

**BEFORE THE DIVISION BENCH-I, ODISHA SALES TAX
TRIBUNAL: CUTTACK**

S.A. No. 133 (VAT) of 2018

(Arising out of order of the learned JCST, Angul Range,
Angul in Appeal No. AA- 108101510000520/2015-16,
disposed of on 27.03.2018)

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

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

... Appellant

-Versus-

M/s. A.P. Construction,
Vikash Nagar, Angul

... Respondent

For the Appellant : Sri D. Behura, S.C. (CT) &
Sri S.K. Pradhan, Addl. SC (CT)
For the Respondent : Sri K.R. Mohapatra, Advocate

Date of hearing : 10.04.2023 *** Date of order : 24.04.2023

ORDER

State is in appeal against the order dated 27.03.2018 of the Joint Commissioner of Sales Tax, Angul Range, Angul (hereinafter called as 'First Appellate Authority') in F A No. AA- 108101510000520/2015-16 reducing the assessment order of the Deputy Commissioner of Sales Tax, Angul Circle, Angul (in short, 'Assessing Authority').

2. The facts of the case, in short, are that –

M/s. A.P. Construction is a works contractor. The assessment relates to the periods 01.04.2009 to 31.03.2014. The Assessing Authority

raised tax and penalty of ₹2,33,98,515.00 in exparte assessment proceeding u/s. 42 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') basing on the Audit Visit Report (AVR).

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the tax demand to ₹32,06,561.49 and allowed the appeal in part. Being aggrieved with the order of the First Appellate Authority, the State prefers the appeal. Hence, the appeal.

The Dealer filed cross-objection, but not pressed.

3. The learned Standing Counsel (CT) for the State submits that the First Appellate Authority allowed 100% deduction towards labour and service charges which is contrary to the provisions of law and fact involved. So, he submits that the order of the First Appellate Authority requires interference in appeal.

4. Per contra, the learned Counsel for the Dealer submits that the First Appellate Authority rightly passed the order after examining the documents filed by the Dealer. He further submits that the State has not furnished any single material to show the order of First Appellate Authority as erroneous and improper. So, he submits that the order of the First Appellate Authority needs no interference.

5. Heard the rival submissions and gone through the orders of the Assessing Authority and First Appellate Authority vis-a-vis the materials on record. The assessment order reveals that the TTO for the account of works contract is ₹12,29,14,211.00. The Assessing Authority computed the tax at the appropriate rate and the same came to a sum of ₹1,25,95,449.44. After adjustment of ITC, the tax due was for ₹1,11,52,166.00. The Dealer has paid VAT in shape of TDS amounting to ₹33,52,611.00. So, the net tax due was for ₹2,33,98,515.00 along with penalty.

The First Appellate Authority determined the gross receipt at ₹36,00,20,489.40. After allowing deduction, the First Appellate Authority determined the GTO at ₹6,30,97,134.28 and TTO at ₹5,72,32,336.45. He computed the output tax due of ₹58,64,797.83. After adjusting the ITC of ₹14,43,333.00 and TDS of ₹33,52,611.00, the tax due came to ₹10,68,853.00 and the total tax due along with penalty was for ₹21,37,707.66.

6. The State claims that in case of works executed at NTPC, Talcher and NALCO, Angul, the materials used were supplied by the contractees, i.e. M/s. NTPC and M/s. Utility Powertech Ltd. The State further claims that the Dealer has also received some direct work orders for execution of works and the Dealer has received materials for execution of works as free of cost. The State disputes only the works at Sl. Nos. 53, 54, 55, 56 & 58, wherein 100% deduction of labour and services charges were allowed by the First Appellate Authority.

The order of the First Appellate Authority reveals that the exparte assessment was made by the Assessing Authority. The Dealer produced copies of work orders and other documents before the First Appellate Authority for verification. Works at Sl. No. 53 to 56 & 58 reveal that the Dealer had executed the works in the capacity of sub-contractor. The contractee had supplied materials free of cost. The Dealer has executed only labour works and received the amount to that effect. As the Dealer has produced the books of account and all relevant documents before the First Appellate Authority, who examined the documents with reference to the works executed and accordingly allowed the deduction on that score. The State is unable to substantiate any material to take a contrary view in the order passed by the First Appellate Authority. So, we do not find any

illegality to call for any interference in the impugned order. Hence, it is ordered.

7. Resultantly, the appeal stands dismissed and the impugned order of the First Appellate Authority is hereby confirmed.

Dictated & Corrected by me

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

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

I agree,

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