

BEFORE THE ODISHA SALES TAX TRIBUNAL (FULL BENCH), CUTTACK

S.A.No. 1380/2005-06

(Arising out of order of the Id.ACST, Balangir Range, Balangir, in
Appeal No. AA.28(KA)2005-06,
disposed of on dtd.08.06.2005)

P R E S E N T :

Sri Sashikanta Mishra Sri S. Mohanty & Sri R.K. Pattnaik
Chairman Judicial Member-II Accounts Member-III

State of Orissa, represented by the
Commissioner of Sales Tax,
Orissa, Cuttack

... Appellant

-Versus -

M/s. Jagadish Mandal,
Contractor,
Bhawanipatna.

... Respondent

Appearance :

For the Appellant ... Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)

For the Respondent ... Mr. P.R. Mohanty, Advocate

Date of Hearing: 18.05.2018

Date of Order: 19.05.2018

ORDER

The Revenue has challenged the order of learned First Appellate Authority/Asst. Commissioner of Sales Tax, Balangir Range, Balangir (in short, FAA/ACST) passed in First Appeal Case No. AA.28(KA)2005-06 whereby the FAA has enhanced the deduction towards labour and service charges as against the deduction allowed by the Assessing Officer, Kalahandi Circle, Bhawanipatna, Ward-D (in short, AO).

2. Brief fact of the case giving rise to this appeal are as follows: the assessee-dealer was a works contractor. It had undertaken job work under the Executive Engineer, UIR CD No.II, Junagarh and Executive

Engineer, RWD, Bhawanipatna and had received Rs.43,50,926/- and Rs.4,42,782/- respectively totaling Rs.47,93,708/- during the assessment year 2002-03. The works undertaken under the E.E. UIRCD No.II, Junagarh involved renovation of canal, Earth work, excavation, disposal of excavated material, breaking of clods, dressing, leveling trench cutting, fine dressing turfing of slopes, watering, R.R. stone packing, trimming of canal bed collection and stacking of moorum, spreading sand in foundation surface etc. The AO in a proceeding u/s.12(5) of the OST Act allowed deduction @62% against the canal work and other works under Executive Engineer, UIRCD No.II Junagarh and has allowed 42% towards road work executed under E.E., RWD, Bhawanipatna.

3. Not being satisfied with the percentage of deduction, the dealer preferred First Appeal No. AA.28(KA)2005-06. The FAA vide impugned order dtd.08.06.2005 enhanced the deduction of Rs.33,55,596/- treating the earth work, canal work and road work under same category of job work, thereby, the deduction was enhanced and tax due determined by the AO reduced from Rs.87,942.77 to Rs.44,540/-.

4. Being aggrieved, the Revenue has preferred this appeal with the contention that 62% deduction for earth work and 32% deduction for construction and 42% for road work should have been allowed to the dealer for the works undertaken under the works contracts in this case.

5. As it is mentioned above, here in this case, the dealer is a works contractor. He has undertaken different works under two divisions. The works undertaken by the dealer are earth work, canal work and road work as mentioned above. Applying best judgment principle, the AO had allowed 62% deduction against the earth work/canal work and connected works undertaken under E.E. UIR CD No.II, Junagarh, whereas he has allowed 42% deduction against road work under E.E. RWD, Bhawanipatna. On the contrary, the FAA treated all the works of similar in nature and allowed a particular sum i.e. Rs.33,55,596/- to be deducted towards labour and service charges. Both the fora below have

applied best judgment principle. The FAA only replaced assessment by AO treating the nature of work as same in all the cases. The impugned order as it manifests, the FAA was wrong in holding the view that, all the works like canal work, earth work and road work are similar in nature. The labour component in earthwork and canal work in comparison to road work are different. Similarly the goods incorporated in canal work are necessarily different from the goods incorporated in road work. In that case, it is believed that, the FAA has not applied the best judgment principle in a just and fair manner.

6. Learned Addl. Standing Counsel Mr. Pradhan while arguing against the best judgment assessment of the FAA has claimed that, the provision under Rule 4-B should be applied to the case in hand as the nature of work undertaken by the dealer has been broadly classified as earthwork and road work. It is a fact that, such classification of work by both the fora below are not under challenge by the dealer. So it can safely be said that, the work undertaken by the dealer under Executive Engineer, UIR CD No.II, Junagarh come under the category of earth work, whereas the work undertaken under the Executive Engineer, RWD, Bhawanipatna fall under the category of road work.

7. Law is no more *res-integra* in view of the authority in **M/s.Gannon and Dunkely and Co. Vrs. State of Rajasthan and Others (1993) 88 STC page 204 (SC)** wherein the Hon'ble Apex Court held as follows:

“47. Normally, the contractor will be in a position to furnish the necessary material to establish the expenses that were incurred under the aforesaid heads of deduction for labour and services. 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 as to how the deduction towards the aforesaid heads may be made. On behalf of the States, it has been urged that 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 services and the same may be deducted from the value of

the works contract and that the said formula need not be uniform for all works contracts and may depend on the nature of the works contract. We find merit in this submission. In cases where the contractor does not maintain proper accounts or the accounts maintained by him are not found worthy of credence it would, in our view, be permissible for the State legislation to prescribe a formula for determining the charges for labour and services by fixing a particular percentage of the value of the works contract and to allow deduction of the amount thus determined from the value of the works contract for the purpose of determining the value of the goods involved in the execution of the works contract. It must, however, be ensured that the amount deductible under. The formula that is prescribed for deduction towards charges for labour and services does not differ appreciably from the expenses for labour and services that would be incurred in normal circumstances in respect of that particular type of works contract. Since the expenses for labour and services would depend on the nature of the works contract and would not be the same for all types of works contracts, it would be permissible, indeed necessary, to prescribe varying, scales for deduction on account of cost of labour and services for various types of works contracts.”

Adverting to the case in hand, it is believed that, instead of the method of best of the judgment assessment, Rule 4-B can be successfully applied and to that effect it is worthy to mention here that, the rule has got retrospective effect from 30.07.1999, thereby enabled the Department to make assessment of the dealer for the tax period in question.

In consequence thereof, it is held that, this is a fit case where the matter should be remitted back to the Assessing Authority to make assessment afresh by giving deduction towards labour and service charges on application of Rule 4-B of OST rules. Resultantly, it is hereby ordered.

The appeal is allowed on contest. The impugned order of the First Appellate Authority is hereby set-aside. The matter is remanded back to the Assessing Authority with a direction to apply Rule 4-B and re-assess the dealer for the tax period in question and thereupon tax due be calculated/demanded or returned if excess payment is made. The whole

exercise should be completed within a period of three months from the date of receipt of this order.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

Sd/-
(S. Mohanty)
2nd Judicial Member

I agree,

Sd/-
(Sashikanta Mishra)
Chairman

I agree,

Sd/-
(R.K. Pattnaik)
Accounts Member-III