

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

S.A.No. 1505/2004-05

S.A.No.1506/2004-05

&

S.A.No.1507/2004-05

(Arising out of order of the Id. ACST, Cuttack-II Range, Cuttack, in First Appeal Case Nos. AA.26/DL/2003-2004, AA.123/DL/2003-04 & AA.544/DL/2003-04, disposed of on dtd.26.06.2004, dtd.26.06.2004 & dtd.15.05.2004 respectively)

P R E S E N T :

**Sri A.K. Das
Chairman**

**Sri S. K. Rout
Judicial Member-II**

**& Sri S. Mishra
Accounts Member-II**

M/s. Mukand Ltd.,
At- Nalco Nagar,
Dist. Angul.

.... Appellant

-Versus-

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

.... Respondent

For the Appellant : Mr. S.K. Mishra, Advocate
For the Respondent : Mr. D. Behura, S.C. (C.T.)
Mr. S.K. Pradhan, A.S.C. (C.T.)

(Assessment Period : 2000-01, 2001-02 & 2002-03)

Date of Hearing: 03.03.2022 *** Date of Order: 23.03.2022

ORDER

These three appeals are directed against the orders of the learned First Appellate Authority/Asst. Commissioner of Sales Tax, Cuttack-II Range, Cuttack (in short, FAA/ACST) on the assessments made u/s.12(4) of the Odisha Sales Tax Act,

1947 (in short, OST Act) for the years 2000-01, 2001-02 and 2002-03 by the learned Sales Tax Officer, Dhenkanal Circle, Angul (in short, STO) whereby the learned ACST was pleased to reduce the amount of tax for each impugned years of assessment. As common questions of fact and law are involved in these matters, the same are heard together and disposed of by this common order.

2. The brief facts of these cases are as follows : The dealer-appellant being a works contractor had executed the following works contracts under NALCO, Angul. In

S.A.No.1505/2004-05

(i) Work Order No.NBC/MMXP/4010/05/13/99 dtd.23.12.1999 and the nature of work included erection, testing and commissioning service including structural and civil works of Green Arode Plant for NALCO smelter expansion project for total value of Rs.14,80,70,150/-.

(ii) As per work Order No.NBC/MMXP/4230/11/26 dtd.18.02.2000 and the nature of work was for erection, construction, testing, commissioning and performance guarantee tests for complete Alumina and crushed bath handling system for a total value of Rs.6,92,54,163/-.

The dealer had received gross payment of Rs.3,82,96,455/- for execution of works during the material period. The dealer had claimed purchase of cement and steel amounting to Rs.1,95,31,192/- from the registered dealers inside the State of Orissa and utilized the same in the execution of works. The dealer had filed the detail statement of materials purchased inside the State of Orissa. On

examination of the purchase statement with purchase invoices, the Id.STO allowed deduction of Rs.1,95,31,192/- toward tax paid materials.

On scrutiny of the work orders, Id.STO observed that the work was mostly structural and civil in nature and good amount of materials were consumed in the execution of the works contract. The dealer failed to produce the books of accounts in respect of expenditure incurred in labour and service charges. So, considering the nature of work, Id.STO allowed 32% labour and service charges.

Accordingly, the GTO was determined at Rs.3,82,96,455/. Allowing deduction of Rs.1,22,54,865.60 and Rs.1,95,31,192/- towards labour and service charges and tax paid materials respectively, the TTO was determined at Rs.65,10,397.40 and levied tax @8% thereon which calculated to Rs.5,20,831.79. Surcharge @15% calculated to Rs.78,124.76. Tax and surcharge computed to Rs.5,98,956.55. The dealer having paid nothing was required to pay the entire amount of Rs.5,98,957/-.

S.A.No.1506/2004-05

(i) Work Order No.NBC/MMXP/4010/05/1299 dtd.23.12.99 for supply of equipments for G.A.P. (Green Arode Plant) of NALCO smelter expansion projects for a total value of Rs.27,61,16,698/-.

(ii) Work Order No.NBC/MMXP/4230/11/25 dtd.18.02.2000 for supply of equipments for ACBHS (Alumina Crushed bath Handling System) of NALCO expansion project at Angul for total value of Rs.6,78,54,642.57.

(iii) Work Order No.NBC/MMXP/4010/05/13/99 dtd.23.12.99 for erection, testing and commissioning service including structural and civil works of G.A.P. for NALCO Smelter expansion project at Angul, Orissa for total value of Rs.14,80,70,150/-.

(iv) Work Order No.NBC/MMXP/4230/11/26 dtd.18.02.2000 for erection, testing and commissioning service for ACBHS of NALCO Smelter expansion project at Angul for total value of Rs.6,92,54,163/-.

On scrutiny of work orders, learned STO observed that as per the work orders stated above in Sl.No.(i) & (ii) were contracts for supply/sale and the work orders stated in Sl.No.III & IV were contracts for work labour and services.

