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

**S.A.No.86(V) of 2016-17.**

**&**

**S.A.No.102(V) of 2016-17.**

(Arising out of the order of Ld. Addl. CST(Appeal), Odisha,Cuttack, in First Appal Case No.AA/106101610000027/2015-16, disposed of on dated 19.4.2016)

**Present:-Shri G.C.Behera & Shri S.K.Rout, & Shri S.R.Mishra,**
Chairman 2nd Judicial Member Accounts Member-II.

**S.A.No.86(V) of 2016-17**

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

- **V e r s u s** -

M/s. Shakti Engineering,
At/P.O. 46,Daily Market, Badapadia,
Paradeep, Dist- Jagatsinghpur ... Dealer.

**S.A.No.102(V) of 2016-17.**

M/s. Shakti Engineering,
At/P.O. 46, Daily Market, Badapadia,
Paradeep, Dist-Jagatsinghpur ... Dealer,

**- V e r s u s –**

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

For the State ... Mr. D.Behura,
Standing Counsel,
(CT & GST Organisation)&
Mr.S.K.Pradhan,
(Addl.Standing Counsel)
(CT & GST Organisation)&
Mr.N.K.Rout,
Addl. Standing Counsel,
(CT & GST Organisation).

For the Dealer ... Mr.Golak Behari Rout,Adv

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Date of Hearing: 9-1-2024. Date Order:25-1-2024.

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**O R D E R**

The above appeals preferred U/s.78(1) of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act), by the State and dealer

respectively involving same parties and same assessment periods are taken up together for disposal by this common order.

2. The Appeal in S.A.No.86(V) of 2016-17 preferred by the State and Appeal in S.A.No.102(V) of 2016-17 preferred by the Dealer are directed against the impugned order dtd.19.4.2016 passed by the Learned Additional Commissioner of Sales Tax, (Appeal), Orissa, Cuttack, (hereinafter referred to as Learned First Appellate Authority/Ld. FAA) in First Appeal Case No. AA/106101610000027/2015-16, confirming the order of assessment of the Learned Deputy Commissioner of Sales Tax, Jagatsinghpur Circle, Paradeep, (hereinafter referred to as Learned assessing Authority/Ld. AA) passed on dated 30.11.2015 U/s. 42 of the OVAT Act, allowing refund of Rs.22,63,599.00 for the tax period from 1.4.2009 to 31.3.2014.

3. The factual matrix of the case is that the dealer assessee being a works contractor during the material period had undertaken execution of works such as repair, maintenance, replacement and removal under different principals and was in receipt of gross contractual amount of Rs.8,74,07,777.00. The Ld. AA after examining the terms and conditions of the contract made between the dealer and different principals had found that all the materials such structural steel, Pipe, Pipe fittings, Gaskets, Fasteners required for execution of works were supplied by the principals on free of cost basis except welding electrodes and industrial gases which were purchased by the dealer from the registered dealers of Orissa for which the dealer has claimed Input Tax Credit.

4. Since the dealer-contractor failed to produce the books of account pertaining to its *cent percent* claim of deduction from the GTO on account of labour, service and like charges, and considering the fact that the dealer has availed input tax credit on purchase of welding electrodes and industrial gases, the Ld. AA on application of

the rate prescribed in Appendix to Rule 6(e) of the OVAT Rules, has allowed deduction to the extent of 80% on this score, which resulted in refund of Rs.22,63,599.00 in favour of the dealer assessee.

5. On being aggrieved with the above order passed by the Ld. AA, the dealer has preferred the first appeal before the Ld. FAA, who vide his order dated 19.4.2016 confirmed the impugned order of assessment.

6. On being dissatisfied with the order passed by the Ld. FAA, the State has preferred the present appeal in S.A.No.86 (V) of 2016-17 urging for application of the rate prescribed in Appendix to Rule 6(e) of the OVAT Rules, since the dealer failed to produce the relevant books of account on account of expenses incurred for labour, service and other like charges.

7. On the contrary the dealer assessee in S.A.No.102(V) of 2016-17 has challenged the orders passed by the lower fora limiting the deductions towards labour, services and other like charges to 80% of the contractual receipts. In stead, the dealer assessee has claimed for allowance of deduction to the extent of 90% of gross receipts in view of the order passed on dated 28.2.2009 by this Tribunal in S.A.No.935 of 2004-05.

8. Both the Dealer and the State have filed memorandum of cross objections against their respective appeals.

9. Heard the case and perused the orders passed by the lower fora. The central issue for adjudication is left before us is *whether the orders passed by the lower fora in allowing 80% deduction towards labour, service and other like charges are legally justified under the facts and circumstances of the case ?*

10. As transpires from the impugned orders, the dealer does not maintain the detailed books of account in respect of expenses incurred by it towards labour, services and other like charges in executing the works. Therefore, in absence of the details of the same, and considering the very nature of the works, the Ld. AA on keeping reliance on the proviso to Rule 6 (e) of the OVAT Rules has determined such expenses to be 80% of the gross contractual receipts. It is also found that the same deduction was allowed as the works so executed by the dealer are found similar to that described at Sl.No.8 of the Appendix. Since the forum below have allowed deductions on application of Appendix to Rule 6(e) of the OVAT Rules, the appeal preferred by the State urging for application of rate prescribed in Appendix has got no merit.

11. The learned counsel of the dealer appellant has referred to the order of this Tribunal dt.28.2.2009 in S.A.No.935 of 2004-05 wherein deduction of 90% was allowed on account of labour and service charges, and has urged for allowance of an equal percentage of deduction as the nature of work remains similar. On perusal of the said order, it is found that the same was passed under the Odisha Sales Tax Act for the year 2003-04. As no fixed percentage of labour and service charges was prescribed under Odisha Sales Tax Act, the same was allowed on exercise of best judgement. But there is no scope for the Ld. AA to exercise his best of judgement under the OVAT Act to derive the percentage of such expenses which is found to have been prescribed under Appendix as stated above.

12. Under the facts and circumstances of the case and considering the very nature of the work so executed, we do not find any infirmity in the orders passed by the fora below in restricting the deduction on account of labour, services and other like charges to 80% of the gross contractual receipts. Accordingly, we also do not

find any cogent reason to interfere in the orders so passed by the lower fora.

13. Resultantly, the appeals preferred by both the State as well as by the dealer are dismissed being devoid of merit and the impugned orders passed by the Ld. FAA therefore stands confirmed. Respective cross objections filed by the dealer as well as by the State are disposed of accordingly.

Dictated and corrected by me

Sd/-

**(S.R.Mishra)**
Accounts Member-II

Sd/-

**(S.R.Mishra**)
Accounts Member-I

I agree,

Sd/-

**(G.C.Behera**)
Chairman

I agree,

Sd/-

**(S.K.Rout)**
2nd Judicial Member.