

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 46(V)/2018**

(From the order of the Id. JCST (Appeal), Bhubaneswar
Range, Bhubaneswar, in Appeal No. AA-106221622000193
(VAT), dtd.29.11.2017 modifying the assessment order of
the Assessing Officer)

**Present: Smt. Sweta Mishra
2nd Judicial Member**

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

-Versus-

M/s. Jagabandhu Enterprisers,
Bhubaneswar. Respondent

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

(Assessment Period : 01.04.2009 to 31.03.2014)

Date of Hearing: 22.06.2019 *** Date of Order: 24.06.2019

ORDER

The present second appeal has been directed against the order of the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Bhubaneswar Range, Bhubaneswar (in short, FAA/JCST) in modifying the order of assessment passed by the Assessing Authority/Deputy Commissioner of Sales Tax, Bhubaneswar-IV Circle, Bhubaneswar (in short, AA/DCST) by refunding the dealer the excess amount of tax paid by him, if any, as against the demand raised by the AA for the assessment period

from 01.04.2009 to 31.03.2014 u/s.42 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act).

2. In order to avoid unnecessary repetition of facts and to get rid of complexity arising out of the assessment order passed by the AA, the facts of the case is depicted here in short manner, which runs as follows:

The dealer in the instant case i.e. M/s. Jagabandhu Enterprisers Pvt. Ltd., Bhubaneswar is a Private Limited Company incorporated under the Indian Companies Act, 1956 which executes works contract along with trading of HSD, Petrol, Lubricants etc. being an authorised dealer of Hindustan Petroleum Corporation Ltd. Basing upon the Audit Visit Report (AVR), the Audit Team consisting of Sales Tax officer, Bhubaneswar-IV Circle, Bhubaneswar visited the place of business of the dealer on dtd.18.02.2015 where the D.G.M. of the Company was present. After verification of the books of account and other relevant documents as per the AVR, the dealer was assessed u/s.42 of the OVAT Act. As alleged in the AVR, the DGM stated that, the main activities of the company is execution of electrical works contract and trading of petrol, diesel and lubricant of HPCL besides supply of tower equipments to different organisations. Although being confronted, the dealer produced his entire statements relating to his business transactions for the period under assessment but failed to produce supporting documents along with periodic VAT and Entry Tax returns covering

the above mentioned tax period. After thorough scrutiny of the AVR, the AA observed the dealer with the following discrepancies found in the AVR.

- (i) The dealer maintained purchase and sale register but maintained stock register for petrol outlet manually. On being asked, the authorised representative i.e. DGM could not be able to produce purchase invoice in case of works contract.
- (ii) The DGM-cum- Authorised Representative could not disclose the TDS certificate for the self-same period.
- (iii) Regarding production of way bill by the dealer, the audit team found that, the dealer has utilised 62 numbers of way bills amounting to Rs.5,52,44,220/- and cancelled 19 numbers of way bills amounting to Rs.2,32,94,929/- during audit period and paid entry tax of Rs.3,73,810/- and submitted only 10 numbers of Form 'C' amounting to Rs.4,60,92,729/-.
- (iv) On inter-state purchase of goods, the dealer stated that, the machinery and materials are being purchases for works contract purposes.
- (v) The dealer claimed entry tax both basic value and freight but could not produce the copy for verification.
- (vi) The dealer on its own whim even if obtained supply order from OPTCL, Odisha Bhubaneswar but placed purchase order to Kolkata base companies, i.e. M/s. AKPI, Kolkata, M/s. GOCPL and M/s. Aditya Birla

Insulator etc. using own way bill and instead shown the name of the consignee as OPTCL in his invoices.

