

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

S.A.No. 150/2007-08

(Arising out of order of the ld. ACST, Balangir Range,
Balangir, in First Appeal Case No. AA-49(BPII) 2006-07,
disposed of on dtd.31.01.2007)

P R E S E N T :

Sri A.K. Das Sri S. K. Rout & Sri S. Mishra
Chairman Judicial Member-II Accounts Member-II

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

-Versus-

M/s. Sitaram Agrawal,
At/P.O. Saintala,
Dist. Balangir. Respondent

For the Appellant : Mr. S.K. Pradhan, A.S.C. (C.T.)
For the Respondent : None

(Assessment Period : 2004-05)

Date of Hearing: 03.12.2021 *** Date of Order: 13.12.2021

ORDER

The present appeal is preferred against the order
dtd.31.01.2007 of the learned First Appellate
Authority/Asst.Commissioner of Sales Tax, Balangir Range,
Balangir (in short, FAA/ACST) in First Appeal Case No. AA-
49(BPII)2006-07 in confirming the assessment order passed by
the learned Sales Tax Officer/Assessing Authority, Assessment
Unit, Titlagarh (in short, STO/AA) for the assessment year
2004-05 u/s.12(4) of the Odisha Sales Tax Act, 1947 (in short,
OST Act).

2. The brief facts of the case at hand are as follows :

The dealer-appellant, in the instant case, is a works contractor, who had undertaken the works under the different authorities like the Dy. Chief Engineer (Const.), E.Co. Railway, Rayagada, the E.E., R.W.D., Balangir, the E.E., Khariar (R&B) Division, Khariar, the E.E., R.W.D., Phulbani, the E.E. (R&B) Division, Phulbani & Divisional Head, IDCO, Balangir and received total gross payment of Rs.3,80,53,236/- during the year 2004-05 consisting of Rs.47,27,734/-, Rs.2,31,49,023/-, Rs.9,80,773/-, Rs.4,32,086/-, Rs.87,32,551.00 and Rs.31,069/- respectively. Accordingly, the learned STO completed the assessment u/s.12(4) of the OST Act determining the GTO at Rs.3,80,53,236/- and TTO at Rs.89,85,019.55 after allowing deduction of Rs.2,29,98,147.45 and Rs.60,70,069/- towards the labour and service charges and tax paid material used in the contract works. Tax @8% on TTO was calculated at Rs.7,18,801.56. Further, surcharge @10% on the tax due was calculated at Rs.71,880.15 only. So, the tax in toto with surcharge came to Rs.7,90,681.82/-, against which the dealer-contractor having paid Rs.15,75,680/- in shape of TDS duly verified by the STO, an excess amount of Rs.7,84,998/- was refundable to the dealer under the OST Act by the learned STO.

3. Being aggrieved with the order of assessment, the dealer-contractor filed first appeal before the learned ACST, Bolangir Range, Bolangir, who in turn, dismissed the appeal and confirmed the assessment order passed by the learned Assessing Authority.

4. Being dis-satisfied with the order of the learned FAA/ACST, Bolangir Range, Bolangir, State has preferred this

present appeal with the prayer to quash the order of the learned FAA as the same is bad in the eyes of law.

5. Cross objection has been filed by the dealer-respondent in this case.

6. Despite due service of notice on the dealer, for reasons best known to him, he (dealer) neither engaged a counsel nor anybody on his behalf remained present before this Tribunal so as to defend him against the grounds of appeal. This Tribunal, therefore, is left with no other alternative except to hear the argument of Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.) appearing for the Revenue and to dispose of the matter on ex-parte basis on merit.

7. Perused the assessment order as well as first appeal order, all the materials available on record, grounds of appeal submitted by the Revenue. During the course of hearing, Mr. S.K. Pradhan, Addl. Standing Counsel for the State argued that, the order of both the forums are not just and proper. The deduction allowed on labour and service charges is found to be in excess. The deduction allowed on construction of building work and road works is 32% and 42% respectively. The dealer-respondent failed to maintain books of account required as per law. The deduction on materials has not been examined. The second appeal has been filed by the State against the allowance of more percentage towards the labour and service charges than the dealer contractor is entitled to. Noteworthy to mention here that, during the pendency of the second appeal, the Hon'ble High Court of Orissa have been pleased to set-aside the circular of the Commissioner of Sales Tax, Orissa which sought to adopt percentages stated in the Works Department Office Memo in the matter of **Larsen &**

Toubro, 12 STC 31(Ori). The State Government pursuant to said judgment introduced Rule-4B by virtue of Odisha Sales Tax (Amendment) Rules, 2010 where percentages of labour and service charges have been provided for different nature of works. On the date of passing of order in the first appeal, i.e. dtd.31.01.2007 and the assessment order i.e. dt.28.12.2006, the amendment to the Orissa Sales Tax Rules, 1947 was not in force. Hence, the authorities below had no occasion to deal with the point at issue in proper perspective. Even on the date of filing of second appeal by the State, the said amended Rule was not in force. So, State has filed additional grounds. In view of amendment to Orissa Sales Tax Rules, 1947 being brought to the statute in the year 2010 by virtue of Orissa Sales Tax (Amendment) Rules, 2010 with retrospective effect from 30.07.1999, the Tribunal should allow the grounds urged by the State. He had prayed to allow the appeal filed by the State.

8. Heard the learned Addl. Standing Counsel, Mr. S. K. Pradhan on behalf of the State in absence of participation of the dealer in hearing of this appeal. Perused the grounds of appeal, cross objection filed by the dealer-respondent and the materials available on record. No evidence is adduced on behalf of the dealer-respondent nor did anybody appear before this Tribunal to defend him against the grounds of appeal filed by the State. During the course of hearing, Mr. Pradhan, learned Addl. Standing Counsel for the Revenue vehemently argued against the order of learned FAA towards excess deductions allowed towards labour and service charges, which was against Rule-4B of OST Rules inserted vide F.D. Notification dtd.06.02.2010 bearing SRO No.40/2010 effective from 30.07.1999 and introduced by the State Government pursuant

to judgment of Hon'ble High Court of Orissa in **Larsen & Toubro, 12 STC 31 (Ori)**. In view of the facts and circumstances of the case and after analysing the points raised in this appeal, we are of the considered opinion that, the contention raised by the learned Addl. Standing Counsel for the State is quite legal and sustainable in the eyes of law and this is a fit case where the matter should be remanded back to the learned Assessing Authority to make re-computation of tax in the light of Rule 4-B of the OST Rules. Accordingly, it is ordered.

9. The appeal filed by the State is allowed and the order of the learned First Appellate Authority is hereby set-aside. The matter is remanded to the learned Assessing Officer to make re-computation of tax in the light of above provision of the statute and pass reasonable order accordingly after giving the dealer a reasonable opportunity of being heard. He may complete the re-assessment preferably within three months from the date of receipt of this order. The cross objection filed by the dealer-respondent is disposed of accordingly.

Dictated and Corrected by me,

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

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

I agree,

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(S. Mishra)
Accounts Member-II