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

S.A. No. 1241 of 1999-2000

(Arising out of the order of learned ACST, Appellate Unit, Bhubaneswar, in Sales Tax Appeal No. AA- 42/BH.I/1997-98, disposed of on dt. 05.10.1999)

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

M/s. Orissa Construction Corporation Ltd.,
Rasulgarh, Bhubaneswar. . . . Appellant

- V e r s u s –

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

For the Appellant … Mr. D.K. Mohanty, Advocate
For the Respondent … Mr. M.S. Raman, Addl. S.C. (CT)

Date of hearing: 31.01.2020 **** Date of order: 19.02.2020

O R D E R

This appeal is directed against the order dated 05.10.1999 passed by the Asst. Commissioner of Sales Tax, Appellate Unit, Bhubaneswar (in short, "first appellate authority") in Sales Tax Appeal Case No. AA- 42/BH.I/1997-98 confirming the assessment done by the Sales Tax Officer, Bhubaneswar-I Circle, Bhubaneswar (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 pertaining to the tax period 1995-96.

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

The dealer-assessee M/s. Odisha Construction Corporation Ltd. is a works contractor. During the period under assessment it had executed works contract under various Government projects. In response to the notice u/S. 12(4) of the OST Act it produced statement of works, TDS certificates, register of gross receipts, statement of advance, copy of running account bills etc. before the assessing officer through its Advocate and those documents were duly examined by the assessing officer in course of assessment. The assessing officer found that the dealer had received gross payment of ₹5,98,79,135.00 during the year 1995-96 out of which it had reflected receipt of advance amounting to ₹2,96,03,000.00 and claimed deduction of the said amount accordingly. Learned Counsel appearing on behalf of the dealer produced a certificate issued by the Executive Engineer, Jonk Dam Division for ₹1,58,53,000.00 and the works statement of Executive Engineer, Badanala, Irrigation Division where Rs.60,00,000.00 had been reflected as interest free advance. Out of the total advance claimed to be ₹2,96,03,000.00 the dealer failed to produce evidence in respect of other claim of advance for which its

claim of advance was reduced to ₹2,18,53,000.00 and the balance of the total claim of advance was taken towards payments received by the dealer on execution of works which the assessing officer added to its gross turnover (GTO). The assessing officer further on verification of accounts did not allow the dealer's claim towards materials supplied by the department, materials purchased on payment of tax, labour, fabrication, transportation and erection charges as those were not based on proper accounts. However, he allowed the dealer deduction @ 32% towards labour and service charges as well as the TDS amounting to ₹10,72,976.00 which were produced before him. Ultimately he demanded ₹8,97,119.00 from the dealer towards its tax liability for the relevant period.

Being aggrieved by this order of assessment the dealer preferred an appeal against the same before the first appellate authority assailing the determination of its GTO and TTO by the assessing officer and submitted before him that since it had maintained books of account in regular course of its business activity and filed returns as well as paid tax thereon which were also audited by the Auditors, the assessing officer should have considered all those documents instead of rejecting the same arbitrarily. That apart the assessing officer's conclusion that the dealer should be allowed

deduction of only 32% towards labour and service charges was also illegal and without any basis.

The first appellate authority on perusing the order of assessment as well as the averments put forth before him on behalf of the dealer-assessee concluded that there was no infirmity in the said assessment as the dealer had not produced any documentary evidence in support of its claim before the assessing officer. As per his (first appellate authority) observation the dealer also failed to produce relevant documents before him for which he ultimately confirmed the order of assessment in the instant case.

3. Being dissatisfied with the result of its appeal before the first appellate authority the dealer preferred this second appeal before the Tribunal raising the following grounds :

(i) Determination of GTO and TTO in the instant case is arbitrary, unwarranted and uncalled for;

(ii) The dealer was deprived from availing the benefit of natural justice as it was denied reasonable opportunity of being heard;

(iii) The dealer being a Government owned Corporation is engaged in execution of works contract with various Government agencies as well as private bodies and for that it maintains all books of account such as contract receipt register, cash book ledger, vouchers for expenses etc. and as such its accounts are transparent and open to public but the assessing officer in a routine manner determined its

TTO and allowed deduction @ 32% only towards labour and service charges and further did not allow deductions towards advance payment received by it as well as materials purchased by it for execution of the works contract.

