

**BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. Nos. 15, 16 & 17 of 2021

(Arising out of orders of the learned JCST (Appeal), Cuttack-II Range,
Cuttack, in Appeal Nos. AA/10/OST/CUII/ 2015-16,
AA/11/OST/CUII/2015-16 & AA/12/OST/CUII/ 2015-16
disposed of on 17.09.2021 and 18.09.2021 respectively)

Present: **Shri G.C. Behera, Chairman**

M/s. Engineering Design & Construction Co.,
At/PO- Naharkanta, Dist. Khurda ... Appellant

-Versus-

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

For the Appellant : Sri Natabara Panda, Advocate
For the Respondent : Sri S.K. Pradhan, Addl. SC (CT)

Date of hearing : 21.09.2023 *** Date of order : 20.10.2023

ORDER

All these second round remand appeals relate to the same party involving common question of facts and law, but for different assessment years. Therefore, they are taken up for disposal in this composite order for the sake of convenience.

2. Dealer assails remand orders dated 17.09.2021 & 18.09.2021 of the Joint Commissioner of Sales Tax (Appeal), Cuttack-II Range, Cuttack (hereinafter called as 'First Appellate Authority') in F.A. Nos. AA/10/OST/CUII/2015-16, AA/11/OST/CUII/2015-16 & AA/12/OST/

CUII/2015-16 respectively confirming the assessment orders of the Sales Tax Officer, Cuttack-II Circle, Cuttack (in short, 'Assessing Authority').

3. Briefly stated, the facts of the cases are that –

M/s. Engineering Design & Construction Co. executed the work of 'Diversion of 132 KVDC Line from Jajpur Road to Paradeep near Bhutmundei' on behalf of the contractee, i.e. Executive Engineer (Electrical), EHT (Maintenance) Division, Choudwar. The assessments relate to the years 1991-92, 1992-93 and 1993-94.

The original assessments of the Dealer u/s. 12(5) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') were completed raising demands of ₹30,027.00 for the year 1991-92, ₹28,982.00 for the year 1992-93 and ₹7,742.00 for the year 1993-94 in *ex parte*. The orders of assessment were challenged before the First Appellate Authority, who vide orders dated 30.03.2002 passed in Appeal Nos. AA/533-535/CUII/96-97 set aside the assessments for reassessment. But, The Dealer carried the matters to this Tribunal in **S.A. Nos. 2252 to 2254 of 2002-03** and this forum vide order dated 31.12.2005 instructed the Assessing Authority to consider the claim of deductions towards supply of materials as well as labour and service charges basing on the documents to be filed by the Dealer in reassessment proceedings.

Accordingly, the Assessing Authority completed the reassessments and raised tax demands of ₹2,318.00 for the year 1991-92, ₹28,424.00 for the year 1992-93 and ₹7,742.00 for the year 1993-94. The First Appellate Authority vide orders dated 22.04.2016 confirmed the reassessments in *ex parte*. In **S.A. Nos. 14, 15 & 16 of 2016-17** this forum vide order dated 30.04.2018 set aside the first appellate orders and remanded the matters to him for fresh disposal.

In view of such remand, the First Appellate Authority re-heard the matters and confirmed the reassessment orders for the impugned years by dismissing the appeals. Being further aggrieved with the orders of the First Appellate Authority, the Dealer prefers these appeals. Hence, these appeals.

The State files cross-objections supporting the orders of the First Appellate Authority to be just and proper.

4. Learned Counsel for the Dealer submits that the Dealer has filed the copies of challans showing deposit of TDS, copy of the certificate and details of bill showing supply of tax suffered materials by the Department for utilization in the works and the documents showing the nature of works, which is mostly labour oriented, but the Assessing Authority and the First Appellate Authority went wrong in disallowing such claims. So, he submits that the orders of the Assessing Authority and First Appellate Authority for all the periods under assessment suffer from infirmity and require interference in appeal.

5. Per contra, the learned Addl. Standing Counsel (CT) for the State submits that the TDS amounts are not found in the PCR, there is no information regarding supply of tax suffered materials and Sales Tax Registration No. of the contractee and no books of account to claim more deduction on account of labour and service charges. So, he submits that the Assessing Authority and First Appellate Authority have rightly passed the orders, which require no interference in appeal.

6. Heard rival submissions of the parties, gone through the orders of the First Appellate Authority and Assessing Authority vis-a-vis the materials on record. Admittedly, this is third round litigation of the Dealer comes before this forum for adjudication.

In **S.A. Nos. 2252 to 2254 of 2002-03**, this Tribunal had allowed the appeals in part and remanded the matters to the Assessing Authority for

reassessment with direction to consider the TDS certificates and other documents of the Dealer in support of the claim for deduction towards use of the goods supplied by the contractor and claim of higher deduction towards labour and service charges.

The Assessing Authority for the years 1991-92, 1992-93 and 1993-94 determined the GTO at ₹11,03,959.00, ₹9,69,921.00 and ₹2,58,884.00 and TTO at ₹7,50,691.00, ₹6,59,552.00 and ₹1,76,041.00 after allowing deduction of ₹3,53,268.00, ₹3,10,375.00 and ₹82,843.00 respectively towards labour and service charges. The Assessing Authority computed the tax liability of ₹36,331.00 for the year 1991-92 and allowed TDS of ₹6,003.00, ₹2,325.00 and ₹4,651.00 after verification, but disallowed TDS of ₹6,799.00 for not found in the PCR. The Assessing Authority also allowed adjustment of balance previous deposit of ₹21,034.00 and raised tax demand of ₹2,318.00.

