

**BEFORE THE ODISHA SALES TAX TRIBUNAL (FULL BENCH),
CUTTACK**

S.A.No. 1877/2005-06

(From the order of the Id. ACST, Sambalpur Range, Sambalpur,
in Appeal No. AA-171 (SA-II) of 2004-2005, dtd.19.10.2005 for re-
computation of the assessment order of the Assessing Officer)

P R E S E N T :

Smt. Suchismita Misra Sri S. Mohanty & Sri P.C. Pathy
Chairman Judicial Member-II Accounts Member-I

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

... Appellant

-Versus -

M/s. Kedarnath Khandelwal,
At/P.O./Dist. Bargarh.

... Respondent

Appearance :

For the Appellant ... Mr. S.K. Pradhan, A.S.C. (C.T.)
For the Respondent ... Mr. A.N. Mohanty, Advocate

(Assessment Year : 1996-97)

Date of Hearing: 18.02.2019 *** Date of Order: 18.02.2019

ORDER

The present second appeal is directed against the order of the learned First Appellate Authority/Asst. Commissioner of Sales Tax, Sambalpur Range, Sambalpur (in short, FAA/ACST) in First Appeal Case No. AA-171 (SA-II) of 2004-2005, dtd.19.10.2005 in partly allowing the assessment order passed by the Assessing Authority/Sales Tax Officer, Sambalpur-II Circle, Bargarh (in short, AA/STO) for the assessment year 1996-97 u/s.12(5) of the Odisha Sales Tax Act, (in short, OST Act) and remanding the matter for assessment afresh on re-computation of tax liability.

2. The facts in brief necessary for consideration are :

 The dealer being a works contractor had executed job contracts of different types of work under South Eastern Railway on

the strength of contracts executed in between the South Eastern Railway and the dealer. In a regular assessment u/S.12(5) of the OST Act for the assessment period 1996-97, the AA in consideration of the nature of work executed by the dealer had allowed the labour and service charges in three slabs i.e. 32%, 42% and 62%. The dealer was also found not registered under the OST Act, even though it has reached the slab of tax liability. As such, the AA levied surcharge and penalty on him.

3. The above assessment was questioned before the FAA, who in turn, vide impugned order, allowed the appeal in part and remanded the matter back to the AA for re-computation of the tax liability.

On this backdrop, Revenue has preferred this second appeal challenging the sustainability of the impugned order on the ground that, the labour and service charges allowed by the FAA is excessive without considering the nature of work involved and the FAA has gone wrong in deleting the penalty.

4. The dealer contested the appeal without cross objection.

Findings :

5. At the outset, learned Counsel for the dealer brought to the notice of the Court that, the appeal preferred by the dealer against the order of the learned FAA vide S.A.No. 2108/2005-06, is already disposed of by this Tribunal Order dtd.12.01.2009. It was a contested order passed in presence of the Revenue. Learned Addl. Standing Counsel admitted the fact of disposal of the second appeal as mentioned. The copy of the order being furnished by the Addl. Standing Counsel is perused. The order as it revealed, the impugned order in this appeal was under challenge before this Tribunal in S.A.No. 2108/2005-06 at the behest of the dealer and the second appeal was ultimately dismissed. When this being the development in interim and the impugned order was under challenge before this Tribunal and decided finally in presence of both the parties, then the doctrine of law of merger is applicable to the case in hand. The order

of the FAA is necessarily merged in the order of the second appeal decided by this Tribunal.

It is well settled that, when a decision of trial court is either continued, modified or reversed by the appellate court, the trial court order is deemed to have merged in Appellate Court's order. The above principle is squarely applicable to the present appeal in hand. The impugned order in First Appeal No. AA-171 (SA-II) of 2004-2005, dtd.19.10.2005 was dismissed by the Tribunal in Second Appeal No.2108/2005-06, dtd.12.01.2009 at the behest of the dealer in presence of State on contest. So there is no scope before this Tribunal to sit over the self-same matter again, particularly when the order is no more in existence as per the theory of merger.

Hence, we are of the opinion that, the present appeal is not maintainable and accordingly be dismissed as not maintainable.

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/-
(P.C. Pathy)
Accounts Member-I