

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

S.A. No.15(V) of 2016-17

(Arising out of the order of the learned
Addl.CST(Appeal), South Zone, Berhampur in first
appeal case No. AA (VAT)-75/2013-14 disposed of on
26.02.2016)

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

M/s. Golden Wood Pecker,
Plot No-197, Bomikhal,
Rasulgarh, Bhubaneswar.

..... Appellant.

-Versus -

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

..... Respondent.

For the Appellant : : Mr. N.K. Das, Advocate
: : Mr. K.R. Mahapatra, Advocate
For the Respondent : : Mr. N.K. Rout, A.S.C.(C.T.)

Date of Hearing : 04.09.2023 * Date of Order: 03.10.2023**

O R D E R

The dealer-assessee is in appeal against the order dated 26.02.2016 of the Additional Commissioner of Sales Tax(Appeal), South Zone, Berhampur (in short, 'Id. FAA') passed in First Appeal Case No. AA (VAT)-75/2013-14 confirming the order of assessment under Section 42 of the Odisha Value Added Tax Act (in short, 'OVAT Act') passed by the Deputy Commissioner of Sales Tax, Bhubaneswar-I Circle, Bhubaneswar (in short, 'Id. STO').

2. The summary of the case is that M/s. Golden Wood Pecker, Plot No-197, Bomikhal, Rasulgarh, Bhubaneswar is engaged in

execution of works contract under Govt. organizations and private concerns. The dealer-contractor was audited under Section 41 of the OVAT Act. Basing on the Audit Visit Report (AVR), the dealer-contractor was assessed under section 42 of the OVAT Act for the tax period from 01.04.2007 to 31.03.2012 raising demand of ₹11,19,510.00 including penalty of ₹7,40,340.00. The first appeal as preferred by the dealer-contractor resulted in affirmation of the demand raised at assessment.

3. The dealer-contractor being not satisfied with the order of the Id. FAA preferred second appeal before this forum endorsing grounds of appeal. The grounds of appeal are broadly hinged on issues as decided by the Hon'ble Apex Court in case of ***M/s. Gannon Dunkerley and Co. & Anr v. State of Rajasthan & Ors*** reported in 88 STC 204 (SC). It is further submitted that with the dealer-contractor having maintained full set of books of accounts supported with Balance Sheet, Trading and Profit and Loss Account for the entire tax periods under appeal and specifically accounts towards payment to labour contractors and debit vouchers, restricting labour and service charges to a lump sum amount of 25% of the gross receipt as per Appendix to Rule 6(e) of the OST Rules is not justified. The Id. assessing authority has simply relied mechanically on the observation contained in the AVR. It is further contended that the Id.FAA has adopted a contradictory view in stating that the claim of the dealer-contractor towards labour and service charges was not allowed owing to non submission of the supporting evidence like muster roll along with relevant books of accounts at the time of appeal-hearing.

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

4. Heard both the parties. Gone through the orders of the Id. FAA and Id. assessing authority and the materials available on

records. On perusal, it transpires that the dealer-contractor during the tax periods under appeal is learnt to have received gross payment of ₹15,52,21,475.00. There is no mention as to the sources of receipt of payments either in the AVR or in the assessment order or in the first appeal order. There are no copies of Agreements adorned in the records. Nor does any mention thereof in the AVR or in the assessment order/first appeal order. Thus, the nature of works executed during the tax periods under appeal is not ascertainable from the materials available on record. The AVR specifies that the dealer-contractor maintains purchase and sale invoices, audited balance sheet, register of statutory forms and register of waybills. The AVR does also mention that the dealer-contractor has maintained some labour account like debit vouchers and labour contractor payment. It is observed in the AVR that these labour account doesn't commensurate with the service tax paid by the dealer during the period of audit. It is also alleged that the dealer as per the balance sheet has paid Service Tax to the tune of ₹24,81,321.00 during the period 01.04.2007 to 31.03.2012 as against his claim of expenses towards labour and services amounting to ₹8,31,39,548.89 and thus, the payment towards service tax is too less than its claim towards the labour and services. Accordingly, the labour and service charges has been determined at 25% in pursuance of the rate specified in the Appendix to Rule 6(e) of the OVAT Rules. The learned assessing authority is seen to have mechanically gone by the recommendation contained in the AVR without application of his independent mind. The Id.FAA has followed suit affirming the order of assessment passed under Section 42 of the OVAT Act.

5. From the above account of discussion, it appears that the dealer-contractor has maintained books of accounts supported with

purchase invoices and sale bills, accounts on payment to labour contractors. It is also observed that the dealer-contractor has also got its accounts audited by the registered Chartered Accountants under Section 65 of the OVAT Act. Copies of the Balance Sheet, Trading and Profit and Loss Account for the entire tax periods under appeal have been submitted. The said statutory audit report portrays the quantum of labour, service and the like charges utilized in the execution of works contract in question. As observed in the AVR, the dealer-contractor is found to have maintained some labour account like debit vouchers and labour contractor payment. Without lying credence on the labour accounts as adduced, the Audit Team has instead drawn up an inference that as the dealer-contractor has shown deposit of service tax of ₹24,81,321.00 against the total labour and service charges of ₹8,31,39,548.89, it was assumed to be too less than its claims towards labour and service charges. The Audit Team has therefore recommended application of the rate specified in the appendix to Rule 6(e) of the OVAT Rules without purportedly analyzing nature of works executed and disowning the books of accounts like labour accounts and payments made to the labour contractors. The learned assessing authority as well as the Id.FAA has not minutely looked into the contentions of the dealer-contractor and has rather swayed by the observation made in the AVR. We are, therefore, of the view that injustice appears to have been meted out to the dealer-contractor in not accepting the books of account maintained as per law.

6. The learned assessing authority is required to minutely verify the books of accounts more specifically on labour, service and the like charges as shown in the audited accounts like Balance Sheet and other allied documents. The sources of the payments received by the dealer-contractor ought to be ascertained on

examining the books of accounts and the copies of contracts/agreements as may be produced by the dealer-contractor.

7. In view of the above observations, it is ordered that the appeal filed by the dealer-contractor is allowed. The order of the ld.FAA is set aside. The case is remitted back to the learned assessing authority to assess the dealer-contractor afresh in the light of the observations made supra within three months from the date of receipt of this order.

Dictated and corrected by me.

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

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

I agree,

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

I agree,

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