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

S.A. No. 468 of 2003-04

(Arising out of order of the learned ACST, Koraput Range, Jeypore, in Sales Tax Appeal No. AA- (KOI) 133/1998-99, disposed of on dt. 06.01.2000)

Present : **Smt. Suchismita Misra, Chairman**
Shri Subrat Mohanty, 2nd Judicial Member
&
Shri Prabhat Ch. Pathy, Accounts Member-I

M/s. THC (T) Satyam Shankarnarayan (J.V.),
Muran Dam Site, Khatiguda,
Koraput. . . . Appellant

- V e r s u s –

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

For the Appellant … Mr. D. Sethy, Advocate
For the Respondent … Mr. S.K. Pradhan, Addl. S.C.(CT)

Date of hearing: 02.01.2019 **** Date of order: 21.01.2019

O R D E R

This appeal is directed against the order dated 06.01.2000 passed by the Asst. Commissioner of Sales Tax, Koraput Range, Jeypore (in short, "first appellate authority") in Sales Tax Appeal No. AA- (KOI) 133/1998-99 allowing the appeal in part preferred by the dealer-appellant in respect of assessment made u/S. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') for the year 1996-97.

2. The facts as revealed from the record are that the assessee- M/s. THC (T) Satyam Shankarnarayan (J.V.), Khatiguda in the instant case was engaged in execution of works contract under Upper

Indravati Hydro Electricity Project and as such was entrusted with "construction and completion of balance work of Head Race Tunnel and Muran Masonry and Concrete Dam" for a contract value of `64,42,30,000.00. The dealer-assessee, a joint venture concern was assessed by the Sales Tax Officer, Koraput-I Circle, Jeypore (in short, "assessing officer") for the year 1996-97 and thus pursuant to notice u/S. 12(4) of the OST Act the authorized agent of the dealer-contractor along with their Advocate appeared before the assessing officer. They produced a copy of agreement along with copies of running account bills raised by them which were examined by the assessing officer with reference to the certificate issued in Form- IX-A by the deducting authority i.e. Senior Manager (F), Upper Indravati Hydro Electricity Project, Khatiguda . At that time the dealer-contractor could not produce any other books of account except the above documents and statement showing payment received and recoveries made thereof during the period under assessment duly signed by the Executive Engineer, Muran Dam Division of Upper Indravati Project. As such on verification the assessing officer could find that the dealer-contractor had received a gross payment of `5,03,59,422.00 during that relevant period i.e. 1996-97 against their running account bills raised which was revealed from the tax deduction certificate issued by the deducting authorities u/S. 13-AA of the OST Act as well as from the return filed during the period under assessment. On verification of the detailed statement showing the total gross payment of `5,03,59,422.00 received

and the recoveries made thereof and further the total work bills raised and the departmental materials supplied by the Upper Indravati Hydro Electricity Project for a sum of `29,19,306.00 which did not attract tax liability the assessing officer concluded his assessment by determining the TTO of the dealer-assessee at `3,42,44,407.00 and then after allowing a deduction of `1,61,15,015.00 towards labour and service charges i.e. @ 32% calculated the tax due @ 8% i.e. `27,39,552.56. He added surcharge of `2,73,955.25 in the tax dues and then ultimately determined that the assessee was to pay `30,13,507.81 and as the deducting authorities had already deposited a sum of `22,31,722.00 u/S. 13-AA of the OST Act, he issued a demand notice requiring the dealer-contractor to pay the balance amount of `7,81,786.00 as per the terms and conditions of the demand notice.

Being aggrieved with the said order, the dealer-assessee preferred an appeal before the first appellate authority challenging the assessment on the ground that the order of assessment passed by the assessing officer u/S. 12(4) of the OST Act was wrong and illegal. The dealer-assessee had maintained the books of account for all the transactions in his books of account and further the materials worth `32,27,346.00 which were supplied by the department had already been taxed as duly certified by the concerned Executive Engineer. The dealer-assessee had utilized the cement worth `1,95,75,363.00 which was purchased by it on payment of tax. Thus, the materials supplied by the

