

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

**S.A. No. 01 of 2012-13**

(Arising out of the order of the learned JCST,  
Angul Range, Angul, in First Appeal case No. AA/AL/10/08-09)  
disposed of on 29.02.2012)

**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.OCC Ltd.,  
Samal Canal Project,  
Samal Barrage, Angul.

... Respondent.

For the Appellant  
For the Respondent

... Mr. M.L.Agarwal, SC(CT).  
... Mr. R.K.Panda, A/R.

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Date of hearing: **28.12.2022**

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Date of Order: **30.12.2022**  
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**ORDER**

State has preferred this appeal challenging the order dated 29.02.2012 passed by the learned Deputy Commissioner of Sales Tax, (Appeal), Angul Range, Angul (in short, FAA) in first appeal case No.AA/AL/10/08-09, thereby allowing the appeal and modifying the assessment with more amount of refund i.e. Rs.34,098.00 against the order of assessment passed by the learned Sales Tax Officer, Angul Circle, Angul ( in short, STO/AO) under Section 12(4) of the OST Act on dated 23.03.2009 with a refund of Rs.23,548.00.

2. The dealer in the instant case is a works contractor who has executed works under the authorities of Rengali M.I.P. and there are two types of works such as earth work and concrete work during the period under challenge. The dealer contractor has undertaken excavation, transportation, painting work, and

concrete work under the above authorities and has received the gross payment of Rs.39,96,334.00. An amount of Rs.1,59,853.00 has been deducted as sales tax in shape of TDS. The dealer has utilised OST suffered materials of steel and cement of Rs.8,20,988.00 in execution of the work. On verification of the list of first point tax paid goods on steel and cement, the learned STO allowed deduction. Learned STO after verification of R.A. bills and the statement furnished by the dealer found that an amount of Rs.6,31,989.23 gross payment is received by the dealer for excavation, transportation and painting works out of which 87% towards labour and service charges has been allowed for deductions. But on the rest amount of Rs.33,64,344.00, the STO allowed 32% of deduction towards labour and service charges. The gross amount of deduction towards labour and service charges of Rs.16,26,420.93 has been allowed to the dealer. This apart from the balance amount of Rs.23,69,913.03, deduction of Rs.8,209.88 towards OST suffered materials utilised in the execution of work contract has been allowed to the dealer. So, the TTD arrived at Rs.15,48,925.05 and taxed @ 8%. The tax due and surcharge @10% together calculated at Rs.1,36,305.00. When the dealer appellant has already paid Rs.1,59,853.00 in shape of TDS under Section 13 AA of the OST Act, balance amount of Rs.23,548.00 becomes refundable in favour of the dealer.

3. Against such order of the learned STO, the dealer preferred first appeal before the DCST (Appeal), Angul Range, Angul/ FAA who allowed the appeal and modified the assessment with more amount of refund i.e. Rs.34,098.00

4. Being dis-satisfied with the order of the learned first appellate authority, the State has preferred the present second appeal as per the grounds stated in the grounds of appeal.

5. No cross objection is filed in this case on behalf of the dealer respondent.

6. During course of argument, the learned Standing Counsel for the revenue contended that the orders of both the fora below appear to be on higher side deduction since the dealer could not produce any labour and service account and as such this case should be guided by Ganon Dunkerleys case (1993) 88 STC page 204(SC). So the order of the DCST may be set aside and suitable direction may be given for allowing of the deductions on labour and services. On the other hand, learned Counsel for the dealer argued that the learned assessing officer passed an order of assessment arbitrarily which is bad in law and against justice. It is also contended on behalf of the dealer that the learned assessing officer allowed labour and service charges of Rs.16,26,420.95 which is 40.69% of the gross payment received but he should have allowed @60% labour and service charges on the turnover. That the learned assessing officer became reluctant to give credit of TDS amounting to Rs.2,12,000.00 which was deducted on work advance.

7. Heard the contentions and submissions of both the parties in this regard. Perused the orders of fora below vis-à-vis the materials available on record. From the assessment order, it becomes quite clear that the dealer had not maintained any books of accounts regarding expenditure towards labour and service charges for which the assessment was completed to the best of judgment by allowing reasonable percentage on the work done.

8. This apart from the order of the learned first appellate authority, it reveals that the claim of the dealer for TDS amounting to Rs.2,12,000.00 was not considered for want of original TDS certificate which was not found place in the statement furnished at the stage of assessment. The learned first appellate authority allowed 90% of the turnover on excavation work and 35%

of concrete work for deduction. But such deduction appears to be not genuine in the eye of law when it is very much clear that the dealer had not maintained any books of accounts regarding expenditure towards labour and service charges for which the assessment was completed to the best of judgment of the learned STO. Now, with regard to the contention of the State (appellant) that the labour and service charges allowed is not proportionate to the work executed by the dealer, let us have a glance to Rule 4B of Odisha Sales Tax (Amendment) Rules, 2010. 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.

9. With regard to the contention of the dealer relating to the reluctance of the learned assessing officer to give credit of TDS amounting to Rs.2,12,000.00 which was deducted on work advance, may be considered by the learned assessing officer if the original TDS certificate is furnished by the dealer. So, when no certificate had been produced by the dealer to substantiate such claim of TDS, disallowing of such claim is genuine.

10. In view of above analysis, we are of the considered view that the instant case should be remanded to the learned assessing officer for reassessment resorting to Rule 4B of OST (Amendment) Rules, 2010.

11. In the result, the appeal preferred by the State is allowed in part and the orders of the fora below are hereby set aside and the case is remanded to the learned assessing officer for reassessment, pursuant to the provisions of Rule 4B of the OST (Amendment) Rules, 2010 within three months of receipt of this order after giving a reasonable opportunity to the dealer of being heard.

Dictated and Corrected by me,

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

**I agree,**

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

**I agree,**

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

**(Shri M.Harichandan)**  
**Accounts Member-I**

