BEFORE THE ACCOUNTS MEMBER-I: ODISHA SALES TAX TRIBUNAL: KATAKA.
S.A. No. 129(V) of 2020.
(Arising out of the order of the learned JCST (Appeal), (CT & GST), Territorial Range, Bhubaneswar, in First Appeal Case No. AA-106221822000061, disposed of on dt.30.4.2019)

P r e s e n t: Shri A. Bhoi, Accounts Member-I

M/s. S.J. Developers and Housing Pvt. Ltd,
B/6, MIKNIK MALL, A-103,
Nayapalli, Bhubaneswar. ... Appellant

- V e r s u s –

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

For the Appellant: :Mr. N.K.Dash, Advocate &
:Mr. K.R. Mohapatra, Advocate
For the Respondent: :Mr. S.K.Pradhan, Addl. S.C. (C.T.)

Date of hearing :23.10.2026 * Date of order :30.10.2026**

O R D E R

The dealer has filed this appeal against the impugned order of the Learned Joint Commissioner of Sales Tax (Appeal), CT & GST, Territorial Range, Bhubaneswar, (herein after referred to as Learned First Appellate Authority/ FAA), passed on dated 30.4.2019 in First Appeal Case No. AA-106221822000061, confirming the tax demand to ₹.50,63,889.00 including penalty of ₹33,75,926.00 raised in

the order of assessment made Under Section 42 of the Odisha Value Added Tax Act, (OVAT Act) by the Sales Tax Officer, Bhubaneswar II Circle, Bhubaneswar, for the tax period from 12.8.2014 to 30.9.2015.

2. The brief fact of the case is as follows:-

The appellant dealer M/s. S.J. Developers and Housing Pvt. Limited, Nayapalli, Bhubaneswar, is a Private Limited Company engaged in Real estate business like development of land and construction of residential flats for intending purchasers of flats executing agreement with land owners for development of land and agreement with the intending purchasers for construction of flats on receipt of payments on installment basis. Upon receipt of the Audit Visit Report, from the Tax Audit Unit, Bhubaneswar Range, Bhubaneswar, the Learned Assessing Officer initiated assessment proceedings U/s. 42 of the OVAT Act, raised tax demand of ₹50,63,889.00 basing on the findings of the Audit Visit Report for the tax period from 12.8.2014 to 30.9.2015.

3. On being aggrieved by the order of the Assessing Authority, the dealer has preferred an appeal before the Learned First Appellate Authority who after due consideration of

facts and materials available on record, confirmed the tax demand and dismissed the appeal.

4. The Dealer being further dissatisfied by the order of Ld. FAA, has preferred the Second appeal before this Tribunal on the following grounds.

a) The Learned Assessing Authority as well as the First Appellate Authority has erroneously disallowed the claim of labour and service charges in respect of works executed during the impugned tax period ignoring the books of accounts, service tax returns, statements, payment particulars, copies of Audited Balance Sheet and evidence of works contract details.

b) Disallowance of ITC of ₹82,617.00 is illegal and not sustainable.

c) Levy of penalty U/s.42(5) of the OVAT Act is mechanical and gross non-application of judicial mind.

5. Memorandum of Cross Objection has been filed by the State Respondent against the appeal preferred by the dealer.

6. The Ld. Advocate appearing for the Dealer-Company submits that against the claim of deduction of labour and service charges to the tune of ₹11,44,20,745.00, the dealer contractor has been allowed only to the tune of ₹3,43,26,223.00

applying the ratio under Appendix to Rule 6(e) of the OVAT Rules which is 30% of the TTO as determined, resulting disallowance of labour and service charges to the tune of ₹8,00,94,522.00. He also submits that the appellant dealer has maintained proper books of accounts which were also submitted before the forums below. Further he submits that since the appellant is maintained proper books of accounts and the expenditures towards labour and service charges have been very much ascertainable from the said books of accounts, the percentage rate of deduction of labour and service charges as per Appendix to Rule 6(e) of the OVAT Rules is not applicable. It is also submitted that the dealer has claimed the labour and service charges to the tune of ₹11,44,20,745.00 during the impugned tax periods such as Advertisement/Marketing Expenditure at Site amounting to ₹26,64,896.00, interest on term loan of ₹36,78,014.00, Processing Fees of ₹9,63,032.00, Professional and Consultancy Charges of ₹27,20,727.00, Salary and Wages of ₹2,45,06,707.00, Security Service Charges of ₹13,08,521.00, Staff Welfare Expenses of ₹6,67,738.00, Telephone and Mobile Expenses of ₹1,99,352.00, Travelling and Conveyance of ₹4,32,088.00, Diesel Generator Expenses of

₹2,09,001.00, Electricity Charges at Site of ₹11,40,843.00, Repair and Maintenance at Site of ₹3,84,108.00, Miscellaneous Expenses at Site of ₹2,68,245.00 and Labour and Service Charges as per Ledgers amounting to ₹8,03,39,637.00. He relies on the decision of **Hon'ble Supreme Court in the case of Gannon and Dunkerley & Co. and Another Vrs. State of Rajasthan and Others, reported in 88 STC 204 (SC), SLP Nos.3365-68 of 1992 and 1993** regarding deduction of labour and service charges and determination of tax liability for execution of works contract.

