

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

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

S.A. No. 498 of 2006-07

(Arising out of order of the learned Asst. Commissioner of Sales Tax (Appeal), Puri Range, Bhubaneswar, in First Appeal Case No. AA. 107/BH.I/05-06, disposed of on dated 28.02.2006)

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

-Versus-

M/s. Alstom Power India Ltd.,
(Now M/s. GE Power India Ltd.)
Plot No.249, 3rd Floor,
Kharvelnagar, Unit-III,
Bhubaneswar-751001. ... Respondent

For the Appellant : Mr. D. Behura, S.C. &
Mr. S.K. Pradhan, A.S.C.
For the Respondent : Mr. C.R. Das, Advocate &
Mrs. N. Rustagi, Sr. Manager

Date of hearing:23.05.2023 *** Date of order: 13.06.2023

O R D E R

State has preferred this appeal challenging the order dtd.28.02.2006 passed by the learned Asst. Commissioner of Sales Tax (Appeal), Puri Range, Bhubaneswar (hereinafter referred to as, ACST/first

appellate authority) in First Appeal Case No. AA. 107/BH.I/05-06, thereby allowing the appeal in part and reducing the assessment against the order of assessment passed by the learned Sales Tax Officer, Bhubaneswar I Circle, Bhubaneswar (hereinafter referred to as, STO/AO) raising tax demand of ₹51,51,798.00 for the year 2001-02.

2. The case at hand is that, the dealer-assessee in the instant case deals in air pollution control equipment, components, accessories and spare parts and also undertakes works contract of unloading storage, erection including minor civil works, testing, trial run commissioning and performance guarantee, test of waste gas cleaning, etc. Pursuant to notice u/s.12(4) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, OST Act) books of account of the dealer-assessee were produced before the learned assessing officer who after verification of the same raised tax demand as mentioned above.

3. Against such tax demand, the dealer preferred first appeal before the learned Asst. Commissioner of Sales Tax (Appeal), Puri Range, Bhubaneswar who allowed the appeal in part and reduced the demand.

4. Further being dissatisfied with the order of the learned first appellate authority, 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 by the dealer-respondent.

6. During course of argument, learned Standing Counsel for the appellant-State contended that the deduction allowed in respect of labour and service charges is very high which should be in accordance with Rule 4-B of the Orissa Sales Tax (Amendment) Rules, 2010 and the adjustment of TDS is erroneous. On the other hand, learned Counsel for the dealer-assessee argued that the order passed by the learned first appellate authority is proper and genuine.

7. Heard the contentions and submissions of both the parties. From the rival submissions of the parties, these aspects emerged for adjudication viz.

- (i) Whether deduction allowed in respect of labour and service charges is genuine or whether it should be in pursuance of Rule 4-B of the Orissa Sales Tax (Amendment) Rules, 2010 ?
- (ii) Whether adjustment of TDS is genuine?

8. First, it is to be adjudicated whether Rule 4-B of the Orissa Sales Tax (Amendment) Rules, 2010 is applicable to the instant case. Prior to it, let us have a glance to Rule 4-B of the Orissa Sales Tax (Amendment) Rules, 2010, The language which is entailed in Rule 4-B 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 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%

The scenario of the present case clearly entails that the nature of work executed by the dealer-assessee is not covered u/r.4-B of the Orissa Sales Tax (Amendment) Rules, 2010. Pursuant to notice issued to the dealer-assessee u/s.12(4) of the OST Act, the dealer-assessee has produced the books of account such as purchase register supported with purchase invoices and sale register, sale bills, copy of agreement regarding works contract and also furnished revised return disclosing gross turnover and all those documents have duly examined by both the assessing officer and first appellate authority.

9. Now coming to the deduction of 82% allowed on labour and service charges by the first appellate authority, it reveals from the case record that the dealer-assessee is engaged in execution of works contract under the contractees namely Neelachal Ispat Nigam Ltd., NTPC and NALCO. In addition to this, the dealer-assessee was also engaged in trading activities with NTPC and NALCO. The record reveals that the dealer-assessee has received gross payment of ₹6,92,71,195.00 from these three contractees such as ₹1,38,04,839.00 from Neelachal Ispat Nigam Ltd., ₹1,69,88,921.00 from NTPC and ₹3,84,77,437.00 from NALCO. The dealer-assessee received such amount for transportation charges, commissioning, drawing and design, storage, cleaning, installation and erection, trial run, minor civil works, etc. which involve no material component. The agreements and work orders etc. were also produced by the dealer-assessee for verification. Those documents were examined by the first appellate authority and came to the conclusion that the dealer-assessee is to execute the works under the contractees like unloading, handling, storage at sight, watch and ward, transportation of construction equipments, tools, testing equipments, assembly, erection commissioning and minor civil works, etc. The dealer-assessee has also to perform trial run, complete erection of the plant and equipment, supervision, radiographic testing, etc. These type of works are mostly labour oriented works which

involve minor civil and erection works. Learned first appellate authority analysing the nature of works undertaken by the dealer-assessee as entailed in the copies of agreement and work orders rightly allowed 82% of the gross receipt towards labour and service charges for which deduction of ₹5,68,02,381.54 in toto towards labour and service charges was allowed relating to the works contract and the same appears to be genuine.

10. Coming to the aspect of adjustment of TDS, it reveals from the order of the first appellate authority that the dealer-assessee furnished 20 nos. of TDS certificates in original for ₹2,47,730.00 and 6 nos. of xerox copies for ₹1,50,511.00 and claimed that the same should be given adjustment as the assessing officer has not taken into consideration the same while computing the tax paid by the dealer-assessee. Learned first appellate authority has verified the assessment record and opined that as the dealer-assessee could not be able to furnish the original copy of TDS certificates in case of 6 nos. for ₹1,50,511.00 for which in absence of original TDS certificates, he became reluctant to allow the same. But on the other hand, for the tax deducted at source for ₹2,47,730.00 for which original TDS certificates have been furnished before the learned first appellate authority for which he was pleased to allow the same as adjustment. This decision taken by the learned first appellate authority also appears to be genuine and in accordance with law. So, in view of

the above analysis, to our considered view, learned first appellate authority has rightly adjudicated upon the issues raised by the State-appellant in conformity with the provisions of law and as such the order needs no interference.

11. In the result, the appeal preferred by the State is disallowed and the order dtd.28.02.2006 passed by the learned first appellate authority in First Appeal Case No. AA. 107/BH.I/05-06 is hereby confirmed.

Dictated & corrected by me

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

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

I agree,

Sd/-
(G.C. Behera)
Chairman

I agree,

Sd/-
(B. Bhoi)
Accounts Member-II