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

S.A. No. 2128 of 2005-06

(Arising out of the order of learned ACST, Sundargarh Range, Rourkela, in First Appeal Case No. AA- 104 (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 passed by the Asst. Commissioner of Sales Tax, Sundargarh Range, Rourkela (in short, "first appellate authority") in First Appeal Case No. AA- 104 (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 1993-94.

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. It had received gross payment of ₹12,52,80,621.71 during the relevant period. Besides this the dealer had also executed sub-contract works under M/s. MECON, M/s. Braith Waite and M/s. Simplex for which it had received gross payment of ₹3,71,30,559.16. Apart from this the dealer had also received an amount of ₹13,31,849.00 from M/s. Mahanadi Coal Fields, Balarpur for execution of works contract. The assessment u/S. 12(4) of the OST Act in respect of this dealer-assessee was completed on 30.09.1994 with an extra demand of ₹20,95,078.00 considering the gross receipt of the dealer-assessee at ₹16,37,43,030.77 for the relevant period. In the abovesaid assessment the assessing officer allowed deductions of ₹16,54,605.00 i.e. 100% towards execution of pure labour job, ₹5,43,21,932.00 and ₹32,02,827.00 towards labour and service charges i.e. @ 30% and 2% respectively and deduction of ₹19,47,099.56 towards purchase of tax paid materials utilized in the works contract 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. 246(RLI)/1994-95 and set aside the assessment with certain directions to the assessing officer 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 the percentage of labour and service charges in case of sub-contract works executed by this dealer under different contractees should be determined 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 ₹24,628.00 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 ₹5,80,000.00 already paid by the dealer-

assessee in the meantime he (the assessing officer) required the dealer to pay the balance amount of ₹15,67,249.00 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 an amount of ₹29,42,416.00 should have been given credit towards TDS as deducted by the contractees instead of ₹24,44,679.00 only. The dealer further contended that as the SAIL, RSP, Rourkela had certified that the tax suffered materials worth ₹70,52,9819.00 were supplied by them to the dealer on cost recovery basis the said turnover should have been deducted before arriving at its TTO on calculation. It was also submitted by the dealer that deduction should have been allowed in its favour on the goods purchased on payment of tax i.e. cement and GI pipes. 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 ₹16,37,43,043.00. He (the first appellate authority)

then after allowing deduction of ₹1,24,84,835.55 towards payment received on execution of sub-contract works which were already assessed to tax at the hands of the principal contractor, deduction of ₹16,54,605.00 towards execution of pure labour works and further deduction of ₹5,90,22,949.93 towards labour and service charges in favour of the dealer-assessee determined the GTO of the dealer at ₹9,05,50,651.52. He also allowed deductions of ₹32,01,376.56 and ₹70,52,819.00 towards purchase value of first point tax paid goods and utilized in the execution of works contract as well as tax paid materials supplied by the contractees on cost recovery basis respectively. He thus determined the TTO of the dealer at ₹8,02,96,455.96. Thereafter he calculated the tax @ 4% which came to ₹32,11,858.23. He imposed surcharge @ 10% on the tax due which came to ₹3,21,185.82 and ultimately the liability of the dealer in total came to ₹35,33,044.04 which was required to be paid by it in the instant case. Accordingly the first appellate authority directed for recomputation of the tax liability of the dealer-assessee as per his observation made in the impugned order regarding giving credit of TDS amount as claimed by the dealer on due verification of the same. He also directed for refund of excess amount of tax, if any, paid by the dealer for the relevant tax period.

4. The State being aggrieved by this order of the first appellate authority preferred second appeal before the Tribunal on the

grounds that the first appellate authority should not have disagreed with the order of assessment since the deduction allowed by the assessing officer towards labour and service charges was just and proper. The first appellate authority has erroneously allowed 100% deduction on sub-contract work which is not maintainable as per the provision of law. The first appellate authority also erred in allowing deduction in respect of the materials supplied by the contractor on cost recovery basis and deduction of tax paid materials amounting to ₹9,43,538.00, in excess of deduction already allowed by the assessing officer as the same was not in accordance with 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 deduction of 52% towards labour and service charges in respect of development of New Ash Pond described at Sl. Nos. 4 & 5 of Section-B as against 32% allowed by the assessing officer and deduction of 62% towards labour and service charges in respect of Clean and Green Programme at Sl. No. 4 of Section-C as against 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 the materials supplied by the contractee being liable to first point tax the deduction allowed on this score was not illegal. It is also submitted that the first appellate authority had correctly allowed the deduction in respect of cement worth ₹9,43,538.00 and GI pipes worth ₹12,54,277.00 purchased by the dealer as 1st point tax paid goods. 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, thereby 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