BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 2829 of 2004-05
&
S.A. No. 280(ET) of 2004-05

(Arising out of orders of the learned ACST, Appellate Unit, Bhubaneswar in Appeal Nos. AA. 261/BH.II/03-04 & AA. 263-ET/BH.II/03-04, disposed of on dated 05.01.2005)

Present: **Shri A.K. Das, Chairman**
Shri S.K. Rout, 2nd Judicial Member
&
Shri S. Mishra, Accounts Member-II

M/s. Tata Projects Ltd.,
N2/38, IRC Village/
101, Janapath, Bhubaneswar ... Appellant

-Versus-

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

For the Appellant : Sri D.K. Mohanty, Advocate
For the Respondent : Sri D. Behura, S.C. (CT) &
Sri S.K. Pradhan, Addl.SC (CT)

Date of hearing: 07.04.2022 *** Date of order: 13.04.2022

O R D E R

Both these appeals filed by the dealer-assessee involve common question of facts and law for which they are taken up together and disposed of by this common order.

2. The dealer-appellant filed S.A. No. 2829 of 2004-05 challenging the order dated 05.01.2005 passed by the learned Asst. Commissioner of Sales Tax, Appellate Unit, Bhubaneswar(hereinafter called as 'first appellate authority') in Appeal No. AA. 261/BH.II/03-04 thereby reducing the tax demand to ₹40,37,131.00 from ₹1,70,06,168.00 raised by the Sales Tax Officer, Bhubaneswar-II Circle, Bhubaneswar (in short, 'assessing authority') for the year 2000-01 in the assessment framed u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act').

3. S.A. No. 280 (ET) of 2004-05 is directed against the order dated 05.01.2005 passed by the same first appellate authority in Appeal No. AA. 263-ET/BH.II/03-04 enhancing the tax demand to ₹6,16,442.00 from ₹6,00,000.00 raised by the same assessing authority for the same period u/s. 7(3) of the Odisha Entry Tax Act, 1999 (in short, 'OET Act').

4. The facts common under both the appeals are that the dealer-assessee is a Limited Company having its Head Office at Hyderabad and is engaged in execution of works contract and supply contract within the State of Odisha. The dealer for the purpose of assessment was served with a notice u/s. 12(4) of the OST Act with an

instruction to produce the books of account pertaining to the year 2000-01, but unfortunately the dealer did not appear. So, intimations were issued to him on different dates. The last intimation was issued to the dealer on 15.11.2003 with a direction to appear on 20.11.2003. Despite several intimations, the dealer did not appear and produce the books of account. Thus, the assessing authority proceeded with the matter exparte and completed the assessment to the best of judgment basing on the facts on record. The dealer was entrusted with the contract works for commissioning of 132 KV and 33 KV transmission lines at Patnagarh in the Balangir district; Parlakhemundi in the Ganjam district; Sonepur in the Sonepur district and Sambalpur in the Sambalpur district. The assessing authority on verification of documents found that the dealer was engaged in execution of construction and erection of transmission lines, sub-stations, civil structural works, electrical works and supply of essential spares for transmission lines. The deduction certificates issued u/s. 13-AA(2) of the OST Act revealed that an amount of ₹1,31,34,104.00 had been deducted at source by the Chief Engineer, Transmission Projects, GRIDCO Ltd., Bhubaneswar. But, from the PCR entries for the period in

question, it was found that TDS of ₹1,69,33,895.00 had been deducted and credited in favour of the STO, Bhubaneswar-II Circle. The assessing authority on account of non-appearance of the dealer-assessee despite service of intimations, took the total amount of TDS collected as the GTO and TTO. The total payment made towards execution of works contract had been estimated at ₹42,33,47,375.00, but from the return filed by the dealer, it was found that the dealer had effected supply of different materials for ₹2,37,53,849.00 during the period from November, 2000, January, 2001 and February, 2001. No document was produced with regard to the supply of materials during the balance period of the year. Therefore, the supply amount of materials for the balance period was reasonably estimated at ₹3,00,00,000.00 and the total amount of supply was estimated at ₹5,37,53,849.00. The assessing authority further on scrutiny of agreement observed that the contractor was engaged for construction, erection, structural works and electrical works of transmission lines and sub-stations. All these works were more material intensive than the labour oriented. It was found from the 'C' form, the dealer had brought goods to the tune of ₹88,02,337.00 into the State of Odisha during the assessment period in

