rs.1,80,186.81 on completion of tax @8% on TTO after giving credit of Rs.6,44,556.00 towards tax deduction at source under Section 13-AA of the OST Act.

3. Being aggrieved with such assessment order, the dealer assessee preferred first appeal before the learned ACST, Cuttack II Range, Cuttack who set aside the order of assessment for re-assessment.

4. Being dissatisfied with the order of the learned First Appellate Authority, State has preferred the present second appeal.

5. No cross objection has been filed in the instant case by the dealer respondent.

6. Despite due service of notice on the dealer assessee, he neither appeared nor engaged any one to remain present during the hearing of this appeal. So having no alternative, this Tribunal proceeded to dispose of the matter on exparte basis on merit hearing the state appellant.

7. Heard the learned Standing Counsel Mr. M.L.Agarwal for the state appellant. Perused the grounds of appeal vis-à-vis the impugned orders of the fora below and the materials available on record. Learned Standing Counsel for the State appellant contended stating that the learned ACST is illegal, unjust and erroneous in setting aside the case for re-assessment. That the dealer appellant has failed to produce detail books of account in support of labour and service charges and materials utilised in executing the works contract. That the learned STO has allowed 45% deduction towards labour and service charges and the learned ACST has accepted the deduction

towards labour allowed by the learned STO. That the learned ACST without making any examination of the work order, agreement and other documents allowed higher deduction at 45% otherwise it should be limited to 32%.

8. Heard the contentions and submissions raised by the learned Standing Counsel for the State appellant. On perusal of the case record, it is evident that the dealer is a works contractor and received gross payment of Rs.2,73,81,032.00 from Rengali Irrigation Project, Samal, SE Railways, Keonjhar, PPT Paradeep, IRC Society, BBSR and L&T Paradeep. In course of assessment, the respondent dealer claimed deduction towards first point tax paid goods of Rs.2,43,790.00 and 80% towards labour and service charges. However, the STO, Jagatsinghpur Circle, Paradeep by order dated 29.03.2003 determined the GTO at Rs.2,73,01,032.00 and granted deduction of labour and service components @45% and determined TTO at Rs.1,50,15,567.00 and imposed tax @8%. After giving deductions of tax paid of Rs.6,44,556.00 raised extra tax demand of Rs.7,36,876.00. No deduction towards first point tax paid was allowed by the learned assessing officer due to want of evidence thereof. In the first appeal, the dealer claimed to have under assessed and claimed the gross receipt at Rs.2,96,28,010.00 and claimed for credit of the said amount of Rs.9,83,847.00 instead of Rs.6,44,556.00. The dealer further claimed to grant deduction towards first point tax paid goods, but no evidence in support of the same was filed by the dealer. So the learned first appellate authority upheld the deductions of 45% towards labour and service charges and remanded the case for reassessment directing the learned assessing officer to verify the TDS certificate and collection of tax and for re-assessment on correct turnover.

9. The contention of the State is that the labour and service charges allowed is not proportionate to the work executed by the dealer. If that is so, let us have a glance to Rule 4-B of the Orissa Sales Tax (Amendment) Rules, 2010 as in the mean time said Rule 4B

of the OST Rules have come into play and accordingly the deduction has to be allowed as per the rule. The language which is entailed in Rule 4B is as follows:

“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.

10. With regard to allowing of the claim of TDS, it should be done with proper verification of account. So in view of the above analysis, we are of the considered view to remand the case to the learned assessing officer for reassessment according to the provisions of Rule 4B of the OST (Amendment) Rules, 2010.

11. 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.

Dictated and Corrected by me,

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

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

I agree,

(Shri G.C.Behera)
Chairman

I agree,

(Shri M.Harichandan)
Accounts Member-I