THE FULL BENCH, ODISHA SALES TAX TRIBUNAL, CUTTACK.

S.A. No.637 of 06-07
S.A. No.638 of 06-07
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S.A. No.640 of 06-07
S.A. No.641 of 06-07

(Arising out of the orders of the learned Addl.CST, North Zone in First Appeal Nos. AA-12(SAI)/2002-2003 & AA-13(SAI)/2002-2003 disposed of on 28.04.2006, AA(SAI)-31/2003-2004 disposed of on 27.04.2006, AA(SAI)-25/2005-2006 & AA(SAI)-26/2005-2006 disposed of on 28.04.2006.)

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

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

-Vrs. –

M/s. Orient Construction Pvt. Ltd., Khetrajpur, Sambalpur. ..... Respondent.

For the Appellant : : Mr. S.K. Pradhan, Addl. SC(C.T.).
For the Respondent: : Mr. B. P. Mohanty, Advocate.

Date of Hearing : 02.11.2023 * Date of Order : 01.12.2023**

O R D E R

The aforementioned five second appeals have been preferred by the Revenue challenging the first appeal orders of the Additional Commissioner of Sales Tax (North Zone), (in short, 'ld. FAA') passed in first appeal orders mentioned above literally confirming the orders of assessments passed under Section 12(4) of the OST Act by the Assistant Commissioner of Sales Tax

(Assessment), Sambalpur Range, Sambalpur (in short ld. assessing authority). It is worthy to mention here that the self-same five second appeals were disposed of by this forum ex-parte on 10.09.2019. Considering upon the reasons of non appearance at hearing put forth by the dealer-contractor, this forum vide order dated 19.02.2020 restored the impugned cases for hearing on merit setting aside the ex-parte order passed. Hence, these second appeals are now heard together affording reasonable time to the respondent-contractor to have a say in defence. These appeals though relate to different tax periods involve common question of facts and law. For convenience, they are clubbed together for hearing and disposal made in a composite order.

2. The facts leading to these second appeals are summarized in brief for better appreciation. M/s. Orient Construction Pvt. Ltd., Khetrarajpur, Sambalpur is engaged in execution of works contract under different Govt. organizations. The respondent-contractor was assessed under Section 12(4) of the OST Act for the assessment year 1999-2000, 2000-2001, 2001-02, 2002-03 and 2003-04 allowing refund of ₹2,08,356.00, ₹5,58,818.00, ₹4,25,110.00, ₹21,74,092.00 and ₹1,28,350.00 respectively. In the first appeals as preferred by the dealer-contractor, the ld.FAA besides confirming the refunds as determined in assessments has remitted the cases pertaining to the year 1999-2000, 2000-01 and 2003-04 back to the learned assessing authority for verification of TDS deposits and other such claims as agitated by the dealer-contractor in first appeals.

3. The Revenue being not contended with the orders of ld.FAA has filed second appeals alleging excess allowance of labour and service charges. Mr. S. K. Pradhan, Addl. S. C. (C.T.) appearing for the State has submitted a written note on

06.11.2023 stating that allowance of deductions towards labour and service charges in assessments is not in consonance with the provision of Rule 4-B of the Orissa Sales Tax (Amendment) Rules, 2010 effective retrospectively from 30.07.1999. It is submitted that with the assessments in the present cases having been completed much prior to the said amended OST Rules brought into force, the assessing authority has allowed higher percentages of labour and service charges resorting to best judgment in absence of the books of accounts adduced in support of the expenditure incurred towards labour and service charges. This is in sharp defiance of the principles established under law. Accordingly, application of Rule 4-B is insisted upon.

Mr. Pradhan placed reliance on the decision of the Hon'ble High Court of Odisha in case of ***M/s. Bhuyan Engineering & Construction (P) Ltd Vs. State Of Odisha*** reported in STREV No.120 of 2014. It is observed in the said decision that 'admittedly, the amendment to Rule 4B of the Orissa Sales Tax was given retrospective effect from 30th July, 1999 which covers the period in question i.e. 2001-02. The vires of the said amended Rule 4B has not been questioned by the petitioner. In view of the matter, the Court is unable to find any error having been committed by the Tribunal in remanding the matter to the assessing officer for considering the issues in light of the above amendment to Rule-4B of the Orissa Sales Tax Rules.' Mr. Pradhan has also cited the case laws like STREV No.9 of 2011 and STREV No.13 of 2011 to fortify his stand. Mr. Pradhan reinforces his stand relying on the decisions of this forum passed in S.A. No.129 of 2011-12, S.A. No.94 of 2010-11, S.A. No.150 of 2007-08 and S.A.No.1181 of 2002-03 and S.A. No.296 of 2007-08 where

the cases have been remanded to the assessing authorities for fresh assessment on application of Rule 4B.