The Learned Advocate for the Dealer Contractor has also contended that the dealer was in the possession of valid tax invoices issued by the Selling dealers which has not been disputed by any of the forum below, hence the disallowance of ITC of ₹82,617.00 on the ground of non-filing of return by the Selling dealer is illegal and not sustainable in law.

7. On the contrary, the Ld. Addl. Standing Counsel(CT), appearing for the State submits that as the dealer appellant failed to produce any books of accounts/evidences regarding payment of labour and service charges, the Assessing Authority has rightly invoked Rule 6(e) of the OVAT Rules which is also

confirmed the same by the First Appellate Authority. Further he submits that disallowance of ITC of ₹82,617.00 is justified. The Additional Standing Counsel (CT) has also argued that if the tax is assessed, imposition of penalty U/s.42(5) of the OVAT Act is warranted.

8. Heard the arguments from both sides, gone through the orders of the fora below vis -a- vis the materials available on record.

The whole disputes in the instant case are that-

a) Whether the deduction of labour and service charges from the gross receipts applying the ratio under Rule 6(e) of the OVAT Rules is justified ?

b) Whether disallowance of ITC of the Purchasing dealer for non-filing of return by the Selling dealer is justified ?

c) Whether imposition of penalty is justified ?

9. For better appreciation of the case it is essential to refer the judgement of **Hon'ble Supreme Court in the case of Gannon and Dunkerley & Co. Vrs. State of Rajasthan and Others cited (Supra)** wherein it is held that the value of the goods involved in the execution of a works contract will have to be determined taking into account the value of entire works

contract and deducting there from the charges towards labour and services which would cover…

a) labour charges for execution of the works;

b) amount paid to a sub-contractor for labour and services

c) charges for obtaining on hire or otherwise machineries and tools used for the execution of works contract;

d) cost of consumables such as water, electricity, fuel etc. used in the execution of works contract the property in which is not transferred in the course of execution of a works contract;

e) cost of establishment of the contractor to the extent it is relatable to supply of labour and services;

f) others similar expenses relatable to supply of labour and services;

g) profit earned by the contractor to the extent it is relatable to supply of labour and services;

h) the value of goods which are not taxable in view of Sections 3,4 and 5 of the CST Act and goods covered by Section 14 and 15 of the CST Act as well as goods which are exempt from tax under the Sales Tax Legislation of the State.

10. In the case at hand, the Assessing Officer has deduced labour and service charges @ 30% from the gross receipts as per

proviso of Rule 6 (e) of the OVAT Rules. The Learned Advocate for the dealer company vehemently argued that the dealer appellant has maintained proper books of account and same is audited by the Statutory Auditors U/s.44AB of the Income Tax Act. Further the Learned Advocate strongly contested that the Assessing Authority has relied upon the Audited Balance Sheet of the Appellant Company for determination of gross turnover and deduction on account of expenditure made for land cost but did not consider deduction of the turnover relates to labour and services and other like charges as reflected in the Audited Balance Sheet/Profit and Loss Account.

10. The Hon'ble Supreme Court in Gannon Dunkerley case cited (Supra) has prescribed the permissible deductions from the gross turnover to arrive at the taxable turnover. To claim actual or specific deduction for labour and service charges, the dealer must produce books of accounts before the Assessing Authority. In Land mark Rulings such as **Larsen and Toubro Limited Vrs. State of Orissa, Hon'ble High Court has emphasized that pure labour and service component cannot be taxed under a works contract and standard deduction Rules must align with constitutional mandates**. If the dealer

fails to maintain or produce books of accounts or if the actual expenses are not ascertainable then only the Assessing Authority applied a standard percentage deduction for labour and services as specified in the Appendix to Rule 6 of the OVAT Rules. The dealer contractor in the instant case has claimed that the books of accounts, journal, Ledger Account as well as CA Audit Reports are maintained for the material period and therefore Rule 6(e) of the OVAT Rules is not applicable. Considering the facts and circumstances of the case and in view of the above mentioned judgement this forum feels it proper to remand the matter backed to the Assessing Authority to re examine the nature of works and re-determine the admissible deduction of labour and service charges verifying the books of accounts with supporting documents to arrive at taxable turnover of the dealer contractor.

11. Regarding disallowance of ITC, the Ld. Advocate for the dealer urged that there are no irregularities on the part of the petitioner to avail ITC. But the burden of proof lies on the dealer appellant to disclose the facts such as payments made to the Sellers, original tax invoices in order to avail the balance claim of ITC of ₹82,617.00.

12. As regards, imposition of penalty it is settled in law that Under Section 42(5) of the OVAT Act, penalty is mandatory and automatic upon the determination of tax, leaving no discretion to the Assessing officer to waive or reduce it.

13. In the result, the appeal filed by the Dealer is allowed in part. The impugned order of the ld. FAA is set-aside. The case is remitted back to the learned Assessing Authority for verification of books of accounts and re-computation of tax liability along with penalty as per observations made herein above within three months from the date of receipt of this order. The cross objection is disposed of accordingly.

Dictated and corrected by me.

Sd/-
(A. Bhoi)
Accounts Member-I

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