BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 328 of 2007-08

(Arising out of order of the learned ACST, Sambalpur Range, Sambalpur in First Appeal No. AA – 228 (SAIII) of 06-07, disposed of on 27.12.2006)

Present: **Shri G.C. Behera, Chairman**
Shri S.K. Rout, 2nd Judicial Member &
Shri M. Harichandan, Accounts Member-I

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

-Versus-

M/s. Shree Balaji Engicons (P) Ltd., Belpahar, Jharsuguda ... Respondent

For the Appellant : Sri M.L. Agarwal, S.C. (CT)
For the Respondent : Sri Uttam Behera, Advocate

Date of hearing : 29.11.2022 *** Date of order : 06.12.2022

O R D E R

State is in appeal against the order dated 27.12.2006 of the Asst. Commissioner of Sales Tax, Sambalpur Range, Sambalpur (hereinafter called as 'First Appellate Authority') in F A No. AA – 228 (SAIII) of 06-07 reducing the demand in assessment order of the Sales Tax Officer, Sambalpur-III Circle, Jharsuguda (in short, 'Assessing Authority').

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

M/s. Shree Balaji Engicons (P) Ltd. carries on business in sales of petroleum products and execution of works contract. The assessment period relates to 2004-05. The Dealer has executed contract works under the East Coast Railway; N.H. Division, Jharsuguda; MCL; RITES Ltd.; R&W

Department; OHSDP, OPGC, NWMP and TRL. Against execution of works contract, the Dealer has received gross payment of ₹11,66,70,947.97. The Assessing Authority allowed deduction at different rates towards labour and service charges on different heads.

The Assessing Authority in assessment raised tax demand of ₹10,68,472.00 u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act').

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the assessment and allowed refund of ₹8,29,322.00. Being aggrieved with the order of the First Appellate Authority, the State prefers this appeal. Hence, this appeal.

The Dealer files no cross-objection.

3. The learned Standing Counsel (CT) for the State submits that the order of the First Appellate Authority is unjust and improper in the facts and materials available on record. He further submits that the fora below have erroneously allowed deduction on account of labour and service charges without working out the labour and materials component from the agreement of contract. He further submits that materials deduction should be regulated as per the Sec. 5(2)(A)(a)(ii) of the OST Act. He further submits that the First Appellate Authority should allow the deduction by applying the provisions of amended Rule 4-B. So, he submits that the order of the First Appellate Authority should be set aside and the order of the Assessing Authority be restored.

4. On the other hand, learned Counsel for the Dealer objects the contention of the State and submits that the order of the First Appellate Authority is justified and the same needs no interference in appeal. He further submits the word "or" used in amended Rules 4-B vide Notification under SRO No. 40/2010 dated 6th February, 2010 of Finance Department is disjunctive, which implies that either of the conditions is fulfilled, the taxing

authority shall apply the best judgment principles. So, he submits that the deduction allowed by the First Appellate Authority cannot be said to be illegal.

5. On hearing of the rival submissions and on careful scrutiny of the materials available on record, the sole dispute revolves round in this case is whether in the facts and circumstances of the case, the First Appellate Authority is justified by not applying the provisions of amended Rule 4-B while allowing deduction towards labour and service charges?

6. Learned Standing Counsel (CT) for the State assails the impugned order on two grounds, i.e. (i) deduction towards materials component and (ii) deduction towards labour and service charges.

7. So far as deduction allowed towards material component is concerned, bare reading of the orders of the Assessing Authority and the First Appellate Authority, it shows that the First Appellate Authority has confirmed the finding of the Assessing Authority regarding deduction ₹60,95,246.30 towards sale of 1st point tax paid goods, i.e. petroleum products, and ₹56,42,708.50 towards use of tax paid materials in the works contract. The orders of the fora below show that the both the forums allowed deduction towards sale of 1st point tax paid goods and also utilization of tax paid materials in execution of works keeping in view the provisions of the OST Act. State fails to furnish any material evidence before this Tribunal contrary to it. So, we are not able to accede to the submission of the State.

