

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

**S.A. No.11(V) of 2017-18**

(Arising out of the order of the learned DCST(Appeal),  
Bhubaneswar Range, Bhubaneswar First Appeal No. AA  
106221422000167, disposed of on 19.01.2017)

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

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

..... Appellant

**-Vrs.-**

M/s. Srishakti Pasupati Encon Pvt. Ltd.,  
Plot No-3, Gopabandhu Nagar, Bhubaneswar,  
TIN-21201109035.

..... Respondent.

For the Appellant : Mr. D. Behura, Id. A.S.C.(C.T.)  
For the Respondent : Mr. S.S. Rout, Id. Advocate

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**Date of Hearing : 01.06.2023      \*\*\*      Date of Order : 30.06.2023**  
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**O R D E R**

This second appeal has been preferred by the State against the order of the Deputy Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar (in brevity called hereinafter the Id.FAA) passed on 19.01.2017 in the First Appeal Case No.AA-106221422000167 in allowing refund of ₹12,26,625.00 against the demand of ₹34,29,606.00 raised at assessment u/S. 43 of the OVAT Act by the Sales Tax Officer, Bhubaneswar IV Circle, Bhubaneswar

(hereinafter called the ld.STO) for the tax period 01.04.2009 to 31.01.2011.

2. The facts in nutshell of the case are put down for better appreciation. M/s Shrishakti Pasupati Encon Private Limited, TIN-21201109035, Plot No.3, Gopabandhu Nagar, Bhubaneswar is engaged in execution of works contract and construction of residential buildings/apartments and sale thereof to the intending purchasers as per the terms and conditions incorporated in the agreement entered into between the respondent-contractor and the owners of the land. As per the Tax Evasion Report No.13 dated 30.04.2013 submitted by the Sales Tax Officer, Enforcement Range, Bhubaneswar, proceeding u/S. 43 of the OVAT Act was initiated by the learned STO and raised demand of ₹34,29,606.00 which includes penalty of ₹22,86,404.00 imposed u/S. 43(2) of the OVAT Act. The Contractor-respondent being aggrieved preferred the first appeal. The ld.FAA allowed the appeal in part and adjudged the respondent-contractor to avail refund of ₹12,26,625.00.

3. The State being not satisfied with the first appeal order which flew refund in place of demand at assessment approached this forum to intervene contending that where a dealer executing works contract fails to produce the evidences in support of the 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, a lump sum amount on account of labour, service and like surcharges in lieu of such expenses shall be determined at the rate specified in the Appendix. The order of the ld.FAA is held as not in consonance with the provision of Rule 6(e) of the OVAT Rules. The State seeks to restore the order of assessment and to set aside the order of the ld.FAA.

There is no cross objection filed by the respondent-contractor.

4. All the materials such as assessment order, first appellate order, grounds of appeal and other allied documents available on record are gone through. It is revealed from perusal of the record that the respondent-contractor has received payment of ₹2,38,48,260.00 and ₹4,05,36,843.00 towards construction of residential buildings/flats and execution of works contract for construction of building of Rajadhani Engineering Collage respectively culminating to ₹6,43,85,103.00 in total during the period under appeal. The learned STO is learnt to have verified the purchases of the materials worth ₹2,64,57,615.00 made from the registered dealer in which, the contractor-assessee has claimed ITC to the tune of ₹24,05,247.00. The learned STO disallowed the ITC as claimed merely due to the respondent-contractor having not disclosed the same in the returns and non submission of the details of the utilization thereof. Besides, Purchases valuing ₹1,34,77,116.00 are reported to have been made from the unregistered dealers. Deductions towards electricity charges for ₹11,63,968.00 and design and drawings charges for ₹4,48,800.00 have been allowed at assessment. Deduction of the cost of the land @30% on ₹2,38,48,260.00 worked out to ₹71,54,478.00 has been allowed. Output tax @4% on 2,30,69,202.00 and @12.5% on ₹1,53,79,468.00 calculated to a total tax of ₹28,45,20.58. TDS for an amount of ₹17,02,000.00 has been allowed. The total tax due calculated to ₹11,43,202.00 which on imposition of penalty of ₹22,86,404.00 u/S. 43(2) of the OVAT Act arrived at ₹34,29,606.00. The Id.FAA in terms of the agreement made between the respondent-assessee and the owner of the land inclined to allow @33% of the cost of the land used for construction of the residential

buildings/flats. Thus, the ld.FAA allowed deduction towards the cost of the land @33% on ₹2,38,48,260.00 (payment receipt towards construction of buildings) which calculated to ₹78,69,925.80. Further, the ld.FAA has allowed ITC to the tune of ₹24,05,247.18. The reason being that, the learned STO has verified the purchases made by the respondent-contractor both from the registered dealers as well as from the unregistered dealers. It is held by the ld. FAA that disallowance of ITC owing to non-furnishing of the same in the returns is not justified and thus, the ld.FAA allowed ITC to the tune of ₹24,05,247.18. Determination of deduction towards labour and service charges @30% as has been allowed at assessment in terms of Rule 6(e) of the OVAT Rule read with appendix 3(a) is affirmed by the ld. FAA. After allowing deductions of ₹78,69,925.80 towards the cost of the land, ₹1,69,54,553.16 towards labour and service, ₹11,63,968.00 towards electricity charges, ₹4,48,800.00 towards design and drawings out of the gross receipt of ₹6,43,85,103.00, the TTO stood determined at ₹3,79,47,856.04. The TTO as determined is divided up on the basis of the share of taxable purchases made by the contractor assessee i.e. @4% and @13.5% tax groups which respectively calculated to @62.2% and @37.8%. Accordingly, tax @4% on ₹2,36,03,566.46 and @13.5% on ₹1,43,44,289.58 worked out to ₹9,44,142.66 and ₹19,36,479.09 respectively. Thus, the total output tax came to ₹28,80,621.75. After allowing ITC to the tune of ₹24,05,247.18 and TDS for ₹17,02,000.00, the respondent-assessee is due to get refund of ₹12,26,625.00. After going through the order of assessment, first appeal order, the contract Agreement, we are, prima facie, of the view that from the facts as merging from the Agreement, 'the land owner shall be entitled to get 33% of the super built up space of the Apartment on preferential basis and the builder

shall have no right of claim over the same'. Accordingly, allowing deduction of 33% as the cost of the land from the gross receipt (payment receipt from construction of residential buildings) by the ld.FAA is justified. As to the allowing of ITC to the tune of ₹24,05,247.18 by the ld.FAA, it is inferred that the respondent-contractor is found to have made purchases worth ₹2,64,57,615.00 from the registered dealers on payment of VAT to the tune of ₹24,05,247.18. Disallowance of such ITC on account of non furnishing the same in the returns is not justified, since the contractor assessee has paid VAT at the time of purchases from the registered dealers. The ld.FAA is right in allowing ITC to the tune of ₹24,05,247.18.

5. From the above account of discussion, we are of the considered view that the order passed by the ld.FAA in the instant case justifies no interference. The grounds taken by the State bear no merit.

6. Thus, we order as under:-

The appeal filed by the State is dismissed being devoid of merit and the order of the ld.FAA is confirmed.

Dictated & corrected by me.

**Sd/-**  
**Bibekananda Bhoi**  
**Accounts Member-II**

**I agree,**

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

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

**I agree,**

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