

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.**

S.A.No. 381/2007-08

(From the order of the Id.ACST, Koraput Range, Jeypore,
in Appeal No. AA (KOI) 107-108/2006-2007, dtd.11.12.2006,
modifying the assessment order of the Assessing Officer)

**Present: Sri S. Mohanty
2nd Judicial Member**

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

.... Appellant

-Versus-

M/s. C.S.R. Construction,
NAD Colony, Sunabeda.

... Respondent

For the Appellant : Mr. S.K. Pradhan, ASC (C.T.)
For the Respondent : None

(Assessment period : 03/2004 and 2004-2005)

Date of Hearing: 19.11.2018

Date of Order: 19.11.2018

ORDER

Revenue being aggrieved with the order of the learned First Appellate Authority/Asst. Commissioner of Sales Tax, Koraput Range, Jeypore (in short, FAA/ACST) whereby the deduction towards labour and service charges allowed by the Sales Tax Officer/Assessing Authority, Koraput Circle, Jeypore (in short, STO/AA) became enhanced, this second appeal is preferred challenging the sustainability of the impugned order and with a prayer for application of Rule 4-B of the OST amendment Rule, 2010 in the case in hand for determination of labour and service charges.

2. Admittedly, the instant dealer was a works contractor, executed works under Garrison Engineer (I)(P) No.I Station Road,

Visakhapatnam and the nature of job was "Provisions of inner perimeter chain link fencing" at NAD, Sunabeda vide work order No.CA No.GE(I) (P) No.I/VIZ/02 dt.31.1.2004. The dealer had received a sum of Rs.4,14,435/- out of which an amount of Rs.16,579/- was deducted at source towards tax. The AA in a proceeding u/s.12(4) of the OST Act, in consideration of the price of the goods purchased by the dealer on due payment of sales tax and entry tax paid at checkgate, found that, the dealer had not maintained the books of account and registers reflecting labour and service charges. So the AA allowed labour and service charges on application of best judgment principle. On calculation it was found that, the dealer was entitled to get refund of Rs.15,265/-.

3. The matter was carried in appeal in which the dealer had claimed more percentage of deduction along with other grounds. The FAA while confirming the findings on other grounds however enhanced the deduction from 32% to 42%. As a result, the amount of tax refund was enhanced to Rs.25,963/- in place of Rs.15,265/-. When the refund amount became enhanced, State has preferred this appeal. The main contention of the State-appellant is, the percentage of labour and service charges should have less. In course of hearing, the appellant filed a rejoinder to the appeal memo praying therein for application of Rule 4-B of the OST Rule as amended in 2010 for calculation of labour charges.

4. The appeal is heard ex-parte since the dealer did not turn up in spite of the notice of the hearing.

5. The only question to be determined in this appeal are, if the percentage of deduction allowed by the FAA is whimsical and not sustainable, if yes, Rule 4-B of the OST Rules should be applied to the

case in hand or otherwise what should be the just and proper percentage of deduction.

6. Admittedly, the dealer has executed a works contract and the nature of work undertaken by the dealer is "Provisions of inner perimeter chain link fencing. The impugned order as it revealed, the work comprised mainly the work of surface dressing, jungle clearance, removing and disposing of rubbish, excavation and removal of soil as well as fixing of fencing work. The fencing materials were purchased on payment of tax. If we take consideration of the nature of work, it can reasonably be believed that, the nature of work was mainly labour oriented. The impugned order as it reveals, the fora below have taken into consideration of the nature of work while enhancing the percentage of deduction towards labour and service charges. So far as the prayer of Revenue for application of Rule 4-B of the OST Rule, there is no quarrel on the proposition of law that, it has got retrospective effect from 30.07.1999. However, the fact remains, the nature of works undertaken by the instant dealer do not fall under any of the category of works contract mentioned in the said rule. In that case, there is no scope for application of Rule 4-B to the case in hand. Hence, the chart under Rule 4-B has not applicability to the case in hand. The only recourse left for determination of labour and service charges is, the best judgment assessment. In the case in hand, when the best judgment assessment by the AA compared to the FAA, it seems the FAA reasonably taken into consideration of name of work and the order of the AA has arrived at a conclusion that, deduction towards labour and service charges should be @42%. The findings on fact by the FAA is not questionable in absence of any rebuttal evidence. Once it is found that, Rule 4-B of the OST Rule as amended in the year 1999 has got no application to the case keeping in view the

nature of work and when it is found that, the best judgment principle adopted by the FAA is quite reasonable, then the deduction towards labour and service charges as determined by the fora below calls for no interference. Accordingly, it is ordered.

The appeal by the State sans merit, hence dismissed.

Dictated and Corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

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