

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

**S.A. No. 143 of 2005-06**

(Arising out of order of the learned ACST, Puri Range,  
Bhubaneswar in Appeal No. AA 176/BH.II/2004-05,  
disposed of on 18.01.2005)

Present: **Shri G.C. Behera, Chairman**  
**Shri S.K. Rout, 2<sup>nd</sup> Judicial Member &**  
**Shri B. Bhoi, Accounts Member-I**

M/s. IRICON International Ltd.,  
323, Saheed Nagar, Bhubaneswar ... Appellant

-Versus-

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

For the Appellant : Sri C.R. Das, Advocate  
For the Respondent : Sri D. Behura, S.C. (CT)

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Date of hearing : 29.08.2023      \*\*\*      Date of order : 22.09.2023  
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**ORDER**

Dealer assails the order dated 18.01.2005 of the Asst. Commissioner of Sales Tax, Puri Range, Bhubaneswar (hereinafter called as 'First Appellate Authority') in F A No. AA 176/BH.II/2004-05 confirming the assessment order of the Sales Tax Officer, Bhubaneswar-II Circle, Bhubaneswar (in short, 'Assessing Authority').

2. The facts of the case, in brief, are that –

M/s. IRICON International Ltd. is a works contractor and executed works under different authorities. The assessment relates to the year 2000-01. The Assessing Authority raised tax demand of ₹22,39,065.00 u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act').

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority confirmed the tax demand and dismissed the appeal. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

The State files cross-objection to the additional grounds of appeal.

3. The learned Counsel for the Dealer submits that the finding of the First Appellate Authority regarding deductions of 42% and 22% towards labour and service charges in Airport work and GRIDCO work respectively are unjust and improper. He further submits that levy of OST on the purchases made by the Dealer to the tune of ₹1,24,30,828.00 and ₹5,83,12,626.00 made in course of inter-State trade are illegal. He has also advanced an additional ground that the assessment of the principal contractor is not proper when the same has been re-awarded to the sub-contractors. So, he submits that the orders of the First Appellate Authority and Assessing Authority are otherwise bad in law and the same require interference in appeal.

He relies on the decision of the Hon'ble Apex Court in case of *State of Andhra Pradesh & others v. Larsen and Tourbo Ltd. & others*, reported in [2008] 17 VST 1 (SC) and orders of this Tribunal passed in **S.A. No. 1233 of 2006-07** dated 07.11.2009 and **S.A. No. 16 of 2008-09** dated 30.04.2012.

4. Per contra, the learned Standing Counsel (CT) for the State submits that the deductions allowed towards labour and service charges by the Assessing Authority and confirmed by the First Appellate Authority are just and proper since the Dealer was unable to produce the books of account for the works executed by it. He further submits that the Dealer is not able to place the material evidence on inter-State purchases before the Assessing Authority, so the Assessing Authority has rightly levied OST treating as

intra-State transactions. He further contends that the Dealer had received the payments from the contractees and sub-contractors have not received any payment from the contractees, so he submits that the principal contractor is liable to pay OST unless contrary is proved by it. Therefore, he submits that the findings of the Assessing Authority and First Appellate Authority are justified and need no interference in appeal.

5. Heard rival submissions of the parties, gone through the orders of the First Appellate Authority and Assessing Authority vis-a-vis the materials on record. The Dealer executed different works under different contractees. The Dealer had awarded the work to sub-contractors, i.e. M/s. Vimal Constructions, M/s. Satoon Power Control Ltd. and M/s. Supreme Tele Communication Ltd. to work on behalf of it. The sub-contractor, i.e. M/s. Vimal Constructions was assessed by the Assessing Authority for the year 1998-99. The sub-contractor preferred first appeal against the said assessment and the First Appellate Authority directed the Assessing Authority to re-assess the principal contractor.

In the present assessment, the Dealer failed to produce the books of account. So, the Assessing Authority assessed the Dealer by adopting the best judgment principles. The Assessing Authority raised tax demand of ₹22,39,065.00 after allowing due adjustment of tax already paid.

In appeal, the First Appellate Authority confirmed the assessment order.

6. The Dealer had challenged the allowance of deduction towards labour and service charges relating to Airport, GRIDCO and Railway works as inadequate; and levy of OST on inter-State transactions of ₹1,24,30,828.00 from GRIDCO and ₹5,83,12,626.00 from Railway. He files additional grounds of appeal for realization of tax on the works executed by the sub-contractor.

In the instant case, it is not in dispute that the Dealer is principal contractor and M/s. Vimal Constructions is a sub-contractor, who executed the work under the Dealer.