Similarly, for the year 1992-93, the Assessing Authority computed the tax liability of ₹28,982.00 for the year 1992-93 and allowed TDS of ₹558.00 after verification, but disallowed TDS of ₹4,378.00 and ₹12,673.00 (₹17,051.00) for not found in the PCR. Accordingly, the Assessing Authority raised tax demand of ₹28,424.00.

Likewise for the year 1993-94, the Assessing Authority computed the tax liability of ₹7,742.00 for the year 1993-94, but disallowed TDS of ₹3,967.00 for not found in the PCR. Accordingly, the Assessing Authority raised tax demand of ₹7,742.00.

The aforesaid demands raised by the Assessing Authority were confirmed by the First Appellate Authority in *ex parte*. The Dealer again preferred **S.A. Nos. 14, 15, & 16 of 2016-17** and this Tribunal further remanded the matters to the First Appellate Authority for fresh disposal keeping in view the earlier direction of this forum. The First Appellate

Authority confirmed the reassessment orders with a finding that the Executive Engineer has no Sales Tax Registration Number and accordingly, disallowed deduction towards the claim of materials utilized.

7. The order of Assessing Authority reveals that he disallowed the TDS amounts of ₹6,799.00, ₹17,051.00 and ₹3,967.00 claimed for the all years under assessment on the ground that the original PCR is not available in the Office though the Dealer has filed the copies of challans showing deposits TDS by the contractee. The Assessing Authority or the First Appellate Authority could have taken pain to verify such deposits of TDS from the concerned authority, i.e. Treasury/STO within whose jurisdiction the work was executed/Executive Engineer, and allowed necessary adjustment thereof. The Assessing Authority and First Appellate Authority instead of doing the same, disallowed the claim of adjustment of tax by way of TDS deposits merely on the ground of not found in the PCR. This careless approach of the Assessing Authority and First Appellate Authority led the Dealer to move pillar to post starting from Assessing Authority to this forum thrice to get the justice.

8. As regards the claim of material deduction, the orders of the Assessing Authority and First Appellate Authority reveal that the Executive Engineer has reported that the Department has purchased the materials and supplied the same to the contractor for utilization in the works. The copy of the certificate and bill issued by the Executive Engineer reveal that the materials like cement and steel were supplied to the contractor on cost recovery basis and sales tax was paid by the Department. The Assessing Authority and the First Appellate Authority have whimsically disallowed the claim of the Dealer though it was within their knowledge from the documents available on record that the materials supplied to the Dealer on cost recovery basis have suffered sales tax. The First Appellate Authority

also disallowed the claim of the Dealer on flimsy ground that the Executive Engineer has no Sales Tax Registration Number. The challan relating to the deposit of ₹4,749.00 filed by the Dealer bears the Sales Tax Registration No. CU-II- 3756 of the Executive Engineer, which is available on record. Thus, such finding led the Dealer to approach this Tribunal thrice besides the forums of Assessing Authority and First Appellate Authority, which is unfortunate and failure of justice. So, disallowance the claim of material deduction in favour of the Dealer is gross error on record inspite of material evidence available to that effect. Therefore, I feel it proper to set aside the orders of the Assessing Authority and First Appellate Authority with a direction to the Assessing Authority to allow the claim of material deduction to the Dealer in the ends of justice.

9. As regards the claim of labour and service charges, it reveals that the Assessing Authority allowed 32% deduction for the same and First Appellate Authority upheld such deduction. The copy of agreement filed by the Dealer reveals that mostly the works executed is labour oriented and there is no transfer of property in goods in course of execution of works contract as the Department has supplied the OST suffered materials on cost recovery basis. The relevant portion of the agreement is reproduced below for better appreciation :-

“The contractor agrees to complete the soil testing, designing and execution of pile foundation work in conformity with provisions of the contract documents attached and forming part of this contract on or before June, 1989.”

The said condition of the agreement finds support from the certificate and details of bills issued by the Executive Engineer, which is amply clear that there is no transfer of property in goods in course of execution of works contract by the Dealer except labour and services to be rendered. So, allowance of 32% deduction towards labour and service charges by the

Assessing Authority is not justified. Rather, the Assessing Authority taking into consideration the nature of works executed by the Dealer and also the materials supplied by the Department on cost recovery basis, should have allowed 90% deduction towards labour and service charges.

10. So, for the foregoing discussions, the disallowance of TDS amount, material deduction and allowance of labour and service charges 32% are unjustified and improper, so the same require interference in appeal. Therefore, the matters are required to be remanded to the Assessing Authority for recomputation of tax liability keeping in view the observations made herein above. Hence, it is ordered.

11. Resultantly, the appeals are allowed. The orders of the First Appellate Authority are set aside. The Assessing Authority is instructed to recompute the tax liability of the Dealer for all the years under assessment keeping in view above observation within a period of three months from the date of receipt of this order positively as for the self-same cause the Dealer has approached different forums time and again to get the justice. Cross-objections are disposed of accordingly.

A copy of the order be sent to the Commissioner of Sales Tax for information and necessary instruction to the Assessing Authority for due compliance of the order of the Tribunal in the ends of justice as the disposal of the case has lingered for about three decades compelling the Dealer to approach various forums for relief/justice.

Dictated & Corrected by me

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

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