BEFORE THE JUDICIAL MEMBER-I: ODISHA SALES TAX TRIBUNAL: CUTTACK.

S.A. No. 6 of 2015-16

(Arising out of the order of the learned DCST (Appeal), Balasore Range, Balasore, in First Appeal Case No. AA-23/BA-2002-2003 (OST), disposed of on dtd.23.02.2015)

P r e s e n t : Shri A.K. Panda,
1st Judicial Member

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

- V e r s u s -

M/s. Electro Commercial Co.,
At/P.O.- Chandipur,
Dist.- Balasore. ... Respondent

For the Appellant ... Mr. M.L. Agarwal, S.C.
For the Respondent ... Mr. S.N. Das, Advocate

Date of hearing: 04.07.2018 **** Date of order: 06.07.2018

O R D E R

This appeal is directed against the order dtd.23.02.2015 passed by the learned Deputy Commissioner of Sales Tax (Appeal), Balasore Range, Balasore (hereinafter referred to as, the learned DCST) in First Appeal Case No. AA-23/BA-2002-2003 (OST), wherein and whereby he has allowed the first appeal and has directed for refund of an amount of Rs.8,778.00 instead of the balance tax demand amounting to Rs.15,099.00 raised against the respondent-dealer by the learned Taxing Authority, Balasore Circle, Balasore (hereinafter referred to as, the learned Taxing Authority) in an assessment u/s.12(4) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, the OST Act) for the assessment year 1998-99.

2. The respondent-dealer M/s. Electro Commercial Co. being a works contractor executed certain works under M/s. Garrison Engineer, Chandipur, Balasore in the assessment year 1998-99 and received an

amount of Rs.12,11,003.00 for the same. In an assessment u/s.12(4) of the OST Act for the assessment year 1998-99, being noticed, the respondent-dealer appeared through an Advocate before the learned Taxing Authority and produced the relevant materials which were duly been examined by him. On examination, though the learned Taxing Authority found out that, the respondent-dealer has effected purchase of G.I. pipes amounting to Rs.2,61,011.90 from outside the State of Odisha and has brought it on the strength of way bills for utilization in the works contract, he did not allow deduction of the same due to lack of proper materials relating to payment of tax. Similarly, in view of the failure of the respondent-dealer to produce any account towards the labour and service charges, the learned Taxing Authority allowed deduction of Rs.5,58,560.00 towards the same on examination of the available materials and determined the TTO accordingly at Rs.6,52,143.00 and levied tax thereon @ 8% which came to be Rs.52,171.44. Then, he also levied surcharge thereon @ 10% which came to be Rs.5,217.84 and as such both the tax and surcharge came to be Rs.57,388.58 in total. As the respondent-dealer had already paid tax to the tune of Rs.42,290.00 by way of TDS, the learned Taxing Authority raised the balance tax demand of Rs.15,098.58 rounded up as Rs.15,099.00, to be paid by it.

3. After the assessment, being aggrieved with the order of the learned Taxing Authority, the respondent-dealer preferred an appeal before the learned DCST bearing First Appeal Case No. AA-23/BA-2002-2003 (OST). On hearing and on consideration of the materials available on record, the learned DCST found out the deduction allowed towards the labour and service charges to be inappropriate and accordingly enhanced the same to 47% of the gross receipt. Similarly, he also allowed deduction of Rs.2,61,011.90 relating to the purchase of G.I. pipes for utilization of the same in the works contract and accordingly recomputed the tax liability of the respondent-dealer and the same resulted in an order of refund amounting to Rs.8,778.00 instead of the balance tax demand of Rs.15,099.00 as raised earlier by the learned Taxing Authority. Thus, being aggrieved with the order of the learned DCST, the Revenue as appellant has preferred this second appeal.

4. In its grounds of appeal, the appellant-Revenue has taken the following grounds:-

(i) That, in the instant case, the Ld. 1st Appellate Authority has allowed deductions towards labour and service charges @ 47% even though the dealer failed to produce the detailed labour account to that effect.

(ii) That, secondly, though the dealer is found to have effected purchases of G.I. pipes from outside the State of Orissa amounting to Rs.2,61,011.90 on the strength of waybills and that have been utilized in the work, deductions of the said turnover have been allowed by the Ld. 1st Appellate Authority. Without taxing the transfer of property in goods in course of exemption of work contract, the Ld. 1st Appellate Authority allowed deductions as per the provisions of law.

(iii) That, other points/grounds, if any will be urged at the time of hearing of appeal.

