

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

S.A.No.1809 of 2004-05

(Arising out of the order of the learned ACST, Sambalpur Range,
Sambalpur, in Appeal case No.139(SAI)/2003-04,
disposed of on 29.06.2004)

P r e s e n t: **Shri S.Mohanty,** **Shri R.K.Rout,**
 Judicial Member-II. **Accounts. Member-II.**

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

... Appellant.

- V e r s u s -

M/s.Inter continental Construction (AP) Ltd.,
Co-operative Office, D-6, Kartik Apartment
46-Vijaya Raghava Road, T.Nagar,
Chennai.

... Respondent.

For the Appellant ... Mr.M.S.Raman, Id. AS.C.(C.T.)
For the Respondent ... None.

Date of hearing: 29.03.2018 * * * Date of Order: 29.03.2018

ORDER

This tax appeal is preferred by the State assailing order of the First Appellate Authority, whereby the first appellate authority denied the tax liability of the assessee dealer on the plea that the assessee dealer is a sub-contractor performed the job work of the principal contractor who has been already assessed as such the assessee dealer is not exigible to sales tax as per the scheme of the proviso to Section-8 of the OST Act,1947.

2. The assessee-dealer is a works contractor who has performed two nos. of works contract as a sub-contractor under M/s.TPL, the principal contractor. M/s.GRIDCO is the contractee. The dealer had received gross payment of Rs.7141613.82 during the tax period as against the works contract. In a proceeding under Section-12(4) of the OST Act, the assessing authority passed exparte order determining the GTO and TTO of the dealer giving deduction of 35% towards labour and service charges and there upon the tax liability with surcharge became calculated to Rs.408500.00.

3. Being aggrieved, the assessee dealer preferred the first appeal. The First Appellate Authority on acceptance of the dealer's plea that the principal contractor has already been assessed for the self same tax period under the CST Act at Bhubaneswar-II Circle so the instant dealer cannot be taxed again and accordingly he deleted the tax demand and directed refund of the tax deducted at source to the tune of Rs.817830.00.

4. Being dis-satisfied with such findings of the First Appellate Authority, State has preferred this appeal on the contentions like the deduction towards labour and service charges should be at 35% and with further contention that the agreement between principal contractor and sub-contractor are appropriate.

Findings:-

5. At the outset it can safely be said that the plea of the State in this appeal seems to be mechanical and vogue. It is the assessing

authority while passing exparte order allowed certain amount of deduction towards labour and service charges applying best judgment principle. However, the first appellate authority has gone into the details of the works contract, the nature of contract work, agreement between the principal contractor and the sub-contractor (the instant dealer). The first appellate authority has followed the principle laid down by the authority in Hindustan Dorr Oliver Limited and Others Vrs. Union of India and Others reported in 1989 (75STC) 211 (Patna). As per Section 5(2)(AA)(ii) of the OST Act, 1947 taxable turnover in respect of works contract shall be deemed to be the gross value received or receivable by the dealer for carrying out sub contract less amount of labour charges and service charges incurred for the sake of contract. If that be, the turnover of a sub-contractor is not excluded from taxable turnover of the main contractor. Once the principal contractor is found assessed under the OST Act for the self same contract sub-contractor cannot be taxed i.e. to avoid double taxation. Proviso to Section-8 of the OST Act says same goods shall not be taxed at more than one point in the same series of sale or purchase by successive dealer. Here, in this case the goods were supplied by the principal contractor. The principal contractor was assessed which includes the turnover of the sub-contractor. In that case the sub-contractor is not liable to be taxed again. In consideration of the factors above, we are of the considered view that the first appellate authority has gone into the details of the works contract, the agreement between the principal contractor and

sub-contractor and in consideration of the fact that the principal contractor was already assessed and revised return was filed by the sub-contractor in the light of assessment of the principal contractor, hence there is no reason and occasion to levy tax on the goods utilised by the sub-contractor which was supplied by the main contractor. When the entire amount received under the works contract was considered by the assessing authority while assessing the principal contractor that proviso to Section-8 can successfully come to the rescue of the present assessee dealer. Further, in the light of the authority Hindustan Dorr Oliver Ltd. (Supra), it is held that the impugned order suffers no illegal, resultantly the same needs no interference. Accordingly, it is ordered.

6. The appeal by the State is dismissed as of no merit.

Dictated and Corrected by me,

(Shri S.Mohanty)
Judicial Member-II

(Shri S.Mohanty)
Judicial Member-II

I agree,

(Shri R.K.Rout)
Accounts Member-II.