4. Mr. B. P. Mohanty, ld. Advocate representing the respondent dealer-contractor has submitted a written note on 17.11.2023 defending the contention taken by the State in their written note dated 06.11.2000.

It is submitted that the ground for application of Rule 4-B was not taken by the State in the grounds of appeal. There is also no additional ground filed to this effect. The State has raised this issue in course of hearing of the second appeals. It is, therefore, pleaded that the said contention of the State seeking application of Rule 4-B in the impugned cases may not be considered.

The ld. Advocate clarifies that Rule 4-B of the Odisha Sales Tax (Amendment) Rules, 2010 applies where a dealer executing works contract fails to produce evidence in support of expenses incurred towards labour and service or such expenses are not ascertainable from the terms and condition of the contract or the books of accounts maintained for the purpose are found to be not credible. In such cases, the expenses on account of labour and service shall be determined at rates specified in the table appended to Rule 4B.

The ld. Advocate refers to the orders of assessment wherein the ld. assessing authority has observed by noting 'that the details of payment received from the different principals towards execution of works contract supported with payment certificates, the TDS Certificates in original, the copies of agreement entered into with the different authorities, the details of purchases of the materials made from inside and outside the State of Odisha utilized in the execution of work contract which are verified in detail'.

It is further contended that the finding made by the learned assessing authority in the orders of assessment as to allowance of labour and service charges confined to verification on materials used in the execution of works contract. It is observed therein that 'in absence of any books of account relating to labour and service charges, it is essential to have a detail study into the nature of works executed and the quantum of materials involved in each work to consider allowance of deduction from GTO towards labour and service charges'.

Under the above pretext, the ld. Advocate vehemently argues that the learned assessing authority has on analysis of the terms and condition as are apparent in the face of the agreements determined the percentages of labour and service charges involved keeping in view of the materials utilized in the execution of works contract.

It is, therefore, submitted that the labour and service charges as allowed by the ld. assessing authority is genuine and in accordance with the provisions of the statute, as he considered the quantum of materials involved in each work executed by the respondent by thorough study of the agreement/work orders, produced before him by the dealer, to find out the labour component. Thus, as pleaded, Rule 4-B is not applicable in the present cases, as the expenses incurred towards labour and service charges have been determined by taking into consideration the nature of works executed and the involvement of materials therein. Besides, both the forums below have arrived at concurrent findings determining the nature of works after examination of the entire materials available on record including the work orders/agreements and details of materials purchased and utilized in the execution of works contract.

The ld. Advocate placed reliance on the decision of the Full Bench of this forum made in S.A. No.1490 of 2006-07 and S.A. Nos. 550 & 551 of 2002-03 wherein the applicability of Rule 4-B has been dispensed with.

5. Rival submissions are heard. The orders of the forums below, written notes submitted by both the parties and the case laws cited are gone through at length. The second appeals in these cases are under challenge by the State basically on allowance of labour and service charges in assessments contrary to the principles prescribed under Rule 4-B as inserted under Orissa Sales Tax (Amendment) Rules, 2010 notified by the Government of Odisha in Finance Department on 06.02.2010 providing retrospective effect from 30.07.1999. For, there were no books of accounts on labour and services produced in assessments wherefrom, the expenses incurred towards labour and services could be ascertained.

6. **S.A. No.637 of 06-07**

On perusal of the order of assessment passed under Section 12(4) of the OST Act relating to the assessment year,1999-2000, it is revealed that the dealer-contractor had executed works contracts under different Government organisations such as Executive Engineer, NH Division, Sambalpur, Keonjhor, Baripada and Rourkela, DGM, RITS, Talcher, SPM, SE RLY, Sambalpur, L&T, Kanshabahal, Rourkela, Executive Engineer, Irrigation Division, Burla, G.M., Construction, MCL, Burla, Executive Engineer Main Dam Division, Sambalpur and C.E.M, BPCL, Calcutta and is found to have received gross payment of ₹6,39,36,648.28. The learned assessing authority on a detailed study of the nature of works executed and considering upon the materials involved in the execution of works contract considered reasonable to allow 50% deduction on works executed under the

Executive Engineer, NH Division, Sambalpur, Keonjhor, Rourkela, Baripada, L & T. Kanshabahal and MCL, Burla. 40% deduction of the gross receipt is seen to have been allowed against works executed under DGM, RITS, Talcher. It is revealed that 65% of the gross receipt from SPM, SE Rly, Sambalpur on account of supply and stacking machine crushed ballast has been allowed towards labour and service charges. 80% of the gross payment on account of construction of flood embankment-cum-ring road of Sambalpur town received from the Executive Engineer, Irrigation Division Burla is seen to have been allowed towards labour and service charges. 65% deduction has been allowed against surface protection executed under Executive Engineer, Main Dam Division, Sambalpur and 75% of the gross payment received from BPCL, Calcutta on account of the execution of side grading and moorum filling is seen to have been allowed as deduction towards labour and service charges. The learned assessing authority determined allowance of deduction towards labour and services in percentages to his best judgment.

