BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 2133 of 2002-03

(Arising out of order of the learned ACST, Puri Range, Bhubaneswar in Sales Tax Appeal No. AA- 386/BH.II/2002-03, disposed of on dated 28.12.2002)

Present: **Shri A.K. Das, Chairman**
Shri S.K. Rout, 2nd Judicial Member
&
Shri S. Mishra, Accounts Member-II

M/s. Tata Projects Ltd.,
N-2/38, Nayapalli, Bhubaneswar ... Appellant

-Versus-

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

For the Appellant : Sri D.K. Mohanty, Advocate
For the Respondent : Sri D. Behura, S.C. (CT) &
Sri S.K. Pradhan, Addl.SC (CT)

Date of hearing: 08.02.2022 *** Date of order: 19.02.2022

O R D E R

The dealer-appellant has called in question the legality of the order dated 28.12.2002 passed by the learned Asst. Commissioner of Sales Tax, Puri Range, Bhubaneswar (hereinafter called as 'first appellate authority') in Appeal No. AA- 386/BH.II/2002-03 thereby confirming the order of assessment dated 14.05.2002

passed by the Sales Tax Officer, Bhubaneswar-II Circle, Bhubaneswar (in short, 'assessing authority') raising demand of ₹16,17,221.00 for the assessment year 1999-2000 by invoking the power u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act').

2. The facts of the case in brief are that M/s. Tata Projects Ltd., Bhubaneswar is a works contractor, who executed works with GRIDCO Ltd., Odisha, Bhubaneswar. The assessing authority initiated the assessment proceeding u/s. 12(4) of the OST Act against the dealer-appellant, who in response to notice issued appeared through his Advocate Sri N.K. Dash and produced the books of account for verification. The assessing authority on verification of the books of account and other documents produced by the dealer-appellant found that the dealer executed works i.e. design, drawing, supply, erection, testing, commissioning of OECF funded sub-project i.e. 132 KV on turn-key basis. The appellant in order to execute the works contract purchased goods from outside the State and inside the State of Odisha for ₹29,90,02,408.00 out of which goods worth ₹19,25,85,350.00 were utilized in the works executed and the balance goods worth ₹10,64,17,058.00 could not be

utilized. The assessing authority further found that out of ₹19,25,85,350.00, goods worth ₹4,12,01,016.00 relates to purchases effected from inside the State of Odisha and the balance relates to purchase from outside the State. The dealer during the year under assessment disclosed to have received gross payment of ₹32,74,26,216.00 through 7 nos. of running bills, but on verification of TDS certificate the assessing authority found the dealer to have received gross payment of ₹32,74,26,275.00. The assessing authority allowed deduction of ₹4,12,01,016.00 which relates to the goods purchased inside the State of Odisha as the said goods have suffered tax. The assessing authority also allowed deduction of 33% of the gross payment received towards labour and service charges as against the claim of ₹12,25,80,858.00 towards labour and service charges. The assessing authority determined the GTO at ₹21,93,75,604.00 (gross payment received ₹32,74,26,275.00 – ₹10,80,50,671.00 towards labour and service charges). After allowing deduction of ₹4,12,01,016.00 towards tax suffered materials, the TTO was determined at ₹17,81,74,588.00 which was taxed @ 8% and surcharge was calculated @ 15% on the tax amount of ₹1,42,53,967.04.

Thus, the total tax and surcharge was calculated at ₹1,63,92,062.09 as against which the dealer had paid ₹1,47,74,841.00. So, the balance demand was raised at ₹16,17,221.00.

2(a). The dealer-appellant being aggrieved with the extra demand of ₹16,17,221.00 raised by the assessing authority preferred appeal before the first appellate authority on the ground that the assessing authority illegally disallowed the claim of deduction of ₹11,76,36,778.00 towards labour and service charges and ₹1,39,00,833.00 towards tax paid goods without giving due opportunity to justify the claim of deduction. The first appellate authority on going through the materials on record confirmed the order of the assessing authority and dismissed the appeal. The dealer being further aggrieved with the order of the first appellate authority has preferred the present second appeal.

3. The dealer-appellant mainly challenged the impugned orders of both the fora below on two grounds that he was allowed deduction of ₹4,12,01,016.00 as against the claim of ₹4,39,00,833.00 towards tax suffered goods and deduction of ₹10,80,50,671.00 towards labour and service charges @ 33% as against the claim of ₹11,76,36,778.00. It

was vehemently argued by the learned Counsel for the dealer-appellant that both the fora below committed serious illegality in not allowing the entire claim of deduction of the dealer-appellant towards tax suffered goods and towards labour and service charges inspite of production of relevant documents. He submitted that the goods acquired by the dealer-appellant for incorporation in the works contract should have been allowed as deduction instead of the goods utilized in the works contract. The dealer-appellant having already paid tax on the goods acquired by him for the purpose of incorporation in the works contract, he was entitled to the deduction of the entire amount. He further submitted that the finding of both the fora below that the dealer did not produce the relevant documents to justify his claim of deduction towards labour and service charges is against the materials on record. He submitted to set aside the orders of both the forums below and allow the deduction as claimed.

