

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

S.A.No. 1547/2006-07

(From the order of the Id.ACST, Koraput Range, Jeypore, in Appeal No. AA(KOIIG) 25-26/97-98, dtd.20.09.2006, confirming the assessment order of the Assessing Officer)

**Present: Sri S. Mohanty
2nd Judicial Member**

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

.... Appellant

-Versus-

M/s. Kalinga Constructions,
Kenduguda,
Dist. Rayagada.

.... Respondent

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

(Assessment Year : 1995-96)

Date of Hearing: 08.02.2019 *** Date of Order: 08.02.2019

ORDER

When the dealer failed in his attempt to enhance the labour and service charges in First Appeal No.AA(KOIIG)25-26/97-98 and thereby the assessment by the Assessing Authority/Sales Tax Officer, Assessment Unit, Gunupur (in short, AA/STO) became confirmed by the learned First Appellate Authority/Asst. Commissioner of Sales Tax, Koraput Range, Jeypore (in short, FAA/ACST), Revenue being dissatisfied, preferred this second appeal on the contentions like, the deduction towards labour and service charges as granted by the FAA is excessive and the allowance of first point tax paid goods without proper verification of the relevant documents is illegal.

2. The dealer was subjected to assessment u/s.12(4) of the Odisha Sales Tax Act, 1947 (in short, OST Act) for the assessment year 1995-96. The dealer was a works contractor. The AA determined the GTO at Rs.26,75,330/- and TTO at Rs.10,48,334.76. After allowing the deduction towards labour and service charges and taking into consideration of the first point tax paid goods, the tax liability was calculated at Rs.72,213.94. The dealer having paid tax at Rs.86,024/-, the AA held the dealer entitled to refund of Rs.13,810/-. The dealer preferred first appeal claiming more percentage of labour component. However, the FAA confirmed the order of AA thereby the entitlement of the dealer remained undisturbed.

3. When the matters stood thus, State preferred this appeal taking grounds mentioned herein above.

4. The deduction towards labour and service charges by the AA and thereupon by the FAA are questioned by the State. The State has not advanced any cogent reason to interfere with the order of both the fora below. The AA and thereafter the FAA both have applied the best judgment principle to determine the labour component. The subjective satisfaction of both the fora below on the question of fact need not to be disturbed unless any cogent and rebuttal is adduced from the side of the State. It is the authority below has taken into consideration of the nature of work and then applied reasonable guess work to determine the labour and service charges. In that view of the matter, it is unsafe to go for another best judgment assessment replacing the assessment of both the fora below. Similarly, when both the fora below have satisfied that the dealer has utilized some first point tax paid goods and accordingly while calculating the tax due, the same amount was deducted by the AA, in that event this Tribunal should not interfere into the determination of the fora below

mechanically. In absence of any cogent evidence from the side of the Revenue, there is no reason to interfere with the findings of both the fora below on question of facts. From the discussion above, it is held that, Revenue has made an unsuccessful attempt to unsettle the impugned order on the grounds, which are bad both in law and facts. Resultantly, it is ordered.

The appeal is dismissed as of no merit.

Dictated and Corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

Sd/-
(S. Mohanty)
2nd Judicial Member