7. On perusal of the order of assessment, it transpires that the dealer-contractor has not furnished any evidence in support of the expenditure incurred towards labour and services. Nor did the dealer contractor produce any credible books of accounts or such data as per the terms and conditions of the contract displaying the expenses incurred on such purposes. It is pertinent to note that consequent upon amendment of the Orissa Sales Tax Rules in Orissa Sales Tax (Amendment) Rules, 2010 providing retrospective effect from 30th July, 1999 inserting Rule 4-B with marginal heading as 'Deduction of labour and Service Charge by Works Contractors', 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 towards labour and service as referred to above, or such expenses are not ascertainable from the terms and 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:-

Sl. No.	**Nature of Works contract**	**Percentage of labour, service and like charges of the total value of the works**
(1)	**(2)**	**(3)**
1	Structural Works	35%
2	Earth Work, Canal Work Embankment Work etc.	65%
3	Bridge Work	35%
4	Building Work	35%
5	Road Work	45%

8. In the instant case, it is observed that almost all the works executed during the assessment year under appeal are in the nature of road works, earth works and embankment works. Under this analogy, provisions of Rule 4-B have been contravened. The forum bellows have thus erred in allowing deductions towards labour and service charges in excess of the percentages as ought to be allowable under Rule 4-B. Accordingly, the contention taken by the State in the present case justifies interference.

9. **S.A.No.638 of 2006-07**

This second appeal has been filed by the State containing the same grounds of appeal/written submission as discussed supra in S.A. No.637 of 2006-07. Besides, the written submission filed by Mr. B. P. Mohanty, learned Advocate representing the respondent dealer-contractor contains the same averments as filed in respect of the assessment year1999-2000. The works contract executed by the dealer-contractor during the tax period 2000-01 were of the contractees like the Executive Engineer, NH Division, Sambalpur, Keonjhar, Baripada and Pallahara, Executive Engineer, Sambalpur Irrigation Division, Burla, DGM, RITS, Talcher, Executive Officer, N.A.C., Burla, Executive Engineer, (R&B) Division, Keonjhor and Sambalpur, D.F.M, MCL, Burla, D.F.M.(Bills), M.C.L., Basundhara area, Sundargarh, E.A.O, M.C.L., Jagannath area, Talcher and C.E.M, BPCL, Calcutta. As it appears, the works executed are almost of the same contratees barring a few ensuring similar nature of works. Similar to the finding contained in the order of assessment passed for the assessment year 1999-2000, the learned assessing authority in absence of books of accounts for the labour and service charges has allowed the component of labour and service charges to his best judgment @ 50% of the gross receipt against works executed under Executive Engineer, NH Division, Sambalpur, Keonjhor, Baripada and Pallahara, Executive Officer, N.A.C, Burla, Executive Engineer (R&B), Keonjhor and Sambalpur, D.F.M., MCL, Burla, Basundhara area, Sundargarh and Jagannath area, Talcher. 80% of the gross receipt has been allowed towards labour and service charges against the works executed under the Executive Engineer, Sambalpur Irrigation Division, Burla. Similarly, 40% and 75% of the gross receipt towards labour and service charges are found to

have been allowed respectively against works executed under DGM, RITES, Talcher and BPCL, Calcutta. The ld.FAA is atoned with the deductions as allowed above by the learned assessing authority in assessment.

The observation made by this forum in S.A. No. 637 of 2006-07 above is unequivocally applicable in the present case with respect to allowance of deduction towards labour and service charges in assessment. Thus, the contention of the State in this case deserves consideration.

