

2. The case at hand is that, the dealer is a private limited company registered under Companies Act and carried on business of supply of goods and execution of works contract under the name and style of M/s. K.C.S. Private Ltd., having its office at Power House Road, Rourkela in the district of Sundargarh, Odisha. The dealer-company is registered under the OST and CST Act bearing No.RL-I-2128 and RL-I-C-1570 respectively under the jurisdiction of the Sales Tax Officer, Rourkela-I Circle, Uditnagar. Pursuant to notice issued u/s.12(4) of the OST Act, the representative of dealer-company appeared before the learned STO and produced books of account consisting of cash book, journals, purchase register, sale register, purchase bills, sale memos and the same were examined with reference to the returns filed. During course of examination, the learned STO found that the appellant had executed works contract under M/s. SAIL, R.S.P., Rourkela, M/s. NALCO, Angul and M/s. C.D.A., Cuttack etc. as a main contractor. The dealer-contractor had also undertaken execution of works contract as a sub-contractor of M/s. ABB Ltd., M/s. BHEL, M/s. L &T Ltd., M/s. Tata Robins Frasers Ltd. He had received the payment of Rs.5,41,35,747/- towards earth work and Rs.1,55,76,236.99 towards supply and erection of electrical goods. Apart from this, the dealer had also executed works as a sub-contractor and received payment of Rs.69,97,120/- during the year under assessment. The major work of the dealer-contractor was execution of works as per the agreement with the CDA for development of lands at Sector-8, Bidanasi, Cuttack with provision of infrastructure facility like water supply system, storm water drainage system, sewerage system site development, road and external electrification

system. This apart, the dealer had also effected sale of goods to the tune of Rs.58,08,028.47 in connection with his trading activities and furnished return to that effect. The learned STO examined the details of the works executed as the main contractor and also as the sub-contractor. He allowed deduction of Rs.69,97,120/- towards sub-contract works as the main contractors were legally required to pay the tax to the exchequer but not to the sub-contractor. That apart, the learned STO allowed labour and service charges @62% on earth work portion of Rs.5,41,35,747/- and @32% on the electrical works portion of Rs.1,55,76,236.99 calculated at Rs.3,35,64,163.11 and Rs.49,84,395.83 respectively. The turn over of materials involved in the works contract was thus determined at Rs.3,11,63,425.05 to which the trading gross turnover of Rs.58,08,028.47 was added to determine the GTO. The learned STO levied tax @4% on sale of goods against Form-IV, 8% on works contract and 12% for other sales. He also levied surcharge @15%, which led to refund of Rs.1,73,777.60.

3. Being aggrieved with such order of assessment, the dealer preferred first appeal before the learned ACST, Sundargarh Range, Rourkela, wherein the order of assessment passed by the learned STO was confirmed.

4. Being dis-satisfied with the order of the learned FAA/ACST, State has preferred the present appeal.

5. Cross objection is filed by the dealer-respondent in this case.

6. Heard both the parties. Perused the assessment order as well as the first appeal order, all the materials available on record and the grounds of appeal submitted by the State. In the instant appeal, the sole discontentment of the

State-appellant is the deduction @62% allowed on labour and service charges which is bad in the eye of law. Per contra, the dealer-respondent claimed 90% of deduction as the work in question was the earth work. But on perusal of the case record it reveals that, the land development work of C.D.A. executed by the dealer-assessee included the provisions of infrastructure facilities like water supply system, road and external electrification system. From the above scenario, one thing becomes clear that the land development work was labour dominated and as such allowing of deduction @62% on labour and service charges is genuine. The contention raised by the State-appellant that the deduction is not in consonance with the settled principle of law holds not good as by then i.e. in the year 1998-99, the amended circular (Rule 4-B) of the OST Rules was not in existence. So, in view of such, we are of the considered view that, the order of the learned FAA is genuine and as such the same needs no interference.

7. In the result, the appeal filed by the State is dismissed and the order of the learned FAA is hereby confirmed. The cross objection filed by the dealer-respondent is disposed of accordingly.

Dictated and Corrected by me,

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

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

I agree,

Sd/-
(A.K. Das)
Chairman

I agree,

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