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

**S.A. No. 31 of 2012-13**

(Arising out of order of the learned Addl.CST (Appeal), South Zone, Berhampur, in Appeal Case No. AA-178/2005-06, disposed of on dt. 26.05.2012)

**Present** : **Smt. Suchismita Misra**, **Chairman**
**Shri Subrat Mohanty, 1st Judicial Member**
**&**
**Shri Rabindra Ku. Pattnaik, Accounts Member-III**

M/s. Orissa Industrial Infrastructure Development Corporation (IDCO), IDCO Towers, Janapath, Bhubaneswar. . . . Appellant

**- V e r s u s –**

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

For the appellant … Mr. Amaresh Mishra, Advocate
For the respondent … Mr. M.L. Agarwal, S.C. (CT)

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Date of hearing: 04.06.2019 **** Date of order: 24.06.2019

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***O R D E R***

This second appeal preferred by the dealer is directed against the order dated 26.05.2012 passed by the Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur (in short, "first appellate authority") in Appeal Case No. AA-178/2005-06 allowing the appeal preferred by the dealer in part while reducing the amount demanded by the Asst. Commissioner of Sales Tax (Assessment), Puri Range,

Bhubaneswar (in short, 'assessing officer) vide order of assessment dated 16.02.2005 passed u/S. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') in respect of the period 2001-02.

2. The facts, in brief, are as follows :

The dealer-assessee M/s. Orissa Industrial Infrastructure Development Corporation (to be referred hereinafter as 'IDCO') being a State Government undertaking is engaged in execution of works contract. The Head Office of this Corporation is located at IDCO Tower, Janapath, Bhubaneswar and it executes works contract through its 13 (thirteen) divisions located in different parts of the State. In response to the statutory notice the authorized officer of the Corporation alongwith their Advocate appeared before the assessing officer and produced books of account consisting of material purchase register, billwise statement of materials purchased, consolidated statement of sub-contractors indicating gross bill, deduction etc. statement showing value of works executed by different divisions, statement showing GTO, TTO and tax liability for the year 2001-02. The authorized officer on behalf of the dealer-assessee also furnished a list of sub-contractors indicating their names, nature of their work, Sales Tax Registration number (in some cases), gross bill received towards contractual obligation, net bill, sales tax deducted etc. and also furnished a statement in respect their claim against purchase of goods utilized in the execution of works contract on

payment of taxes. The assessing officer on verification of these documents and then taking into account the nature of works executed by the dealer-assessee as well as considering the fact that the dealer-Corporation had not maintained any books of account in respect of expenses towards labour and service charges completed the assessment applying the principle of best judgment and then allowed the expenses towards labour and service charges to the extent of 32% of the payment received from various principals towards works executed which he found as just and reasonable. Accordingly he determined the GTO of the dealer-Corporation at `38,88,45,262.37 and then allowed certain deductions therefrom and ultimately required the dealer to pay the balance amount of tax amounting to `25,27,121.00 as per terms and conditions of the demand notice issued by him.

Being aggrieved with this order the dealer-assessee preferred an appeal before the first appellate authority advancing several grounds in support of its assertions. The dealer-assessee's main contention was that they had received `4,48,79,314.00 from various principals from which an amount of `17,53,576.00 was deducted from Corporation bill by the principals and deposited with Sales Tax Department and the Corporation executed contract work for an amount

of `3,32,14,763.00 during the assessment period which includes `1,88,814.00 of non-taxable contract. Further the materials used by a works contractor were either purchased by them at site or issued from the central store of the dealer-Corporation and most of the materials like cement, steel etc. were declared goods and had suffered tax at purchase point. Therefore, the assessing officer was not justified in adding the turnover of unregistered contractors in the turnover of the dealer without allowing TDS amount deducted from them.

The first appellate authority after going through the order of assessment vis-à-vis the grounds of appeal held that the dealer could not produce the relevant documents/notification or books of account relating to the points of objection raised by the assessing officer at the time of assessment and therefore, the disallowance of claim by the assessing officer was correct. However, considering the amended provision of Rule 4-B of the OST Rule giving retrospective effect to the same w.e.f. 30.07.1999, the first appellate authority allowed 35% deduction from the gross payment received towards labour and service charges in absence of books of account or documents. Ultimately, he redetermined the TTO of the dealer-assessee and reduced the tax liability determined by the assessing officer to `23,43,849.00 for which he also made it clear that if any excess amount than this had been paid

by the dealer-assessee then the same be refunded to him as per provisions of law.

3. Still dissatisfied with the aforesaid order the dealer-appellant preferred the instant appeal before this forum on the grounds that the liability of the dealer ended when it assigned the contract to a contractor and deducted tax from the payment made to the contractor and deposited the tax with Sales Tax Authorities with their details and as such it was the responsibility of Sales Tax Officer having jurisdiction to assess the contractor even the unregistered ones as per provisions of law. It was contended that while disallowing the turnover of unregistered contractors worth `3,83,66,400.00 by the Taxing Authority, the TDS amount deducted and deposited by the dealer (M/s. IDCO) with the Sales Tax Authority should be considered. Further the dealer contended that the materials i.e. cement, steel etc. which had suffered tax at purchase point should be allowed as deduction.

The State-respondent, however, has filed cross-objection supporting the order of assessment passed by the assessing officer for the relevant period.

4. In course of hearing the appeal learned Counsel for the dealer-assessee reiterated the grounds as mentioned in the memorandum of appeal submitted by the dealer. On the other hand, learned Standing Counsel (CT) appearing on behalf of the State

supported the assessment order of assessing officer which allowed 32% towards labour and service charges and disallowed the claim in respect of material component utilized in the works and other deductions in absence of supporting documents. After going through the order of assessment as well as the grounds of appeal, it was categorically observed by the first appellate authority in the impugned order that at the stage of appeal the dealer-appellant could not produce the relevant documents/notification or books of account for reconciling the objections raised by the assessing officer at the time of assessment. Therefore, the order of assessment passed by the assessing officer disallowing the claim advanced by the dealer was found to be correct on account of lack of documentary evidence supporting its claim. The dealer-appellant has not produced any material evidence in support of its assertions before this forum also. In such circumstances claim for deduction as advanced by the dealer-appellant certainly cannot be entertained due to lack of proper evidence.

However, as revealed from the impugned order the first appellate authority considering the amendment in OST Rules i.e. Rule 4-B having retrospective effect w.e.f. 30.07.1999 has allowed 35% as deduction from gross payment received towards labour and service charges in absence of books of account against 32% as allowed by the assessing officer in his assessment for the relevant period. In such

circumstances the percentage of labour and service charges as allowed by the first appellate authority keeping in view the provisions of Rule 4-B cannot be said to be illegal. Therefore, we find no merit in the contention advanced on behalf of the State on this score.

5. In the result, the appeal filed by the dealer-assessee is dismissed and the impugned order of the first appellate authority is hereby confirmed. Cross-objection is disposed of accordingly.

Dictated & Corrected by me,

**Sd/-**
**(Smt. Suchismita Misra)**
**Chairman**

**Sd/-**
**(Smt. Suchismita Misra)**
**Chairman**

I agree,

**Sd/-**
**(Subrat Mohanty)**
**1st Judicial Member**

I agree,

**Sd/-**
**(Rabindra Ku. Pattnaik)**
**Accounts Member-III**