

**BEFORE THE DIVISION BENCH, ODISHA SALES TAX TRIBUNAL,
CUTTACK.**

S.A. No.9 of 2018

&

S.A. No.10 of 2018

(Arising out of the order of the learned JCST(Appeal), Sambalpur Range, Sambalpur First Appeal Nos. AA 78/SAI/OST/2017-18 & AA 77/SAI/OST/2017-18, disposed of on 26.03.2018)

Present: Shri G.C. Behera, Chairman
&
Shri B. Bhoi, Accounts Member-II

M/s. Sarad Kumar Gupta,
Khaliabandh, Sambalpur. Appellant

-Vrs.-

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

For the Appellant : : None
For the Respondent : : Mr. M.L. Agarwal, S.C.(C.T.)

Date of Hearing : 25.04.2023 * Date of Order : 03.05.2023**

O R D E R

Both these second appeals involve similar question of facts and law. These appeals relate to the same dealer appellant covering the year 2002-03 and 2004-05 under OST Act. Hence, both the cases are heard together for the sake of convenience and disposal made in a composite order.

S.A. No.10 of 2018

The dealer-contractor challenges the order of the dated 26.03.2018 of the Joint Commissioner of Sales Tax (Appeal), Sambalpur Range, Sambalpur (in brevity called Ld. FAA) passed in First Appeal

Case No.AA 77/SAI/OST/2017-18. In the instant case, the learned assessing officer is found to have reassessed the dealer-contractor for the year 2002-03 in pursuance of the observations of the Odisha Sales Tax Tribunal passed in SA No.935 of 2006-07. The tax so assessed at reassessment for ₹81,708.00 was reduced to ₹58,828.00 at the first appellate stage.

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Similarly, the dealer-contractor assails the order dated 26.03.2018 of the Joint Commissioner of Sales Tax (Appeal), Sambalpur Range, Sambalpur (hereinafter called as Ld. FAA) passed in First Appeal Case No.AA 78/SAI/OST/2017-18. In the instant case, the learned assessing officer is found to have reassessed the dealer-contractor for the year 2004-05 in pursuance of the observations of the Odisha Sales Tax Tribunal passed in SA No.482 of 2007-08. The tax so assessed at reassessment for ₹3,40,906.00 was reduced to ₹3,28,613.00 at the first appellate stage.

2. The facts in nutshell are that M/s Sarad Kumar Gupta, Khaliabandh, sambalpur, RC No.SAI-5360 is a works contractor executing works contract in different Govt. organizations. It was initially assessed U/s 12(4) of the OST Act for the year, 2002-03 and 2004-05 and the dealer-contractor was found refundable to ₹1,92,586.00 and ₹3,99130.00 respectively. The orders of the learned assessing authority were confirmed in the first appeals. The Revenue being not satisfied with the orders of the Ld.LAA preferred second appeals before this forum. The Odisha Sales Tax Tribunal in their S.A. No. 935 of 2006-07

and S.A.No.482 of 2007-08 remanded the cases back to the learned assessing authority to assess the dealer-contractor afresh in the light of the provisions of Rule 4-B as inserted in the Orissa Sales Tax (Amendment) Rules, 2010.

3. The learned assessing authority applied Rule 4-B of the amended OST Rules for determination of the expenses on account of labour and service for having the relevant books of accounts for the year 2002-03 and 2004-05 been found to be not creditable.

(i) The gross receipt of the year 2002-03 disclosed at ₹80,71,296.00 includes road works and canal works respectively for ₹33,42,497.00 and ₹43,28,799.00. Deduction of labour and service charges thereon @ 45% and 65% worked out to ₹15,04,124.00 and ₹28,13,719.00. The total deduction allowable towards labour and service charges computed to ₹43,17,843.00. Further, deduction towards tax suffered material amounting to ₹13,27,131.00 has been allowed. After such deductions from the gross receipt, the TTO stood at ₹24,26,322.00 which being taxed @8% calculated to ₹1,92,106.00 and surcharge @10% on ₹1,92,106.00 worked out to ₹19,411.00. Accordingly, tax and surcharge put together came to ₹2,13,517.00. The dealer-contractor having deposited tax at source for ₹3,24,395.00, an amount of ₹1,10,878.00 was refundable to him. As per the original assessment, an amount of ₹1,92,586.00 was refunded to the dealer-contractor. The dealer-contractor was as per the assessment made on application of Rule 4-B of the amended OST Rules was liable to pay the balance amount of ₹81,708.00.

(ii) Similarly, as for the year 2004-05, the gross receipt disclosed at ₹2,00,68,110.00 includes road works and canal works respectively for ₹1,86,71,178.00 and ₹13,96,932.00. Deduction of labour and service charges thereon @ 45% and 65% worked out to ₹84,02,030.00 and ₹4,88,926.00. The total deduction allowable towards labour and service charges computed to ₹88,90,956.00. Further, deduction towards tax suffered material amounting to ₹23,98,965.00 has been allowed. After such deductions from the gross receipt, the TTO stood at ₹87,78,189.00 which being taxed @8% calculated to ₹7,02,255.00 and surcharge @10% on ₹7,02,255.00 worked out to ₹70,225.00. Accordingly, tax and surcharge put together came to ₹7,72,481.00. The dealer-contractor having deposited tax at source for ₹8,30,705.00, an amount of ₹58,224.00 was refundable to him. As per the original assessment, an amount of ₹3,99,130.00 was refunded to the dealer-contractor. The dealer-contractor was as per the assessment made on application of Rule 4-B of the amended OST Rules was liable to pay the balance amount of ₹3,40,906.00.

