BEFORE THE ODISHA SALES TAX TRIBUNAL: CUTTACK
(Full Bench)

S.A. No. 295(VAT) of 2010-11

(Arising out of order of the learned DCST, Jajpur Range,
Jajpur Road, in First Appeal Case No. AA- 265CUIII-09-10
disposed of on dated 21.12.2010)

Present: Shri R.K. Pattanaik, Chairman,
Shri A.K. Dalbehera, 1st Judicial Member, and
Shri R.K. Pattanaik, Accounts Member-III

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

-Versus-

M/s. G.S. Atwal & Co., Engineers (P) Ltd.,
Kalarangiatta, Jajpur ... Respondent

For the Appellant : Sri D.Behura, Standing Counsel (CT)
For the Respondent : Sri B.N. Mohanty, Advocate

Date of hearing: 17.11.2020 ***** Date of order: 20.01.2021

O R D E R

Present appeal under Section 78(1) of the Odisha Value Added Tax Act, 2004 (in short, 'the Act') is at the behest of the State questioning the legality and judicial propriety of the impugned order dated 21.12.2010 promulgated in Appeal Case No.AA-265 CU-III-09-10 by the learned Deputy Commissioner of Sales Tax, Jajpur Range, Jajpur Road (in short, 'FAA'), who allowed all the claims of the dealer assessee and also directed to refund the TDS vis-a-vis assessment for the year 2006-07 vide order dated 28.11.2008 passed under Section 42(1) of the Act by the

learned Sales Tax Officer, Jajpur Circle, Jajpur Road (in short, 'AA'), who had adjusted the TDS to the tune of ₹900861.00 as credit carried forward to the tax period of April,2007 on the grounds inter alia the authorities below committed a gross error on facts and law in not appreciating the nature of works contract which to an extent if not fully involved men and material and also in allowing refund of entire TDS with the reason that deduction @100% towards labour and service charges to be permissible and hence, it deserves to be set aside in the interest of justice with a further direction to reassess the dealer assessee on proper verification of the materials on record.

2. In fact, the dealer assessee is a company which is engaged in contractual works and as revealed from the record, it was entrusted with such an assignment during the year 2006-07 concerning M/s. Tata Steel Ltd., Sukinda Chromite Mines, Kalarangiatta. So far as the assessment is concerned, an audit inspection was made and a report was furnished under Section 42(1) of the Act which, in fact, necessitated initiation of a proceeding against the dealer assessee and accordingly, a notice was issued in Form VAT-306 to it with a direction to produce books of accounts for examination and verification in the light of the observations of the audit unit. It is revealed that the Audit Visit Report (in short, 'AVR') was confronted to the dealer assessee along with the objections contained therein. The AA, on verification of the agreements and books of accounts, noticed that there was no transfer of property in goods involved in the contractual works accomplished by

the dealer assessee, inasmuch as, the entrusted work was found not to consume any material components and it is, therefore, entitled to 100% deduction towards labour and service charges. While concluding so, the AA carried forward the TDS to the next tax period from the tax period of April, 2006 which was challenged before the FAA by the dealer assessee. The FAA allowed the claim of the dealer assessee and directed refund of the TDS.

3. The State has disputed the findings of the authorities below on the ground that the agreements vis-a-vis works executed were not properly examined and scrutinised before reaching at a decision that it did not involve use of any materials and was entirely labour intensive while refunding the TDS amount. In other words, in the considered view of the State, the contractual works involved utilisation of certain materials and therefore, deduction @100% towards labour and service charges, as has been directed by the authorities below was totally unjustified and dehors the materials on record. The dealer assessee, on the other hand, justified the impugned order dated 21.12.2010 by advancing an argument to the effect that no error was committed in appreciating non-involvement of materials and consequently, deduction @100% towards labour and service charges to be just, proper and in accordance with law.

4. In course of audit assessment, the dealer assessee furnished the details of the purchases effected during 2006-07 which disclosed spending at ₹196272537.00 on mining equipments, spare parts, tyres & tubes and other goods

and on the head of transportation vis-a-vis out of State purchases and purchases made from registered dealers of the State on payment of VAT. The dealer assessee while explaining in detail the works undertaken and executed claimed that it was entirely labour intensive where no transfer of property in goods was involved. The AA, considered the explanation of the dealer assessee with respect to 09(nine) agreements executed with the contractee, namely, M/s. Tata Steel Limited and finally, arrived a definite conclusion that the observations of the audit unit could not be substantiated with materials particulars, albeit, allowed carry forward of the TDS to the tax period of April, 2007 which was later deleted by the FAA directing its refund. The said finding of the AA as to the nature of the contractual works and to what extent it was labour intensive was confirmed by the FAA in appeal. As is contended by the State, the decisions of the authorities below need re-examination on proper verification of the contracts in question.

5 In respect of the agreements dated 16.08.2004, 16.10.2004, 31.01.2005, 07.05.2005, 22.08.2005 and 31.01.2006, it was contended by the dealer assessee that NDC was issued justifying the works involving 100% of labour and service charges. From the assessment order dated 28.11.2008, it is prima facie made to appear that the works basically involved in the removal of the over-burden, shifting of low grade, deployment at the mine site, ore breaking and shifting, spinning and crushing and according to the dealer assessee, all are labour intensive in nature, the claim which was rightly and correctly realized, understood and properly appreciated

by the authorities below to hold that it justified 100% deduction on account of labour and service charges. The AA did consider the objections raised in the audit and examined it vis-a-vis the contractual works executed during the year 2006-07 and reached at a categorical finding that there is nothing on record in specific to suggest involvement of material components save and except men, machineries and fuel and therefore, the dealer assessee is entitled to 100 % deduction on labour and service heads. In fact, the dealer assessee was able to submit the NDC obtained from the concerned authorities. In course of assessment, the State, as a matter of fact, miserably failed to bring to the notice of the AA to confirm as to what were the machineries and consumables particularly used and utilised at the time of execution of the works. The AA, that apart, could not be convinced about the transfer of property in goods as was alleged in the AVR. The AA, rather, concluded that no specific material as to the above could be brought forth even to remotely suggest that some material components were really involved in such works and to what extent. The allegation contained in the AVR was found to be unspecific or general, as was held by the AA. In other words, no clear and convincing evidence could be produced at the time of assessment so as to prove and establish with certainty that some material components had been utilised to some extent while accomplishing the contractual works by the dealer assessee. Such a conclusion of the AA cannot be ignored and discarded which is apparently based on examination of the agreements and that too, in absence of any convincing material brought on to record to the

contrary. The issuance of NDC that the works to be 100% labour intensive and on examination of the agreements by the authorities below with a clear finding to the effect that it is a case of 100% deduction towards labour and service charges, in the humble opinion of the Tribunal, in absence of any compelling reasons, is not lightly to be interfered with. The Tribunal, thus, arrives at a decision that the FAA not only rightly confirmed the findings of the AA vis-a-vis the nature of contractual works but also justifiably directed refund of entire TDS payable to the dealer assessee.

6. Hence, it is ordered.

7. In the result, the appeal stands dismissed. As a logical sequitur, the impugned order dated 21.12.2010 in Appeal Case No. AA- AA-265 CU-III-09-10 for the period of assessment 2006-07 vis-a-vis the dealer assessee is hereby confirmed.

Dictated & Corrected by me

(R.K. Pattanaik)
Chairman

(R.K. Pattanaik)
Chairman

I agree,

(A.K.Dalbehera)
1st Judicial Member

I agree,

(R.K.Pattnaik)
Accounts Member-III