

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 43 of 2008-09

(Arising out of order of the learned ACST (Appeal), Puri Range,
Bhubaneswar in First Appeal Case No. AA- 97/BH-II/05-06,
disposed of on dated 15.12.2006)

Present: **Shri A.K. Das, Chairman**
Shri S.K. Rout, 2nd Judicial Member
&
Shri M. Harichandan, Accounts Member-I

M/s. Karunakar Mohanty,
607, Lewis Road, Bhubaneswar ... Appellant

-Versus-

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

For the Appellant : N o n e
For the Respondent : Sri D. Behura, S.C. (CT) &
Sri S.K. Pradhan, Addl.SC (CT)

Date of hearing: 27.12.2021 *** Date of order: 28.12.2021

O R D E R

This appeal is directed u/s. 23(3) of the
Odisha Sales Tax Act, 1947 (in short, OST Act) at the
instance of the dealer-appellant assailing the order dated
15.12.2006 passed by the learned Asst. Commissioner of
Sales Tax (Appeal), Puri Range, Bhubaneswar (hereinafter
called as 'first appellate authority') in Appeal Case No. AA-

97/BH-II/05-06 thereby confirming the order of assessment dated 27.12.2004 passed by the Sales Tax Officer, Bhubaneswar-II Circle, Bhubaneswar (in short, 'assessing authority') raising tax demand of ₹2,12,592.00 u/s. 12(4) of the OST Act for the assessment period 2001-02.

2. The facts of case in nutshell are that the dealer-appellant, who is a works contractor, executed works under various authorities of the Government. He was assessed u/s. 12(4) of the OST Act for the assessment period 2001-02 during which period the dealer received gross payment of 1,07,15,306.00 from different authorities. The dealer claimed deduction of ₹58,93,418.00 towards labour and service charges, which is 55% of the gross amount received. The assessing authority disallowed such claim of the dealer and basing on the documents produced by it allowed deduction of 30% towards labour charges and 2% towards service charges keeping in view the nature of works. The assessing authority also further disallowed the claim of deduction towards purchase of materials like cement worth ₹21,83,909.00 and steel worth ₹14,78,049.00 utilized in the works contract as the dealer could not produce documents relating to such purchases. It was specifically held by the

assessing authority in the absence of purchase bill, it is difficult to ascertain whether such goods suffered OST or not. The assessing authority determined the GTO of the dealer at ₹1,07,15,306.00 on which it allowed deduction of ₹34,28,897.92 towards labour and service charges @ 32%. The TTO was determined at ₹72,86,408.08 on which tax and surcharge was calculated at ₹6,41,203.90 and the dealer having paid ₹4,28,612.00 by way of TDS, tax demand was raised at ₹2,12,592.00

2(a). The dealer-appellant challenging the aforesaid findings of the assessing authority preferred appeal before the first appellate authority, who by its order dated 15.12.2006 dismissed the appeal and confirmed the order of assessment. Hence, the present second appeal.

3. When the matter was called on for hearing, none appeared on behalf of the dealer-appellant inspite of due service of notice for which the matter was taken up for hearing *exparte* in the absence of the dealer-appellant and in the presence of the learned Standing Counsel (CT) representing the State for disposal in accordance with law.

4. The record reveals that the dealer mainly challenged the order of the forums below for not allowing

deduction of ₹21,83,909.00 spent towards purchase of cement and ₹14,78,049.00 spent towards purchase of steel as those goods were first point tax paid goods. Apart from this, the dealer also challenged deduction of labour and service charges @ 32% instead of 55% as claimed. In course of hearing of the second appeal, learned Standing Counsel (CT) for the State in terms of cross-objection filed vehemently urged that both the forums below did not commit any illegality in disallowing the claim of deduction towards tax paid materials like steel and cement when the appellant failed in its attempt to produce the books of account before the forums below. So they had no other option except disposing the matter pending before them on the strength of materials on record and settled law of the land. Learned first appellate authority had rightly allowed deduction of 32% towards labour and service charges. The dealer cannot claim deduction on account of labour and service charges as per his own whim and caprice. The claim must be based on sound reasoning and settled principle of law. The dealer in order to protract the matter and delay the disposal of the proceeding has preferred the second appeal

without any valid grounds. He submitted to dismiss the appeal and confirm the orders of the forums below.

5. There is no dispute that the dealer received gross payment of ₹1,07,15,306.00. When the dealer-appellant claimed deduction of tax suffered materials, i.e. cement worth ₹21,83,909.00 and steel worth ₹14,78,049.00, the burden was on him to establish and substantiate the claim by producing relevant documents. It appears from the record that the dealer neither produced the documents before the assessing authority nor before the first appellate authority. Even during hearing of the second appeal also none appeared on behalf of the dealer-appellant to substantiate its claim. In the absence of any documentary evidence, it is difficult to ascertain how much money the dealer spent towards purchase of cement and steel and whether those goods were tax suffered goods or not. So, the forums below were correct in their approach in negating the claim of the dealer-appellant and assessing him raising tax demand of ₹2,12,592.00.

6. In view of the discussions made above, we are of the unanimous view that the dealer-appellant failed in its attempt to substantiate its claim that he had purchased

cement worth ₹21,83,909.00 and steel worth ₹14,78,049.00 and those were tax suffered goods. Accordingly, the appeal filed by the dealer-appellant being devoid of any merit stands dismissed and the impugned orders of the forums below are hereby confirmed. Cross-objection is accordingly disposed of.

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/-
(M. Harichandan)
Accounts Member-I