BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 2624 of 2003-04

(Arising out of order of the learned ACST, Sundargarh Range, Rourkela in sales Tax Appeal No. AA- 6/7 (RL-I) /1993-94, disposed of on dated 20.03.2003)

Present: **Shri A.K. Das, Chairman**
Shri S.K. Rout, 2nd Judicial Member
&
Shri S. Mishra, Accounts Member-II

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

-Versus-

M/s. Braithwaite & Co. Ltd., Inside RSP, Rourkela ... Respondent

For the Appellant : Sri S. Mishra, Addl.SC (CT) & Sri S.K. Pradhan, Addl.SC (CT)
For the Respondent : Sri B. Mohanty, Sr. Advocate & Sri A.K. Samal, Advocate

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Date of hearing: 13.01.2022 *** Date of order: 25.01.2022

O R D E R

This appeal is directed at the instance of the State against the order dated 20.03.2003 passed by the learned Asst. Commissioner of Sales Tax, Sundargarh Range, Rourkela (hereinafter called as 'first appellate authority') in Appeal No. AA- 6/7 (RL-I) /1993-94 thereby reversing the order of assessment dated 31.01.1994 passed

by the Sales Tax Officer, Rourkela-I Circle, Uditnagar (in short, 'assessing authority') raising tax demand of ₹25,12,143.00 for the assessment period Q/E. December, 1992 and March, 1993 by invoking power u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act').

2. The relevant facts of the case leading to the filing of the present appeal are that the dealer-Company is engaged in execution of works contract under SAIL, RSP, Rourkela and has got itself registered under the OST Act w.e.f. 26.11.1992. The assessing authority initiated proceeding U/s. 12(4) of the OST Act for assessment of the dealer-Company for the period Q/E. December, 1992 and March, 1993. From the documents produced by the dealer, the assessing authority found that it (the dealer) has entered into an agreement with SAIL, RSP, Rourkela for execution of two separate contracts, i.e. for Laddle Repair Shop on a contractual value of ₹12,43,85,610.00 and the second for conveyorisation on a contractual value of ₹18,78,73,000.00. The contracts were for design, manufacture, supply and delivery at the site of the plant and equipments and steel structure including civil and structural work, storage, erection etc. for Laddle Repair Shop and conveyorisation. On

verification of the statement of accounts, learned assessing authority further found that the respondent-dealer received a gross payment of ₹1,17,51,959.00 in steel sector, ₹17,62,125.00 for civil works, ₹43,83,018.00 for fabrication and erection and ₹2,44,385.00 for supply of plant and equipments. The dealer-Company supplied plant and equipments worth ₹1,32,65,397.00 to the purchaser- SAIL, RSP, Rourkela u/s. 6(2) of the CST Act and accordingly, claimed exemption. Learned assessing authority held the sale u/s. 6(2) of the said Act as vitiated on account of the fact that the respondent was not a registered dealer u/s. 7(1) of the CST Act and the dealer failed to furnish declaration in Form-C and corresponding E-1 declaration form from its purchasing and selling dealer respectively. It further on verification of the supporting documents observed that the purchase order though placed by the dealer-Company to a party outside the State for supply of equipment, the goods were never taken delivery by the ultimate purchaser rather the same were taken delivery by the dealer-Company from the carriers and latter sold to the purchaser. The dealer-Company resorted to illegal practice of showing transaction u/s. 6(2) of the CST Act, even though

the transaction did not qualify for exemption u/s. 6(2) of the said Act. So, the assessing authority disallowed the claim of the dealer towards sale effected u/s. 6(2) of the CST Act for an amount of ₹1,32,65,397.00. Learned assessing authority determined the gross receipt of the dealer-assessee for the material period at ₹3,14,06,884.00 and allowed deduction of ₹80,53,696.00 i.e. 45% of ₹1,78,97,102.00 (payment received on account of steel structure, civil works and fabrication and erection). The balance turnover was determined at ₹2,33,53,188.00. Learned assessing authority imposed tax in two taxable groups, i.e. @ 4% on ₹98,43,406.00 and @ 16% on ₹1,35,09,782.00. Further, surcharge @ 10% of the tax due was determined at ₹2,55,530.13. The assessing authority having found that the dealer-assessee withheld payment of tax by filing incorrect return, levied interest of ₹10,943.40 u/s. 12(4-a) of the OST Act. The total amount of tax together with surcharge and interest were calculated at ₹28,20,874.87.

2(a). The dealer-respondent challenging the aforesaid finding of the assessing authority preferred appeal before the first appellate authority u/s. 23(1) of the OST Act,

who reversed the finding of the assessing authority with the following observations :-

(i) The agreements in question for execution of works contract i.e. Laddle Repair Shop and conveyorisation, were executed between SAIL, RSP, Rourkela and the present dealer-respondent.

(ii) As per the agreement, the dealer-Company has to design, engineering, manufacture, supply and delivery at site of the plant and equipment and steel structures including civil and structural works, storage, erection, start up trial run, commissioning, performance guarantee tests of conveyors from and to sinter plant (Sp-2) and Laddle Repair Shop, as the case may be.

(iii) The agreement reveals the contract price for supplies is inclusive of CST @ 4% applicable for supply of finished goods.

(iv) Purchaser shall issue necessary declaration in Form-C for the purpose to the contractor once in each financial year.

(v) The ownership and property of goods, materials, equipments etc. shall pass on to the purchaser as per the terms and conditions of the contract after the supplier has effected despatch of the same to SAIL, RSP, Rourkela.

(vi) The materials on record show that the plant and equipments were supplied from outside State of Odisha as per the terms and conditions of the contract by different agencies employed by the contractor and it (the contractor) raised bills worth ₹1,32,65,397.00.

