

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

S.A. No.2 of 2016-17

(Arising out of the order of the learned JCST, Cuttack-II
Range, Cuttack in first appeal case No.
AA/22/CUII/OST/2015-16 dtd.22.01.2016)

Present: **Shri S.K. Rout, 2nd Judicial Member**
&
Shri B. Bhoi, Accounts Member-II

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

..... Appellant.

-Vrs. -

M/s. Bijaya Kumar Panda
Khartang, Nurtang, Cuttack.

..... Respondent.

For the Appellant : : Mr. D. Behura, Id. S.C.(C.T.)
For the Respondent : : Mr. H.S. Patra, Id. Advocate

Date of Hearing : 14.02.2023 * Date of Order: 10.03.2023**

O R D E R

The State is in appeal against the order dated 22.01.2016 of the Joint Commissioner of Sales Tax, Cuttack-II Range, Cuttack (hereinafter called as 'Id. FAA') in first appeal case No. AA/22/CUII/OST/2015-16 allowing the appeal and refund of Rs.6,557.00 against the demand of Rs.97,730.00 raised at assessment u/s 12(4) of the OST Act.

2. The facts in nutshell are that M/s. Bijaya Kumar Panda, Khartanga, Nurtang, Cuttack is a works contractor. The dealer-assessee has been assessed u/s 12(4) of the OST Act by the Id. Sales Tax Officer, Cuttack-II Circle, Cuttack U/s.12(4) of the OST Act for the year 2000-01 raising demand of Rs.97,430.00.

3. On being aggrieved against the order of assessment, the Contractor-respondent preferred first appeal. The demand raised by the Id. STO U/s.12(4) of the OST Act was reduced to Nil and refund of Rs.6,557.00 was rather emanated at the forum below.

4. The State preferred second appeal before this Forum challenging the order of the Id. FAA to be erroneous on the grounds that the Id. FAA has allowed deduction towards materials supplied by the contractee without any observation as to whether the goods have suffered tax or not as to whether the goods have been supplied free of cost or on cost recovery basis. Further, it is contended that the entire deductions was allowed in respect of turnover of earth work was without any observation to that effect.

There is no cross objection filed by the contractor-respondent.

5. The orders of assessment, first appeal order, grounds of appeal and the materials on record are gone through at length. It is observed that the dealer contractor was assessed exparte u/s 12 (4) of the OST Act on 31.4.200, as the same was due to be barred by limitation and demanded tax of Rs.97,430.00 including surcharge of Rs.8,857.00. The demand so raised was confirmed in the first appeal due to non submission of the books of accounts by the contractor-respondent despite advancement of adequate opportunity for the purpose. As per the directions of the Orissa Sales Tribunal passed in S.A. No.23 of 2014-15, as observed in the impugned first appeal order, the dealer-contractor was noticed for production of the books of accounts. It is observed from the first appeal order dated 22.01.2016 to the effect

that the Ld. FAA has verified the books of accounts, work order, agreement copy, Gazette Notification towards claim of exemption for payment of tax, TDS certificates obtained from deducting authority for the year under appeal. As is apparent from the first appeal order, the contractor-respondent during the year under appeal has executed works under the Executive Engineer, Mahanadi North Division, Cuttack, Executive Engineer, IDCO, Cuttack Division, Executive Engineer, Rural Works Division, Cuttack and has received gross payment of Rs.1,25,103.00, Rs.8,58,000.00 and Rs.2,48,566.00 respectively for cyclone relief works and Prime Minister's Relief works. It is also observed that the dealer-contractor has claimed exemption from payment of tax; submitted TDS certificates and has claimed deduction towards the cost of materials supplied by the Departments and execution of earth works. The Ld. FAA determined the GTO at Rs.12,31,669.00. After deductions towards the cost of materials for Rs.2,28,464.00, Rs.1,94,342.00 for earth works and Rs.3,23,545.20 towards labour and service charges, the TTO stood at Rs.4,85,318.00. Tax @ 8% thereon calculated to Rs.38,825.44 and surcharge @10% on Rs.38,825.44 came to Rs.3,882.54. Thus, the total tax due was for Rs.42,707.98 against which, Rs.49,265.00 having been deducted at source, an amount of Rs.6,557.00 was found refundable to the dealer-contractor.

6. On a minute perusal of the impugned first appeal order, it is said for certain that it does not portray the details of the materials supplied by the Departments as to whether the same were suffered tax or not. The reasonability of allowing the cost of earth works has

not been explained. It is a matter of dismay that there was no documentary evidence produced in support of the claims of deduction/exemption at the time of hearing at the fora below as has been mentioned in the first appeal order, but the Ld. FAA has ordered as saying that the books of accounts, works orders, agreement orders, TDS certificates etc have been verified in details. There is disagreement in having dual versions.

7. Under the above backdrop, it is of the considered views that the impugned first appeal order is not a reasoned one and thus, it is felt expedient to reassess the dealer-contractor calling for the relevant books of accounts and necessary documentary evidence in support of the claims of deductions or exemption of tax as the case may be from the dealer-contractor affording reasonable opportunity of being heard.

8. Hence, it is ordered.

The appeal filed by the State is allowed. The impugned case is set aside with direction to the learned assessing officer to assess the dealer contractor afresh in the light of the observations made supra. The instant appeal is disposed of accordingly.

Dictated and corrected by me.

**Sd/-
(Bibekananda Bhoi)
Accounts Member-II**

**Sd/-
(Bibekananda Bhoi)
Accounts Member-II**

I agree,

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