4. Per contra, learned Standing Counsel (CT) for the revenue supporting the impugned orders of the forums below vehemently urged that the dealer did not produce details of expenditure incurred towards labour and

service charges for which the assessing authority allowed deduction of 33% of the gross amount received. There is no illegality in such action of the assessing authority. He further argued that both the forums below correctly restricted the deduction in respect of tax suffered goods which were actually utilized in the works contract. The acquisition of goods is not the basis of allowing deduction, but the goods which are incorporated in the works contract are to be taken into consideration for the purpose of taxation. There is no illegality or impropriety in any of the finding of the learned fora below. He submitted to dismiss the second appeal filed by the dealer-appellant.

5. We have heard the rival submissions of the parties, gone through the grounds of appeal vis-a-vis the impugned orders of the forums below and the materials on record. On perusal of the impugned orders of both the forums below, we find that both the forums below have categorically observed that the dealer did not produce relevant documents to justify his claim of deduction towards labour and service charges. So, 33% of the gross amount received by the appellant was allowed as deduction towards labour and service charges basing on the judgment of the

Hon'ble Apex Court in the case of **Gannon Dunkerley & Co. and others Vs. State of Rajasthan and others, reported in [1993] 88 STC 204 (SC)**. Similarly, both the forums below allowed deduction of ₹4,12,01,016.00 towards tax suffered goods as against the claim of ₹4,39,00,833.00 on the ground that the dealer could not furnish utilization certificate of the goods for the rest of the amount. In course of hearing of the second appeal, the appellant did not dispute that the goods worth ₹4,12,01,016.00 were utilized in execution of the works contract as against the claim of ₹4,39,00,833.00. Now, the question arises whether the goods incorporated in the execution of works contract is to be allowed as deduction towards tax suffered goods or the goods acquired by the dealer-appellant is to be allowed as deduction as claimed by him (dealer-appellant).

6. The Hon'ble Apex Court in case of Gannon Dunkerley & Co. and others (supra) held that in view of Article 366(29-A)(b), the State legislatures are competent to impose tax on transfer of goods involved in execution of the works contract. The measure for levy of tax contemplated by Article 366(29-A)(b) is the value of the goods involved in the execution of a works contract. It is wrong to say that the

value of such goods for levying tax can be assessed only on the basis of the cost of acquisition of goods by the contractor. Since the taxable event is the transfer of property in goods involved in the execution of a works contract and the said transfer of property in such goods takes place when the goods are incorporated in the works, the value of goods which can constitute the measure for levy of tax has to be the value of the goods at the time of incorporation of goods in the works and not the cost of acquisition of goods by the contractor. In view of such settled position of law, the mere acquisition of goods worth ₹4,39,00,833.00 cannot be allowed as deduction towards tax suffered goods as the same has not been utilized/ incorporated in execution of the works contract. The fora below were correct in their approach in allowing deduction to the extent of ₹4,12,01,016.00 towards tax suffered goods, which was being utilized in execution of the works contract. Moreover the 'sale' as defined in Section 2(g)(ii) of the OST Act means any transfer of property in goods for cash or deferred payment or other valuable consideration and includes transfer of property in goods (whether as goods or in some other form) involved in execution of the works

contract. The entire goods worth ₹4,39,00,833.00 having not been incorporated/utilized in execution of the works contract, the same cannot be allowed as deduction towards tax suffered goods. Learned Counsel for the dealer-appellant to our query failed to site a single case law to show that the entire goods acquired by the dealer-appellant even though not involved in execution of the works contract is to be allowed as deduction towards tax suffered goods. The authorities below have rightly allowed deduction to the extent of ₹4,12,01,016.00 as against the claim of ₹4,39,00,833.00 as the entire goods acquired by the dealer-appellant were not utilized in execution of the works contract. Similarly, deduction of 33% of the gross amount received by the dealer towards labour and services charges, allowed by both the forums below on account of non-production of relevant documents, such as written copy submitted to the Labour Office, details of payment towards labour and service charges etc. is just, proper and reasonable. The dealer-appellant also failed to justify his claim of deduction of ₹11,76,36,778.00 towards labour and service charges before this forum by producing relevant documents. There is no material on record to substantiate

the claim of deduction towards labour and service charges by the dealer-appellant.

7. In view of the discussions made above, we are of the unanimous view that both the fora below rightly allowed deduction of ₹4,12,01,016.00 towards tax suffered goods and ₹10,80,50,671.00 i.e. 33% of the gross amount received by the dealer-appellant towards labour and service charges. There is no illegality or impropriety in such finding of the learned fora below warranting interference of this Tribunal. Accordingly, the appeal filed by the dealer-appellant being devoid of merit stands dismissed.

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/-
(S. Mishra)
Accounts Member-II