

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

S.A. Nos. 1293 & 1294 of 2007-08

(Arising out of orders of the learned ACST, Balasore Range,
Balasore in First Appeal Nos. AA- 297/BA- 2005-06 &
AA-163/BA- 2006-07, disposed of on dated 02.01.2008)

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

M/s. Niraj Cement Structurals Pvt. Ltd.,
Gudikhal, Jaleswar, Balasore ... Appellant

-Versus-

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

For the Appellant : Sri A.N. Mohanty, Advocate
For the Respondent : Sri D. Behura, S.C. (CT)

Date of hearing: 16.08.2022 *** Date of order: 30.08.2022

O R D E R

Both these appeals though relate to two different periods involve common question of facts and law, for which they are taken up together for hearing and are disposed of by this composite order.

2. The dealer-assessee has preferred S.A. No.1293 of 2007-08 assailing the order dated 02.01.2008 passed in Appeal No. AA- 297/BA- 2005-06 and S.A.

No.1294 of 2007-08 assailing the order dated 02.01.2008 passed in Appeal No. AA-163/BA- 2006-07 by the Asst. Commissioner of Sales Tax, Balasore Range, Balasore (hereinafter called as 'first appellate authority'), thereby confirming the assessment orders dated 17.01.2006 and 27.09.2006 passed by the Sales Tax Officer, Balasore Circle, Balasore (in short, 'assessing authority') raising extra demand of ₹16,62,982.00 for the year 2002-03 and ₹41,48,862.00 for the year 2003-04 in the assessment framed u/s.12(4) of the Orissa Sales Tax Act, 1947 (in short, 'OST Act').

3. The facts and circumstances of the case giving rise to the present appeals are that the dealer-assessee is a sub-contractor of M/s. L&T Ltd. and has executed works relating to dismantling of brick and stone structure, dismantling concrete structure, boring for soil investigation, excavation in marshy soil and scarifying exiting bituminous surfacing layers. The dealer-contractor received gross payment of ₹3,98,86,733.00 from M/s. L&T Ltd., the principal contractor, for execution of works contract on N.H.60 and it claimed deduction of ₹7,10,95,237.00, which the learned assessing authority treated as GTO. While completing the assessment for the

year 2002-03, the learned assessing authority disallowed the claims of the dealer-assessee for deduction towards purchase of POL, gas and consumables amounting to ₹1,86,62,551.00, ₹96,07,915.00 towards supply of materials by the principal contractor- M/s. L&T Ltd. on cost recovery basis and other expenses of ₹2,02,72,037.00 due to non-production of documentary evidence. The assessing authority also rejected the claim of the dealer-assessee for ₹3,12,08,504.00 towards loss. Accordingly, the assessing authority raised extra demand of ₹16,62,982.00 for the year 2002-03.

3(a). Similarly, for the year 2003-04, the dealer-assessee received gross payment of ₹21,12,00,077.00 which was treated as GTO. While completing the assessment, the learned assessing authority disallowed the claims of the dealer-assessee towards deduction of aggregate supplied by the principal contractor- M/s. L&T Ltd. amounting to ₹49,66,055.00, labour charges of ₹5,25,70,168.00 and overhead expenses of ₹8,04,18,375.00 due to non-production of documentary evidence. Further, the assessing authority also disallowed deduction of ₹45,87,432.00 towards net loss. Accordingly, the assessing authority raised

extra demand of ₹41,48,862.00 for the assessment year 2003-04.

4 The dealer-assessee challenging the aforesaid demand of ₹16,62,982.00 for the year 2002-03 has preferred appeal in Appeal No. AA- 297/BA- 2005-06 and demand of ₹41,48,862.00 for the year 2003-04 has preferred appeal in Appeal No. AA-163/BA- 2006-07 before the first appellate authority, who agreed with the findings rendered by the assessing authority and confirmed the orders of assessment.

5. The dealer-assessee being further dissatisfied with the orders of first appellate authority confirming the orders of assessment filed the S.A. No.1293 of 2007-08 for the assessment year 2002-03 and S.A. No.1294 of 2007-08 for the assessment 2003-04 on the grounds that the orders of the forums below are illegal, perverse and against the sanction of law; that the learned first appellate authority grossly erred in law by disallowing the deduction towards the materials worth of ₹96,07,915.00 for the year 2002-03 and ₹49,66,955.00 for the year 2003-04 supplied by the principal contractor on cost recovery basis, deduction of account on purchase of POL, gas and consumables worth of ₹1,86,62,551.00 and restricting the overhead expenses to ₹71,26,905.00 for the year 2002-03 and that the order

passed by the forums below is violative of Circular No. 2933 dated 09.02.2001 wherein it has been clarified that it is main contractor who is legally supposed to execute the work for the contractee; that it granted deduction @ 42% towards labour and service charges which is at lower side and that the order of the forums below are otherwise illegal and violative of the principle of natural justice.

6. It was vehemently urged by the learned Counsel for the dealer-assessee that the forums below illegally and erroneously disallowed certain claims of the dealer-assessee on the ground that it could not produce any documents to that effect. In view of the judgment of the Hon'ble Apex Court in the case of M/s. Gannon Dunkerley & Co. and others Vs. State of Rajasthan & others, [1993] 88 STC 204 (SC), the assessing authority should have allowed the deduction as claimed by the dealer-assessee instead of as per his whim and caprice and that the tax liability has been computed in an erroneous and arbitrary manner for which the impugned orders are liable to be quashed.

7. On the other hand, the learned Standing Counsel (CT) for the revenue supporting the impugned orders of the forums below vehemently urged that the assessing authority considered all the claims of the dealer-

assessee which it (dealer) substantiated by producing relevant documents. The rejection of certain claims is due to non-production of relevant documents for which the assessing authority cannot be blamed with. The orders passed by the forums below are just and reasonable and according to law and the same do not warrant interference of this Tribunal. He submitted to dismiss both the appeals.

