



short, 'OST Act') in respect of the dealer-assessee for the tax period 2002-03.

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

The dealer in the instant case M/s. Braith Waite Born & Jessop Construction Co. Ltd. is a Government of India undertaking and a subsidiary of Bharat Bhary Udyog Nigam Limited. It was accorded registration u/S.9 of the OST Act w.e.f. 25.06.2002. Pursuant to a notice u/S. 12(4) of the OST Act the Asst. Manager of the dealer-Company had appeared before the assessing officer and had produced relevant books of account for his verification. The assessing officer examined the books of account of the dealer-Company in relation to returns filed by it. On verification the assessing officer could know that the dealer-Company had entered into an agreement with M/s. South Eastern Railway, Sambalpur Division, Sambalpur for supply, fabrication, transportation, assembly and erection as well as launching of steel through type bridge girders of bridge No.7 (span 8 X 45.7 M) on Bonan river between Brundamal and Lapanga Station of Sambalpur Division of South Eastern Railway. The value of the contract was ₹4,47,91,052.00 and the entire work was to be completed in all respects within six months including monsoon from the date of issue of acceptance letter. The dealer had received gross payment of ₹3,57,47,802.00 for the

above contract for the material period. At that time the dealer had disclosed that it had received gross amount of ₹67,00,000.00 against same nature of works the contract value of which was ₹2,61,11,360.00. This second contract work was in progress under East Coast Railway, Bhubaneswar for which the dealer-Company had taken amendment in his Registration Certificate for additional place of business at Nirgundi, Cuttack w.e.f. 20.03.2003. Therefore, the dealer-Company had received gross payment of ₹4,24,47,802.00 during the relevant period. It had not executed any other work inside the State of Odisha at that time. The dealer-Company had submitted original TDS certificate amounting to ₹16,97,911.00 at different Circles inside the State of Odisha and further claimed that the gross amount of ₹67,00,000.00 received by it on account of Nirgundi Project was in the shape of an advance payment to it though no work had actually been done at that site at that relevant time. Thus the dealer claimed for deduction of this advance payment in its favour as well as TDS and further deduction towards labour and service charges amounting to ₹2,35,52,441.00. The assessing officer examined all the documents pertaining to the nature of works executed by the dealer and other connected papers and concluded that as the dealer failed to submit any account on utilization of material, receipt of its ₹67,00,000.00 towards advance from Nirgundi Project and documents showing expenditures towards labour and service charges it

was entitled to have deduction @ 27% towards labour and @ 5% towards service charges for the works done by it inside the State of Odisha. He thus determined its taxable turnover (TTO) at ₹2,88,64,506.00 and taxed the same @ 8% which came to ₹23,09,160.00. After adding surcharge therein the total tax dues of the dealer came to ₹25,40,076.00 and since the dealer had deposited tax in shape of TDS for ₹16,97,911.00, he (the assessing officer) required it to pay the balance amount of ₹8,42,165.00.

Being aggrieved by this order of assessment the dealer-assessee preferred an appeal against the same before the first appellate authority challenging that determination of its GTO and TTO at ₹2,88,64,506.00 by the assessing officer was excessive and arbitrary on the facts of the case. The advance receipt of ₹67,00,000.00 should not have been included in its GTO and TTO and further it should not have been allowed deduction of 32% only towards labour and service charges in the instant case. The first appellate authority after examining the facts and documents pertaining to this case computed the tax liability of the dealer in the following manner.

He determined the GTO of the dealer at ₹3,57,47,802.00 (excluding the mobilization advance of ₹67,00,000.00 received towards work at Nirgundi Site of East Coast Railway). Then after allowing deduction @ 45% towards labour and service charges

from the gross receipt he determined the TTO of the dealer at ₹1,96,61,291.10. He taxed the said amount @ 8% which came to ₹15,72,903.28. He also levied surcharge thereon which in total came to ₹17,30,192.61. As the dealer could furnish TDS for ₹16,97,911.00, the first appellate authority required it (the dealer) to pay only ₹32,283.00 towards its tax liability as per the provisions of law.

3. Being dissatisfied with this order the State preferred second appeal before the Tribunal on the grounds that the deduction allowed @ 45% towards labour and service charges is found to be excessive since the nature of work involved in this work contract justifies deduction on this count @ 32% only.

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

4. When the appeal was taken up for hearing it was noticed that none appeared on behalf of the dealer to participate in the proceeding despite service of notice on it by way of affixture as reported by the Dy. Commissioner of CT & GST, CT & GST Circle, Jharsuguda and kept on record. Hence, the matter was heard exparte to be disposed of on merit as per Rule 60(2) of the OST Rules.

5. In course of hearing of the appeal learned Addl. Standing Counsel (CT) appearing on behalf of the State submitted that the expenditures incurred by the dealer-assessee towards labour and

service charges were not ascertainable from any of the documents produced by the dealer before the forums below. Therefore, the dealer should not have been allowed to have deduction of 45% towards labour and service charges from its gross receipt which unnecessarily caused loss to the Revenue in the instant case.

6. Admittedly in the present case the dealer remained unrepresented before the Tribunal but on a thorough reading of the impugned order it could be gathered that the first appellate authority had verified relevant, documents to come to his own conclusion for enhancing the percentage of deduction towards labour and service charges in favour of the dealer. It is not understood as to why the assessing officer had allowed only 32% deduction towards labour and service charges. He had not assigned any reason as to why he came to that conclusion while determining the aforesaid percentage of deduction to be allowed in favour of the dealer towards labour and service charges. Therefore, on comparing both the orders passed by the forums below we feel that the order passed by the first appellate authority allowing 45% deduction towards labour and service charges is quite reasonable and just keeping in view the nature of works executed by the dealer-assessee pursuant to the works contract in the present case. Therefore, we do not find any reason to interfere with this impugned order on this count as well as on other counts as the said order seems

to be based on sound reasons and as such correct in the facts and circumstances of the case. Accordingly as per the discussion made above we confirm the impugned order.

7. In the result, the appeal is dismissed.

Dictated & Corrected by me,

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

I agree,

**Sd/-**  
**(Smt. Sweta Mishra)**  
**2<sup>nd</sup> Judicial Member**

I agree,

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