BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.
S.A.No. 2266/2004-05

(Arising out of order of the ld. ACST, Sundargarh Range, Rourkela, in First Appeal Case No. AA-186 (RL-II) 2003-2004, disposed of on dtd.17.09.2004)

P R E S E N T :

Sri A.K. Das **Sri S. K. Rout** **&** **Sri M. Harichandan**
Chairman **Judicial Member-II** **Accounts Member-I**

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

-Versus-

M/s. Vesaj Patel, Kundukela, Dist. Sundargarh. .... Respondent

For the Appellant : Mr. D. Behura. S.C. (C.T.) & Mr. S.K. Pradhan, A.S.C. (C.T.)
For the Respondent : None

(Assessment Period : 1999-2000)

Date of Hearing: 28.02.2022 *** Date of Order: 23.03.2022

ORDER

Challenge in this appeal is to the order dtd.17.09.2004 passed by the learned First Appellate Authority/Asst. Commissioner of Sales Taxes, Sundargarh Range, Rourkela (in short, FAA/ACST) in First Appeal Case No.AA-186 (RL-II) 2003-04, thereby confirming the assessment order dtd.31.08.2003 passed by the learned Sales Tax Officer/Assessing Authority, Assessing Unit, Rajgangpur (in short, STO/AA) for the assessment year 1999-2000 u/s.12(4) of

the Orissa Sales Tax Act (in short, OST Act) with a refund of Rs.1,41,638/-.

2. In nutshell, the case at hand is that, the dealer-assessee was engaged in execution of works contract being a registered dealer under OST Act. During assessment stage, the dealer appeared before the ld.STO through his authorized representative and produced the copies of the documents relating to execution works contract and payment received. But books of account relating to the labour and service charges incurred by the dealer in execution of the works contract could not be furnished. So, the learned STO on verification of the contract bills, running account bills, TDS certificates and purchase vouchers etc. noticed that the dealer received gross payment from M/s. Mahanadi Coal Field Ltd., Basundhara area and Executive Engineer, M.I. Division, Sundargarh as mentioned below and in absence of detail accounts of labour and service charges allowed deductions on account of labour and service charges as mentioned against each considering the nature of works executed, which is as follows :

Principals	Gross payment received	Nature of works	Percentage of labour and service charges allowed
MCL, Basundhara area	a.Rs.18,28,714.00 b. Rs.80,45,587.00	Earth work Composite work	95% 42%
Executive Engineer, M.I. Division, SNG	a.Rs.70,86,228.00 b. Rs.68,55,734.00 c. Rs.2,83,536.00	Earth work composite work of MI and Dam Construction work	95% 60% 32%

On verification, in absence of detail accounts of labour and service charges, learned STO allowed deductions on

labour and service charges as against gross payment received from MCL, Basundhara area of Rs.18,28,714/- for earth work 95% and 42% as against gross payment of Rs.80,45,587/- for composite work, 95% for earth work as against Rs.70,86,228/- and 60% for composite work of M.I. & Dam as against Rs.68,55,734/- and 32% for construction work as against Rs.2,83,536/- received from Executive Engineer, M.I. Division, SNG as principals.

After allowing such deduction of a total amount of Rs.1,60,52,514/- from the gross payment of Rs.2,40,99,799/- towards labour and service charges, the gross turnover has been determined at Rs.80,47,285/- wherefrom an amount of Rs.8,90,561/- has been allowed as deduction towards utilization of tax paid cement in execution of works contract and the TTO has been determined at Rs.71,56,724/-.

Such assessment was challenged before the learned FAA on the grounds that the learned STO has arbitrarily disallowed the claim of the dealer for allowing deduction of 95% of the gross receipt in respect of pure labour oriented earth work where there is no involvement of any materials. That the entire amount received being labour and service charges taxing of the same is not sustainable in the eyes of law. That even if the dealer claimed higher percentage of labour and service charges but the learned AO allowed very lower percentage without any rhyme and reason. That the learned STO illegally disallowed the claim of the dealer towards utilization of tax paid materials even though the relevant purchase bills and utilization certificate were furnished. That as no reason was assigned and as such the

assessment is quite arbitrary and illegal and the same should be set-aside.

3. With these contentions, the dealer preferred the first appeal before the ld.ACST, Sundargarh Range, Rourkela who after due adjudication confirmed the assessment order as mentioned above.

4. Being dissatisfied with the order of the learned FAA, State preferred the present second appeal with the prayer to quash the order of the ld.FAA as the same is bad in the eyes of law.

5. No cross objection is filed by the dealer-respondent.

6. Despite due service of notice on the dealer, for reasons best known to him, he (dealer) neither engaged a counsel nor anybody on his behalf remained present before this Tribunal so as to defend him against the grounds of appeal. So, this Tribunal, having no alternative, heard the argument of Mr. D. Behura, learned Standing Counsel for Revenue and proceeded to dispose of the matter on ex-parte basis on merit.

7. During course of argument, learned Standing Counsel for Revenue, Mr. D. Behura vehemently contended that the order of ld.ACST is unjust, illegal, arbitrary and bad in law. That the rate of deduction allowed by the ld.STO and sustained by the ld.ACST on the face of the nature of the works executed by the dealer-contractor is quite high and excessive. That both the fora below allowed deduction @42%, 60% and 95% towards labour and service charges which is quite unjust and improper. That the ld.ACST has allowed deduction of Rs.8,90,561/- towards utilization of tax paid cement without a

certificate from the contractee is not correct. That the order of the ld.ACST being devoid of merit, be quashed.

8. Heard the contentions and submissions of the learned Standing Counsel for the Revenue, perused the impugned orders of the fora below, grounds of appeal vis-à-vis the materials on record.

The apple of discord in the instant case is with regard to the deduction on labour and service charges. If that is so, had it been taken into consideration the verdict of the Hon'ble High Court of Orissa decided in the case of Larsen & Toubro reported in STC 31 (Ori), in which percentages of labour and service charges have been provided for different nature of works with retrospective effect from dtd.30.07.1999. On this score , our view is that certainly "No" is the answer as both the fora below have not adhered this principle as laid down by the Hon'ble Court.

Ergo, at this juncture, we are of the unanimous view that the amendment to OST Rules, 1947 being brought to the statute in the year 2010 by virtue of OST (Amendment) Rules, 2010 with retrospective effect from dtd.30.07.1999, Rule-4B of the OST Rules inserted vide Notification dtd.06.02.2010 bearing SRO No.40/2010 effective from 30.07.1999 and introduced by the State Government pursuant to the judgment of the Hon'ble High Court of Orissa in Larsen & Toubro Ltd. (supra) should be given due regard and accordingly, the assessment should be done.

In view of the scenario of the instant case, we are of the considered view that, it becomes quite befitting to remand the

case to the learned AA to make re-computation of tax in the light of Rule 4-B of the OST Rules. Hence, ordered.

9. The appeal filed by the State is allowed. As a corollary the impugned order of the learned FAA is hereby set-aside. The matter is remanded to the learned AA to make re-computation of tax in the light of above provision contained in Rule 4-B of the OST Rules within a period of three months from the date of receipt of this order subject to giving an opportunity to the dealer of being heard.

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/-
(M. Harichandan)
Accounts Member-I