8. We have heard the rival submissions of the parties, gone through the grounds of appeal raised in memorandum of appeal vis-a-vis the impugned orders of the forums below and the materials on record. The limited grievance of the dealer-assessee in the present second appeals is that certain deductions claimed by it were disallowed by the forums below which it claims to be illegal, perverse and against the sanction of law. On going through the impugned orders of the assessing authority, we find that the assessing authority rejected certain claims of the dealer-assessee on the ground that it could not produce relevant documents to substantiate such claim. It is found from the assessment order for the year 2002-03 that the dealer assessee claimed deduction of ₹1,86,62,551.00 towards purchase of POL, gas, consumables; ₹96,07,915.00 towards supply of materials such as cement, steel, POL, sand and

aggregate, explosive and consumables by the contractor-L&T Ltd. on cost recovery basis; ₹2,73,98,942.00 towards overhead expenses which includes salary and wages, machinery hire charges, maintenance of machineries, transportation charges of construction materials, electricity expenses, vehicle maintenance, tools and tackles, lease rent, staff welfare, motor vehicle tax, insurance charges, rate, rent and taxes, soil testing charges, hutment, shedding and mess expenses, postage and telegram, travelling and conveyance, telephone and telex, guest house expenses, office maintenance, legal expenses, depreciation of machinery, financial charges and Head Office overhead; and ₹3,12,08,504.00 towards net loss as against which the assessing authority allowed deductions of ₹71,26,905.00 towards overhead expenses and ₹1,45,31,726.00 towards labour charges. Similarly, in the assessment year 2003-04, the dealer-assessee claimed deduction of ₹4,70,32,850.00 towards first point tax paid goods; ₹3,57,66,116.00 towards supply of cement, steel, POL, sand and aggregate, explosive and consumables supplied by the principal- M/s. L&T Ltd. on cost recovery basis; ₹5,25,70,168.00 towards labour charges; ₹45,87,432.00 towards net loss as against which the assessing authority allowed deductions of

₹4,70,32,000.00 towards utilization of first point tax paid goods; ₹3,08,00,061.00 towards supply of materials by the principal contractor on cost recovery basis. The reason assigned by the assessing authority for disallowing the claim of the dealer-assessee is non-production of books of account and relevant documents. In appeal, the dealer-assessee though claimed deductions on aforesaid ground, the same were rejected and the orders of assessment were confirmed. Now, it is to be seen whether the assessing authority was correct in its approach in disallowing the above claims raised by the dealer-assessee. The reason assigned by the assessing authority in disallowing the claim for deduction is non-production of documents. On meticulous analysis of the impugned orders of the forums below and the materials on record, we are of the considered view that the assessing authority has rightly disallowed the claim of the dealer-assessee on different heads on account of non-production of relevant documents except the goods worth ₹49,66,055.00 supplied by the principal contractor on cost recovery basis. When the dealer-assessee claimed certain deductions from the gross receipt, the burden was on it to substantiate such claim by adducing relevant documents. In absence of relevant documents, there cannot be adjudication of any of

the claim of the dealer. But, so far as disallowance of claim of the dealer-assessee towards supply of goods worth ₹49,66,055.00 by the principal contractor on cost recovery basis, the impugned orders of the forums below are unsustainable. When the part of the claim was allowed by the assessing authority basing on same documents, the disallowance other part of claim is illegal, arbitrary and whimsical. The assessing authority negated the claim of the dealer-assessee for deduction of ₹49,66,055.00 on the ground that the dealer-assessee could not explain the manner, nature and scope of such aggregates. The reason for which the claim has been disallowed, in our view, is not acceptable to any prudent man when the assessing authority has observed that M/s. L&T Ltd. has supplied such materials on cost recovery basis, which have suffered tax. Therefore, the claim of deduction of ₹49,66,055.00 is hereby allowed. So far as the deduction of 42% towards labour and service charges for the year 2003-04 is concerned, we find that the assessing authority considering the nature of works executed, labour component involved in executing such work has allowed deduction of 42%, which in our considered view, does not warrant any interference. The disallowance of claim on account of non-production of

documents by the dealer-assessee is also justified in the facts and circumstances of the case. The dealer-appellant has got ample opportunity to substantiate its claim by producing relevant documents, but it did not produce the same either before the first appellate authority or before this forum. Therefore, under this circumstance, the order of the assessing authority disallowing the aforesaid claim on account of non-production of documents cannot be faulted with. The first appellate authority also rightly confirmed the order of the assessing authority except disallowing the claim of deduction of ₹49,66,055.00 towards supply of materials by the principal contractor, i.e. M/s. L&T Ltd., on cost recovery basis. There is no illegality or impropriety in the impugned orders of the forums below warranting interference of this forum except disallowance of claim to the tune of ₹49,66,055.00 towards supply of materials on cost recovery basis.

9. In the light of the discussions made above, the impugned orders of the forums below for the assessment year **2003-04** are set aside to the extent of disallowing the claim of the dealer-assessee to the tune of ₹49,66,055.00 towards supply of materials on cost recovery basis. Accordingly, the S.A. No. 1294 of 2007-08 is allowed in part.

So far as the S.A. No. 1293 of 2007-08 is concerned, the same being devoid of any merit stands dismissed on contest and the orders impugned therein are hereby confirmed. The matter pertaining to S.A. No. 1294 of 2007-08 is remitted back to the assessing authority to recompute the tax liability of the dealer-assessee in accordance with law keeping in view the observations made herein above within a period of three months from the date of receipt of this order.

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