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

S.A. No. 2127 of 2005-06

(Arising out of the order of learned ACST, Sundargarh Range, Rourkela, in First Appeal Case No. AA- 103 (RLI)/2005-06, disposed of on dt. 25.11.2005)

Present : **Smt. Suchismita Misra, Chairman**
Smt. Sweta Mishra, 2nd 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. Hindustan Steel Works Construction Ltd., Inside RSP, Rourkela. . . . Respondent

For the Appellant … Mr. S.K. Pradhan, Addl. S.C. (CT)
For the Respondent … Mr. D. Pati, Advocate

Date of hearing: 09.01.2020 **** Date of order: 31.01.2020

O R D E R

This appeal is directed against the order dated 25.11.2005 as well as corrigendum order dated 20.01.2006 passed by the Asst. Commissioner of Sales Tax, Sundargarh Range, Rourkela (in short, "first appellate authority") in First Appeal Case No. AA- 103 (RLI)/2005-06 reducing the assessment done by the Sales Tax Officer, Rourkela-I Circle, Uditnagar (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 1992-93.

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

The dealer M/s. Hindustan Steel Works Construction Ltd. is a works contractor and during the period under assessment it was executing works as principal contractor under M/s. SAIL, RSP, Rourkela. Besides this the dealer had also executed sub-contract works under M/s. MECON, M/s. BTS, M/s. Braith Waite etc. The assessment u/S. 12(4) of the OST Act in respect of this dealer-assessee was completed on 06.12.1993 with an extra demand of ₹21,66,383.00 considering the gross receipt of the dealer-assessee at ₹9,96,60,605.20 for the relevant period. In the abovesaid assessment the assessing officer had allowed deductions of ₹25,87,659.95 towards labour escalation, ₹3,98,01,900.13 and ₹19,41,458.90 towards labour and service charges respectively from the gross payment receipt of the dealer.

Being aggrieved by this order of assessment, the dealer-assessee preferred an appeal before the first appellate authority. The first appellate authority vide order dated 08.06.2001 disposed of the appeal bearing AA No. 502(RLI)/1993-94 and set aside the assessment with direction to the assessing officer to examine the case

afresh and complete reassessment on the basis of observation made by him to the effect that in the instant case percentage of deduction towards labour and service charges to be allowed in terms of the decision of the Hon'ble Apex Court rendered in the case of Gannon Dunkerly & Co., reported in 88 STC 204 and further levy of tax on sub-contract works executed by this dealer under different contractees should be done as per the decision rendered in the case of Hindustan Door Olivers Ltd. and another Vs. Union of India and others, reported in 75 STC 21. After due examination of the case the first appellate authority also instructed the assessing officer to delete the interest of ₹1,22,626.00 charged in the assessment and to give credit of the TDS amount deposited, if any, by the contractee in favour of the dealer. But in the reassessment proceeding the dealer-assessee did not participate despite the notice and intimations issued to it for production of books of account. The assessing officer, however, completed the reassessment exparte vide his order dated 27.05.2005 confirming the earlier assessment done u/S. 12(4) of the OST Act. Then taking into account the amount of ₹8,00,000.00 already paid by the dealer-assessee in the meantime he (the assessing officer) required the dealer to pay the balance amount of ₹13,66,383.00 for the relevant period.

3. Being further aggrieved by this order of reassessment the dealer preferred an appeal before the first appellate authority

challenging the abovesaid exparte order of the assessing officer as arbitrary, capricious and illegal. It was pleaded on behalf of the dealer-assessee that the assessing officer failed to delete the interest charged u/S. 12(4-a) in the original assessment despite the direction of the first appellate authority on this score. It was further submitted that the STO was wrong in law while making the reassessment u/S. 12(4) of the OST Act exactly on the figures that had assessed u/S. 12(4) for the years 1992-93, 1994-95, 1995-96 and 1996-97 and also assessing for the year 1993-94 on an enhanced turnover than what was assessed u/S.12(4) of the OST Act. The first appellate authority after examining the order of reassessment vis-à-vis the points raised by the dealer-assessee and the works in particular executed by the dealer during the relevant period came to a conclusion that the gross payment received by the dealer-assessee for the tax period was ₹9,96,60,605.20.00. He (the first appellate authority) then after allowing deductions of ₹25,87,659.95 towards payment received on account of labour escalation, ₹1,13,23,872.38 towards payment received on execution of sub-contract works which were already assessed to tax at the hands of the principal contractor, ₹1,44,49,491.18 towards execution of pure labour works and further deduction of ₹3,97,14,226.84 towards labour and service charges in favour of the dealer-assessee determined the GTO of the dealer at ₹3,15,85,355.35. He also allowed deductions of

