BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 432 (VAT) of 2015-16
(Earlier S.A. No. 33 of 2015-16)

(Arising out of order of the learned JCST, Koraput Range, Jeypore in Appeal No. AAV (KOR) 34/10-11, disposed of on 15.05.2015)

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

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

-Versus-

M/s. Tosil Agencies, Qr. No. R/275, HAL Township, Sunabeda ... Respondent

For the Appellant : Sri D. Behura, S.C. (CT)
For the Respondent : Sri S.N. Sahu, Advocate &
Sri A.N. Barik, Advocate

Date of hearing : 01.06.2023 *** Date of order : 30.06.2023

O R D E R

It is revealed from the record that the instant appeal has been registered under the OST Act inadvertently. The same is rectified and renumbered as S.A. No. 432 (VAT) of 2015-16 under the OVAT Act.

After registration under the OVAT Act, the matter was taken up in Full Bench though it comes under pecuniary jurisdiction of Single Bench.

2. State is in appeal against the order dated 15.05.2015 of the Joint Commissioner of Sales Tax, Koraput Range, Jeypore (hereinafter called as

'First Appellate Authority') in F A No. AAV (KOR) 34/10-11 reducing the demand raised in assessment order of the Deputy Commissioner of Sales Tax, Koraput Circle, Jeypore (in short, 'Assessing Authority').

3. The facts of the case, in brief, are that –

M/s. Tosil Agencies is a works contractor. The assessment period relates to 01.04.2005 to 31.03.2006. The Assessing Authority raised tax and penalty of ₹12,62,400.00 u/s. 43 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') in *ex parte* proceeding.

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the tax demand and allowed the appeal in part with a direction for refund of excess amount paid vide order dated 23.05.2011. Being aggrieved with the order of the First Appellate Authority, the Dealer preferred appeal bearing S.A. No. 106 (V) of 2011-12 before this Tribunal. This Tribunal set aside the impugned order and remanded the matter to the First Appellate Authority for fresh consideration vide order dated 17.12.2013.

On further examination of books of account, learned First Appellate Authority computed the tax liability at ₹1,24,506.00. Dealer having paid an amount of ₹5,60,988.00 towards TDS, he allowed refund of ₹4,36,482.00. Being further aggrieved with the order of the First Appellate Authority, State prefers this appeal. Hence, this appeal.

Dealer files no cross-objection.

4. The learned Standing Counsel (CT) for the State submits that the First Appellate Authority passed the impugned order allowing 65% deduction towards labour and service charges, which is in contrary to the direction of the this Tribunal. The First Appellate Authority lost sight of execution of concrete works, road work, purchase of materials like cement,

MS rod and paints, but allowed flat deduction of labour and service charges. So, he submits that the order of the First Appellate Authority is contrary to law and facts involved and the same requires interference in appeal.

5. Per contra, the learned Counsel for the Dealer submits that the First Appellate Authority passed the impugned order without going through the materials evidence. He further submits that the works executed by the Dealer are mostly labour oriented works including earth works and the deduction allowed on that score is not proper.

6. Having heard the rival submissions and on going through the materials on record, it transpires from the record that the State challenged the impugned order on the ground that the Dealer cannot produce the books of account before the First Appellate Authority, which he had not filed before the Assessing Authority.

The record reveals that earlier Single Bench of this Tribunal had remitted the matter to the First Appellate Authority for reconsideration keeping in view Rule-6 of the OVAT Rules after giving opportunity of being heard to the Dealer. The Single Bench rendered a specific observation that the Dealer has not produced any material regarding expenditure statement towards labour and service charges. The Single Bench further observed by taking into consideration the nature of work that the allowance of 65% towards labour and service charges for the entire is not permissible under law.

The impugned order reveals that the First Appellate Authority passed the order after examining the books of account such as purchase register, material purchase invoices, agreement-cum-work orders and payment particulars. Accordingly, he allowed ₹91,16,067.35 towards labour and service charges and computed the tax liability.

