

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

S.A. No. 337 of 2005-06

(Arising out of order of the learned ACST, Cuttack II Range,
Cuttack in First Appeal No. AA- 282/CU-II-J/04-05,
disposed of on 07.02.2005)

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

M/s. Khazana Projects & Industries Pvt. Ltd.,
At- Aparna Business Centre,
5, Clive House, Strand Road,
Kolkata- 700 001 ... Appellant

-Versus-

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

For the Appellant : N o n e
For the Respondent : Sri D. Behura, S.C. (CT)

Date of hearing : 16.09.2022 *** Date of order : 29.09.2022

ORDER

The Dealer prefers this appeal against the order of confirming assessment order passed on 07.02.2005 by the Assistant Commissioner of Sales Tax, Cuttack II Range, Cuttack (hereinafter called as 'First Appellate Authority') in F A No. AA- 282/CU-II-J/04-05.

2. The case of the Dealer, in short, is that:

M/s. Khazana Projects & Industries Pvt. Ltd. is engaged in executing works contract under Deputy Chief Engineer, South Eastern Railway, Bhubaneswar and other authorities. The assessment period relates

to 2000-01. The Sales Tax Officer, Jagatsinghpur Circle, Paradeep (in short, 'Assessing Authority') raised tax demand of ₹6,69,690.00 u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') against the Dealer.

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

3. The State files no cross-objection. The Dealer did not appear at the time of hearing of this appeal.

4. Learned Standing Counsel (CT) for the State was present and supports the order of the First Appellate Authority. He submits that the First Appellate Authority committed no wrong and the order of the First Appellate Authority needs no interference in this appeal.

5. Appellant was not present at the time of hearing. The matter was taken up for disposal *ex parte* on merit on the materials available on record.

6. We formulated the following question for adjudication in appeal :-

“Whether in the facts and circumstances of the case the First Appellate Authority is justified in confirming the order of the Assessing Authority ?”

7. On perusal of the materials available on record, it shows that the Assessing Authority determined the GTO at ₹1,15,18,538.00, TTO at ₹74,87,849.70 and raised tax demand of ₹6,69,690.00. The Dealer does not dispute the GTO of ₹1,15,18,538.00. The Dealer claims that he had incurred labour and service and relatable charges @ 95% amounting to ₹1,09,42,611.00 and the TTO is ₹5,75,927.00. The Assessing Authority allowed TDS of ₹19,119.00 by disallowing the amount of ₹63,645.00. The Assessing Authority allowed 35% towards labour and service charges instead of 95% as claimed by the Dealer.

The First Appellate Authority confirmed the order of Assessing Authority *ex parte* on the ground that the Dealer failed to substantiate the claim.

8. The Dealer claims that he had received gross amount of ₹46,96,837.00 for execution of earth and other works under Deputy Chief Engineer, S.E. Railway, Bhubaneswar and TDS of ₹18,786.00 was deducted from its bill. Similarly, the Dealer claims that he had received ₹28,03,709.00 towards execution of protection works and other misc. works under the Deputy Chief Engineer, S.E. Railway, Keonjhar and TDS of ₹44,859.00 was deducted from its bill. The Dealer had claimed the same before the Assessing Authority and also First Appellate Authority, but they disallowed the same.

Section 13-AA(2) of the OST Act provides that the deducting authority shall grant a certificate to the contractor in the form prescribed and shall send a copy thereof to the Sales Tax Officer within whose jurisdiction the works contract is executed.

Section 13-AA(3) of the OST Act provides that the amount deducted from the Bills or invoices shall be deposited into Government Treasury within one week from the date of deduction in such form or challan as maybe prescribed.

Section 13-AA(4) of the OST Act provides that such deposit into Government Treasury shall be adjusted by the Sales Tax Officer towards the sales tax liability of the contractor and would also constitute a good and sufficient discharge of the liability of the deducting authority to the contractor to the extent of the amount deposited.

Section 13-AA(6) of the OST Act provides that any person contravenes the provisions of sub-section (1) or sub-section (2) or sub-section (3) or of clause (b) of sub-section (5), the Sales Tax Officer shall, after giving him an opportunity of being heard, by an order in writing,

impose on such person penalty not exceeding twice the amount required to be deducted and deposited by him into Government Treasury.

9. In view of the above provisions, the Assessing Authority should have complied the provisions sub-section (6) of Section 13-AA of the OST Act. Though the Dealer claims that TDS of ₹18,786.00 and ₹44,859.00 were deducted against the gross amount of ₹46,96,837.00 and ₹28,03,709.00 from the contractees, but the Assessing Authority had not verified the TDS which were sent to the concerned Sales Tax Officer and disallowed the such claim arbitrarily. The First Appellate Authority did not consider the said aspect and confirmed the order of the Assessing Authority in *exparte* proceeding.

10. Coming to the claim of labour and service charges, the Dealer claims that he had incurred expenses on the head of labour and services and other miscellaneous works executed under the aforesaid authorities. The Assessing Authority has only allowed 35% deduction instead of 95% deduction claimed by the Dealer. The Assessing Authority should examine the nature of works executed and allow deduction towards labour and service charges as per Rule 4-B of the OST Rules, if the Dealer fails to produce the proper books of account to that effect.

11. In the premises above, we are of the considered view that the Assessing Authority ought to have verified the TDS from the concerned Sales Tax Officer before disallowing the TDS claim of the Dealer so also the deduction on account of labour and service charges as per Rule 4-B of the OST Rules, if the Dealer fails to produce the proper books of account. So, we felt it proper to remit the proceeding back to the Assessing Authority for reassessment in accordance with law.

12. On the foregoing discussions, the order of the First Appellate Authority and the assessment order of the Assessing Authority are not sustainable and the same requires interference in this appeal. Hence, it is ordered.

13. Resultantly, the appeal is allowed. The order of the First Appellate Authority confirming the order of the Assessing Authority is set aside. As a necessary corollary thereof, the matter is remanded to the Assessing Authority for reassessment keeping in view the above observations within a period of three months from the date of receipt of this order. The Dealer is directed to appear before the Assessing Authority with relevant materials and documents, if any, in the reassessment proceeding.

Dictated & Corrected by me

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

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

I agree,

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

I agree,

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