

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

**S.A. No. 33 of 2010-11**

(Arising out of order of the learned JCST, Puri Range,  
Bhubaneswar in First Appeal No. AA – 7-OST/BHIV/09-10,  
disposed of on 30.12.2009)

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

M/s. Orissa Bride & Construction Corpn. Ltd.,  
Setu Bhawan, Nayapalli, Bhubaneswar ... Appellant

-Versus-

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

For the Appellant : Sri P. Mohapatra, Advocate  
For the Respondent : Sri M.L. Agarwal, S.C. (CT)

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Date of hearing : 27.10.2022      \*\*\*      Date of order : 18.11.2022  
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**ORDER**

The Dealer assails the order dated 30.12.2009 of the Joint Commissioner of Sales Tax, Puri Range, Bhubaneswar (hereinafter called as ‘First Appellate Authority’) in F A No. AA – 7-OST/BHIV/09-10 reducing the assessment order of the Sales Tax Officer, Bhubaneswar-IV Circle, Bhubaneswar (in short, ‘Assessing Authority’).

2. The case of the Dealer, in brief, is that –

M/s. Orissa Bridge & Construction Corporation Ltd. is engaged in execution of works contract under different Divisions of Government of Odisha. The assessment period relates to 2004-05. The Assessing Authority

raised tax demand of ₹97,90,828.00 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 allowed the appeal in part and reduced the tax demand to ₹85,33,540.00. Being further aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

The State files no cross-objection.

3. The learned Counsel for the Dealer challenges the orders of the fora below on the following grounds :

- (i) Wrongly disallowed 15% overhead charges;
- (ii) Did not allow the TDS of ₹1,01,266.00;
- (iii) Should have allowed labour and service charges @ 35%, which was allowed by this Tribunal in previous year;
- (iv) Went wrong in disallowing the deduction towards price and job work amounting to ₹29,83,24,189.00 and direct labour charges amounting to ₹2,59,71,003.00 on the ground that no supporting documents were produced;
- (v) Should have allowed the deduction towards consumption of materials for a sum of ₹27,38,742.00 basing on the valid sales tax paid vouchers; and
- (vi) Failed to accept the claim of ₹5,26,024.00 towards supply of materials by the contractee.

So, he contends that the orders of the fora below are contrary to the law and facts involved and require interference in appeal.

4. Per contra, learned Standing Counsel (CT), Mr. Agarwal, for the State objects the contentions of the Dealer and submits that the Dealer should have produced original TDS certificate and valid documents for acceptance of its claim. So, he submits that the orders of the fora below do

not require any interference. He also supports the finding of the First Appellate Authority as well as Assessing Authority.

5. Having heard the rival submissions and the materials available on record, it is not in dispute that the Dealer is a Govt. of Odisha undertaking executing works contract under different authorities. The works relate to the assessment year 2004-05. The assessment order shows that the Dealer disclosed gross receipt of ₹37,48,06,358.00 towards execution of works contract. He also received ₹12,27,391.00 towards hire charges in the assessment year. After verification of the TDS certificates produced, it was detected that the Dealer has not included ₹79,91,948.00. The Dealer has also submitted TDS certificate in the case of Executive Engineer, R&B Division, Rayagada and Executive Engineer, RW Division, Ganjam wherein, the Dealer has received ₹1,93,94,461.00 and ₹20,83,569.00 respectively, but the Dealer had not included the same in the turnover. The same were added to the disclosed amount. The Assessing Authority determined the GTO at ₹40,55,03,727.00. He allowed deduction of ₹12,97,61,193.00 towards labour and service charges @ 32% and ₹39,760.00 towards materials supplied by the Department and utilized in the contract works. He determined the TTO at ₹27,57,02,774.00. He computed the tax @8%, which comes to a sum of ₹2,20,56,222.00, added surcharge @ 10% i.e. ₹22,05,622.00 and accordingly, raised tax of ₹2,42,61,844.00. The Dealer had paid ₹1,44,71,016.00 by way of TDS. So, the Dealer was liable to pay ₹97,90,828.00 in assessment.