The assessment order reveals that the sub-contractor, i.e. M/s. Vimal Construction was assessed, and the said sub-contractor preferred 1<sup>st</sup> appeal bearing No. AA – 321/BH-II/2000-01 dated 23.07.2002, wherein the First Appellate Authority observed that the turnover of sub-contractor shall not be assessed as the principal contractor is liable to be assessed.

It further reveals that the Dealer fails to produce any labour, service register and materials involved in the said work. The Dealer also fails to produce any TDS certificates in support of the payments. So, the Assessing Authority assessed the tax liability of the Dealer in best judgment principles.

The assessment order further reveals that the Dealer-contractor re-awarded the works relating to GRIDO and GM, Central Organization to other sub-contractors. The Assessing Authority assessed the tax liability of the Dealer and raised demand of ₹22,39,065.00 after allowing adjustment of tax paid. The First Appellate Authority confirmed the demand.

7. The Dealer claims that the Dealer had already released the payments to the sub-contractors and submits that he is not liable to pay any OST in respect of the works awarded by the contractees as he has already re-awarded the same to the sub-contractors. Furthermore, the Dealer raised the ground that the labour and service charges allowed is in lower side and levy of OST on the inter-State purchases is illegal and unjust.

8. As regards the issue raised in additional ground that the computation of tax liability on the Dealer is not sustainable as the sub-contractors have executed the works and are liable to pay the same.

It is settled law decided by the Hon'ble Apex Court in the case of *Builders' Association of India v. Union of India*, reported in [1989] 73

**STC 370 (SC)**, wherein Hon'ble Apex Court was pleased to observe that even if there is no privity of contract between the contractee and the sub-contractor, that would not do away the principle of transfer of property by the sub-contractor by employing the same on the property belonging to the contractee. This reason is based on the principle of accretion of property in goods. It is subject to the contract to the contrary. In such a case, the work, executed by sub-contractor results in a single transaction and not multiple transaction to avoid plurality of deem sales which would be contrary to Article 366(29A)(b) of the Constitution. Moreover, it may result in double taxation as violative of Articles 14, 19(1)(g) and 265 of the Constitution of India.

In view of the ratio laid down above, ordinarily unless there is a contract to the contrary in the case of a works contract, the property in the goods used in the construction of a building passes to the owner of the land on which the building is constructed, when the goods or materials used are incorporated in the building. It is not in dispute regarding the execution of works by the sub-contractors. Unless the contractor proves the contracts contrary, the principal contractor is liable to pay the tax to the State exchequer.

In the instant case, the assessment order further reveals that the contractees, i.e. Director of Airport Authority, GRIDCO and GM, Central Organization Railway Electrification, released total payment of ₹8,90,01,124.00 in favour the Dealer-contractor. In this regard, the Dealer has filed the copy of the work order issued by it to the sub-contractor containing the obligations of the contractor as per Annexure-2. The relevant portion is quoted herein below for better appreciation :-

**“1.1. Contract Tax Deductions –**

Works Contract Tax/ Commercial Tax as applicable at the site of works at Bhubaneswar Airport shall be borne by the Sub-contractor, M/s. Vimal Constructions on the total contract value with AAI.

M/s. Vimal Construction shall allow to IRCON to deduct the same amount from their bills that is deducted by AAI on account of contract tax. The total refund if any on this account to IRCON at any stage shall be in turn released to M/s. Vimal Constructions immediately.”

The Dealer fails to file any inter-se documents in between the Dealer and other two sub-contractors. In view of the above clause of the Annexure-2, the sub-contractor shall allow the Dealer to deduct the same amount from their bills, i.e. deducted by AAI on account of contract tax. The total refund, if any, on this account to the Dealer at any stage shall be in turn released to the sub-contractor immediately. The assessment order reveals that the Dealer has received the total payment from the contractees. The Dealer has not furnished any materials that the sub-contractors have received any amount from the contractees directly regarding the works executed by them. The Dealer fails to produce any TDS certificates in support of payments made to the sub-contractors for the works re-awarded to them. So, we do not find any illegality in the assessment order and the first appeal order making liable to pay the OST on the amount received from the contractees.

