

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

S.A. No. 550/2005-06

(Arising out of the order of the learned ACST, Balasore Range, Balasore in first appeal Case No. AA-225/BA-2004-2005 disposed of on 24.02.2005.)

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

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

..... Appellant.

-Vrs.-

M/s Shree Laxmi Engineering Co.,
At/Po- Sabira, Balasore.

..... Respondent.

For the Appellant: : Mr. D. Behura, Ld. S.C.(C.T.)
For the Respondent: : None.

Date of Hearing : 26.07.2021

Date of Order : 30.07.2021

ORDER

The present appeal of the State has been directed against the impugned order of learned Assistant Commissioner of Sales Tax, Balasore Range, Balasore (hereinafter referred as ld. FAA) passed on dated 24.02.2005 in Appeal Case No. AA-225/BA-2004-2005 confirming the order of assessment of the Learned Assessing Authority, Balasore Circle, Balasore (hereinafter referred as LAO) framed Under Section 12(4) of the Odisha Sales Tax Act, resulting in a refund of Rs.4,09,109.00 relating to the period 2002-03.

2. Being aggrieved by the impugned order of the Id. FAA, the appellant-State has preferred second appeal before the Tribunal contending that such order may be quashed and the order of LAO may be modified as per following grounds:-

“i. That the order of the Id. ACST is not appropriate.

ii. That the appellant failed to maintain books of accounts though the turnover is very high.

iii. That the Id. ACST failed to bring on the order the tax effect of the goods utilized in the works contract & payment thereof.

iv. That these supply of ballast may be treated as supply contract.....”

3. The brief fact of the case is as follows:-

That, the instant dealer is a works contractor, executing works under South Eastern Railways, Kharagpur. At the time of assessment, the dealer produced TDS Certificate, work order and purchase invoices. After examining the work order, the LAO ascertained that the dealer is entrusted to provide cast in situ Bored piles, removal of existing earth in formation, dismantle the old track in approaches of bridges on up and down line, launching of relieving girder as well as new girder of different sizes with suitable methods including leveling, lifting, lowering of girder by erecting and fixing of C.C. Crib or wooden sleeper Crib, delaunching of the relieving girder, clearing and removing of old plate and rust by scraping, chipping, wire brushing and then painting with

contractors material, labour and equipments, supplying of ordinary Portland cement confirming relevant IS. Specifications, supplying approved quality of M.S. Rod of different sizes and loading and unloading of C.C. Crib, wooden sleeper, girder etc. in between SFO-MKO those damaged in the super cyclone on 29.10.99. Accordingly, the LAO observed that the work is both labour oriented and composite in nature. The materials such as the rails, sleeper ballasts, fish plates, bolts and joints are supplied by the Railway. But items like red oxide, fevicol, paints are used by the dealer at his own cost. The claim of the dealer of Rs.2,09,87,143.79 towards labour charges and other deductions was not accepted by the LAO in absence of detail books of account. Hence, he allowed labour and service charges at the reasonable rate of 50% to the best of his judgment. Accordingly, he determined the gross receipt at Rs.2,19,60,552.00 and after allowing deductions @ 50% on such receipt towards labour and service charges and Rs.55,18,036.19 towards first point sales tax paid goods, he determined the TTO at Rs.54,62,239.81 and taxed it at different rates as per schedule. He, thus, determined tax and surcharge at Rs.4,69,312.85 in toto against which the dealer has paid Rs.8,78,422.00 in the shape of TDS, resulting in a refund of Rs.4,09,109.00 for the impugned year.

4. Being aggrieved by the said order, the dealer preferred appeal before the Id. FAA bearing appeal No.AA-225/BA-2004-05 who confirmed the assessment order after hearing of the case.

5. Now, being aggrieved by the order of Id. FAA, the State has come up before the Tribunal assailing the said order to be quashed and the order of LAO to be modified.

6. That, in spite of sufficient opportunities availed by the dealer-respondent, he failed to appear in appeal proceeding without any reasonable cause. Accordingly, in the absence of dealer-respondent, but with cross objection filed, the case was heard and disposed of ex-parte basing on the materials available in this record including records of both the fora below and hearing from the Id. Standing Counsel for appellant-Revenue.

7. In course of hearing, Mr. D. Behura, Id. Standing Counsel for the Revenue referred to the grounds of appeal filed but conceded that the dealer-respondent has entered into an agreement with the S.E. Railway that involves both labour and supply of materials, thereby making it a composite contract.

8. After examining all the information available in this record including the records of both the fora below, the Tribunal referred to relevant sections of the OST Act relating to works contract and determination of taxable turnover thereon.

Section 2(jj):-

“Works Contract” includes any agreement for carrying out, for cash or deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection,

installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property.”

Section 5 (2) (AA) (i) on taxable turnover in case of works contract:

- (i) ‘works contract’ shall be deemed to be the gross value received or receivable by a dealer for carrying out such contract, less the amount of labour charges and service charges incurred for the execution of this contract.”

It is observed from the copy of the contract available in the assessment record that the dealer-respondent has entered into an agreement with S.E. Railway, Kharagpur for a gross value of Rs.4,10,37,687.00 vide agreement No.27/S/KGP/2002-03 on 16.05.2002 in which the schedule attached revealed that it was a composite contract involving both supply and works and hence taxable @8% on the TTO as per tax rates on works contract. Therefore, This Tribunal is of view that:-

- a. In the absence of complete set of books of account, the LAO has rightly allowed deductions of 50% towards labour and service charges on gross receipts after properly analyzing the nature of work executed as per contract, being confirmed by Ld.FAA that does not require any further interference.
- b. That, both the fora below have rightly disallowed claim of the dealer towards deductions for purchase of first point Sales Tax paid goods made from unregistered dealer and goods like diesel and tools not

used directly in the work requiring no further interference, being just and proper.

- c. That, the LAO has rightly calculated the tax and surcharge (excluding on declared goods) which does not require any further interference.

Accordingly, it is ordered.

The appeal filed by the State is rejected being devoid any merit and the refund of Rs.4,09,109.00 determined by both the fora below for the impugned period is sustained.

The cross objection filed by the dealer-respondent is disposed of accordingly.

Dictated & corrected by me,

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

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

I agree,

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(Sweta Mishra)
2nd Judicial Member