

**BEFORE THE DIVISION BENCH, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 1454 of 05-06

(Arising out of order of the learned Asst.CST, Cuttack-II Range, Cuttack in First Appeal Case No. AA 596/CU-II-J/04-05, disposed of on 24.05.2005)

**Present: 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

-Versus-

M/s. Monsanto DMCC,
Enviro Tech and Engineering Ltd.,
Dist-Paradeep, Jagatsinghpur. ... Respondent

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

Date of hearing : 25.07.2023 * Date of order : 24.08.2023**

O R D E R

The State is in appeal against the order dated 24.05.2005 of the Assistant Commissioner of Sales Tax, Cuttack-II Range, Cuttack (in short, Id.FAA) passed in First Appeal Case No. AA 596/CU-II-J/04-05 confirming the order of the Sales Tax Officer, Jagatsinghpur Circle, Paradeep (in short, 'Id. Assessing Authority') passed under Section 12(4) of the Orissa Sales Act (in short 'OST Act').

2. The dealer-assessee in the instant case is a Limited Company christened under the name and style of M/s Monsanto DMCC, Enviro Tech and Engineering Ltd., Dist-Paradeep, Jagatsinghpur engaged in execution of works contract for undertaking Phosphoric Acid Concentration Unit under PPL, Paradeep. The dealer-Company was assessed under Section 12(4) of the OST Act for the year 2003-04 (QE 9/2003 to 3/2004). The dealer-company is learnt to have received gross payment of ₹34,00,000.00 during the material period against the R/A Bill No.7 dated 06.11.2003, bill No.11 to 13 dated 03.02.2004 and Bill No.15 to 17 dated 27.02.2004. Out of the gross payment received against Bill No.7 dated 06.11.2003, an amount of ₹8,00,000.00 being received on account of dismantling of pile caps involving no transfer of property in goods, the entire amount was deducted towards labour charges. An amount of ₹6,00,000.00 received against Bill No13 dated 03.02.2004 relating to fabrication, structural and erection works. The ld. Assessing Authority allowed deduction at 90% towards labour charges on this account in defiance of 100% as claimed for by the dealer-assessee and the remaining 10% being ₹60,000.00 was treated as value of materials used in the execution of the said work. As against receipt of ₹20,00,000.00 pertaining to works on piling, piling cap, plinth beam column and hot well sump, the ld.

Assessing Authority inclined to allow 37% towards labour and service charges. The ld. Assessing Authority allowed deduction of ₹5,48,153.78 towards purchases of materials already suffered tax at the first point of sale which were utilized in the execution of the works during the year under appeal. After effecting deductions as stated supra from the gross payment received, the TTO stood determined at ₹7,71,846.22 which being taxed @8% worked out to ₹61,747.69. With surcharge @10% thereon, the tax due arrived at ₹67,922.45. The dealer-company having paid ₹1,51,680.00 earlier, and amount of ₹83,758.00 was found refundable to the dealer-assessee. The ld. FAA in the first appeal preferred by the dealer-assessee has upheld the order of the ld. Assessing Authority.

3. The State became not satisfied with the above order of the ld. FAA and has preferred this second appeal before this Forum. The State disputes bifurcation of works in assessment treating an amount of ₹8,00,000.00 as purely of labour and service. It is also contested that allowance of deduction @90% on ₹6,00,000.00 against fabrication and erection works is not justified. Further, it is submitted that deduction of ₹5,48,153.78 towards the cost of materials said to have suffered tax without examining their actual use in the works is not justified.

4. There is no cross objection filed by the dealer-assessee. The dealer-assessee did not turn up despite issuance of

notices/intimations to defend the case. There is no alternative but to dispose of this case ex-parte basing on the materials on record.

5. Gone through the orders of the Id. Assessing Authority and the Id. FAA along with other materials available on record. The grounds of appeal filed by the State are perused. It is a fact that the dealer-contractor is found to have received gross payment of ₹34,00,000.00 during the period under appeal. An amount of ₹8,00,000.00 was in receipt out of the above gross receipt vide Bill No.7 dated 6.11.2003 pertaining to dismantling of pile caps. This is purely labour oriented works involving no transfer of property in goods. Accordingly, as facts emerged from the materials on assessment record, allowance of 100% deduction on this score by the learned Assessing Authority as well as the Id.FAA necessaries no interference. As for ₹6,00,000.00 that received vide Bill No.13 dated 3.2.2004 on account of fabrication and erection of equipments, the learned Assessing Authority allowed 90% deduction as against claim of 100% in careful consideration of the nature of works stating that 10% of the said works would have involved utilization of materials in fabrication, structure and erection of equipments. Thus, the learned Assessing Authority brought 10% of ₹6,00,000.00 into tax net. On perusal of the orders of both the forums below, it transpires that the learned Assessing Authority on considering upon the nature of works has

allowed 90% of deduction without there being any evidence produced in support of such expenses towards labour and service under Section 5(2) AA of the OST Act. There is also no books of accounts or any agreement adduced from which, the expenses incurred on account of labour and service could be ascertainable. Under this premises, allowance of 90% deduction towards labour and service by the learned Assessing Authority is not justified. Deduction of 35% on this account is allowable in pursuance of Rule 4B of the Orissa Sales Tax (Amendment) Rules, 2010 which gave retrospective effect from 30th July,1999. We are therefore inclined to interfere in this case and advise the ld. Assessing Authority to re-do the assessment as observed above. It is brought out from the record that materials such as cement, steel and other materials valuing ₹14,87,846.00 were purchased from the registered dealers on payment of OST during the year 2003-04. Out of the said purchase value, the learned Assessing Authority has allowed ₹5,48,15,345.00 as tax suffered materials. The Ld.FAA assumed the said deduction as reasonably allowed in assessment for the year under appeal. We find it reasonably adjudicated and thus, solicit no interference.

6. With the above observation, we hereby order that the appeal filed by the State partly succeed. The order of the ld.FAA is set aside with direction to the learned Assessing Authority to

reassess the dealer company afresh in the light of the observation stated supra within four months from the date of receipt of this order affording reasonable opportunity of being heard to the dealer-company.

Dictated & corrected by me.

Sd/-
(Bibekananda Bhoi)
Accounts Member-II

Sd/-
(Bibekananda Bhoi)
Accounts Member-II

I agree,

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