

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

**S.A. No. 61 of 2005-06**

(Arising out of the order of the learned Asst.CST, Balangir Range, Balangir in first appeal case No.AA-123 (BP-I) of 2004-2005 disposed of on 30.11.2004)

**Present:** **Shri S.K. Rout, 2<sup>nd</sup> Judicial Member**  
**&**  
**Shri B. Bhoi, Accounts Member-I**

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

..... Appellant.

**-Vrs. -**

M/s. Dharti Dreging & Construction Ltd.,  
Bagmari, Po- Birmaharajpur.

..... Respondent.

For the Appellant : : Mr. S.K. Pradhan, ld. A.S.C.(C.T.)  
For the Respondent : : None.

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**Date of Hearing : 18.09.2023 \*\*\* Date of Order: 17.10.2023**  
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**O R D E R**

The State is in appeal against the order dated 30.11.2004 of the Assistant Commissioner of Sales Tax, Balangir Range, Balangir (in short, 'ld. FAA') in First Appeal Case No. AA-123 (BP-I) of 2004-2005 confirming the order of assessment passed by the Sales Tax Officer, Balangir-I Circle, Balangir (in short, ld.STO) passed under Section 12(4) of the OST Act.

2. The facts in nutshell are that M/s. Dharti Dreging & Construction Ltd., Bagmari, P.O:-Birmaharajpur, district:-Subarnapur executes works contract under different Govt. Organizations like Hariharjore Irrigation Project, Birmaharajpur.

During the assessment year 1997-98, the dealer-contractor is learnt to have received gross payment of ₹96,93,948.00 executing earth works like excavation of canal at Hariharjore Irrigation Project. Out of the said gross receipt, a sum of ₹55,51,513.14 is shown to have related to earth work involving no transfer of property of goods. The balance amount for ₹41,42,034.86 is said to have involved utilization of materials rendering thereby transfer of property in goods. This apart, certain materials like cement and iron rod worth ₹1,71,418.00 is reported to have been supplied by the Department/Contractee. The materials like cement and iron rods worth ₹4,80,059.00 which includes materials supplied by the contractee being purchased from the registered dealers are first point tax paid goods. The Id. STO has allowed deduction towards labour and service charges at 62% on ₹41,42,034.86 as against claim of 70%. The dealer-contractor was granted refund of ₹2,91,478.00 after effecting admissible deductions towards labour and service charges, value of first point tax paid goods and TDS and charging surcharge on tax due as admissible. The Id. FAA has confirmed the order of assessment in the first appeal as preferred by the dealer-contractor.

3. The State prefers second appeal assailing the orders of the forums below as unjust holding that deduction of 62% out of the gross payment towards labour and service charges is without basis. It is further contended that allowance of ₹4,30,059.00 towards deduction of first point tax paid goods has been made without examining the nature of works executed and the volume of materials used in the execution of works.

4. The grounds of appeal vis-a-vis the orders of the forums below are gone through. The respondent-contractor did not

appear for hearing despite issuance of several notices/intimations. There is no alternative but to dispose of the impugned case ex-parte basing on the materials available on record. As it appears, the dealer-contractor in the instant case is found to have executed earth works i.e. excavation of canals at Hariharjore Irrigation Project, Birmaharajpur. The dealer-contractor was in receipt of gross payment of ₹96,93,548.00 during the material period. An amount of ₹55,51,513.14 was disclosed as purely earth works involving no transfer of property in goods. The balance amount of ₹41,42,034.86 involves construction of culverts, embankments etc. involving transfer of property in goods. There is no books of account evidencing expenses towards labour and service produced either at assessment or at first appellate stage by the dealer-contractor. The learned STO is found to have accepted the claims of the dealer-contractor without detail verification of the accounts and allowed deduction 62% towards labour and service charges merely on a part of turnover of ₹41,42,034.86 assuming ₹55,51,513.14 as excavation of canals involving no transfer of property in goods. The dealer-contractor has executed earth works, canal works and construction of culverts etc. Allowance of 62% on the entire works towards labour and service charges ought to have been made. In the present case, the dealer-contractor has received gross payment of ₹96,93,548.00 on account of execution of excavation of canals. Accordingly, 62% on ₹96,93,548.00 is sought to be allowed towards deduction of labour and service charges instead of merely on a part of the gross receipt i.e. ₹41,42,034.86. As regards, utilization of materials disclosed at ₹4,80,059.00 said to be first point tax paid goods, detail verification of the purchase invoices together

with utilization of the same in the execution of works contract is required to be carried out.

5. In view of the above observations, the appeal filed by the State is allowed. The order of the ld. FAA is set-aside. The ld. STO is directed to assess the dealer-contractor afresh in the light of the observations made above.

**Dictated and corrected by me.**

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

**I agree,**

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

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