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

S.A.No. 1404/2005-06

(From the order of the ld.ACST (Appeal), Puri Range, Bhubaneswar, in Appeal No. AA.165/BH-II/03-04, dtd.12.07.2005, confirming 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. Amarjit Sing Bhui, NAC Colony, Bhubaneswar. ... Respondent

For the Appellant : Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)
For the Respondent : None

Date of Hearing: 12.07.2018 Date of Order: 12.07.2018

ORDER

State has challenged the confirming order of the learned First Appellate Authority/Asst. Commissioner of Sales Tax, (Appeal) Puri Range, Bhubaneswar (in short, FAA/ACST) relating to the deduction towards labour and service charges against works contract on the contentions like, the authority below has allowed deduction at higher rate in comparison to the nature of work undertaken by the dealer/works contractor i.e. construction of building.

2. In the instant case, the dealer was a works contractor, who had undertaken job works under different Heads of Departments like (i) G.P.W.D., Bhubaneswar, (ii) Telecom Civil Division, Sambalpur, (iii) R.R.L., Bhubaneswar, (iv) Telecom Civil Division, Bhubaneswar etc.. During the assessment period 1999-2000, the dealer/works contractor had received a sum of Rs.27,71,850/- as against the job works. In a proceeding u/s.12(4) of the Odisha Sales

Tax Act, 1947 (in short, OST Act) the Assessing Officer/Sales Tax Officer, Bhubaneswar-II Circle, Bhubaneswar (in short, AO/STO) in consideration of the nature of work i.e. construction work, allowed deduction @42% towards labour and service charges and then determined the taxable turnover as well as the tax due to be paid by the assessee-dealer.

3. With a hope of higher rate of deduction towards labour and service charges, the assessee-dealer knocked the door of the learned First Appellate Authority (FAA). The ld.ACST as FAA vide impugned order dtd.12.7.2005 declined the prayer of the dealer and thereby the order of the AO became confirmed with the demand of tax remained as it was.

4. When the matters stood thus, Revenue has came up with this appeal on the plea that, the deduction allowed by both the fora below is in higher side. It has prayed that the percentage of deduction must be 32% keeping in view the nature of work undertaken by the dealer.

5. In the appeal at hand, it is to be seen that, whether the FAA is wrong in allowing deduction towards labour and service charges @42% and if yes, what should be the exact percentage of deduction ?

6. To substantiate the plea of the State, learned Addl. Standing Counsel, Mr. Prdhan draws the attention of the Court to Rule 4-B of the Odisha Sales Tax Rules, which was amended in the year 2010 but came into force w.e.f.30.07.1999. Learned Counsel argued that, the works undertaken by the dealer against the particular job works in question were construction of building. So on application of Rule 4-B the percentage of deduction should be restricted to 32%.

7. At the outset, bare perusal of the chart appended to Rule 4-B shows the deduction for building work is prescribed at 35%. So it can safely be said that, the claim of the State to allow deduction @32% is baseless.

On the contrary, when the assessment period in question is considered, it is found that, the same relates to the period 1999-2000. Rule 4-B is inserted in the tax group was promulgated in the year 2010 but it has got retrospective effect from 30.07.1999. Retrospective effect of the Rule neither can be challenged before this forum nor it is within the jurisdiction of this forum to decide the Constitutional validity of the provision. So once the provision says it has got retrospective effect w.e.f.30.07.1999, it must be applied whenever it is found applicable in case of works contract. It is not out of place to mention here that, while applying the provision, it must be kept in mind that the nature of work should be within the category appended to the provision. Beyond that, there is no scope in the hands of this Tribunal to apply this chart of deduction under the rule.

8. Adverting to the case in hand a bona-fide question raised in the appeal is, when the assessment period relates to the year 1999-2000, then there is every possibility that, the dealer had undertaken the job work before Rule 4-B came into force. Unless and until any cogent evidence led before the Court to draw an inference that the job works undertaken by the dealer were after 30.07.1999, in no case Rule 4-B can be successfully applied. When the State has challenged the impugned order, the burden lies on the State to establish the same by reliable evidence. Unless the works contract is perused or any connected documents relating to payment under the works contract, it is unsafe to hold that, the dealer had executed job contract after 30.07.1999. So in absence of any materials the plea

orally taken by the State even cannot withstand in the facts and circumstances of the case. Thus, it is held that, the impugned order calls for no interference and resultantly the deduction as allowed by both the fora below need to be treated as confirmed hereby. Hence, ordered.

The appeal is accordingly dismissed as of no merit.

Dictated and Corrected by me,

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

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