In the aforesaid circumstances the dealer urged before this forum to quash the order of assessment as well as the impugned order.

No cross-objection has been filed on behalf of the State in the instant appeal.

4. In course of hearing of the appeal learned Counsel appearing on behalf of the dealer-assessee submitted that he has filed certain documents in the present case alongwith an application u/R. 61 of the OST Rules. Those documents would indicate that the dealer had filed its return voluntarily and paid the tax wherever it was due. The dealer could not produce certain documents such as R.A. bill (running accounts bill) for payment of advance, reimbursement of Central Excise paid and copies of agreement for reimbursement of Central and State which were obtained by it (the dealer) subsequent to the first appeal proceeding. Since those documents and evidence are parts of the record and this forum being the last fact finding authority it was urged on behalf of the dealer to consider those documents and evidence in its favour. Learned Counsel for the dealer-assessee also filed xerox copies

of those documents. On perusal of those documents we could find that the matter needs to be remitted to the assessing officer for making assessment afresh taking into account all the documents connected to this case which would be filed before him by the dealer at present. In this regard, learned Standing Counsel appearing on behalf of the State, submitted that the dealer then must assign sufficient reasons/cause before the assessing officer as to why he did not furnish those documents earlier either before the assessing officer or the first appellate authority. If its (the dealer's) explanation in this regard would be found just and convincing by the assessing officer then he may accept the same.

5. The next point raised by the dealer was percentage of deduction allowed in its favour towards labour and service charges. Learned Counsel for the dealer cited an order passed by this Tribunal in S.A. No. 320 of 1999-2000. He contended before this forum that the second appeal in question as cited by him in the present second appeal involved the same dealer-assessee and the State for a dispute between them pertaining to the tax period 1994-95. In the said second appeal which was disposed of by this Tribunal on 14.10.2019 it was held by this Tribunal that the assessing officer was to examine the works executed by the dealer pursuant to the works contract and if those were involved design, fabrication, supply and erection of radial gates with

hoist bridges etc. for different irrigation projects and further the nature of work executed by it was not only ordinary structural work or bridge work but needed expert and skilled personnel to accomplish the task of execution of the concerned works contract then he is to determine the percentage of deduction towards labour and service charges afresh.

6. However, in reply to this contention of the learned Counsel for the dealer it was strenuously urged on behalf of the State that percentage of deduction towards labour and service charges as determined by the assessing officer in the instant case should be maintained by this forum.

7. After hearing from both the parties with regard to percentage of deduction towards labour and service charges we would like to say that at this stage we do not feel it proper to give a specific direction to the assessing officer that the deduction towards labour and service charges should be allowed @ 37% from its gross receipts as was given in favour of the dealer in some other cases being cited as instances by learned Counsel for the dealer in the present appeal. But so far as the examination of relevant documents which as per the submission of the dealer before this forum would be produced before the assessing officer with leave of this Tribunal, we would like to say that the assessing officer in course of fresh assessment must look into the evidence placed before him and examine all the documents for

determination of the tax liability of the dealer-assessee afresh by taking into account the exact nature of works executed by it as that would also enable him to determine the percentage of deduction to be allowed in favour of the dealer-assessee towards labour and service charges correctly in accordance with law.

In the circumstances, as discussed above the case is remitted to the assessing officer to complete the reassessment in this case within three months from the date of receipt of this order. The dealer is also directed to cooperate with the assessment proceeding to be held in this case as per the above order by filing all the relevant documents before the assessing officer in time.

8. In the result, the appeal is allowed and the impugned order is set aside. The assessing officer is directed to make reassessment as per provisions of law keeping in view the observations made in the foregoing paragraph of this order.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Smt. Sweta Mishra)
2nd Judicial Member

I agree,

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