



2. The case at hand is that, the dealer-company being a Government of Orissa undertaking is engaged in manufacturing and sale of overhead electric transmission tower structure, conductors, cables etc. for which it had a manufacturing unit at Hirakud. Apart from this, the appellant is also engaged in execution of works contract under different organisations. For manufacturing purpose, the dealer-company used M.S. Angles, Aluminium Rods and steel, wire etc. which were purchased both from inside and outside the State of Orissa against Form-IV and Form 'C' respectively. The dealer-assessee had also a unit for production of A.C.S.T./AAAC conductors at Hirakud (formerly known as Hira Cable Works), which merged with H.I.W. For manufacturing of conductors, the unit utilises steel wire and aluminium rods as raw materials. During the year under appeal, the dealer-assessee had returned the GTO and TTO at Rs.27,32,33,143.20 and Rs.12,95,72,623.72 respectively. The dealer had collected OST amounting to Rs.70,10,910.88. Out of the GTO returned the dealer-assessee had claimed deduction of Rs.15,01,062.60 u/s.5(2)(A)(a)(ii) of the OST Act and towards sale of tower structures and conductors to registered dealers inside the State free of tax. Against this claim, the dealer-company had furnished the requisite Form-XXXIV in all cases which were found to be in order. The dealer-assessee had also claimed to have sold tower structures and conductors amounting to Rs.8,25,26,679.48 to registered dealers of the State engaged in mining and generation of electricity at the concessional rate of tax @4% against Form-IV and had furnished requisite Form-

IV, which were allowed. Besides the above transactions, the dealer-company had executed works contract under different organisations as many as 12 contract works and received a gross payment of Rs.18,04,62,630/-. The works included construction of E.I.T. lines and sub-stations which involved erection of transmission tower and included works like survey excavation, back filling of soil, supply of sand earth morum for back filling, dewatering, selting of stubs etc. Some of these works were non-turnkey ones. In the above receipt, the material components for the turnkey project was disclosed at Rs.4,53,14,084/-. In the works other than turnkey works, the appellant claimed that the works involved only labour and service charges, where materials used were supplied by the principal and as such no sales were involved. The assessing authority however did not agree with the claim of the dealer-company as much as the dealer could not produce detailed books of account to substantiate the claim. Considering the nature of works in different contractual agreements, the Assessing Authority allowed deductions on account of labour and service charges @90% of the gross payment after deducting the material components of turnkey works, calculated the same at Rs.12,16,33,691.40. Accordingly, after allowing the amount towards labour and service charges, the Assessing Authority quantified Rs.1,35,14,854.60 as the value of materials used in non-turnkey works and added to the material component to be taxed at appropriate rate. On the basis of above observation, the Assessing Authority calculated the TTO at Rs.14,30,87,478.32 and levied tax and surcharge at the

appropriate rates. After due adjustment of tax u/r.36 of the OST Rules and demand already raised u/s.13(4)(a) of the OST Act. Out of the tax and surcharge so calculated at Rs.92,96,677.51, the refund as aforesaid found due in favour of the dealer-company.

3. Being aggrieved with such order, the dealer-filed first appeal before the learned FAA/ACST, which was disallowed and the order of assessment passed by the learned STO was confirmed.

4. Being dis-satisfied with the order of the learned FAA/ACST, Sambalpur Range, Samablpur, State has preferred this present appeal.

5. No cross objection is filed by the dealer-respondent in this case.

6. Despite due service of notice on the dealer, he neither engaged a counsel nor anybody on his behalf remained present before this Tribunal to defend him against the grounds of appeal. So, this Tribunal having no other alternative, proceeded to dispose of the matter on ex-parte basis on merit.

7. Heard the argument of Mr. S.K. Pradhan, learned Addl. Standing Counsel appearing for the Revenue. Learned Counsel for the Revenue challenged the impugned orders of the fora below mainly on the ground that, the deduction granted towards labour and service charges is in violation of Rule 4-B of the OST (Amendment Rules), 2010 (in short, OST Rules).

8. Heard the contention and submissions of the learned Counsel for the Revenue, perused the impugned orders of the fora below, grounds of appeal vis-à-vis the materials on

record. Learned Counsel for the State challenged the impugned order of the fora below solely on the ground that the deduction of 90% towards labour and service charges in view of the nature of works executed by the dealer-assessee is in violation of Rule 4-B of the OST (Amendment Rules), 2010. If that is so, let's have a glance to Rule 4-B of the OST (Amendment Rules), 2010. The language which is entailed in Rule 4-B is as follows :

“In case of works contract, deduction of the expenditure incurred towards labour and service as provided in Section 5(2) AA of the Act shall be subject to production of evidence in support of such expenses to the satisfaction of the Assessing Authority. In the cases where a dealer executing works contract, fails to produce evidence in support of expenses incurred towards labour and service as referred to above, or such expenses are not ascertainable from the terms and conditions of the contract or the books of accounts maintained for the purpose are found to be not credible, expenses on account of labour and service shall be determined at the rate specified in the table below :

Sl.No.	Nature of works Works Contract	Percentage of labour service and like charges of the total value of the works
(1)	(2)	(3)
1.	Structural works	35%
2.	Earth work, Canal work, Embankment work etc.	65%

3. Bridge work	35%
4. Building work	35%
5. Road work	45%

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So, it becomes clear that Rule 4-B prescribes the deductions towards labour and service charges for different nature of works. The nature of works executed by the dealer-assessee is squarely covered under Rule 4-B of Orissa Sales Tax (Amendment Rules), 2010. Therefore, deduction should have been allowed as per the rate prescribed in Rule 4-B of OST (Amendment Rules), 2010. But such principle has not been adhered to by the fora below while adjudicating upon the case of the dealer-appellant.

9. So, in view of Rule 4-B of the OST Rules inserted vide Finance Department Notification dtd.06.02.2010 bearing SRO No.40/2010 effective from dtd.30.07.1999 and introduced by the State Government pursuant to the judgment of the Hon'ble High Court of Orissa in **Larsen & Toubro Ltd. –Vrs. State of Orissa & Others, (2008) 12 VST 31 (Ori)** case, we are of the unanimous view that the contentions raised by Mr. S.K. Pradhan, learned Addl. Standing Counsel for the Revenue is legal and sustainable in the eye of law and as such the instant case is fit to be remanded back to the learned STO for re-computation of tax in the light of Rule 4-B of the OST Rules.

10. In the result, the present appeal filed by the State is partly allowed and the order of the learned First Appellate Authority is hereby set-aside to the extent indicated above. The matter is remanded to the learned Assessing Authority to

make re-computation of tax in the light of the above provision of the statute and pass reasonable order accordingly after giving the dealer a reasonable opportunity of being heard preferably within a period of three months from the date of receipt of this order.

Dictated and Corrected by me,

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

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

I agree,

Sd/-  
(A.K. Das)  
Chairman

I agree,

Sd/-  
(M. Harichandan)  
Accounts Member-I