

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 82 of 2012-13

(Arising out of order of the learned JCST, Cuttack-II Range,
Cuttack in First Appeal No. AA- 13/CUII/2010-11,
disposed of on dated 17.12.2012)

Present: **Shri A.K. Das, Chairman**
Shri S.K. Rout, 2nd Judicial Member
&
Shri M. Harichandan, Accounts Member-I

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

-Versus-

M/s. Kandoi Automobiles (P) Ltd.,
Jagatpur, Cuttack ... Respondent

For the Appellant : Sri M.L. Agarwal, S.C. (CT)
For the Respondent : Sri J.B. Sahoo, Sr. Advocate &
Sri R. Ghosh, Advocate

Date of hearing: 23.08.2022 *** Date of order: 25.08.2022

O R D E R

Instant appeal at the behest of the State is directed against the order dated 17.12.2012 passed by the learned Joint Commissioner of Sales Tax, Cuttack-II Range, Cuttack (hereinafter called as 'first appellate authority') in Appeal No. AA- 13/CUII/2010-11 thereby reducing the extra demand to ₹2,27,701.00 from ₹8,39,559.00 raised by the Sales Tax Officer, Cuttack-II Circle, Cuttack (in short,

‘assessing authority’) for the period 2002-03 in the assessment framed u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, ‘OST Act’).

2. The facts and circumstances of the case giving rise to the present appeal are that the dealer-assessee carries on business in purchase and sale of new tyres and retreading and sale of old tyres. Learned assessing authority assessed the dealer-assessee u/s. 12(4) of the OST Act for the year 2002-03 accepting the figures shown in the annual return and determined the GTO and TTO at ₹1,41,75,405.00 and ₹99,22,783.50 respectively. The dealer-assessee claimed deduction of ₹88,92,494.25 towards purchase of tax suffered goods and ₹53,76,724.75 towards labour and service charges including wages, establishment expenses etc. The dealer-assessee during the tax period under assessment executed retreading of tyres under different authorities, who deducted and deposited into the Government account an amount of ₹33,646.00 in shape of TDS. Learned assessing authority allowed deduction of 30%, i.e. ₹42,52,621.50 towards labour and service charges and determined the TTO at ₹99,22,783.50. The total tax and surcharge was calculated at ₹8,73,204.94 and after adjustment of the tax of

₹33,646.00 paid in shape of TDS, extra demand of ₹8,39,559.00 was raised.

2(a). The dealer-assessee challenging such demand raised by the assessing authority, filed appeal before the first appellate authority on the ground that deduction of 30% granted towards labour and service charges is at lower side when the Government has prescribed labour and service charges towards retreading of tyres @ 75% under the OVAT Rules, 2005. Learned first appellate authority examining the materials on record and taking into consideration the contention raised by the learned Counsel for the dealer-assessee, enhanced the deduction to 55% towards labour and service charges and accordingly, reduced the tax demand to ₹2,27,701.00.

3. The State being dissatisfied with the order of the first appellate authority reducing the demand to ₹2,27,701.00 has presented this appeal on the sole ground that the deduction of 55% granted by the first appellate authority is illegal and contrary to the Finance Department notification vide SRO No. 368/2012 dated 19.07.2012.

The dealer-respondent pursuant to the notice issued by this forum appeared through his Advocate

and filed cross-objection supporting the impugned order of the first appellate authority.

4. We have heard the rival submissions of the parties, gone through the grounds of appeal raised in the memorandum of appeal vis-a-vis the impugned order of the first appellate authority and the materials on record. The sole dispute in the present case is with regard to the deduction granted by the first appellate authority towards labour and service charges. The assessing authority granted 30% deduction towards labour and service charges whereas the first appellate authority enhanced it to 55% applying the best judgment assessment. There is no dispute in the present case that the nature of works executed by the dealer-assessee comes under the definition of 'works contract' and the dealer is entitled to deduction enumerated by the Hon'ble Apex Court in the case of **Gannon Dunkerley & Co. and others Vs. State of Rajasthan and others, reported in (1993) 88 STC 204 (SC)**. The only dispute is with regard to the percentage of deduction granted by the forums below. When the dealer-respondent claimed that the first appellate authority was correct in its approach in granting 55% deduction, learned Standing Counsel (CT) for the revenue claimed that it was the assessing authority who

was correct in granting 30% deduction applying best judgment principle. In view of such claim and counter claim of the parties, it is to be seen which of the forums below is correct in granting deduction towards labour and service charges. Though it was specifically directed by the Hon'ble Apex Court in case of **Gannon Dunkerley & Co. (supra)** the State Government may prescribe a formula for deduction of cost of labour and services on the basis of percentage of value of contract when the books of account are not maintained or if maintained, the credential of such books of account is doubtful, no rule was framed. Subsequently, pursuant to direction of the Hon'ble High Court of Orissa in case of **Larsen & Toubro Limited Vs. State of Orissa and others, reported in [2008] 12 STC 31 (Ori)**, Rule 4-B was introduced vide SRO No. 40/2010 dated 06.02.2010, which came into force w.e.f. 30.07.1999. Rule 4-B introduced by the State Government w.e.f. 30.07.1999 does not include the nature of works executed by the dealer-assessee. Therefore, the said rule cannot be applied to the present case. The only way left open to the forums below was to apply the best judgement principle to grant such deduction. It transpires from the Appendix to Rule 6 of the OVAT Rules, before 19.07.2012 deduction of 75% was granted as per entry at Sl.

No. 9 towards labour and service charges for retreading of tyre work. This entry was amended vide SRO No. 368/2012 dated 19.07.2012 and such deduction for tyre retreading was reduced to 30%. In the present case, the assessment pertains to the tax period 2002-03 when the OVAT Act was not in force, therefore both the entries are not applicable to the case of the dealer-assessee. But the Rules framed under the OVAT Act can be taken into consideration as guiding principle for determining the percentage of deduction to be granted towards labour and service charges. When the State Government prescribes deduction of 75% after enactment of the OVAT Act till 19.07.2012, which was subsequently amended and reduced to 30%, in our considered view, the deduction of 55% granted by the first appellate authority, which is in between 30% and 75% is just, reasonable and rational. The deduction of 55% granted by the first appellate authority applying the best judgment principles and taking into consideration the deduction prescribed in Appendix to Rule 6, in our considered opinion, is correct and does not warrant interference of this Tribunal. The State has challenged the impugned order on the ground that the deduction granted by the first appellate authority is contrary to SRO No. 368/2012 dated 19.07.2012, which was not in

force at the time of assessment and was not applicable to the case of dealer-assessee. Therefore, the first appellate authority has rightly fixed the deduction towards labour and service charges in between 75%, which was prior to 19.07.2012 and 30% deduction prescribed after 19.07.2012. There is no illegality or impropriety in the deduction granted by the first appellate authority towards labour and service charges.

5. In view of the discussions made above, the second appeal filed by the State being devoid of merit stands dismissed and the impugned order of the first appellate authority is hereby confirmed. Cross-objection is disposed of accordingly.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

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

I agree,

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