On examination of work orders mentioned in Sl.No.(i) & (ii), learned STO found that the contract was primarily between Mukand Ltd. Thane, Maharashtra and the NALCO, Angul for supply of equipments by the former to the later. Hence, the consigner was M/s. Mukund Ltd., Thane, Maharashtra and the consignee was the Chief Manager, Materials, NALCO, Angul. The goods were moved from Maharashtra to Angul in the State of Orissa on the strength of declaration in Form "C". The ld.STO treated the said transactions as inter-state sales u/s.3(a) of the CST Act which did not come under the jurisdiction of taxation of OST Act.

On examination of record, learned STO found that the dealer had received gross payment of Rs.10,63,71,435/- for execution of both the works contract of Sl.No.III & IV out of which an amount of Rs.8,12,48,422/- and Rs.2,51,23,013/-

relates for the works contract of Sl.No.III & IV respectively. The dealer failed to produce the books of accounts in respect of expenditure incurred in labour and service charges. Considering the nature and scope of work, Id.STO allowed 32% labour and service charges.

The dealer had claimed to have purchased steel and cement worth Rs.6,60,47,408.58 which were suffered OST during the material period. Out of which steel and cement worth Rs.1,72,21,536/- had been consumed in course of execution of works during the material period which had been certified by NALCO. The dealer had submitted the detail statement of materials i.e. steel and cement purchased from inside the State of Orissa. On verification of purchase invoices with statement, learned STO found that all the goods had been suffered OST. Hence, he allowed deduction of Rs.1,72,21,536/- towards tax paid materials i.e. steel and cement which were consumed during the material period.

Accordingly, the GTO was determined at Rs.10,63,71,435/-. Allowing deduction of Rs.3,40,38,859.20 and Rs.1,72,21,536/- towards labour and service charges and tax paid materials respectively, the TTO was determined at Rs.5,51,11,039.80 and levied tax @8% thereon which calculated to Rs.44,08,883.18. Surcharge @15% up to 14.05.2001 and @10% for the rest period which calculated to Rs.79,722.28 and Rs.3,87,739.11 respectively. Thus, tax and surcharge taken together computed to Rs.48,76,344.57. The dealer having paid nothing, was required to pay the entire amount of Rs.48,76,345/-.

S.A.No.1507/2004-05

- (i) Work Order No.NBC/MNXP/4010/05/12/1999 dtd.23.12.99 for supply of equipments for Green Arode Plant for Smelter expansion project for a total value of Rs.27,61,16,698/-.
- (ii) Work Order No.NBC/MMXP/4230/11/25 dtd.18.02.2000 for supply of equipments for Alumina crushed Bath Handling System for NALCO expansion project for a total value of Rs.6,78,54,642.57.
- (iii) Work Order No.NBC/MMXP/4010/5/13/99 dtd.23.12.1999 for erection, testing and commissioning service including structural and civil works for GAP for smelter expansion project for total value of Rs.14,80,70,150/-.
- (iv) Work Order No.NBC/MMXP/4230/11/26 dtd.18.02.2000 for erection, testing and commissioning service for ACBHS for smelter expansion project for a total value of Rs.6,92,54,163/-.

On scrutiny of work orders, learned STO found that Sl.No.(i) & (ii) were contract for supply/sale and the work orders mentioned in Sl.No.III & IV were contracts for work, labour and service. The dealer had claimed that the supply of equipments for green anode plant and alumina and crushed bath handling system as mentioned in GAP/S” contract and ACBHS/s contract respectively were by way of inter-state sales u/s.3(a) of the CST Act which would not be subjected to further taxation under OST Act. On examination of both the work orders, learned STO observed that the contract was primarily between Mukand Ltd., Thane, Maharashtra and the NALCO, Angul for supply of equipments by the former to the later. Hence, the consignor was M/s. Mukand Ltd., Thane,

Maharashtra and consignee was Chief Manager, Materials, NALCO, Angul. The goods were moved from Maharashtra to Angul in the State of Orissa on the strength of declaration Form "C". The learned STO treated the said transactions as inter-state sales u/s.3(a) of the CST Act which did not come within the jurisdiction of taxation under OST Act. The dealer had received gross payment of Rs.6,55,26,580/- for both the works contract of Sl.No. III & IV out of which an amount of Rs.3,86,45,410/- and Rs.2,68,81,170/- relates for the works contract of Sl.No.III & IV respectively. The dealer failed to produce the detail accounts in respect of expenditure incurred in labour and service charges. So, considering the nature of works, learned STO allowed 32% labour and service charges.