department and used by the dealer-assessee worth `2,28,02,709.00 should have been deducted from the GTO which was not done by the assessing officer. The dealer-assessee also raised dispute regarding the quantum of service charges which should have been allowed to him in the relevant assessment. Taking all the aforesaid grounds as advanced by the dealer-appellant into consideration along with connected documents, learned first appellate authority concluded that as the dealer-assessee failed to produce any books of account showing the expenses incurred by it for executing the works contract the assessing officer had to determine the labour and service charges basing upon the principle of best judgment after properly considering the nature of works executed by the dealer-assessee. Therefore, in absence of any documentary evidence showing anything contrary to the findings of the assessing officer with regard to determination of labour and service charges, learned first appellate authority did not prefer to come to any other conclusion differing with the assessing officer in this regard. Then in respect of materials which had suffered as first point sales tax inside the State, learned first appellate authority again after verifying the purchase register of cement and utilization of stock in the work as certified by the Executive Engineer, Muran Dam Division for the said period concluded that the dealer-assessee was entitled for deduction of `1,75,99,298.00 towards first point tax paid goods utilized in the works contract and allowed the same while deciding the appeal. The first appellate authority, however, did not allow the claim of the dealer-assessee for deduction of the cost of materials supplied by the department on cost recovery basis on the ground that most of those materials were consumables and the dealer-appellant could not produce any evidence to prove that those goods had already been subjected to tax in a series of sales. Thus, he determined the GTO for the instant year at `5,03,59,422.00 confirming the finding of the assessing officer and then allowed deduction of `1,61,15,015.00 towards labour and service charges as allowed by the assessing officer and `1,75,99,298.00

towards first point tax paid goods being utilized in the works. Accordingly, the TTO was determined by him at `1,66,45,109.00 which was taxed @ 8% and in turn the tax payable was computed at `13,31,609.00 and with surcharge @ 10% on the tax assessed which came to `1,33,160.90, the total amount to be paid by the dealer-assessee was determined at `14,64,770.00. Since the dealer-assessee had already paid `22,31,722.00 by way of TDS as per assessment order, learned first appellate authority ordered for refund of `7,81,786.00 to the dealer-assessee.

3. Being aggrieved with the said order, the dealer-assessee came up with this second appeal challenging the findings of the first appellate authority as arbitrary and based on incorrect appreciation of facts. Learned Counsel for the dealer-assessee contended that the assessing officer did not allow the deduction @ 100% towards labour and service charges even though the nature of work undertaken by the assessee demands thus and further both the assessing officer and first appellate authority did not allow deduction of `32,27,346.00 towards materials supplied by the Department though the said material was already subjected to tax. In the circumstances the dealer-appellant urged before this Tribunal to quash the order of the first appellate authority entirely.

However, learned Addl. Standing Counsel (CT) for the State submitted that the order passed by the learned first appellate authority is found to be absolutely just and correct being based on sound reasons. Therefore, the said order should be maintained in the instant appeal.

4. On perusal of records it is found that learned first appellate authority as well as the assessing officer had elaborately discussed the facts and the laws involved for proper assessment of tax dues in respect of the dealer-assessee for that relevant period. The dealer-assessee had claimed for total deduction of labour and service component while arguing that this labour and service component involved in the works executed by him were more than 50% and 10% respectively. However, as noticed from the record he could not produce any document worth consideration of his such assertion. Similarly, the dealer-assessee's claim for deduction of cost of materials supplied by the department on cost recovery basis was also not allowed as those materials were found to be consumables and consumed in the process of executing the works. Learned first appellate authority found that the dealer-assessee was entitled for deduction of `1,75,99,298.00 towards first point tax paid goods utilized in the works contract despite the assessing officer ignoring the same during the assessment on the ground that the dealer-contractor could not produce any books of account disclosing such purchases and also failed to produce any certificate in support of those purchases as well as utilization of those articles in course of their execution of works contract. However, when learned first appellate authority on verification of purchase register of cement and the certificate issued by the Executive Engineer, Muran Dam Division, Muran regarding its utilization in the works found those documents acceptable allowed the cost of cement worth `1,75,99,298.00 which was purchased from the registered dealers only at

that relevant period to be deducted towards first point tax paid goods. In the circumstances, considering all these facts as revealed from the case record, it is felt that the order passed by the first appellate authority having been based on documents and being in consonance with relevant facts and law needs no interference by this Tribunal.

5. In the result, the appeal is dismissed and the impugned order of learned first appellate authority stands confirmed.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Subrat Mohanty)
2nd Judicial Member

I agree,

Sd/-
(Prabhat Ch. Pathy)
Accounts Member-I