

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

S.A. No. 591 of 2008-09

(Arising out of the order of the learned ACCT, Balangir Range,
Balangir, in First Appeal case No. AA-49(KA) of 2008-09
disposed of on 08.09.2008)

**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.**

M/s.Simplex Concrete Piles (India) Ltd.,
Lanjigarh. ... Appellant.

- V e r s u s -

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

For the Appellant ... Mr.A.N.Mohanty, Adv.
For the Respondent ... Mr.M.L.Agarwal, SC

Date of hearing: **14.11.2022** * * * Date of Order: **12.12.2022**

ORDER

Challenge in this appeal is the order dated 08.09.2008 passed by the learned Asst. Commissioner of Sales Tax, Bolangir Range, Bolangir (in short, ACST/FAA) in first appeal case No.AA.49(KA) of 2008-09 thereby allowing the appeal in part and reducing the tax liability and has granted refund of Rs.65,39,731.00 against the refund of Rs.57,21,773.00 granted by the learned Sales Tax Officer, Kalahandi Circle, Bhawanipatna (in short STO/AO) by order dated 28.03.2008 passed under Section 12(4) of the OST Act for the assessment year 2004-05.

2. The case in nutshell is that the dealer appellant is a works contractor and executes work for Vedanta Alumina Ltd. and Sterlite Industries (India) Ltd. undertaking pipe line work, piling work and civil work. The appellant received gross amount of

Rs.35,37,83,669.00 which comprises of pipe line supply work of Rs.15,97,40,171.00, piling work of Rs.5,81,65,645.00, Civil work of Rs.13,58,77,853.00. During the year, the appellant had purchased the goods from inside and outside the State for execution of works contract and has also received escalation price towards supply of goods. After assessment, the learned assessing officer determined the dealer's GTO at Rs.23,21,78,686.00 and TTO at Rs.5,87,85,608.00. Thus, tax @8 on the TTO computed to Rs.47,02,848.64 and surcharge thereon came to Rs.4,70,284.86. Both tax and surcharge together calculated to Rs.51,73,133.00. As the dealer appellant has paid Rs.1,08,94,907.00 in shape of TDS, he has been ordered allowing a refund of Rs.57,21,773.00.

3. Against such demand, the dealer preferred first appeal before the learned ACST, Bolangir Range, Bolangir who reduced the tax liability by granting refund of Rs.65,39,731.00 against the refund of Rs.57,21,773.00 granted by the learned STO.

4. Further being dis-satisfied with the order of the learned ACST (FAA), the dealer has preferred the present second appeal as per the grounds stated in the grounds of appeal.

5. No cross objection has been filed in this case by the state respondent.

6. Heard the contentions and submissions of both the parties in this regard. Perused the orders of fora below, vis-à-vis the grounds of appeal and the materials available on record.

7. On perusal of the case record, it reveals that the learned assessing officer out of the gross receipt of Rs.35,37,83,669.00 granted deduction towards the labour and service charges at Rs.12,16,04,983.00 and towards first point tax paid goods at Rs.17,33,93,078.00 and determined the TTO at Rs.5,87,85,608.00, thereby taxing the same @8% and surcharge @10% which comes to

Rs.51,53,134.00. The dealer having paid a sum of Rs.1,08,94,907.00 in shape of TDS, the learned Assessing officer granted a refund of Rs.57,21,773.00. Thus, in toto, the learned Assessing officer granted deduction of 34% towards labour and service charges. That the learned first appellate authority further granted deduction of 37% towards labour and service charges at Rs.13,08,99,958.00 and after giving deduction towards tax paid goods at Rs.17,33,93,078.00 determined the TTO at Rs.4,94,90,633.47, thereby taxing the same @8% and surcharge @10% which comes to Rs.43,55,176.00 which resulted in refund of Rs.65,39,731.00 against the refund of Rs.57,21,773.00 granted by the learned Assessing officer.

That further being dis-satisfied with such order of the learned first appellate authority, the dealer appellant preferred the present appeal claiming further deduction towards labour and service charges. The appellant has relied upon the assessment order issued in memo no.78(2) dated 20.01.2007 passed by the STO, Cuttack II Circle, Cuttack, wherein the appellant claims that on similar type of works, the said learned assessing officer has granted deduction of 55% which should be adopted. However, in course of hearing, the appellant has failed to demonstrate the same nor has produced the said assessment order for perusal of this Tribunal. So, the learned first appellate authority has rightly disallowed and differed to follow the said assessment order in as much as the same is not binding on the appellate authority and the nature of work may differ from case to case. This apart, it is quite obvious that the assessment order passed in case of other dealer does not have any precedent value. The determination of the turnover has to be taken as per the work order and contract received and executed by the appellant and therefore relying on other contract or work order is not proper and binding. This apart, no deduction certificates are issued by the department on the start of the financial year taking the overall work order, contract into

account and such certificates are issued on tentative basis which is always subject to assessment.

In case of works contract, goods are taxable till its incorporation including all the expenses, incidental and ancillary incurred thereon forms part of the TTO. This has been settled in the case of State of Gujarat Vrs. Bharat Pest Control (2018)55 GSTR-99(SC), Indian Hume pipe Co. Ltd Vrs. State of Rajasthan (2018)(53) GSTR - 283 (SC), Gannon Dunkerley case 88 STC page 204.

8. In view of the above analysis, we are of the unanimous view that the learned first appellate authority has rightly adjudicated upon all the facts in consonance with the provision of law and as such the same needs no interference.

9. In the result, the appeal preferred by the dealer is dismissed and the order passed by the learned first appellate authority is hereby confirmed.

Dictated and Corrected by me,

Sd/-

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

Sd/-

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

I agree,

Sd/-

(Shri G.C.Behera)
Chairman

I agree,

Sd/-

(Shri M.Harichandan)
Accounts Member-I