4. The dealer-contractor being aggrieved against the aforesaid assessments preferred first appeals. The Ld.FAA allowed the appeals in part and caused rectification of the clerical mistake and misclassification of the nature of works executed apparent on the face of the assessment orders passed by the learned assessing authority. The Ld. FAA is found to have agreed with the learned assessing authority in regard to application of Rule 4-B of the amended OST Rules, since the dealer-contractor was found to have not maintained

the full set of the books of accounts and records not produced showing evidence in support of expenses incurred towards labour and service. It is observed in respect of assessment for year, 2002-03 by the Ld. FAA that the learned assessing authority has mentioned gross receipt under canal works as ₹43,28,799.00 instead of ₹47,28,799.00 due to oversight. In result, the deductions towards labour and service charges @45% on ₹33,42,497.00 and 65% on ₹47,28,799.00 calculated to ₹45,77,843.00. Besides, deduction of ₹13,27,131.00 towards tax suffered materials was allowed. After such deductions towards labour and service charges and tax suffered materials as stated above from the gross receipt of ₹80,71,296.00, the TTO stood at ₹21,66,322.00 which being taxed @8% thereon worked out to ₹1,73,306.00. Surcharge @10% on ₹1,73,306.00 calculated to ₹17,330.00. The tax and surcharge put together computed to ₹1,90,697.00. The dealer-contractor having already paid ₹3,24,395.00 in shape of TDS and availed a refund of ₹1,92,586.00 as per the original assessment order, the amount of balance tax payable calculated to ₹58,828.00 as against ₹81,708.00 determined by the learned assessing authority.

Similarly, as far as the assessment made for the year 3004-05, the Ld. FAA on going through the assessment record and materials available on record could infer that the dealer-contractor during the year in question undertook execution of works contract to the tune of ₹2,00,68,110.00 which were of only road works. There were no canal works executed. Accordingly, deduction of 45% on gross receipt of ₹2,00,68,11.00 towards labour and service charges was considered to

be allowed in pursuance of Rule 4-B of the OST Rules. Deduction on this score @45% on ₹2,00,68,110.00 calculated to ₹90,30,650.00. There was tax suffered materials to the tune of ₹23,98,965.00 utilized in the instant works contract. After allowing deduction of ₹90,30,650.00 and ₹23,98,965.00 as stated above from the gross receipt of ₹2,00,68,110.00, the TTO stood at ₹86,38,495.00 which being taxed @8% thereon calculated to ₹6,91,080.00. Surcharge on ₹6,91,080.00 came to ₹69,108.00. Thus, the tax and surcharge put together calculated to ₹7,60,188.00. The dealer-contractor having already paid ₹8,30,705.00 in shape of TDS and availed a refund of ₹3,99,130.00 as per the original assessment order, the amount of balance tax payable calculated to ₹3,28,613.00 as against ₹3,40,906.00 determined by the learned assessing authority.

5. The dealer-contractor being not satisfied with the aforesaid two orders of the Ld. FAA preferred second appeals alleging that the Ld.FAA has hurriedly passed the orders in both the cases without providing any opportunity of being heard.

6. Despite service of several notices, the dealer-appellant or the learned Counsel of the dealer-contractor has not appeared for hearing at his forum. There is no alternative but to dispose of these cases ex-parte basing on the grounds of appeals filed and the materials available on record.

7. The Revenue filed cross objection stating the orders of the Ld. FAA in respect of both the impugned assessments as right and based on the amended Rule 4-B of the OST Rules.

8. On going through the orders of the Ld FAA, assessment orders, grounds of appeals and the materials on record, we are of the considered views that consequent upon amendment of the Orissa Sales Tax Rules in Orissa Sales Tax (Amendment) Rules, 2010 providing retrospective effect from 30th July, 1999 inserting Rule 4-B with marginal heading as 'Deduction of labour and Service Charge by Works Contractors', 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 towards labour and service as referred to 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 etc.	65%
3	Bridge Work	35%
4	Building Work	35%
5	Road Work	45%

8. On examination of the orders of the Ld FAA with reference to the provisions of the aforesaid amended OST Rules, it is averred that the Ld. FAA is right in allowing deductions towards labour and service

charges @45% on road works and 65% on canal works on both the appeal cases with the books of accounts having not been credible and the dealer-appellant having failed to produce evidence in support of the expenses incurred towards labour and service charges. We, therefore, find no justification to interfere in these cases.

9. Resultantly, the appeals filed by the contractor-appellant are dismissed and the orders of the Ld FAA are confirmed. Cross objections filed by the Revenue are disposed of accordingly.

Dictated and corrected by me.

**Sd/-
(Bibekananda Bhoi)
Accounts Member-II**

**Sd/-
(Bibekananda Bhoi)
Accounts Member-II**

I agree,

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