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

S.A. No. 2699 of 2004-05

(Arising out of the order of learned ACST, Balasore Range, Balasore, in First Appeal Case No. AA- 129/BD/2003-04, disposed of on dt. 29.10.2004)

Present : **Smt. Suchismita Misra**, **Chairman**
Sri A.K. Dalbehera, 1st Judicial Member
&
Shri Rabindra Ku. Pattnaik, Accounts Member-III

M/s. Dharti Dredging & Construction Ltd.,
Dhamra, Bhadrak.
Presently – Flot No. 2, Ground Floor,
Coromondel Towers, 816/817,
Poon Malle High Road, Kalipauk,
Chennai-600 010. . . . Appellant

- V e r s u s –

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

For the Appellant … N o n e.
For the Respondent … Mr. M.L. Agarwal, S.C. (CT)

Date of hearing: 11.02.2020 **** Date of order: 11.02.2020

O R D E R

This appeal is directed against the order dated 29.10.2004 passed by the Asst. Commissioner of Sales Tax, Balasore Range, Balasore (in short, "first appellate authority") in First Appeal Case No. AA- 129/BD/2003-04 enhancing the assessment done by the Sales Tax Officer, Bhadrak Circle, Bhadrak (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 2000-01.

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

The dealer-assessee in the instant case M/s. Dharti Dredging & Construction Ltd., Dhamra, Bhadrak is a works contractor. It was entrusted with a contract work by the Executive Engineer, Fishery Engineering Division, Government of Odisha for a total contract value of ₹4,45,07,087.00 at Dhamra Fishing Harbour Stage-II vide F-2 Agreement No. 10F-2/99-2000. The nature of work to be executed by it was construction of civil work of Landing Query, Auction Hall, Gear Shed and Workshop. In response to notice u/S. 12(4) of the OST Act the dealer-Company had appeared before the assessing officer through its Manager and Advocate. They produced the books of account of the dealer before the assessing officer for his verification. The assessing officer on examining the aforesaid documents alongwith the copy of the agreement pertaining to the works contract as well as other connected documents determined the tax due of the dealer at ₹6,14,024.08. He added surcharge @ 15% on tax due excluding the tax due on declared goods worth ₹12,56,630.00 which came to ₹84,563.63. Thus the tax and surcharge together came to ₹6,98,587.91. As the dealer had already paid ₹8,20,734.00 towards tax deducted at source he (the

assessing officer) ordered for refund of ₹1,22,146.00 in favour of the dealer on proper application by the latter as per the provisions of OST Act.

The dealer being aggrieved by this order of assessment preferred an appeal before the first appellate authority raising its objection on the sole ground that the amount of deduction i.e. 35% and 7.5% towards labour and service charges respectively, as allowed by the assessing officer, was very low and unreasonable. This percentage of deduction should be enhanced to 40% and 10% respectively. The first appellate authority then on a thorough scrutiny of the order of assessment, grounds of appeal as well as concerned records found that the assessing officer had allowed deductions towards labour charges @ 35% including fuel 5% and service charges @ 7.5% from the gross turnover (GTO) of the dealer at the assessment stage. The authorized representative of the dealer failed to furnish documentary evidence before him (the first appellate authority) to substantiate its claim for which he did not accept the contentions of the authorized representative of the dealer in this regard. He rather found that allowance of deduction @ 7.5% towards service charges from the GTO by the assessing officer in structural and earth work was excessive and illegal. He, therefore, issued a show-cause notice to the dealer to explain before him with all relevant documents regarding justifiability of

allowance of deduction @ 7.5% towards service charges as done by the assessing officer in the instant case. However, as the dealer did not turn up before him he accepted that the dealer had nothing to explain in this regard. Therefore, he reduced the deduction of service charges to 2% from 7.5% of the GTO and recalculated the tax liability of the dealer in the following manner. He (the first appellate authority) determined the GTO of the dealer at ₹1,66,63,378.00 i.e. the gross payment received by it for that relevant period and then allowed deduction of ₹66,09,952.00 towards labour charges and fuel and ₹3,33,267.56 towards service charges which was 2% of the GTO and ₹17,89,306.00 towards cost of materials. Thus he determined the taxable turnover (TTO) of the dealer at ₹79,30,352.44. He calculated the tax @ 8% thereon which on computation came to ₹6,34,468.19 and added surcharge @ 15% to it excluding declared goods worth ₹12,56,630.00. Accordingly the surcharge came to ₹80,099.67. Adding both i.e. tax and surcharge the first appellate authority held that the dealer was to pay ₹7,14,567.86 and since it had already paid ₹8,20,234.00 in shape of TDS the first appellate authority concluded that the dealer was entitled for a refund of ₹1,06,166.00 only.

3. The dealer being dissatisfied with the aforesaid order of the first appellate authority challenged the same before this forum on the grounds that limiting deduction to the extent of ₹30,42,059.00 from

the GTO and taxing the balance of contract receipt is illegal, unjust and unreasonable while taking into consideration the nature of work executed by it (the dealer) in the instant case. Deduction towards labour charges @ 40% would have been just and proper as against 35% as allowed in the assessment done in the present case. Similarly deduction of 2% only towards service charges instead of enhancing the same to 10% is also unreasonable. Therefore, enhancement of assessment by the first appellate authority is unfair and illegal so also levy of surcharge on the tax due is unreasonable in view of this issue being subjudiced before the Hon'ble Apex Court as reported in Arjun Flour Mills' case, 117 STC 546 (SC).

No cross-objection has been filed on behalf of the State in this case.

4. When the appeal was taken up for hearing it was noticed that none on behalf of the dealer appeared before this forum despite service of notice on it by way of affixture as reported by the Dy. Commissioner of CT & GST, CT & GST Circle, Bhadrak which is kept on record. As this is a pretty year old matter the appeal was heard from the side of the State only to be disposed of exparte on merit as per Rule 60(1) of the OST Rules.

5. Learned Standing Counsel (CT) appearing on behalf of the State vehemently urged that in the instant case the first appellate

authority, being a fact finding authority also, had examined all the connected documents relevant to this case. He then concluded that there should be a reduction in the percentage of service charges allowed in favour of the dealer by the assessing officer. He also afforded the dealer an opportunity of being heard in this matter but the dealer did not opt to explain anything before him in that connection. At this stage also the dealer did not come forward to substantiate its grounds for bringing this appeal challenging the justifiability of the impugned order. The impugned order is quite self explicit to indicate as to why the percentage of deduction towards service charges needed to be reduced in the instant case. Therefore, there is absolutely no necessity or justification for disturbing the order of the first appellate authority.

6. On a bare perusal of the impugned order alongwith the order of assessment it could be gathered that the order under challenge before this Tribunal is certainly based upon sound reasons. The dealer rather failed to substantiate as to why there would be an enhancement in the percentage of deduction to 40% and 10% towards labour and service charges respectively. The order of the first appellate authority virtually remained uncontroverted and unchallenged despite opportunity was afforded to the dealer to substantiate its grounds for sustaining the appeal in its favour. In the aforesaid circumstances we

feel that the impugned order needs to be affirmed only in absence of any material evidence adduced by the dealer-assessee in its favour.

7. In the result, the appeal is dismissed and the order passed by the first appellate authority is hereby confirmed.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(A.K. Dalbehera)
1st Judicial Member

I agree,

Sd/-
(Rabindra Ku. Pattnaik)
Accounts Member-III