The dealer had also claimed to have purchased steel and cement worth Rs.42,03,892/- which were suffered tax. The dealer had consumed steel and cement amounting to Rs.1,99,07,535/- for execution of works during the material period including previous year balance of Rs.1,59,03,643/-. The dealer had submitted the detail statement of materials i.e. steel and cement purchased from inside the State of Orissa. On verification of the purchase invoices, learned STO found that all the goods had been suffered OST. Hence, he allowed the same as deduction.

Accordingly, the GTO was determined at Rs.6,55,26,580/. Allowing deduction of Rs.2,09,68,506/- and Rs.1,99,07,535/- towards labour and service charges and tax paid materials respectively, the TTO was determined at Rs.2,46,50,539/- and levied tax @8% thereon which calculated to Rs.19,72,043/-.

Surcharge @15% calculated to Rs.2,95,807/-. Thus, tax and surcharge computed to Rs.22,67,850/-. The dealer having paid nothing, was required to pay the entire amount of Rs.22,67,850/-.

3. Being aggrieved with these orders of assessment of the learned STO, Dhenkanal Circle, Angul, dealer preferred first appeals bearing Nos.AA.26/DL/2003-04, AA.123/DL/2003-04 and AA.544/DL/2003-04 respectively before the learned ACST, Cuttack-II Range, Cuttack whereby the amount of assessments of tax were reduced.

4. Further being dis-satisfied, the dealer has preferred the present set of appeals before this forum.

5. In these case, no cross objections are filed by the State-respondent.

6. Heard both the parties. Perused the assessment orders as well as first appeal orders, all the materials available on record, grounds of appeal submitted by the dealer. During the course of argument, learned counsel for the dealer, Mr. S.K. Mishra vehemently contended that the dealer had claimed deductions towards labour and service charges amounting to 75% of the gross receipts and had produced sufficient evidence through books of accounts, bills, vouchers, documents, statements etc., but the learned FAA did not allow the same and gave an arbitrary deduction of 48% of the gross receipt towards deduction on account of labour and service charges. So, such action of the learned FAA is illegal, arbitrary and violative to the provisions of Orissa Sales Tax Act. The last submission of Mr. Mishra is that the orders passed by the fora

below should be modified to the extent of allowing 75% of the gross receipts towards deductions on account of labour and service charges. Per contra, learned Standing Counsel for Revenue, Mr. D. Behura refuted the contentions and submissions of Mr. Mishra and hammered to Rule 4-B of the Orissa Sales Tax (Amendment) Rules, 2010.

If that is so, let us have a glance to Rule 4-B of the Orissa Sales Tax (Amendment) Rules, 2010. The language which is entailed in Rule 4-B is as follows : “In case of works contract, deduction of the expenditure incurred towards labour and service as provided in Section 5(2) AA of the Act shall be subject to production of evidence in support of such expenses to the satisfaction of the Assessing Authority. In the cases where a dealer executing works contract, fails to produce evidence in support of expenses incurred towards labour and service as referred to above, or such expenses are not ascertainable from the terms and conditions of the contract or the books of accounts maintained for the purpose are found to be not credible, expenses on account of labour and service shall be determined at the rate specified in the table below :

Sl.No.	Nature of works Works Contract	Percentage of labour service and like charges of the total value of the works
(1)	(2)	(3)
1.	Structural works	35%
2.	Earth work, Canal work, Embankment work etc.	65%
3.	Bridge work	35%

4. Building work	35%
5. Road work	45%

So, it becomes evident that Rule 4-B prescribes the deductions towards labour and service charges for different nature of works. The nature of work executed by the dealer-assessee is squarely covered under Rule 4-B of Orissa Sales Tax Amendment Rules, 2010. Therefore, deduction should have been allowed as per the rate prescribed in Rule 4-B of OST Amendment Rules, 2010. But such principle has not been adhered to by the fora below while adjudicating upon the case of the dealer-appellant.

Ergo, in view of Rule 4-B of OST Rules inserted vide Finance Department Notification dtd.06.02.2010 bearing SRO No.40/2010 effective from dtd.30.07.1999 and introduced by the State Government pursuant to the judgment of Hon'ble High Court of Orissa in Larsen & Toubro, 12 STC 31 (Ori) case, we are of the unanimous view that, the contention raised by Mr. D. Behura, learned Standing Counsel for Revenue is legal and sustainable in the eye of law and as such, these cases are fit to be remanded back to the learned STO for re-computation of tax in the light of Rule 4-B of the OST Rules.

7. In the result, the present set of appeals filed by the dealer are partly allowed and the orders of the learned FAA are hereby set-aside to the extent indicated above. The matters are remanded to the learned AA to make re-computation of tax in the light of above provision of the statute and pass reasonable order accordingly after giving the dealer a

reasonable opportunity of being heard preferably within a period of three months from the date of receipt of this order.

Dictated and Corrected by me,

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

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

I agree,

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(S. Mishra)
Accounts Member-II