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

S.A.No. 195(V)/2017-18

(From the order of the ld.DCST (Appeal), Balasore Range, Balasore, in Appeal No. AA-59/BA-2013-14(VAT), dtd.17.05.2017, modifying 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. Chauhan Syndicate,
Dist. Balasore. ... Respondent

For the Appellant : Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)
For the Respondent : Mr. S. Panigrahi, Advocate

Date of Hearing: 09.07.2018 Date of Order: 09.07.2018

ORDER

Revenue has preferred this appeal against the order of the learned First Appellate Authority/Deputy Commissioner of Sales Tax (Appeal), Balasore Range, Balasore (in short, FAA/DCST) solely on the ground that, the authorities below have committed wrong in giving the arbitrary percentage of deduction towards labour and service charges against the works contract undertaken by the assesee-dealer-respondent.

2. The facts of the case in brief are : the instant dealer is a works contractor and had undertaken different contract jobs under GE(I) R&D, Chandipur, Balasore. The Audit team on visit of the dealer's business unit, submitted Form VAT-306 suggesting assessment u/s.42 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act). Basing the Audit Visit Report (AVR), the Assessing Officer/Sales Tax Officer, Balasore Circle, Balasore (in short, AO/STO)

in the assessment found the dealer had undertaken 29 numbers of contract job of different authorities. The AO accepted the suggestion of the Audit team for allowance of deduction towards labour and service charges @64.13%. However, while determining the GTO and TTO, the AO allowed the claim of the dealer regarding payment of TDS of Rs.11,68,230 but denied TDS to the extent of Rs.2,18,131/- and then, in ultimate calculation the dealer was found entitled to refund Rs.2,01,535/-.

3. The dealer put up the matter before the FAA challenging thereby the non-acceptance of TDS and disallowance of claim of Rs.1,11,093/-. The FAA allowed the claim of the dealer and thereby enhanced the amount refundable to the dealer to the tune of Rs.3,12,628/-.

4. When the matters stood thus, State has preferred this appeal with the contentions like, both the authorities below have wrongly allowed the deduction @64.13% towards labour and service charges. It is contended that, since the job contract relates to the period 01.04.2005 to 31.03.2011, the authority should have applied Appendix to Rule-6 for the purpose of determination of labour and service charges.

5. The appeal is heard without cross objection. The sole question to be determined in this appeal is, if Appendix to Rule-6 should be applied for determination of labour and service charges in the case in hand and in consequence thereof, what should be the exact amount of deduction keeping in view the nature of job undertaken by the dealer ?

6. Advancing the argument on behalf of the taxing authority, learned Addl. Standing Counsel Mr. Pradhan argued that the job contract undertaken by the dealer in the case in hand relates to the period 01.04.2005 to 31.03.2011, which is squarely covered

under Appendix to Rule-6 came into force w.e.f.01.04.2005, which postulates the percentage of deduction towards labour and service charges in a works contract.

Ld. Addl. Standing Counsel vehmently argued that, once the provision is explicit about the percentage of deduction, the authority below has travelled beyond the jurisdiction vested on them under law as they have adopted their own method.

Per contra, leaned Counsel for the dealer argued that, all the works undertaken by the dealer are maintenance work and should be covered under Sl.No.8 of the Appendix. He draws the attention of the Court to the AVR where the nature of work it is mentioned as "maintenance of repair and structure like "Maintenance/repair of street light, gate light, garden light, tennis court light and swimming light at I.N.S. Chillika" According to him, since the works are covered under Sl.No.8 there is no need to disturb the findings of both the fora below and particularly when the authorities on verification of the nature of job suggested for deduction @64.13% there is no material evidence rebuttal to it placed by the Revenue leading to a different opinion regarding the percentage.

7. For better appreciation proviso to Rule-6 is reproduced below :

> **"Rule-6.**
> xxx xxx xxx
>
> **Provided that** where a dealer executing works contract, fails to produce evidence in support of such expense as referred to above or such expense are not ascertainable from the terms and conditions of the contract or the books of accounts maintained for the purpose, a lump sum amount on account of labour, service and like charges in lieu of such expenses shall be determined at the rate specified in the Appendix.]"

8. Here in the case in hand, the nature of work undertaken by the dealer under 29 categories mentioned in the AVR. It is not in dispute

that, the rejection of books of account of the dealer by the AO was wrong once the books of account is rejected on the plea that, it does not contain the exact/detail statement towards labour and service charges in a particular works contract, then the AO is required to proceed with the Appendix to Rule-6, which came into force w.e.f. 01.04.2005. Once the provision under law is speaking in ink and paper relating to the percentage of deduction, then the authorities below have no option to apply the best judgment principle. It is surprising to take note of the fact that, when the Appendix to Rule-6 expressly speaks of the deduction at particular rate for specific type of work and further, the deduction at a particular percentage under the work in question does not come under any of the category, then there is no scope in the hands of the AO to apply a reasonable guess work. It may be case of deduction from 63.14% or less but when the statement has mandates the method of calculation to be done in a particular way, this is to be done in the same way. The authorities have no discretion in his hand not to follow the statute. Hence, it is held that, the authorities below have travelled beyond jurisdiction i.e. vested on them under law. However, it is made clear that, by the above observation, this Tribunal does not mean that the dealer is entitled to deduction at lesser percentage in the case in hand.

9. With the observation above, it is held that, this is a fit case where the matter should be remitted back to the AO for assessment afresh by determining the percentage of deduction towards labour and service charges on application of the Appendix to Rule-6 and particularly giving regard to the AVR reflecting the nature of work as maintenance/repair of light etc. Accordingly, it is ordered.

In the result, the appeal is allowed on contest and the impugned order under challenge is set-aside. The matter is remitted

back to the AO for assessment afresh on application of the Appendix to Rule-6.

Dictated and Corrected by me,

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