

2. Being aggrieved by the impugned order of the Id. FAA, the dealer-appellant has preferred second appeal before this Tribunal assailing the order of the forum below as unjust, illegal, arbitrary and not maintainable. The main contentions in the grounds appended to the memorandum of appeal are as follows:

“a. For that, the order passed by the forum below, is violative of the ratio of the case M/s. Gannon Dunkerley and Co.Vrs. State of Rajasthan and Others (1993) 88 STC 204(SC) and as such liable to be set aside.

b. For that disallowance of materials worth Rs.22,61,942.83 purchased by the appellant, which has suffered tax at the purchase point, is violative of section 8 of the OST Act, and ratio of the case M/s. BHEL Vs. Union of India (1988) 71 STC (Ori) and as such the order is liable to be set aside.

c. For that, disallowance of TDS to the tune of Rs.2,37,559.00 as claimed by appellant in gross violation of equity and justice and as such the order is liable to be revised.”

3. The brief fact of the case is that the dealer-assessee is registered under Paradeep Circle having RC No.CUII-J-1305 and is a work contractor. At the time of assessment, the LAO observed that the assessee has filed nil returns for the Quarter Ending 09/2000, 12/2000 and 03/2001. Moreover, he has not filed any return for the Q.E. 06/2000 and annual return of 2000-2001. However, during assessment proceeding, the assessee filed 10 numbers of TDS Certificates, Statement of materials purchased from registered dealers, statement of payment

received and a written submission only. On verification of written submission, it was revealed that the assessee contractor has received gross payment of Rs.1,37,13,940.10 from its principal M/s. BPCL, Calcutta towards execution of work for the impugned year. However, it filed TDS Certificates for Rs.68,47,380.85 and tax deducted at source was at Rs.2,73,895.00. Due to non-submission of copy of work order, agreement, bill of quantity, the LAO could not ascertain the nature of work. In absence of above documents, he allowed 35% towards deduction on labour and service charges from the gross receipt of Rs.1,37,13,940.10. All these resulted in an extra demand of Rs.5,46,199.00 in the assessment order passed by the LAO for the impugned year which was challenged by the assessee before the Id. FAA.

4. At the first appeal stage, the Id. FAA, after going through the grounds of appeal filed by the dealer-assessee along with materials available in the assessment record, confirmed the assessment order by his ex-parte appeal order.

5. Being further aggrieved, the dealer-assessee has come up and filed this second appeal before this Tribunal as per main grounds stated supra.

However, when the matter was called on for hearing, none appeared on behalf of the dealer-assessee in spite of valid service of notice. Moreover, since, the instant appeal relates to the year 2000-01, which is more than 22 years, it was taken up for ex-parte hearing in the presence of Id. Standing Counsel (C.T.) representing the State.

6. During the course of hearing, the ld. S.C. (C.T.) vehemently argued in favour of the appeal order passed ex-parte by the ld. FAA claiming it as just and in accordance with the provisions of the statute that does not warrant any further interference by this Tribunal. Since, the assessee reasonably failed to produce necessary documents along with work order obtained from M/s. BPL, the claim made by the assessee towards deductions of tax paid goods from the gross receipt and further claim of more deductions towards labour and service charges are not maintainable nor sustainable. Moreover, though the assessee has claimed TDS of Rs.5,03,033.00, it has submitted such certificates for Rs.2,73,895.00 and hence his claim cannot be considered.

7. We, now, felt necessitated to address the grounds taken by the assessee as appended in appeal memorandum taking into consideration the information available in this record including assessment order and appeal order.

It is profitable to quote the relevant provision of the statute in order to correctly ascertain the deductions to be allowed to the assessee for determining the taxable turnover on which tax is leviable.

Section 2jj

“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)

“Notwithstanding anything contained in sub-section (2)(A) “Taxable turnover” in respect of, –

- 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.”

Certainly, the Hon’ble Apex Court in case of M/s. Gannon Dunkerley and Co. Vs. State of Rajasthan and Others (1993) 88 STC 204 has prescribed guidelines towards deduction on labour and service charges from the gross value received. Moreover, in the case of M/s. BHEL Vrs. Union of India & Others reported in (1988)71 STC 36(Orissa), it is held that :-

“It is submitted that goods which have suffered taxation in a series of sale are excluded from further taxation and the plain meaning of Section 5(2)(AA)(i) does not envisaged such exclusion. Section 5(2)(AA)(i) is also subject to Section-8. When claimed before the assessing authority, it is to determine if the goods involved in works contract were subject to taxation in a series of sales. If it is so held, the same would be excluded. Section -8 and section-5(2)(AA)(i) are to be read together.”

In the case in hand, the assessee has claimed to have purchased materials worth of Rs.22,61,942.83 from registered dealers of Odisha by paying tax, however, could not produce the necessary bills to that effect in any of the forums below including before this Tribunal. As such, his

claim of deduction toward tax paid materials purchased is not sustainable and hence rejected.

Moreover, the dealer-assessee has claimed 60% deductions towards labour and service charges from the gross receipt. However, he reasonably failed before the forums below including Tribunal to produce work order/agreement with its principal i.e. M/s. BPCL in order to correctly ascertain the nature of work executed by him so as to allow labour and service charges. In Gannon Dunkerley case noted supra, the Hon'ble Supreme Court, in their judgment in Page 235, have held as under:

“But there may be cases where the contractor has not maintained proper accounts or the accounts maintained by him are not found to be worthy of credence by the assessing authority. In that event, a question would arise how the deductions towards the aforesaid heads may be made. It would be permissible for the State to prescribe a formula on the basis of a fixed percentage of the value of the contract as expenses towards labour and service and the same may be deducted from the value of works contract and that the said formula need not be uniform for all works contract and may depend on the nature of the works contract.”

In the present case, the assessee failed to produce work order/agreement for the work executed at every stage of assessment including appeal. In absence of such, based on the written note of submission, the LAO allowed 35% towards deduction on labour and service charges from the gross receipt which was upheld by the Id. FAA

ex-parte. Moreover, in absence of this important piece of information, we are not inclined to interfere in the observations of forums below and hence upheld.

Lastly, it is observed that the assessee has claimed TDS of Rs.5,03,033.00 against which it could be able to produce such certificates for Rs.2,73,895.00. Accordingly, we reasonably observe that the LAO has been correct in disallowing the balance TDS claim of Rs.2,37,559.00.

8. Accordingly, it is ordered.

The appeal filed by the assessee is rejected being devoid of merit and the appeal order passed by the ld. FAA is confirmed for the impugned year.

Dictated and corrected by me.

Sd/-
(Srichandan Mishra)
Accounts Member-II

Sd/-
(Srichandan Mishra)
Accounts Member-II

I agree,

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(S.K. Rout)
2nd Judicial Member