5.1. The assessment order further shows that the Dealer has claimed 15% towards overhead charges. The Dealer could not produce any material evidence in support of its claim. So, the Assessing Authority disallowed the same. The Dealer has also claimed deduction of ₹29,83,24,189.00 towards price and job work, ₹2,59,71,003.00 towards direct labour charges and ₹27,38,742.00 towards materials consumed, but the Dealer could not show

any material in support of its claim, for which the Assessing Authority disallowed the claims. The Dealer has also produced xerox copies of two nos. of TDS certificate for a sum of ₹1,01,266.00 which were not accepted in absence of original. The Dealer has also submitted certificate of deduction of material of ₹39,760.00 in respect of the works of Executive Engineer, Baliguda R&B Division in which the deducting authority certified that the OST has been paid at the time of procurement of the materials supplied. So, the Assessing Authority allowed the said deduction on the materials supplied.

6. The First Appellate Authority deleted ₹2,14,78,030.00 which was included by the Assessing Authority in the turnover. The First Appellate Authority further found that the Dealer had produced TDS certificate showing receipt of payment of ₹1,93,94,461.00 for the works relating to Executive Engineer, R&B Division, Rayagada, but the turnover as per audited account of ₹1,89,45,999.00. So, the differential turnover was of ₹4,48,462.00 and the same was added to the gross payment received.

7. The First Appellate Authority confirmed the finding of the Assessing Authority regarding disallowing the claim of deduction of 15% towards overhead charges on the ground that the Dealer fails to substantiate such claim by producing any materials. In this regard, the Dealer has produced the relevant Circular of Works Department dated 15.05.2001. The R.A. Bill of Executive Engineer, Balasore Division (under Annexure-3) shows addition of 15% towards corporation charges, but the fora below did not entertain the same on the ground for want of documentary evidence. As per the above circular, the Dealer is entitled to 15% overhead charges (corporation charges) under Annexure-3. The Dealer is at liberty to file relevant documents, if any, before the Assessing Authority, who shall allow the claim in accordance with law.

8. Admittedly, the orders of the fora below show that the Dealer has not produced the books of account. But, the Assessing Authority allowed 32% deduction towards labour and service charges, which was confirmed by the First Appellate Authority, which is not proper. In absence of any books of account, the fora below should have allowed the deduction on labour and service charges as per amended provision of Rule 4-B of the OST Rules considering the nature of works executed by the Dealer during the period under assessment.

9. As regards the claim of TDS for ₹1,01,266.00, the Dealer has not produced the TDS certificate for our consideration. So, as the matter shall be remanded for fresh assessment on other score, the Dealer is at liberty to produce original TDS certificate to that effect before the Assessing Authority, who shall examine the issue in accordance with law.

10. As regards the price and job work; direct labour charges and consumption of materials are concerned, the fora below disallowed the said claim for want of documentary evidence except for ₹39,760.00 against the certificate issued by the Executive Engineer, R&B Division, Baliguda towards cost of materials supplied by the Department. During hearing of this appeal, the Dealer also failed to adduce any material documents to support of its claim. So, in absence of any material evidence, the fora below have rightly disallowed the claim of the Dealer on this score.

11. So, on the foregoing discussions, we do not find any illegality in the orders of the fora below regarding refusal of the claim on account of price and job work, direct labour charges, consumption of materials except for ₹39,760.00 and TDS claim of ₹1,01,266.00 in absence of material evidence, but disallowing labour and service charges for the works executed by the Dealer and 15% overhead charges by the fora below are not sustainable as per law. So, the orders of the fora below require interference on that score. During hearing of the appeal, the learned Counsel for the

Dealer submits that the Dealer will produce all the relevant documents before the Assessing Authority and he may be allowed to produce the same. Basing on such submission, we feel it proper to give an opportunity to the Dealer to produce original TDS certificate or challan or any other material documents before the Assessing Authority in course of reassessment proceeding regarding its claim and the Assessing Authority shall consider the same as per law upon such filing of documentary evidences. In the event, the Dealer fails to do so, the Assessing Authority shall not consider such claim on that score. Hence, it is ordered.

12. Resultantly, the appeal is allowed and the orders of the fora below are set aside. The matter is remitted to the Assessing Authority for recomputation of tax liability of the Dealer in accordance with law vis-a-vis the material evidences to be produced by the Dealer in such reassessment keeping in view the amended provision of Rule 4-B of the OST Rules. The Dealer is at liberty to produce original TDS certificate and other documentary evidences in support of its claim with regard to price and job work; consumption of materials and direct labour charges, which shall be considered by the Assessing Authority in accordance with law. The reassessment should be completed within a period of three months from the date of receipt of this order.

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