8. As regards allowance of labour and service charges is concerned, the Dealer contends that the amended Rule 4-B is not applicable to its case as the Dealer has produced the audited balance sheet before the Assessing Authority. He also produced the copy of the same before this Tribunal. He took the plea on the point that the word ‘or’ is disjunctive and amended Rule 4-B can only be applicable if any of the conditions is fulfilled. The relevant provisions of the amended Rule 4-B are quoted herein below for better appreciation :-

> "4-B - Deduction of Labour and Service Charge by Works Contractors :
>
> In case of works contract, 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 incurred towards labour and service as referred to above, ***or*** such expenses are not ascertainable from the terms of the 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."

Bare reading of the amended 4-B provision shows that the expenses on account of labour and service shall be determined at the rate specified in the table in the case where a dealer executing works contract, fails to produce evidence in support of expenses incurred towards labour and services, or such expenses are not ascertainable from the terms and conditions of the contract or the books of account maintained for the purpose are found to be not credible. The word '***or***' used in the provision is disjunctive and if any of the conditions is fulfilled, the Assessing Authority can apply the principles of amended Rule 4-B.

9. Now, examining the case at hand, the order of the Assessing Authority shows that the Dealer has claimed different percentages of deduction for different works. The assessment order further shows that he had verified details of work orders issued by the contractees in each of the cases and classified the works broadly in the following categories :-

> Railway works/track maintenance; earth works; road works; construction of building/construction of level crossing; ash pond development; construction of canal/misc. construction works; and various constructions/fabrication jobs inside TRI premises, which includes site development, disposal of debris etc.

Though the Assessing Authority verified the records and classified the works, but allowed the deductions on account of labour and service

charges on the best judgment principles. The order further shows that he had allowed the deductions on labour and service charges and passed the order with an assumption that the nature of works were essentially same as determined by the First Appellate Authority for the year 2002-03 as per the guidelines of this forum in S.A. No. 7222 of 1994-95. When the Assessing Authority had verified the detailed work orders of each of the cases, he should not have passed the order on assumption on the basis of previous year works by applying the best judgment principles.

10. Now, on carefully scrutiny of the order of the First Appellate Authority, it shows he allowed the deduction by following the ratio laid down by the Hon'ble Apex Court in case of ***Gannon Dunkerly & Co. v. State of Rajasthan***, reported in **[1993] 88 STC 204 (SC)** by analyzing the nature of works and estimating the involvement of labour and services.

11. During the course of hearing of appeal, the Dealer produced the balance sheet and Profit & Loss Account. It shows that the Dealer has filed a scheduled attached to and forming part of Profit & Loss Account for the year end 31.03.2005 showing expenses on account and labour and service charges to the tune of ₹19,10,739.50 as on 31.03.2005 and ₹3,22,377.50 as on 31.03.2004. The record shows that the Dealer had also filed the list of documents containing contract bill file, purchase register, work orders etc. before the Assessing Authority. He had also filed an authorization memo showing authorization in favour of Mr. Rupak Mukhopadhya to produce the books of account for the year 2004-05. The record further shows that the Assessing Authority verified the said documents and classified the works as aforesaid. The amended 4-B provision as per Notification vide SRO No. 40/2010 dated 6th February, 2010 can be applicable only when the Dealer fails to produce the books of account or any of three conditions mentioned in the Notification. As the Dealer has filed the books of account and expenses incurred in the head of labour and service charges, the fora below

should not have applied the best judgment principles in allowing the deductions on that score.

Though the First Appellate Authority had followed the best judgment principles, but the order shows that he had classified the nature of works and allowed 100% deduction on execution of earth work in Sl. No. 1, ash pond development in Sl. No. 10 and development of periphery bund in Sl. No.11. He also allowed 90% deduction for track maintenance under Sl. No. 5, shifting of raw dolomite in Sl. No. 16, civil job for dolo in Sl. No. 18 and various works from Sl. Nos. 22 to 26. As the First Appellate Authority had already allowed the deductions keeping in view the nature of works executed by the Dealer and the Dealer does not aggrieve on such finding, so no purpose shall be served in remanding the matter for disposal afresh only the ground that he followed the best judgment principles.

12. On the foregoing discussions, we find no illegality or impropriety in the impugned order of the First Appellate Authority to call for any interference in appeal. Hence, it is ordered.

13. 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/-
(S.K. Rout)
2nd Judicial Member

I agree,

Sd/-
(M. Harichandan)
Accounts Member-I