(vii) The contractee, i.e. SAIL, RSP, Rourkela, has also issued declaration in Form-C to the dealer-respondent for the above amount covering the purchase bills.

(viii) The plant and equipments having been supplied from outside the State of Odisha, i.e. from West Bengal, that State has only right to levy tax on such inter-State sale of ₹1,32,65,397.00.

(ix) The dealer-Company also having purchased the first point tax paid iron and steel worth ₹41,84,923.43 and having utilized those materials

in execution of works contract, is entitled to deduction of the same while determining the TTO.

(x) The dealer-assessee has raised bills for ₹1,95,28,290.62, which is taken as the gross value. After allowing deduction of ₹1,32,65,397.00 and ₹73,18,302.12 towards value of the plant and equipments supplied in course of inter-State trade and commerce and the labour and service charges @ 45%, the GTO of the dealer was determined at ₹89,44,591.00. Further deduction of ₹41,84,923.43 was allowed towards first point tax paid iron and steel utilized in the execution of the works contract. Thus, the TTO was determined at ₹47,59,668.07 on which tax was calculated @ 4%, which came to ₹1,90,386.72, surcharge @ 10% thereon was calculated at ₹19,038.67. In toto, tax and surcharge was calculated at ₹2,09,425.39. The dealer having paid an amount of ₹3,08,732.00 by way of TDS, was entitled to refund of ₹99,307.00.

3. The State being aggrieved with the order of the first appellate authority reducing the tax demand to ₹2,09,425.39 and directing refund of ₹99,307.00 preferred the present second appeal mainly on the ground that the forums below were not correct in their approach in treating the entire contract as divisible one and calculating the tax liability of the dealer-assessee accordingly. The dealer having failed to produce necessary statutory forms and having not been registered u/s. 7(1) of the CST Act, the first appellate authority was not correct in its approach in treating the supply of plant and equipments to the tune of ₹1,32,65,397.00 as inter-State sales and allowing deduction thereof as claimed by the dealer-Company u/s. 6(2) of the CST Act. He submitted to allow the appeal, set aside the impugned orders of the fora below and remit the matter back to the assessing authority for recomputation of the tax liability of the dealer-assessee afresh.

4. Per contra, learned Sr. Counsel for the dealer-assessee supporting the impugned order of the first appellate authority vehemently urged that after 46th Amendment of the Constitution, the contract which is single and indivisible has been altered by legal fiction into a

contract which is divisible into one for sale of goods and other for supply of labour and service and as a result, such contract which is single and indivisible has been brought at par to the contract containing two separate agreements. After 46th Amendment of the Constitution, the State is precluded from taking the plea that the contract entered into between the parties was single and indivisible and the authorities below should have computed the tax liability of the dealer-assessee accordingly. The first appellate authority was fully correct in its approach in treating the supply of plant and equipments from West Bengal as inter-State sale and allowing deduction thereof from the gross payment received by the dealer-assessee while determining the TTO. The assessing authority also illegally collected tax on purchase of first point tax paid goods which were utilized in execution of works contract and the same was rectified by the first appellate authority. There is no illegality or impropriety in the order of the first appellate authority warranting interference of this Tribunal.

5. We have heard the rival submissions of the parties, gone through the impugned orders of the forums below, grounds of appeal vis-a-vis the materials on record.

The only contention that was raised before this forum while challenging the impugned orders of the forums below was that the contract entered into between the parties was single and indivisible contract and the authorities below erred in law in treating the contract as divisible while computing the tax liability of the dealer-assessee. Such contention raised by the learned Addl. Standing Counsel (CT) for the State, in our humble view, is against the principles of law laid down by the Hon'ble Apex Court in the cases of **Gannon Dunkerley & Co. and others Vs. State of Rajasthan and others, reported in [1993] 88 STC 204 (SC), and Builders' Association of India Vs. State of Karnataka and others, reported in [1993] 88 STC 248 (SC).** The Hon'ble Apex Court in the aforesaid decisions categorically held as a result of 46th Amendment, the contract which was single and indivisible has been altered by the legal fiction into a contract which is divisible into one for sale of goods and other supply of labour and services and as a result, such a contract which was single and indivisible has been brought at par with contract containing two separate agreements. On perusal of the impugned orders of the forums below, we find that they have taken into consideration the law laid down by

the Hon'ble Apex Court in the case of Gannon Dunkerley & Co. and others (supra) and accordingly, computed the tax liability of the dealer-assessee. It reveals from the order of the first appellate authority that it allowed deduction of ₹1,32,65,397.00 relating to supply of plant and equipments treating the same as inter-State sale u/s. 6(2) of the CST Act. The assessing authority disallowed such claim of the dealer-assessee on the ground that the dealer could not produce the necessary statutory forms which he produced before the first appellate authority and the first appellate authority having found the same genuine accepted those documents and allowed deduction of ₹1,32,65,397.00 relating to supply of plant and equipments. There is no illegality in finding of the first appellate authority that the dealer-assessee is entitled to deduction of ₹1,32,65,397.00 towards supply of plant and equipments treating the same as inter-State sale. So far as deduction of 45% towards labour and service charges are concerned, the State did not challenge such finding of both the forums below. Therefore, the same needs no discussion. It further reveals from the impugned order of the first appellate authority that it has allowed deduction of ₹41,84,923.43 towards purchase of

first point tax paid goods, i.e. iron and steel, which was also not challenged by the State before this forum. On over all examination of the impugned order of the first appellate authority, we are of the view that the first appellate authority correctly assessed the tax liability of the dealer-assessee at ₹2,09,425.39 and directed refund of ₹99,307.00 because of excess payment of tax by way of TDS.

6. In view of the discussions made above, the appeal filed by the State being devoid of any merit stands dismissed and the impugned order of the first appellate authority is hereby confirmed.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

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

I agree,

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