question against which the dealer had been issued 15 nos. of 'C' form. The assessing authority further observed that ₹3,00,00,000.00 had been reasonably added to the turnover of supply effected by the dealer. **The assessing authority in absence of any document with regard to the labour and service expenses granted deduction @ 22% of the gross value of works contract.** The expenses incurred towards labour and service charges were determined at ₹8,13,10,575.72, which was calculated @ 22% of the gross amount of ₹36,95,99,526.00 received. The assessing authority determined the GTO at ₹42,33,47,375.00 and after deducting ₹8,13,10,575.72 towards labour and service charges, the TTO was determined at ₹34,20,36,799.28. Out of which ₹28,82,82,950.28 was taxed @ 8% and ₹5,37,53,849.00 @12%. The total tax and surcharge was determined at ₹3,39,40,062.58. The dealer having paid ₹1,69,33,895.00, it was liable to pay the balance amount of ₹1,70,06,168.00.

4(a). The dealer-assessee challenging the aforesaid demand raised by the Assessing authority filed appeal before the first appellate authority, who reduced the tax demand to ₹40,37,131.00 on the following findings :-

(i) As per the certificate issued by the GRIDCO authority as well as the gross payment disclosed by the appellant at ₹32,83,52,600.00 was the basis for determination of GTO. Since actual expenditure towards labour and service charges could not be disclosed for examination with the relevant documents, the expenditure shown in the statement did not merit for consideration. The claim for deduction towards service charges for the year 2000-01 couldnot be considered as during the year 1999-2000 service charges had been allowed separately to the dealer-assessee, which must have covered the design charges. The claim of deduction towards hire charges for car, jeep couldnot be allowed in view of the judgment of the Hon'ble Apex Court in the case of Gannon Dunkerlay & Co. and others Vs. State of Rajasthan and others, reported in [1993] 88 STC 204 (SC). The claim of deduction towards electricity and water charges for ₹13,09,966.00 could not be allowed as no evidence regarding such payment could be produced for verification. The claim of deduction of ₹16,66,254.00 for

transport of goods from work site, insurance charges, motor vehicle expense, post and telegram, telephone charges, printing and stationery, repair and maintenance, travelling expense, staff conveyance etc. could not be allowed as deduction towards service charges in view of the aforesaid judgment of the Hon'ble Apex Court in case of Gannon Dunkerlay & Co. ibid. The claim of deduction of ₹1,15,70,609.00 towards profit on labour couldnot be considered as the dealer-assessee did not produce any supporting documents. The dealer-assessee is entitled to deduction @ 32% of gross payment towards labour and service charges keeping in view the nature of works executed by it. The claim of deduction of ₹26,99,817.00 towards first point tax paid goods cannot be considered in the present appeal without any supporting evidence. The claim of deduction is restricted to ₹2,08,89,272.00 as against claim of ₹2,11,45,773.00 as the dealer could not furnish supporting bills for ₹1,52,615.00 relating to purchase of different goods, purchase of bricks for

₹36,000.00 and spares for ₹62,710.00 showing payment of tax. The dealer-assessee is entitled to deduction of ₹1,74,923.00 as discount from the gross payment in view of the provisions in the contract.

4(b). The dealer-assessee, being further aggrieved with the aforesaid demand raised by the first appellate authority preferred second appeal vide S.A. No. 2829 of 2004-05 mainly on the ground that deduction of 32% granted towards labour and service charges is at lower side and that disallowing claim of deduction towards first point tax paid goods utilized in execution of works contract was illegal.