₹47,39,489.55 towards purchase value of first point tax paid goods and utilized in the execution of works contract. He thus determined the TTO of the dealer at ₹2,68,45,865.80. Thereafter he calculated the tax @ 4% which came to ₹10,73,834.63. He imposed surcharge @ 10% on the tax due which came to ₹1,07,383.46 and thus the tax and surcharge taken together came to ₹11,81,218.09. Considering the payment of ₹3,90,745.00 through TDS and ₹8,00,000.00 against the demanded tax by the dealer-assessee, the first appellate authority allowed it to get refund of ₹9,527.00 in the impugned order.

4. The State being aggrieved by this order of the first appellate authority preferred second appeal before the Tribunal on the grounds that the assessing officer had considered the material facts properly and assessed to his best of judgment by allowing reasonable percentage of deduction towards labour and service charges as well as tax paid materials with extra demand of ₹13,66,383.00. The first appellate authority has erroneously allowed excess labour and service charges which resulted in refund of ₹9,705.00 in favour of the dealer. This seems not maintainable as per the provision of law. It is thus pleaded on behalf of the State to quash the impugned order while restoring the order of assessment in the instant case.

5. The dealer-assessee has filed cross-objection in the instant case mentioning therein that after perusing the relevant contract agreements the first appellate authority had allowed deductions of 72% and 52% in respect of three cases out of 13 (thirteen) works listed in Section-A towards labour and service charges as against 52% and 32% allowed by the assessing officer. Therefore, the dispute raised by the State in this regard without assigning any reason for the same is unwarranted. It is further pleaded on behalf of the dealer that in respect of one sub-contract work executed for M/s. Braith Waite & Co. as listed in Section (numbering 6) relief was granted with due reason assigned in the impugned order. It is also submitted that the first appellate authority after due examination had allowed the deduction of ₹47,39,489.55 on account of 1st point tax suffered goods against the claim of ₹53,62,547.58 by the dealer. It is thus urged on behalf of the dealer to confirm the impugned order.

6. In course of hearing of the appeal as well as on perusal of the impugned order it could be gathered that the first appellate authority had examined each and every work executed by this dealer-assessee in terms of its works contract and the gross payment received by it during the period under assessment. Not only that the first appellate authority has reflected the percentage of labour and service charges allowed by the assessing officer in the chart prepared by

him reflecting the names of the works executed, gross amount received, percentage of labour and service charges allowed by the assessing officer and percentage of labour and service charges claimed by the dealer-assessee quite clearly leaving none to get confused as to what sort of works were executed by this dealer-contractor and to what extent it was allowed to have deduction towards labour and service charges for the works done by it. The first appellate authority after preparing such a chart in his order has explained elaborately about the works executed by the dealer bit by bit under the contractee as well as sub-contractors works. A thorough reading of the impugned order would reveal as to how painstakingly the first appellate authority decided the appeal preferred by the dealer-assessee and then came to a conclusion as aforesaid in the matter. Learned Counsel for the dealer submitted that there is absolutely no reason for holding the order of the first appellate authority incorrect or unjustified in the facts and law involved in the case.

7. In the aforesaid circumstances as discussed in the foregoing paragraph after going through the analysis made by the first appellate authority in his order relating to the assessment in respect of the dealer-assessee u/S. 12(4) of the OST Act we find absolutely no infirmity or irregularity therein so as to interfere with or disturb the same in any manner.

8. In the result, the order of the first appellate authority is hereby confirmed and the appeal preferred by the State is dismissed being devoid of merit. Cross-objection is disposed of accordingly.

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