

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

S.A. No.79 of 2014-15

(Arising out of the order of the learned JCST(Appeal),
Balasore Range, Balasore First Appeal No. AA-111/BA
2004-2005(OST), disposed of on 18.08.2014)

**Present: 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. Siddhartha Engineering Pvt. Ltd.,
Plot No-1015, Nayapalli, Bhubaneswar.

..... Respondent.

For the Appellant

: Mr. S.K. Pradhan, A.S.C.(C.T.)

For the Respondent

: Mr. P.K. Harichandan, Advocate

Date of Hearing : 18.09.2023

Date of Order : 05.10.2023

O R D E R

The Revenue has preferred this second appeal challenging the order dated 12.08.2014 of the Joint Commissioner of sales Tax (Appeal), Balasore range, Balasore (in short, 'ld. FAA') passed in First Appeal Order No.AA-111/BA 2004-2005(OST) in allowing deduction towards labour and service charges in contravention of Rule 4B of the Orissa sales Tax Rules,2010.

2 The facts in brief of this case are that M/s Siddhartha Engineering Pvt. Ltd, Plot No.1015, Nayapalli, Bhubaneswar has a Branch Office at Sergarh in Balasore district which falls under the territorial jurisdiction of the Sales Tax Officer, Balasore Circle, Balasore. Thus, it has got registered under the OST Act at

Balasore Circle, Balasore having R.C No.BA 5196. The dealer-company is learnt to have been executing railway electrification works as awarded by the Railways Authorities. The dealer-company during the assessment year,2000-2001 is said to have executed works contract of design, supply, execution, testing and commissioning of 132/25 KV Traction Sub-Station at Jaleswar, Babasore and an additional CB at existing FP at Hijili over Kharagpur-Bhadrak Section Traction. The dealer-company was assessed ex-parte under Section 12(4) of the OST Act raising demand of ₹1,71,807.00 allowing deduction of labour and service charges @35% over and above the GTO of ₹30,03,611.00 determined at assessment. The ld. FAA in the first appeal as preferred by the dealer-company besides accepting the revised returns shown at ₹26,70,625.00 has allowed deduction of labour and service charges @65%. Hence this second appeal has been by the State alleging irregular allowance of labour and service charges.

There is no cross objection filed by the respondent dealer-company.

3. On going through the order of the Ld FAA, assessment order, grounds of appeal and the materials on record, we are of the considered views 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%

4. On examination of the order of the Ld FAA with reference to the provisions of the aforesaid amended OST Rules, it is of the view that the Ld. FAA has discarded allowance of labour and service charges made by the learned assessing authority at 35% and allowed of his own at 65% regardless to the nature of works executed. In the instant case, the dealer-company failed to adduce evidence in support of expenses towards labour and service. There are no books of accounts maintained by the dealer-company evidencing expenditure incurred towards labour and service. The ld.FAA has adopted deduction of such expenditure at 65% without any basis. As far as the nature of works as has been executed, the present works would fall under structural works admissible to allowance of labour and service at 35% in consonance with the amended Rules cited supra. We are therefore inclined to go with

the contention of the State and thus, the order of assessment is sought to be modified allowing deduction towards labour and service charges @35% together other deductions as allowable under law.

5. In view of the above observation, the appeal filed by the State is allowed. The order of the ld. FAA is set-aside with direction to the ld. Assessing Authority to reassess the dealer in the light of the above observation within a period of three months from the date of receipt of this order.

Dictated and corrected by me.

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

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

I agree,

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