7. Record reveals, it is not in dispute that the Dealer had received gross payment of ₹1,40,24,719.00 from HAL, Sunabeda for ₹83,35,975.00

towards construction of road & civil repair and maintenance and from East Coast Railway for ₹56,88,744.00 for earth work. It is also not in dispute that the Dealer had not produced the proper books of account at the time of assessment and the First Appellate Authority. He had only produced the books of account, such as purchase register, material purchase invoices, agreement-cum-work order and payment particulars. The First Appellate Authority has not specifically mentioned how the labour and service charges was computed for ₹₹91,16,067.35. It is also not in dispute that earlier this Tribunal had remitted the matter to the First Appellate Authority with certain observation in S.A. No. 106 (V) of 2011-12. This Tribunal has specifically observed that allowance of 65% towards labour and service charges for the entire amount received is not permissible under law. With such observation, this Tribunal had remitted the matter for reconsideration. But, the First Appellate Authority again allowed 65% deduction towards labour and service charges from the gross payment received, i.e. ₹91,16,067.35 from ₹1,40,24,719.00, which is contrary to the direction of this Tribunal.

8. Rule 6 of Appendix prescribes the percentage of deduction towards different works. Sl. No. 3 of the Appendix provides different percentage of deduction for different types of civil work. So, at this stage, it will be prudent to examine the nature of works undertaken by the Dealer during the period under assessment.

The work order No. RP/KR/821 dated 01.03.2005 of East Coast Railway that the work was divided into three Schedules, i.e. ‘A’, ‘B’ & ‘C’. Schedule ‘A’ deals in earth work, retaining walls and breast walls; Schedule ‘B’ deals in execution of all works, i.e. supply of cement and steel. The terms and conditions of the work order reveal that East Coast Railway shall provide the materials, i.e. cement & steel and etc. free of cost. It is not in

dispute that the Dealer had received ₹56,88,744.00 from the East Coast Railway and TDS of ₹2,27,549.00 has been deducted from the bills.

As regards works executed under HAL, Sunabeda, the Dealer has received ₹83,35,975.00 for different types of works. The Dealer has filed copies of all the documents, i.e. the work orders and invoices relating to the works executed under both the contractees.

It appears that the First Appellate Authority has not verified the same and passed the impugned order without examining the nature of works executed by the Dealer. It further appears that the First Appellate Authority mechanically allowed 65% deduction towards labour and service charges inspite of specific observation made by the Single Bench of this Tribunal. So, the same requires detail examination and allowance of due labour and service charges as per law. The documents filed before this forum reveal that the Dealer had executed construction of new concrete road under HAL, Sunabeda against which he had received bill amount of ₹28,68,329.00, ₹35,03,732.00 and ₹8,40,214.00 and due TDS had been deducted therefrom. Some works show that the Dealer also had executed painting works against which, the Dealer had purchased painting materials. The invoices reveal that the Dealer had purchased MS rod and cement from other dealers. It reveals that the First Appellate Authority has not verified the relevant materials properly for the works executed by the Dealer and passed the order mechanically by allowing 65% flat deduction, which is contrary to the direction of this forum.

9. So, for the foregoing discussions, the order of the First Appellate Authority is contrary to the observation of the Single Bench and he has not gone through the documents while passing the impugned order. So, the same needs interference in appeal. Therefore, we feel it proper to remit the matter to the Assessing Authority for due examination of the material evidences

afresh. The Dealer shall produce all the relevant materials along with books of account before the Assessing Authority or else he shall not be entitled for any relief as per law. Hence, it is ordered.

10. Resultantly, the appeal stands allowed and the impugned order of the First Appellate Authority is hereby set aside. The matter is remitted to the Assessing Authority for de novo assessment keeping in view the observations made supra within a period of three months from the date of receipt of this order. The Dealer shall produce all the relevant materials with books of account before the Assessing Authority or else he is not entitled for any other relief as per law.

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/-
(B. Bhoi)
Accounts Member-II