10. **S.A. No. 639 of 2006-07**

This second appeal filed by the State relates to the assessment year, 2001-02. The ground of appeal, written note filed by the State and the written note filed by Mr. Mohanty, learned Advocate representing the respondent-dealer contractor carry the identical submissions as discussed above in S.A. No.637 of 2006-07. The gross payment received against the running bills of the works executed are under the contractees namely Executive Engineer, NH Division, Sambalpur, Keonjhor, Jharsuguda, and Pallahara, Executive Engineer, (R&B) Division, Sundargarh, Executive Engineer, Rural Works, Sambalpur, DGM, RITES, Talcher, AFM, MCL, Basundhara area, Sundargarh, Jagannath area, Talcher and SE Rly, Sambalpur. On a study of the nature of jobs and in consideration of the involvement of materials as found from the schedule of agreements as well as the detail of running bills, the learned assessing authority held it reasonable to allow 50% of the gross receipt against the works executed under the Executive Engineer, NH Division, Sambalpur, Jharsuguda, Pallagara, and Keonjhor. 55% towards labour and service charges is seen to have been allowed against the jobs executed under the Executive Engineer, (R&B), Division, Sundargarh, Executive

Engineer, Rural Works Division, Sambalpur and MCL, Jagannath area, Talcher. 40% and 45% of the gross receipt are found to have been allowed against works executed under the DGM, RITES, Talcher and MCL, Basundhara area, Sundargarh. The ld.FAA is learnt to have been at one with the assessing authority as regards allowance of labour and service charges in assessment towards deduction from the gross receipt in the present case.

The observation of this forum is as the same as imparted in S.A. No.637 of 2006-07 above.

11. **S.A. No. 640 of 2006-07**

This second appeal filed by the State assailing the order of the ld.FAA pertains to the assessment year, 2002-03. The grounds of appeal and the written note are the same as have been filed in respect of S.A. No.637 of 2006-07. Similarly, the written note submitted by Mr. B. P. Mohanty, learned Advocate representing the respondent dealer-contractor in defence of the contentions of the State in respect of S.A. No. 637 of 2006-07 is stated as applicable in the present case. During the year under appeal, the dealer-contractor is seen to have executed works contract under the contractees such as the Executive Engineer, NH Division, Sambalpur, Keonjhor, Deogarh and Bolangir, Executive Engineer, R.W. Division, Sambalpur and Sundargarh, Assistant Manager (F&A), SAIL, RSP, Executive Engineer, (R&B) Division, Sundargarh, AFM, MCL, Basundhara area, Sundargarh and Executive Engineer, NWMP Division, Bargarh. The learned assessing authority has allowed deduction of 65% towards labour and service charges out of the gross payment received from the aforesaid contractees. The ld.FAA did find the deductions as reasonable and affirmed the order of assessment.

The observation made by this forum in S.A. No. 637 of 2006-07 above is unequivocally applicable in the present case with respect to allowance of deduction towards labour and service charges in assessment. Thus, the contention of the State in this case deserves consideration.

12. **S.A. No. 641 of 2006-07**

This second appeal filed by the State relates to the assessment year 2003-04. The ground of appeal, written note filed by the State and the written note filed by Mr. Mohanty, learned Advocate representing the respondent-dealer contractor carry the identical submissions as discussed above in S.A. No.637 of 2006-07. The gross payment received against the running bills of the works executed are under the contractees namely Executive Engineer, NH Division, Sambalpur, Keonjhar, Jharsuguda, Deogarh and Bhubaneswar, Executive Engineer, (R&B) Division, Sundargarh, Executive Engineer, Rural Works, Sundargarh and Bolangir, DGM, RITES, Kolkata, AFM, MCL, Basundhara area, Sundargarh, Jagannath area, Talcher and SAIL, RSP. The learned assessing authority held it reasonable to allow 65% towards labour and service charges out of the gross payment received from the aforesaid contractees. The ld.FAA did find the deductions as reasonable and affirmed the order of assessment.

The observation of this forum made in S.A. No.637 of 2006-07 is squarely applicable to this case as to allowing deduction towards labour and service charges as prescribed under Rule 4-B. The contention taken by the State in this regard is considerable and thus, solicits interference.

13. From the above account of discussion, it is pertinent to note that the works executed by the dealer-contractor in the assessment years 1999-2000 to 2003-04 almost involve identical

nature of works. The learned assessing authority is seen to have allowed excess deductions towards labour and service charges in sharp contrast to the principles outlined under Rule 4-B. It is, therefore, of the view that the learned assessing authority is required to reassess the dealer-contractor in all the impugned cases on application Rule 4-B.

14. In the result, the appeals filed by the State are allowed. The orders of the ld.FAA are set aside to the extent as observed above with respect to allowance of labour and service charges. All the aforementioned cases are remanded back to the learned assessing authority to reassess the dealer in the light of the observations imparted in the foregoing paragraphs within three months from the date of receipt of this composite order. Cross objections are hereby disposed of accordingly.

Dictated and corrected by me.

Sd/-
Bibekananda Bhoi)
Accounts Member-II

Sd/-
(Bibekananda Bhoi)
Accounts Member-II

I agree,

Sd/-
(G.C. Behera)
Chairman

I agree,

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