

judgment assessment of the Assessing Authority/Sales Tax Officer, Balasore Circle, Balasore (in short, AA/STO) and thereby enhanced the percentage of deduction towards labour and service charges, resulting reduction of tax liability of the dealer, State being aggrieved called the order of FAA in question in this appeal.

2. The moot question raised for decision in this appeal as preferred by the dealer is, whether the FAA has committed wrong in enhancing the percentage of deduction towards labour and service charges from 32% to 47% keeping in view the nature of work under the works contract executed by the assessee-dealer in the case in hand. The assessee-dealer is a works contractor executed contract job under two different Government departments such as R&B Division, Balasore and R.W. Division, Balasore. During the year of assessment 1995-96, the dealer had received 1,67,823/- from R&B Division, Balasore and Rs.87,427/- from R.W. Division, Balasore. When the dealer failed to produce the accounts of labour and service as spent by him in the execution of works contract, the AA on application of the principle of best judgment assessment, allowed labour charges @30% and service charges @2% on the total GTO. Thus, he calculated the GTO at Rs.2,55,250/-. Deduction was allowed at Rs.81,680/-. Minus deduction, the TTO was determined at

Rs.1,73,570/-. Out of it, tax @4% on the value of the goods worth of Rs.45,843.56 and 8% on value of goods worth of Rs.1,27,726.44 was imposed. The total tax due was calculated at Rs.12,051.86. The dealer having paid no tax, the entire amount was raised against him. Besides tax, penalty of Rs.1,205/- was also levied. As such, the total demand against the dealer was raised at Rs.13,257/-.

3. As against the assessment above, the dealer knocked the door of the FAA. Before the FAA authority also, the dealer failed to produce the details of the account of labour charges. But the FAA without accepting the best judgment assessment of the AA, has applied its mind independently and enhanced the deduction from 32% to 47%.

4. Consequent upon such enhancement of deduction, the tax due from the dealer became reduced to Rs.8,989/-. When the tax due from the dealer reduced from Rs.13,257/- to Rs.8,989/-, the Revenue being aggrieved preferred this appeal on the ground mentioned here in above.

5. The appeal is heard without cross objection and in absence of the dealer as the dealer remained absent in the hearing.

6. In the appeal in hand, it is to be seen that, whether the FAA is wrong in replacing the best judgment assessment of the AA by a best judgment assessment of his

own? Law is amply clear that, one best judgment assessment cannot be replaced by another without any reasonable cause.

7. Gone through the orders of both the fora below. The AA has not spelt any reasoning in detail, on the basis of which, he has allowed deduction @32%. In the similar manner, the FAA has also allowed deduction @47% but without assigning any reason. It seems and found that, both the authorities below have mechanically assessed the deduction in the garb of best judgment assessment. When the FAA rejected the best judgment of the AA, it must be supported by sufficient reasons, why the best judgment of the AA is to be discarded, but it is not reflected in the impugned order. In that event, it is believed that, though the application of best judgment principle in the case in hand is lawful because the dealer has failed to account for the details of labour and service charges, but the FAA has committed wrong in rejecting the best judgment assessment of the dealer. Nowhere in the impugned order, the FAA has discussed the nature of work executed by the dealer in detail. So, though *prima-facie* the best judgment of the AA seems to be mechanical, but there is no reason to accept the best judgment of the FAA, as the same also suffers the similar defect. Hence, it is held that, the FAA has committed wrong in rejecting the order of AA. Accordingly, it is ordered.

The appeal is allowed. The order of the FAA is set-aside and in consequence thereof, the order of the AA is restored to its file. Demand be raised accordingly.

Dictated and Corrected by me,

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

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