

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

S.A. No. 592 of 2008-09

(Arising out of order of the learned ACST, Ganjam Range,
Berhampur in First Appeal No. AA- 353/2006-07,
disposed of on dated 18.06.2008)

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

M/s. Jaganath Choudhury,
Aska Road, Berhampur, Ganjam ... 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 M.L. Agarwal, S.C. (CT)

Date of hearing: 21.06.2022 *** Date of order: 29.06.2022

ORDER

The order impugned in the present second appeal is dated 18.06.2008 passed by the learned Asst. Commissioner of Sales Tax, Ganjam Range, Berhampur (hereinafter called as ‘first appellate authority’) in Appeal No. AA- 353/2006-07 thereby reducing the demand to ₹1,45,251/- from ₹2,02,189.00 raised by the Sales Tax Officer, Ganjam-I Circle, Berhampur (in short, ‘assessing

authority') for the period 2002-03 in the assessment framed u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act').

2. Shorn of unnecessary details, the relevant facts leading to filing of the present second appeal are that the dealer-assessee is a works contractor registered under the OST Act and it submits quarterly returns for the payments received by it in respect of different works executed. On receipt of the returns filed by the dealer-assessee, notice was issued u/s. 12(4) of the OST Act to produce the books of account. Pursuant to such notice, the dealer-assessee produced the books of account and other relevant documents before the assessing authority, who on verification of those documents found that the dealer received gross payment of ₹11,23,68,719.00 from different departments towards the works executed by it. The first appellate authority has narrated in detail the names of the different contractees under whom the dealer-assessee executed works and the amount received from them. Learned assessing authority on verification of the documents produced by the dealer-assessee bifurcated the nature of works executed by it (dealer) and in the absence of

any books of account relating to the expenses incurred towards labour and service charges granted deduction @ 32% towards labour and service charges in respect of road works executed under the Executive Engineer, N.H. Division and Executive Engineer, R&B Division No.II; @ 65% in respect of excavation of canal under 6 nos. of Work Divisions and @ 45% in respect of construction of roads under RW Divisions No.I and II. The assessing authority also allowed deduction of ₹27,46,089.00 towards tax suffered goods. Ultimately, the assessing authority raised demand of ₹2,02,189.00.

2(a). The dealer-assessee challenging the demand raised by the assessing authority filed appeal before the first appellate authority, who reduced the demand to ₹1,45,251.00 granting deduction @ 62% towards labour and service charges in respect of canal works executed under 6 nos. of Work Divisions; @ 45% in respect of the road works executed under RW Divisions No. I and II and @ 42% in respect of road works executed under the Executive Engineer, N.H. Division and Executive Engineer, R&B Division No.II. The first appellate authority also disallowed tax suffered materials to the tune of ₹2,75,400.00 on

account of purchase from the unregistered dealers. It also disallowed the material worth ₹7,311.00 on the ground that the name of the dealer was not mentioned in the purchase invoices.

The dealer-assessee being further dissatisfied with the demand raised by the first appellate authority, filed the present second appeal. No cross-objection has been filed by the State.

3. When the appeal was called on for hearing, none appeared on behalf of the dealer-assessee despite due service of notice. This appeal being of the year 2008-09 and in the meantime 14 years have passed, we decided to proceed with hearing of the appeal ex parte in the absence of the dealer-assessee.

4. Learned Standing Counsel (CT) for the revenue supporting the impugned order of the first appellate authority vehemently urged that the first appellate authority has correctly recomputed the tax liability of the dealer-assessee granting deduction of 62% in respect of canal works, 45% deduction in respect of road works and 42% deduction in respect of road works executed under the Executive Engineers, N.H. Division and Executive Engineer,

R&B Division No.II on thorough verification of the agreement and other documents produced by the dealer-assessee. In some cases, it has increased the deduction and in some cases, it has reduced the deduction keeping in view the nature of works executed by the dealer-assessee and involvement of labour component in execution of such works. The first appellate authority also rightly disallowed the claim of the dealer-assessee towards tax suffered materials worth ₹2,82,711.00 as it (dealer) purchased materials worth ₹2,75,400.00 from unregistered dealers and materials worth ₹7,311.00 in the name of other persons. The first appellate authority while recomputing the tax liability of the dealer-assessee examined each piece of materials on record and justly computed the tax liability of the dealer-assessee reducing it to ₹1,45,251.00. The impugned order of the first appellate authority is just, reasonable and strictly in accordance with law, which does not warrant any interference of this Tribunal. He submitted to dismiss the appeal and confirm the order of the first appellate authority.

5. We have heard learned Standing Counsel (CT) for the revenue, gone through the grounds raised in the memorandum of appeal vis-a-vis the impugned orders of the

forums below and the materials on record. On going through the memorandum of appeal filed by the dealer-assessee, we find that it has mainly challenged the order of the first appellate authority reducing the claim of deduction of the dealer-assessee from 65% to 62% towards labour and service charges as against the claim of 100% and levying tax on the materials procured from Government quarries and utilized in the Government works. So far as the grant of deduction towards labour and service charges made by the first appellate authority is concerned, on perusal of the record, we find that learned first appellate authority while reducing the deduction of 65% granted by the assessing authority towards labour and service charges to 62% took into consideration the agreement entered into between the parties and other relevant documents and enhancing the 32% deduction granted by the dealer-assessee to 42% in respect of road works executed under the Executive Engineer, N.H. Division and the Executive Engineer, R&B Division No.II. The first appellate authority specifically observed in the impugned order that on scrutiny of the agreement, he found construction of cement concrete M-15 with 22 mm and use of materials such as cement, rods,

stone, chips, morum, sand and other materials. Deduction of 62% granted by the first appellate authority in respect of canal works and 42% deduction granted towards labour and service charges in respect of the road works executed under the Executive Engineer, N.H. Division and the Executive Engineer, R&B Division No.II is based on the materials on record. The assessing authority has not discussed anything while granting deduction @ 32% towards labour and service charges in respect of the road works and @ 65% towards canal works whereas the first appellate authority while granting deduction towards labour and service charges examined each material on record. We do not find any illegality in such order of the first appellate authority. Learned first appellate authority also rightly disallowed the claim of deduction of ₹2,82,711.00 towards tax suffered materials on the ground that the dealer purchased materials worth ₹1,25,400.00 and ₹1,50,000.00 from unregistered dealers and ₹7,311.00 from M/s. Ram Chandra Panda and others, Berhampur on the purchase bill of which the name of other person has been mentioned. So, under this circumstance, disallowing the claim of dealer-assessee to the tune of ₹2,82,711.00 towards tax suffered materials is just,

legal and proper and does not warrant any interference from this Tribunal. The dealer-assessee also challenged the impugned order of the first appellate authority on the ground that it procured materials from Government quarries and utilised the same in Government works. It is pertinent to mention here that the dealer-assessee neither took such plea before the forums below nor produced any material before this forum to substantiate such claim. The forums below had no occasioned to examine the issue whether the materials procured from Government quarries and supplied for Government works was taxable or not. The dealer-assessee cannot be permitted to take a new ground in the memorandum of appeal without laying any foundation for the same before the forums below. Therefore, such ground raised by the dealer-assessee is unsustainable in the eyes of law. The first appellate authority has granted different deductions basing on the materials on record and on scrutiny of the relevant documents to that effect. We do not find any illegality or impropriety in its order warranting interference of this Tribunal.

6. In view of the discussions made above, the appeal filed by the dealer-assessee being devoid of merit

stands dismissed and the impugned order of the first appellate authority is hereby confirmed.

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