**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL, CUTTACK.**
**S.A. No.43(V) of 2014-15**
(Arising out of the order of the learned JCST, Puri Range, Puri in First Appeal Case No.AA/06/VAT/Ngrh./2013-14, disposed of on 20.12.2013)

**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. Krishan Chandra Patra, N-6/107, IRC Village, Nayapalli, Bhubaneswar, TIN-21171105414. ..... Respondent.

For the Appellant: : Mr. D. Behura, ld. S.C.(C.T.)
For the Respondent : : None.

---

**Date of Hearing : 04.12.2023 *** Date of Order : 02.01.2024**

---

**O R D E R**

The State is in appeal against the order dated 20.12.2013 of the Joint Commissioner of Sales Tax, Puri Range, Puri (in short, 'ld. FAA') passed in First Appeal Case No. AA/06/VAT/Ngrh./2013-14 bifurcating taxable turnover into two tax rate groups being one 85% taxable @4% and another 15% taxable @ 12.5% as against levy of 4% on entire taxable turnover in assessment passed under Section 42 of the OVAT Act by the Assistant Commissioner of Sales Tax, Nayagarh Circle, Nayagarh (in short, ld. assessing authority).

2. The summary of the case is that M/s. Krishan Chandra Patra, N-6/107, IRC Village, Nayapalli, Bhubaneswar, TIN-21171105414 is engaged in execution of works contract under different Rural Works Divisions. The dealer-contractor was assessed under Section 42 of the OVAT Act for the tax period from 01.04.2007 to 31.03.2011 basing on the recommendation contained in Audit Visit Report (in short, AVR). The dealer-contractor is seen to have received gross payments of ₹8,21,86,425.00 during the tax period under assessment. The ld. assessing authority allowed deduction of ₹4,10,93,213.00 being 50% of the gross receipts towards labour and service charges as per Appendix to Rule 6 of the OVAT Rules due to non-furnishing of evidence towards expenses incurred towards labour and service charges by the dealer-contractor. Tax @4% on ₹4,10,93,213.00 worked out to ₹16,43,729.00. After allowing deduction of ITC to the tune of ₹750,062.00 and TDS for an amount of ₹32,87,457.00, the dealer-contractor was entitled to refund of ₹17,18,790.00 in assessment. Aggrieved, the dealer-contractor went for first appeal. The ld. FAA during the course of appeal hearing could find utilization of cement in the execution of works contract during the material tax period which is taxable @ 12.5%. The ld. FAA considered it reasonable to distribute 85% of the TTO under 4% tax group and 15% under 12.5% tax group. Allowing adjustment

of ITC for ₹73,593.00 and TDS for ₹32,87,457.00, the dealer-contractor was refundable to ₹11,93,383.00 in first appeal.

3. The State being not satisfied with such presumptive distribution of TTO under 4% tax group and 12.5% tax group preferred second appeal holding that the ld. FAA without verification of the purchase invoices and the quantum of materials used in the execution of works contract has of his own distributed the taxable turnover at 4% tax group on 85% of TTO and 12.5% tax on 15% on TTO on presumption. In the wake up maintenance of the books of accounts by the dealer-contractor, presumptive derivation of tax on TTO is not warranted and as such, the order of the ld.FAA is required to be set-aside for re-assessment.

4. There is no cross objection filed by the respondent dealer-contractor. The dealer-contractor has not also appeared before this Forum despite issuance of several intimations. There is no alternative but to dispose of this case ex-parte basing on the materials available on records.

5. Having gone through the orders of the forums below, grounds of appeal filed by the State and the materials available on records, it is observed that the ld. FAA has noticed the dealer-contractor to have executed construction of roads during the tax period under appeal and as such, utilization of cement in such works contract cannot be ruled out. The ld. FAA without

verification of the quantum of cement utilized in the execution of works contract has apportioned the entire taxable turnover at 85% and 15% exigible to tax @ 4% and 12.5% respectively on presumption basis. Such a presumption yardstick despite availability of books of accounts on the part of the ld.FAA is unfair and not warranted. It is sheer shrouded with ambiguity and insanity. The ld. FAA ought to have remanded the case back to the ld. STO for fresh assessment. Under this premise, the contention of the State deserves consideration.

6. Under this eventuality, the second appeal filed by the State is allowed. The order of the ld.FAA is set aside. This case is remanded back to the ld. assessing authority to assess the dealer-contractor fresh in the light of the above observation within three months from the date of receipt of this order.

**Dictated and corrected by me**.

**Sd/-**
**(Bibekananda Bhoi)**
**Accounts Member-I**

**Sd/-**
**(Bibekananda Bhoi)**
**Accounts Member-I**

**I agree,**

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

**I agree,**

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