

# **BEFORE THE FULL BENCH : ODISHA SALES TAX TRIBUNAL: CUTTACK.**

## **S.A. No. 241 of 2003-04**

(Arising out of the order of learned ACST, Balangir Range,  
Balangir, in Sales Tax Appeal No. AA- 102 (BPII) of 1992-93,  
disposed of on dt. 13.02.2003)

**Present :** **Smt. Suchismita Misra, Chairman**  
**Smt. Sweta Mishra, 2<sup>nd</sup> Judicial Member**  
**&**  
**Shri Prabhat Ch. Pathy, Accounts Member-I**

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

**- V e r s u s -**

M/s. Engineering Project (India) Ltd.,  
Badmal, Saintala, Dist. Balangir. . . Respondent

For the Appellant ... Mr. M.S. Raman, Addl. S.C. (CT)  
For the Respondent ... N o n e.

Date of hearing: 24.01.2020 \*\*\*\* Date of order: 13.02.2020

## *ORDER*

This appeal is directed against the order dated 13.02.2003 passed by the Asst. Commissioner of Sales Tax, Balangir Range, Balangir (in short, "first appellate authority") in Sales Tax Appeal No. AA- 102 (BPII) of 1992-93 reducing the demand raised by the Sales Tax Officer, Balangir-II Circle, Balangir (in short, 'assessing officer') u/S. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') in respect of the dealer-assessee for the tax period 1991-92.

2. The facts as revealed from the case record are as follows :

The dealer M/s. Engineering Project (India) Ltd. is a Government of India Enterprise having its head office in New Delhi and registered office at Dhurwa, Ranchi. The dealer-assessee being a works contractor represented by its General Project Manager had its site office at Badmal in the District of Balangir, Odisha at the relevant time and as per the contract agreement with the General Manager, Indian Ordnance Factory, Balangir Project it had executed construction work of buildings, drainage and sewage system, roads etc. It had also erected cooling towers for making provisions of air conditioning in and around the factory premises and provided fire fighting equipments as per the specifications given in their agreement. The assessee had also supplied certain materials, machines and equipments to the contractors at the site office of the contractee in accordance with their contract and received a total payment of ₹20,95,85,150.00 during the relevant year under assessment. This dealer was assessed u/S. 12(4) of the OST Act for the tax period 1991-92 and pursuant to a notice received from the assessing officer it had produced its books of account consisting of account vouchers granted by the Ordnance Factory, purchase invoice files showing purchase of machinery, materials and equipments supplied and copies of certificates of deductions of sales tax at source u/S. 13(AA)(2) of the OST Act. All these documents were verified by the

assessing officer alongwith the contract agreement. After examining those documents and on hearing learned Advocate appeared on behalf of the dealer before him, he (the assessing officer) concluded that the works executed by the dealer was divisible in nature for which he proceeded to assess the dealer-contractor on two aspects i.e. for sales and then for supply and other respectively in execution of its works contract. Being aggrieved by this sort of assessment, done by the assessing officer, the dealer preferred an appeal challenging the same before the Asst. Commissioner of Sales Tax, Balangir Range, Balangir but the first appellate authority confirmed the order of assessment while deciding the appeal ex parte against the dealer with his observation that the dealer-contractor was not interested to agitate its case before the first appellate authority.

Being dissatisfied with the aforesaid order of the first appellate authority the dealer preferred second appeal before this Tribunal. On a thorough examination of the matter this Tribunal held that the dealer was not given adequate opportunity to produce its books of account which were with their Head Office and as such remitted the case to first appellate authority for fresh hearing after offering the dealer an opportunity of being heard in the appeal before him. The first appellate authority then heard the appeal afresh, examined the documents produced before him by the dealer such as the agreement in

original, copy of the annual return for the year 1991-92, statement of payment received during the relevant period containing the details of work done, copy of the order passed in a second appeal bearing S.A. No. 3876 of 1994-95 by this Tribunal pertaining to the tax period 1992-93 in respect of the instant dealer for reference in the present first appeal. Then taking into account the finding of this Tribunal in S.A. No. 3876 of 1994-95 relating to works contract of this dealer pertaining to the year 1992-93 alongwith their (the Tribunal's) opinion that works contract involved therein is an indivisible one and further the dealer being a Government of India Enterprises is subject to internal audit and periodical statutory audit with their properly maintained books of account, the splitting of works undertaken by it (the dealer-contractor) into two parts i.e. one for supply and sales of materials and other for execution of works contract as held by the Sales Tax Officer is not proper, the first appellate authority considered the allowance of percentage for deduction towards labour and service charges @ 42% as against 32% given by the assessing officer. Then making other adjustments such as tax paid by the dealer at the checkgates as well as goods purchased on payment of tax at the first point inside the State of Odisha and purchase of exempted goods supported with proper documents he (the first appellate authority) redetermined the tax payable by the dealer as per the details mentioned by him in his order

(at pages 8 & 9). He ultimately found that the dealer was eligible to get refund of ₹32,69,085.02. Therefore, he ordered that excess tax, if any, paid may also be refunded to the dealer as per provisions of law.

3. Being aggrieved by this order the State came up with the present appeal before the Tribunal on the grounds that the impugned order is illegal and arbitrary. The first appellate authority has erroneously allowed huge deduction towards labour and service charges because for the works executed in this case labour and service charges cannot exceed 32% of the total receipt. Therefore, the impugned order needs to be modified suitably.

No cross-objection has been filed in this case on behalf of the dealer-assessee.

4. In course of hearing it was found that despite service of notice on the dealer by way of affixture through Asst. Commissioner of CT & GST Circle, Kantabanji none appeared on its (the dealer-assessee) behalf to participate in the hearing of this appeal. As this is a pretty year old matter the appeal was heard from the side of the State only to be disposed of ex parte on merit as per Rule 60(2) of the OST Rules.

5. On a thorough scrutiny of the impugned order it is seen that the first appellate authority while considering the appeal afresh had verified all the relevant documents pertaining to the case. He had examined the works contract agreement and the nature of work

executed by the dealer pursuant to the relevant agreements. Rule 4-B of the OST Rules which prescribes the percentage of deductions to be allowed towards labour and service charges in respect of certain types of work was not in vogue then. The first appellate authority had examined the books of account of the dealer thoroughly and his order does not indicate if he had noticed any sort of discrepancy in the said document. Further the first appellate authority in his elaborate order has described in detail as to what are the facts which led him to redetermine the tax payable by the dealer in the instant case. His conclusions in each aspect of the case are found to have been based upon sound reasons. Considering all these circumstances we feel there is no need for us to interfere with the impugned order at this stage.

6. In the result, as per the discussion made above we confirm the order passed by the first appellate authority. Accordingly the appeal preferred by the State is dismissed.

Dictated & Corrected by me,

**Sd/-  
(Smt. Suchismita Misra)  
Chairman**

**Sd/-  
(Smt. Suchismita Misra)  
Chairman**

I agree,

**Sd/-  
(Smt. Sweta Mishra)  
2<sup>nd</sup> Judicial Member**

I agree,

**Sd/-  
(Prabhat Ch. Pathy)  
Accounts Member-I**