5. Similarly, the dealer also filed S.A. No. 280 (ET) of 2004-05 being aggrieved with the demand of ₹6,16,442.00 raised by the first appellate authority on the ground that levy of entry tax in the absence of any evidence that goods had entered into local area for the purpose of consumption, use and sale therein is illegal, arbitrary and against the sanction of law.

6. The learned Counsel for the dealer-assessee vehemently urged that this Tribunal in similar nature of cases relating to the present dealer-assessee has allowed

deduction towards labour and service charges @ 33%. Therefore, deduction of 32% granted by the first appellate authority towards labour and service charges should be enhanced to 33%. He also claimed that the first appellate authority illegally disallowed deduction towards first point tax paid goods which should be considered and allowed in the present second appeal. The forums below in an erroneous manner demanded entry tax in the absence of any evidence that the goods had entered into the local area for the purpose of consumption, use or sale therein.

7. On the other hand, learned Standing Counsel (CT) for the revenue supporting the impugned order of the forum below argued that 32% deduction allowed towards labour and service charges keeping in view the nature of works executed by the dealer-assessee and the disallowance of deduction towards first point tax paid goods for non-production of relevant documents regarding utilization of the tax paid goods in execution of works contract is just and proper. Further, entry tax determined by the first appellate authority is reasonable and according to law. Hence, there is no illegality in the impugned order warranting interference of this Tribunal.

8. We have heard the rival submissions of the parties, gone through the grounds of appeal raised by the dealer-assessee vis-a-vis the impugned orders and the materials on record. It appears from the impugned order that the dealer-assessee entered into an agreement for the purpose of executing works like civil, structural, architectural, control room building, staff quarters as well as design, fabrication, erection of sub-station equipment including civil structural works and supply of essential spares for 133 KV transmission line, 222 KV transmission line, 33 KV transmission line etc. as well as activity schedule for augmentation of 33/11 KV sub-station from its existing capacity to 2 X 3.15 MVA. The nature of works clearly reveal that the dealer-assessee in addition to erection, design, fabrication of sub-station equipment, had also undertaken civil and structural works for control room building, staff quarters etc. and in such type of works, more labour and service components are involved. Therefore, 32% deduction granted by the first appellate authority towards labour and service charges, in our view, is at lower side in view of the order of this Tribunal passed in S.A. No. 2133 of 2002-03 in respect of the very same party granting 33% deduction towards labour and service charges for execution of the

same nature of works. Accordingly, we are inclined to enhance the deduction of 32% of gross payment towards labour and service charges to 33%. So far as first point tax paid goods are concerned, the first appellate authority has allowed deduction to the extent of ₹2,08,89,272.00 against the claim of ₹2,11,45,773.00 on account of non-production of relevant documentary evidence showing payment of tax on the goods. In the second appeal also, the dealer-assessee could not produce relevant documents showing payment of tax on such goods as claimed by him. Therefore, the first appellate authority did not commit any illegality in disallowing such claim of the dealer-assessee in full.

9. So far as the demand of entry tax is concerned, the first appellate authority was fully correct in its approach enhancing the tax demand to ₹6,16,442.00 in respect of entry of goods into the local area. The demand so raised by the first appellate authority is strictly in accordance with law and does not warrant any interference of this Tribunal.

10. For the foregoing discussions, S.A. No. 2829 of 2004-05 is allowed in part, the order of the first appellate authority is set aside to the extent indicated above and the matter is remitted back to the assessing authority to

compute the tax liability of the dealer-assessee afresh granting deduction @ 33% of the gross payment received towards labour and service charges. The assessing authority shall complete the entire exercise within a period of three months from the date of receipt of the order after giving due opportunity to the dealer-assessee. S.A. No. 280 (ET) of 2004-05 being devoid of merit stands dismissed and the orders impugned therein is hereby confirmed.

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/-
(S. Mishra)
Accounts Member-II