BEFORE THE JUDICIAL MEMBER-I: ODISHA SALES TAX TRIBUNAL: CUTTACK.

S.A. No. 68 of 2012-13

(Arising out of the order of the ld. DCST (Appeal), Cuttack II Range, Cuttack, in First Appeal Case No.AA/599/CUIIJ/2004-05, disposed of on dtd.26.11.2012)

P r e s e n t: **Shri S. Mohanty,**
1st Judicial Member

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

- V e r s u s -

M/s. Anil Agarwalla, Raghunathpur, Cuttack. ... Respondent

For the assessment period: 2000-01

For the Appellant ... Mr. M.S. Raman, A.S.C.
For the Respondent ... N o n e

Date of hearing: 22.06.2019 ******** Date of order: 24.06.2019

O R D E R

The confirming order of deduction towards labour and service charges in an assessment u/s.12(4) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, OST Act) passed by the first appellate authority is called in question by the Revenue in this second appeal.

2. The dealer, a works contractor was subjected to assessment 12(4) of the OST Act. The tax liability was fixed after giving deduction to the dealer towards labour and service charges by the assessing authority. In the end, the dealer was found entitled to get refund of Rs.27,733.00 with a hope to get more amount of return by claiming more amount of deduction towards labour and service charges, the dealer knocked the door of the first appellate authority. However, the first appellate authority did not interfere

with the order of assessing authority but confirmed the same. Thereby, the refund amount determined by the assessing authority remained undisturbed.

3. When the matter stood thus, Revenue got the opportunity to call the impugned order in question with a prayer for application of Rule 4-B of the OST Rules which came into text book in the year 2010 but with retrospective effect from 30.07.1999. It is the claim of the Revenue is, the tax period under question is 2000-01, Rule 4-B has been incorporated in the statute book though in the year 2010 but with retrospective effect from 1999. So, the tax period being covered under the Rule 4-B, it should be applied to the case in hand for determination of labour and service charges.

4. At the outset, it is pertinent to mention here that, the order of the assessing authority was ended with refund of money to the dealer. The dealer with a hope to get more amount of demand, preferred appeal before first appellate authority, but failed. At this stage, the Revenue has come up with prayer for application of Rule 4-B of the OST Rules.

5. On a careful perusal of the order of the first appellate authority, it is found that, the first appellate authority has scrutinized the nature of work undertaken by the dealer and allowed the deduction. It is not the case that, the first appellate authority has applied the best judgment principle. The deduction was given on percentage basis but it was determined on scrutiny of nature of work. Thus, it will be wrong to say that, the first appellate authority has failed to determine the labour and service charges and applied a reasonable guess work. Determination of labour and service charges by the first appellate authority is not a reasonable guess work but on application of mind conscious to the nature of the work undertaken by the dealer. So, on this score only Rule 4-B has no application to the case in hand.

6. One more aspect of this case need to be mentioned here is, it is well settled principle that, an appellant cannot be placed in a wrong position as a result of preferring appeal. Here, the dealer with a hope to get more amount of deduction towards labour and service charges preferred appeal

but failed. That order of the first appellate authority which goes against the dealer became a weapon in the hand of the Revenue to carry matter before this second appellate authority thereby, the Revenue wrong to put the dealer into a position worse than the position where he was not before preferring first appeal. Thus, I am of the view that, the appeal preferred by the Revenue is also otherwise not against the principle of "No Reformation in Peius".

For the reasons given in the discussions in the foregoing paragraphs, it is hereby ordered.

7. The appeal has no merit, hence dismissed.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
1st Judicial Member

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(S. Mohanty)
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