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

S.A.No. 1947/2005-06

(From the order of the ld. ACST, Sambalpur Range, Sambalpur, in Appeal No. AA-172 (SA-II) of 2004-2005, dtd.19.10.2005 for re-computation of the assessment order of the Assessing Officer)

&

S.A.No. 2109/2005-06

(From the order of the ld.ACST, Sambalpur Range, Sambalpur, in Appeal No. AA-172 (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, Chairman — Sri S. Mohanty, Judicial Member-II — & — Sri P.C. Pathy, Accounts member-I

S.A.No. 1947/2005-06

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

-Versus -

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

S.A.No. 2109/2005-06

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

-Versus -

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

Appearance :

For the State ... Mr. S.K. Pradhan, A.S.C. (C.T.)

For the Dealer ... Mr. A.N. Mohanty, Advocate

(Assessment Year : 1997-98)

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

ORDER

Both the appeals above are preferred by adversary parties in First Appeal Case No. AA-172 (SA-II) of 2004-2005, dtd.19.10.2005 before the learned First Appellate Authority/Asst. Commissioner of Sales Tax, Sambalpur Range, Sambalpur (in short, FAA/ACST) challenging the order to be not sustainable in law and facts. The Appeal No. 2109/2005-06 is preferred by the dealer, whereas the Appeal No. 1947/2005-06 is preferred by the State. Since both the appeals arise out of same order impugned, for sake of convenience and to avoid conflicting opinion, if any, both the appeals are heard and decided by this common order.

2. The assessment periods in question is 1997-98. The appellant-dealer is a works contractor and had executed contract jobs under different contracts more to say different number of contracts under the South East Railway. The dealer had entered into agreements with the contractee for the works and executed accordingly. The works involved in the contract are civil work, earthwork, construction of road including other miscellaneous work details of which are mentioned in the impugned order. The AA in assessment u/S.12(8) for the assessment period 1997-98, has allowed discount at 96,54,183.66 towards labour and service charges denied the tax exemption on the goods, which the dealer had claimed to have paid under the OST Act. In the result, he determined the GTO and TTO at Rs.87,46,544.34 and Rs.73,93,217.84 respectively. After reconciliation of the TDS, as per the certificate produced before him, he fixed liability as well as penalty for non-registration of the dealer as the dealer has reached the tax liability slab. The assessment order was under challenge before the FAA by the dealer claiming thereby higher

percentage towards labour and service charges and deletion of tax liability on the OST Act on the plea that, the tax was already paid. The FAA on scrutiny of the works under the different contracts, enhanced the labour and service charges and fixed the same at 40%, 80% and 90%. However, in absence of any documentary proof of payment of tax under OST Act, he denied the claim of the dealer that, the goods are already tax suffered and in the result, he remanded the matter to the AA for re-computation of tax liability. On this backdrop, the dealer has preferred this appeal claiming more percentage of deduction towards labour and service charges and also claimed that, the FAA has committed wrong in imposing tax under the OST Act.

On the other hand, State has challenged the impugned order on the above factual backdrop with the plea that, the deduction allowed by the FAA is excessive and not in accordance to the job works executed by the dealer. It is further claimed that, the deduction should be allowed in accordance to the notification of the Works Department.

The questions involved arise for decision in these appeals are, (i) If the FAA is wrong in enhancing the percentage of deduction towards labour and service charges or the dealer is entitled to more percentage than it is allowed by the FAA? (ii) Whether the FAA is wrong in imposing the tax under OST Act even though it was duly paid by the dealer? (iii) Whether the FAA is correct in remanding the matter to the Assessing Authority for re-computation?

Findings :

3. In course of the argument, the learned Counsels from both sides submitted that, second appeal preferred by

dealer as well as State against the assessment in respect to assessment period 1996-97 involving identical issues were disposed of by this Tribunal. The decision in S.A.No. 1877/2005-06 decided today and decision in S.A.No.2108/2005-06 decided by Division Bench on 12.01.2009 are perused. It is found that, the Tribunal had scrutinised the order of AA and the FAA regarding the percentage of deduction allowable to the dealer against the self-same works contracts involved in the present appals. The Tribunal has already taken a view that, the deduction granted by the FAA is just and proper. Further, the Tribunal has also held that, the remand order by the FAA for re-computation of tax liability afresh is also just and proper. Undisputedly, the earlier decided appeal involves the identical issues that are raised before us. It is not the case of either side that, the decision of Tribunal in earlier decided appeal relating to the same dealer for the self-same issues are challenged by either sides before the higher forum. In fact, the parties have accepted the findings of this Tribunal passed on earlier occasion. Consistency is the general rule of taxation. When the matter relates to the same dealer involving same issues are already decided by this Tribunal and particularly when the order is accepted by the parties, then there is no reason why to unsettle the finding, which was passed to the satisfaction of both parties, particularly when the issues relates to a question of fact only. From this the inescapable conclusion is, the findings of the FAA under challenge here calls for no interference.

Further, if we delve into the assessment order and the order of the FAA, which is an extended forum of assessment, it is found that, the FAA has gone into details

of the jobs undertaken by the dealer and, therefore, he has determined the labour and service charges accordingly. It is needless to mention here that, application of the notification of the Works Department to such type of cases has been declared as illegal and not sustainable time to time and particularly keeping in view the decision of the Apex Court in **Gannon Dunkerley and Co. Vrs. State of Rajasthan & Others (1993) 88 STC 204 (SC)** and **M/s. Jagannath Choudhury Vrs. ACST in OJC No.7525 of 2000.** The best judgment assessment of the AA in this case is quite whimsical and unreasonable. On the other hand, the best judgment assessment of FAA is found to be arrived on capricious application of mind to the details of the works contract and nature of work. Therefore, we are of the consensus view that, the deduction granted by FAA is just and reasonable and should not be disturbed on that necessary rebuttal evidence. Accordingly, it is ordered.

Thus, to sum up, we are of the considered view that, the impugned order suffers from no illegality and thus calls for no interference. Accordingly, it is ordered.

Both the appeals are dismissed on contest against each other 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/-
(P.C. Pathy)
Accounts Member-I