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

S.A. No. 390 OF 2002-03

(Arising out of order of the learned ACST, Balasore Range,
Balasore in Sales Tax Appeal No. AA. 206/BD/2001-02,
disposed of on dated 28.02.2002)

Present: Shri R.K. Pattanaik, Chairman,
Smt. S. Mishra, 2nd Judicial Member, and
Shri P.C. Pathy, Accounts Member-I

M/s. Gammon India Limited,
Behera Market Complex,
Salandi By Pass, Dist. Bhadrak ... Appellant

-Versus-

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

For the Appellant : Sri A.N. Mohanty, Advocate
For the Respondent : Sri M.L. Agarwal, Standing Counsel (CT)

Date of hearing: 03.06.2020 ***** Date of order: 18.06.2020

O R D E R

Instant appeal under Section 23(3) of the Odisha Sales Tax Act, 1947 (in short, 'the Act') at the behest of the appellant is directed against the impugned order dated 28.02.2002 promulgated in Appeal No. AA- 206/BD/2001-02 by the learned Assistant Commissioner of Sales Tax, Balasore Range, Balasore (in short, 'FAA') confirming the assessment dated 29.11.2001 passed by the learned Sales Tax Officer, Bhadrak Circle, Bhadrak (in short, 'AA') for the assessment year 2000-01

confining the challenge only to the rate of deduction from gross receipt vis-a-vis the labour and service charges.

2. The appellant executed works at Chandbali in the construction of high level bridge across river Baitarani and received payment in respect thereof from the Executive Engineer, R&B Division, Bhadrak. The appellant claimed deductions on different heads, but the AA noticed it not to have maintained detailed accounts, especially, with regard to labour and service charges and thus, allowed 32% in that respect as per the Memorandum of the Works Department which was challenged before the FAA, however, it was without any result. According to the FAA, the appellant did not maintain detailed accounts relating to the labour and service charges and went on to hold that in modern engineering, machinery has replaced the manual labour hitherto employed in works contract and expenses towards POL, hire charges and consumables having been taken care of under labour and service charges allowed it to the extent of 32% of the gross receipt and thus, upheld the assessment made by the AA.

3. The learned Counsel for the appellant simply harped on the rate of deduction applied towards labour and service charges at 32% as illegal and not in consonance with the ratio of the Hon'ble Apex Court in Gannon Dunkerley & Co. and others Vs. State of Rajasthan and others reported in (1993) 88 STC 204 (SC). It is further contended that the illegality committed by the AA was drawn to the attention of the FAA in rejecting the books of account and allowing deduction @ 32% without considering the fact that involvement of labour services in such kind

of projects is predominant, especially, when the works fall under tidal variation and requirement of special techniques for setting up of the foundation. It is claimed that in order to undertake such a work, there is a need of skill and expertise and as such, the deduction on account of labour and service charges ought to be estimated at 60%.

4. The respondent State justified the decision of the authorities below and contended that the rate of deduction to be appreciably correct.

5. The sole question that falls for consideration is, whether, the rate of deduction towards labour and service charges from the gross receipt should be @ 32%? It is to remind that the Hon'ble Apex Court in Gannon Dunkerley & Co. and others Vs. State of Rajasthan and others reported in (1993) 88 STC 204 (SC) held and observed that charges for labour and services which are required to be deducted from the value of the works contract would cover (i) labour charges for execution of works; (ii) amount paid to a sub-contractor for labour and services; (iii) charges for obtaining on hire or otherwise machinery and tools for execution of the works contract; (iv) charges for planning, designing, architect's fees; (v) cost of consumables used in the execution of works contact; (vi) cost of establishment of the contract to the extent it is relatable to supply of labour and services; (vii) other similar expenses relatable to supply of labour and services; and (viii) profit earned by the contractor to the extent it is relatable to supply of labour and services and further held that the legislature may prescribe a formula for deduction of cost of labour and services in case the contractor does not maintain proper accounts or

the books of account produced by him are not found to be worthy of credence. In consonance whereof and pursuant to the ruling of Hon'ble Court in Larsen & Toubro Ltd. Vs. State of Orissa and others reported in (2008) 12 VST 31 (Orissa), an amendment was carried out, with the introduction of Rule 4B in Odisha Sales Tax Rules, 1947 vide SRO No. 40/2010. As per sub-rule (2) of Rule (1) of the Orissa Sales Tax (Amendment) Rules, 2010, Rule 4B shall be deemed to have come into force on 30th July, 1999. So, it was applied with retrospective effect. The contention of the appellant is that deduction rate should be as per Rule 4B of the Rules instead of being capped @ 32% which is too meagre. Though the appellant claimed that the deduction on account of labour and service charges should be estimated @ 60%, but in this regard, no real attention was drawn to substantiate it. Rather, the only contention of the learned Counsel for the appellant is that it ought to be in accordance with Rule 4B of the Rules. A formal objection is raised by the learned Standing Counsel (CT) towards applicability of rate of deduction as per Rule 4B of the Rules. Since such a rate is applicable to the works contract retrospectively w.e.f. 30.07.1999, it covers the case in hand. In the considered opinion of the Tribunal, since a benefit accrues and admissible under law, the deduction on account of labour and service charges vis-a-vis the works contract executed by the appellant should be at the rate prescribed in Rule 4B of the Rules, which would rather serve the purpose and meet the ends of justice.

6. Hence, it is ordered.

7. In the result, the appeal stands allowed. As a necessary corollary, the impugned order dated 28.02.2002 promulgated in Appeal No. AA- 206/BD/2001-02 by the FAA is hereby set aside to the extent above indicated. Consequently, the AA is directed to take up recomputation of the tax liability vis-a-vis the appellant for the period under assessment in the light of the direction(supra) of the Tribunal and to expedite the process preferably within a period of three months from the date of receipt of the above order.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman

I agree, Sd/-
(Smt. S. Mishra)
2nd Judicial Member

I agree, Sd/-
(P.C. Pathy)
Accounts Member-I