

BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK

S.A No. 233/2009-10

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(From the order of the Id. DCST, Koraput Range, Jeypore, in First Appeal Case No. AA(KOR)3-6/09-10, dtd.30.06.2009 modifying the assessment order of the Assessing Authority)

Present: Smt. Suchismita Misra, Chairman,
Sri Subrata Mohanty, 2nd Judicial Member,
&
Sri Ranjit Kumar Rout, Accounts Member-II

M/s. Jyoti Structures Limited,
At- Valecha Chamber,
5th/6th Floor, New Link Road,
Mumbai.

... Appellant

-Versus-

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

... Respondent

For the Appellant : Mr. A.K. Panda, Advocate

For the Respondent : Mr. S.K. Pradhan, Addl.Standing Counsel (C.T.)

Date of Hearing: 15.01.2019 *** Date of Order: 15.01.2019

ORDER

All the four appeals above are preferred by the dealer as appellant challenging the sustainability of the order of the learned First Appellate Authority/Deputy Commissioner of Sales Tax, Koraput Range, Jeypore (in short, FAA/DCST) relating to the appellant-dealer's four numbers of assessment period such as 1995-96, 1996-97, 1997-98 and 1998-99. As the FAA has decided the appeals before him for the four numbers of assessment periods in a common order, which is under challenge in these second appeals, for sake of convenience and to avoid conflicting opinion, if any, all these second appeals are decided vide this common order.

2. The assessee-dealer was subjected to regular assessment u/s.12(4) of the Odisha Sales Tax Act, 1947 (in short, OST Act) for four numbers of assessment period i.e. 1995-96, 1996-97, 1997-98 and 1998-99. The dealer had executed works contracts under M/s. Power Grade Corporation India Ltd. In ultimate analysis, the Assessing Authority/Sales Tax Officer, Koraput-I Circle, Jeypore (in short, AA/STO) allowed deduction @40% of the total amount under the heads of labour and service charges keeping in view the nature of work. The tax due raised against the dealer for tax period 1995-96 was for Rs.1,36,14,663/-, for the tax period 1996-97 was at Rs.29,83,065/-, for the tax period 1997-98 at Rs.5,73,967/- and for the tax period 1998-99 for Rs.1,31,328/-.

3. Being aggrieved with the assessment, the dealer knocked the door of the FAA. The impugned order wherein and whereby the FAA has confirmed the findings of the AA with regard to the percentage of deduction towards labour and service charges whereas, the dealer got relief on tax against the supply of materials, as a result, the tax due became reduced and it was found that, the dealer has made excess payment of Rs.6,39,093/- for the assessment period 1995-96 and Rs.2,97,592/- for 1996-97 but for the assessment year 1996-97 and 1997-98, the dealer was found due at Rs.1,23,027/- and Rs.56,440/- respectively.

4. When the matters stood thus, the dealer preferred the above appeals challenging the method adopted for calculation of labour and service charges and has prayed for higher percentage of deduction. It is contended by the dealer that, even though documents were produced before the FAA reflecting details of the labour and service charges, the fora below, without going for the calculation of the same from the documents, relied on the findings of the AA, which is based on best judgment principle only.

5. In the case in hand, the only question raised by the dealer for decision is, Whether the FAA has committed wrong in

confirming the percentage of deduction determined by the AA i.e. @40% ?

Finding :

6. Learned Counsel for the dealer, Mr. A.K. Panda draws the attention of the forum to the impugned order as well as the order by the AA and argued that, the dealer had produced documentary evidence containing details of the expenses under labour and service head, but the authorities below have not considered the documents and just applied the guess work and determined the labour component applying best judgment principle. The assessment order as it revealed, the AA has calculated the labour and service charges applying best judgment principle keeping in mind the nature of work executed by the dealer. Nowhere the AA has mentioned that, the documents produced before him were not sufficient or not conclusive to determine the labour and service charges. The assessment order is silent if the AA has rejected the books of account that too by giving any valid reason. The impugned order is also silent why and under what considerations, the FAA confirmed the percentage of deduction allowed by the AA. It is pertinent to mention here that, the taxing authorities are found applying best judgment principle in a routine manner invariably in such type of cases of works contract to determine the labour and service charges. They used to prefer the slip-shod method of applying the best judgment principle. In the present case, it is the claim of the dealer that, they have the documents and they had also produced the documents before the fora below but the fora below did not take the documents into account. The power of best judgment assessment apparently are too wide and can be used to the detriment of an assessee and can be manipulated by a corrupt office. Therefore, there has to be checks and balances to the “guess work” done in case of a best assessment judgment. In making best judgment assessment the officer does not possess arbitrary powers to assess any figure as he likes. Though

quasi judicial in nature these assessments are to be based on the principles of justice, equity and good conscience. In common parlance the words “best judgment” carry the connotation that what is being done is in order to make an estimate. Similarly, the best judgment assessment can only be made after giving the assessee an opportunity of being heard. Such opportunities shall be given by issuance of notice by way of a showcause as to why the assessment should not be completed to the best of the judgment and that opportunity for hearing will not be necessary. In the case in hand, there is no allegation from the side of the dealer that, the authorities are whimsical and vindictive while determining the deduction. But the specific claim of the dealer is, he has documents to substantiate the amount of labour and service charges. It is well settled that, by applying the principle of best judgment of the taxing authority in case of works contract, deduction of the expenditure incurred towards labour and service as provided in Section -5(2)AA of the Act shall be subject to production of evidence in support of such expenses to the satisfaction of the Assessing Authority. In the cases where a dealer executing works contract, fails to produce evidence in support of expenses incurred towards labour and service as referred to above, or such expenses are not ascertainable from the terms and conditions of the contract, or the books of accounts maintained for the purpose are found to be not credible, expenses on account of labour and service shall be determined.

7. Keeping in mind the principle above, when we look into the present appeals in hand, it is found that, the AA and thereafter the FAA both have applied the principle of best judgment keeping in view the nature of works. When it is the claim of the dealer that, he has got documents from which the labour component can be calculated, in that case, the authority should make all endeavour to ascertain the labour and service charges. Be that as it may, we are of the view that, this is a fit case, where the matter should be remitted

back to the AA with a direction to calculate the labour and service charges from the works contract, books of account, register and connected documents etc. mentioned above on production by the dealer. However, it is made clear that, if the dealer is found unable to produce reliable evidence/documentary proof in support of the claim in that event, there is no need to go for another best judgment assessment, since, the deduction @40% given is based on the application of mind by the authorities below keeping in view the nature of work and as a matter of principle one best judgment cannot be replaced by another, without treating the earlier one arbitrary. Accordingly, it is ordered.

The appeals are allowed on contest. The matters are remitted back to the AA with a direction to re-compute the labour and service charges, if any, on scrutiny of the documentary evidence produced by the dealer. Unless, the deduction at 40% towards labour and service charges is to be treated as just and proper. Demand be raised accordingly. The AA is requested to complete the remand assessment within a period of four months hence.

Dictated & corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member-II

Sd/-
(S. Mohanty)
2nd Judicial Member

I agree,

Sd/-
(Suchismita Misra)
Chairman,

I agree,

Sd/-
(Ranjit Kumar Rout)
Accounts Member-II