BEFORE THE ODISHA SALES TAX TRIBUNAL (FULL BENCH), CUTTACK
S.A.No. 176(V)/2011-12

(From the order of the ld.JCST, Balangir Range, Balangir, in Appeal No. AA-1 (BPI) of 2011-12, dtd.02.08.2011 modifying the assessment order of the Assessing Officer)

P R E S E N T :

Smt. Suchismita Misra Sri S. Mohanty & Sri R.K. Pattnaik
Chairman Judicial Member-II Accounts Member-III

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

-Versus -

M/s. Jayaram Pujhari,
At/P.O. Ulunda,
Dist. Sonepur. ... Respondent

Appearance :
For the Appellant ... Mr. S.K. Pradhan, A.S.C. (C.T.)
For the Respondent ... Mr. D. Pati, Advocate

(Assessment period : 01.04.2005 to 31.03.2010)

Date of Hearing: 11.04.2019 *** Date of Order: 11.04.2019

ORDER

The order of the learned First Appellate Authority/Joint Commissioner of Sales Tax, Balangir Range, Balangir (in short, FAA/JCST) in an assessment u/s.42 of the Odisha Value Added Tax Act, 2004 (in short,

OVAT Act), is under challenge in this appeal by the Revenue.

2. The facts those relevant for the purpose of this appeal are :

As a works contractor, the assessee-dealer was subjected to audit assessment for the tax period from 01.04.2005 to 31.03.2010. During this period, the dealer has executed works contract under the Executive Engineer, Balangir (R&B) Division, Blanagir, Executive Engineer, Kalahandi M.I. Division, Bhawanipatna and Phulbani and had received a sum total of Rs.30,09,93,377/-. The nature of works contracts were road works and bridge works. The Assessing Authority/Sales Tax Officer, Assessment Unit, Kesinga (in short, AA/STO) had allowed labour and service charges @47% against road work and 30% against bridge work and as such, the total deduction was calculated to Rs.13,86,58,632.54. After minus deduction, the rest amount being treated as TTO was taxed under dividing the goods in two categories such as, 4% tax category and 12.5% tax category keeping in view the ratio of the articles involved in the contract job. Thereafter, admissible ITC of Rs.38,11,333/- and TDS of Rs.1,19,84,236/- were adjusted in the tax liability, resulting thereby the dealer entitled to refund of Rs.64,99,160/-.

3. The dealer being aggrieved with the aforesaid assessment, with a claim of higher percentage of deduction

towards labour and service charges, knocked the door of the FAA, who in turn, allowed deduction @45% against road work and 30% against bridge work. In consequence thereof, the FAA re-determined the TTO and after adjusting the ITC and TDS with the tax liability, the dealer was found entitled to refund of Rs.60,02,544/-.

4. When the matters stood thus, State has preferred this appeal on the following contentions :

The fora below should have applied appendix to Rule-6 of the OVAT Rules for determination of labour and service charges. The FAA has committed wrong in calculating the ratio of the goods of different tax groups. As a result, the tax liability as determined was lesser in side.

5. The appeal is heard without cross objection from the side of the dealer.

6. Before delving into the merit of this case, at the outset it is pertinent to mention here that, the dealer has not disputed application of appendix to Rule-6 of the OVAT Rules for the purpose of determination of labour and service charges. It is found that, the FAA has reduced the percentage of deduction from 47% to 45%. So, against road work it is found that, the dealer had knocked the door of the FAA for higher percentage of deduction but ultimately he was granted the deduction in lesser side. Further, as per the calculation of the AA, the dealer was entitled to refund of Rs.64,99,160/-, whereas as per the FAA the dealer is

entitled to Rs.60,02,544/-. On this backdrop, surprisingly it is not the dealer, who has suffered loss in preferring an appeal, but the Revenue has come up with this second appeal with a peculiar contention such as, the determination of ratio of goods taxable @4% and 12.5% by the FAA is wrong. In a case of works contract, it is only when the authority found not able to calculate the labour and service charges, in that event, it applies the appendix to Rule-6 of the OVAT Rules or in necessary case, it should adopt the principle of best judgment assessment. Here, the books of account was rejected, the deduction as granted is not to the dis-satisfaction of the dealer. It is presumed as such because the dealer or the Revenue has not challenged the allowance of percentage of deduction. Moreover, as per the appendix to Rule-6, the standard deduction for road work is @50%, whereas here, the dealer is granted 45% i.e. in lesser side. Further, keeping in view the nature of works like road works and bridge works without any certificate or opinion from technical expert, the claim of the State regarding the ratio of the materials utilized is nothing but hypothetical assertion. It is found that, when there was an assessment ended with refund, State has preferred appeal as a random practice. In all eventualities, it can be said that, the grounds of appeal by the State are imaginary. Therefore, we are constrained to conclude with our

observation that, the appeal has no legs to stand. Accordingly, it is ordered.

The appeal be and same is dismissed as of no merit.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
Judicial Member-II

Sd/-
(S. Mohanty)
Judicial Member-II

I agree,

Sd/-
(Suchismita Misra)
Chairman

I agree,

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