5. No cross objection has been filed by the respondent-dealer.

6. The learned Standing Counsel appearing for the appellant-Revenue submitted that, in absence of any material towards the expenditure relating to labour and service charges, the proper deduction should be @ 35% and not @ 47% as allowed by the learned DCST and as the order passed in this regard is erroneous, the same needs to be rectified by this Hon'ble forum. He further submitted that, though there is lack of materials that G.I. pipes amounting to Rs.2,61,011.90 purchased by the respondent-dealer for utilization in the works contract are tax suffered goods, the learned DCST has allowed deduction of the same and as the order passed in this regard is also erroneous, the appeal preferred by the appellant-Revenue needs to be allowed. On the other hand, the learned Counsel appearing on behalf of the respondent-dealer by way of a written submission supported the order of the learned DCST and urged for dismissal of the appeal.

7. Perused the orders of the learned forums below and the other materials available on record. There is no dispute that the respondent-dealer has executed certain works under M/s. Garrison Engineer, Chandipur, Balasore and received an amount of Rs.12,11,003.00 for the

same in the assessment year 1998-99. But, during assessment, it has failed to produce any document relating to the labour and service charges, which was to be deducted from the received amount for assessment of its sales tax liability. In absence of any account relating to labour and service charges, the learned Taxing Authority allowed deduction @ 45% which was further being enhanced to 47% by the learned DCST on consideration of the materials available on record at the first appeal stage. In cases, where the dealer does not maintain proper accounts towards the labour and service charges or the accounts maintained by him are not found credible, then the deduction towards such charges shall be made in a prescribed formula as furnished by the State fixing the percentage of the value of the works contract. The State of Orissa has made provision in Rule 4-B of the OST Rules w.e.f. 30.07.1999 prescribing such deduction, which read as follows: -

> "**4-B Deduction of Labour and Service Charge by Works Contractors**:
> 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 the 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%

"

8. Admittedly, the respondent-dealer has not maintained any account towards the labour and service charges in execution of the works. But, that is not the sole condition for application of Rule 4-B of the OST Rules, rather the application of the rule is subject to certain other conditions like failure to produce evidence in support of expenses incurred towards labour and service charges or failure to ascertain the expenses from the terms and conditions of the contract.

9. On perusal of the materials on record, it is seen that, after ascertaining the nature of work, the learned Taxing Authority allowed deduction @ 45% towards the labour and service charges. But, finding the same to be inadequate on examination of the available materials, the learned DCST has enhanced the deduction to 47% of the gross receipt. As the learned DCST has ascertained the nature of work from the available materials and has allowed deduction accordingly towards the labour and service charges, there is nothing to be interfered in the order passed by him in this regard. Further, another important aspect which deserves notice is that, the assessment relates to the year 1998-99 and Rule 4-B of the OST Rules was given effect from the date of 30.07.1999 by a Government notification. Therefore, on this ground also, application of Rule 4-B of the OST Rules does not appears to be proper and justified in the present case.

10. But, so far as the deduction towards the materials used in the works contract i.e. G.I. pipes amounting to Rs.2,61,011.90 is concerned, in order to get deduction of the value of the first point tax paid goods and the Central Sales Tax suffered goods, a dealer has to produce the required documents during the assessment. But, in the present case, the respondent-dealer has failed to produce any document showing payment of tax towards the purchase of G.I. pipes amounting to Rs.2,61,011.90. Therefore, in absence of proper documents showing payment tax, the respondent-dealer is not entitled to get any deduction towards the purchase of the G.I. pipes. But, without any authenticated document, the learned DCST has allowed deduction in this regard and the same being improper and unjustified, the order passed in this regard is required to be set aside. Therefore, after allowing deduction of Rs.5,69,171.41 towards the labour and service charges, the TTO of the respondent-dealer for the assessment

year 1998-99 is re-determined at Rs.6,41,861.59 and tax thereon @ 8% was calculated to be Rs.51,348.92. Similarly, surcharge @ 10% was calculated thereon which came to be Rs.5,134.89 and as such both the tax and surcharge were calculated to be Rs.56.483.78. As the respondent-dealer had already paid tax to the tune of Rs.42,290.00 earlier by way of TDS, it is liable to pay the balance tax demand of Rs.14,193.78, rounded to Rs.14,194.00.

11. In the result, the appeal is allowed in part. The order passed by the learned forums below is hereby set aside. The respondent-dealer is liable to pay the balance tax demand of Rs.14,194.00. The demand notice be issued accordingly.

Dictated & corrected by me,

Sd/-
(A.K. Panda)
1st Judicial Member

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