9. As regards the allowance of deduction towards labour and service charges relating to Airport Work, the nature of works executed under Airport Authority reveals that the Dealer had executed runway and construction of embankment, pavements, parallel drain and allied works. Considering the nature of works, the Assessing Authority allowed 42% deduction towards labour and service charges in absence of proper books of account. The First Appellate Authority confirmed the deduction allowed by the Assessing Authority by applying the Works Department Circular No. 10273/W dated 07.04.1986, which has already been declared obsolete. So, the same is not tenable in the eye of law. However, even applying Rule 4-B of the OST Rules in case of deduction towards labour and service charge,

the deduction of 42% towards labour and service charges appears to be reasonable taking into consideration the nature of works which includes embankment, pavements and parallel drawn works including runway. Earlier, this Tribunal in **S.A. No. 1233 of 2006-07** for the assessment year 2001-02 has confirmed the allowance of 42% of labour and service charges by the First Appellate Authority for the similar works executed by the Dealer. Therefore, this forum should not permit to change such position unless contrary is proved by the Dealer. So, this forum finds no illegality in allowing such deduction by the Assessing Authority on this score.

10. As regards deduction of 22% allowed towards labour and service charges in respect of contract works under GRIDCO, the impugned order reveals that the Assessing Authority has observed that there were two types of contract, one is supply contract and another is erection contract. Erection contract includes performance of all activities, such as (i) complete project management; (ii) inland transportation, insurance etc.; (iii) providing training to the employers' personnel; (iv) associated civil works, such as contouring and site levelling of sub-station area, foundation of transformer, etc., construction of cable trains, draining system and boundary wall, water and sewerage system and staff colony; (v) installation of plant and equipments; (vi) testing, commissioning and operational acceptance of sub-stations for the complete execution of sub-stations covered under package-D. This nature of works shows that it includes both labour and construction of civil works. So, the deduction towards labour and service charges should be allowed to 35% in view of Rule 4-B of the OST Rules in absence of proper books of account. But, in the present case, the Assessing Authority allowed 22% deduction and the same has been confirmed by the First Appellate Authority, which appears to be not proper. Therefore, we are inclined to allow the deduction of 35% towards labour and service charges

in view of Rule 4-B of the OST Rules having not maintained proper books of account by the Dealer on this score.

So far as deduction relating to Railway works is concerned, the Dealer claims that 40% towards labour and service charges allowed is not justified. We have already rendered our views in the similar work executed under GRIDO, which includes both labour and civil works. In the Railway Works also it includes system design, supply, installation and commissioning of 2 MB and 34 MB of OLTEs, digital primary drops insert MUX, higher order MUX and other associated equipment for Optical Fibre Communication system. So, the same should be allowed 35% as per Rule 4-B of the OST Rules instead of 40% as it includes both labour and civil construction works. Therefore, the finding of the First Appellate Authority and Assessing Authority regarding deduction of 40% towards labour and service charges in absence of books of account is not proper and thus, the same is restricted to 35%.

11. As regards the claim of the Dealer regarding levy of OST on receipt of ₹1,24,30,828.00 from GRIDCO and ₹5,83,12,626.00 from Railway having been made in course of inter-State trade, the assessment order reveals that the Dealer-Company had purchased material worth of ₹1,30,88,237.20, which were utilized in the said works. It had purchased tax paid cement from the registered dealer inside the State of Odisha to the tune of ₹17,54,814.00 besides inter-State purchase amounting to ₹98,86,280.20 against 'C' form and rest purchase worth of ₹4,47,143.00 against Form-XXXIV. The Assessing Authority only allowed deduction towards tax paid cement utilized in the works, which is not correct. The Assessing Authority should not have levied OST on the purchase transaction of ₹98,86,280.20 against 'C' form as the same is not coming under the ambit of intra-State sale, rather under inter-State sale. This consistent view has been rendered by this Tribunal in case of self-same Dealer in **S.A. No. 1233 of 2006-07** and



**S.A. No. 16 of 2008-09** for the assessment years 2001-02 and 2002-03 respectively. So, this matter requires further examination by the Assessing Authority. The views rendered by this Tribunal in S.A. No. 1233 of 2006-07 and S.A. No. 16 of 2008-09 have already reached to its finality as neither of the parties was aggrieved on the same. So, the impugned order requires interference in appeal.

12. So, for the foregoing discussions, we feel it proper to remit the matter to the Assessing Authority for reassessment in the light of the above observations. The Dealer is at liberty to furnish all the material evidences that require for due adjudication of the case by the Assessing Authority on the above score. Hence, it is ordered.

13. Resultantly, the appeal is allowed in part and the impugned order of the First Appellate Authority stands modified to the extent observed above. The matter is remanded to the Assessing Authority for reassessment keeping in view the observations supra as per law within a period of three months from the date of receipt of this order. Cross-objection is disposed of accordingly.

**Dictated & Corrected by me**

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

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

**I agree,**

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

**I agree,**

**Sd/-  
(B. Bhoi)  
Accounts Member-I**