On the other hand, the dealer objected the same allegations by submitting written submission and the related papers and documents before the AA. After careful perusal of all the supporting documents and evidence and moreover the copy of contract, the AA found that, the dealer has been awarded the work order for commissioning of towers and constructions of 33 KV and other relevant works. Apart from that, the dealer was also awarded work order for erection and commissioning of towers and the materials have been supplied by the Principal contractee and the contractor has used very nominal materials in the Works Contract. As per the AVR, the dealer should have been awarded labour and service charges @25% but indeed the dealer has claimed for 100% deduction towards labour and service charges for erection and commissioning work as the materials have been supplied by the Principal contractee. Accordingly, the dealer claimed that from the entire gross receipt of Rs.9,01,58,233/-, he is entitled for deduction of Rs.7,84,37,663/- i.e. @87%. In the wake of the above analysis, the AA after taking into consideration of the above discussed facts, written submission and supporting documents adduced by the dealer, allowed 65% deduction towards labour and service charges on the entire gross receipt of the dealer i.e. to the tune of Rs.5,86,02,851/-. As

regards the turnover of Petrol Outlet of the dealer at Chadheidhara under HPCL, the dealer has effected total supply of Rs.4,41,07,498/- against purchase of Rs.1,29,63,379/-. Out of this the dealer has effected taxable sales @4% tax at Rs.2,90,39,767/- and @5% tax at Rs.1,50,67,730/- wherein the dealer has claimed ITC of Rs.6,13,964/-. Similarly in connection with execution of works contract, the dealer has received gross payment of Rs.9,01,58,233/- against erection and commissioning of electrical towers at different places. Thus, after deduction of Rs.5,86,02,851/- towards labour and service charges the TTO of the dealer is determined at Rs.3,15,55,382/ and the differential amount of Rs.2,66,03,505/- is added to the TTO of the dealer as per different tax rates. Accordingly, the GTO of the dealer for the above tax period stood at Rs.69,69,39,400/- from which the dealer is allowed deduction of Rs.25,16,988/- towards collection of VAT, Rs.5,86,02,851/- towards labour and service charges and Rs.55,54,12,483/- towards sale of Schedule 'C' goods. The TTO of the dealer is now at Rs.8,04,27,078/- which is taxable at different tax rates that became calculated to Rs.46,96,090/-. The dealer is allowed ITC of Rs.13,95,232/-. From the net Output Tax of Rs.33,00,858/-, the dealer has already paid Rs.30,61,611/- in shape of TDS. So, the balance amount of Rs.2,39,247/- is payable on the dealer and penalty equal to the amount of tax assessed u/s.42(5)

of the OVAT Act became calculated to Rs.4,78,494/-, which the dealer is required to pay as per the assessment order.

3. Being aggrieved with the order of assessment passed by the AA, the dealer-appellant preferred first appeal before the learned FAA as JCST, Bhubaneswar Range, Bhubaneswar with the plea that, the order of assessment passed by the AA raising extra demand of Rs.4,78,494/- payable by the dealer is illegal, unjust and non-application of mind.

4. The learned FAA-cum-JCST after thorough scrutiny of the assessment order and careful consideration of argument from the counsels of both sides, allowed the appeal in part and conversely passed the order by making the dealer eligible to get refund of Rs.9,71,208/- subject to verification of the genuineness of the TDS certificate furnished by the dealer.

5. Being aggrieved with such adverse, capricious and unwarranted order passed by the learned AA, wherein the dealer was allowed excessive amount of deduction towards labour and service charges @75% i.e. to the tune of Rs.9,71,208/-, State has come up with this second appeal before this forum for the ends of justice.

6. The appeal is heard in presence of both the parties with the requisite materials available on record. Learned Addl. Standing Counsel Mr. S.K. Pradhan was present for the State and learned Counsel Mr. S.C. Sahoo made his appearance on behalf of the dealer-respondent.

Learned Counsel Mr. Sahoo advanced his argument claiming allowance of deduction @87% towards labour and service charges as decided by the AA is just and proper, but miserably failed to produce any supporting documents or materials in order to substantiate his claim.

Conversely, the learned Addl. Standing Counsel for the State, Mr. Pradhan while countering to the argument advanced by the learned Counsel for the dealer, cited provision under Appendix to Rule 6(e) of the OVAT Rule, which reads as follows :

6. Determination of taxable turnover.-

xx	xx	xx	xx
xx	xx	xx	xx
xx	xx	xx	xx

(e) in case of works contract, the expenditure incurred towards labour and service, subject to the condition that evidence in support of such expenses are produced to the satisfaction of the Commissioner :

Provided that where a dealer executing works contract, fails to produce evidence in support of expenses 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, expenses on account of labour and service shall be determined at the rate specified in the Appendix.”

7. Perused the assessment order, first appeal order as well as the lower court records. Gone through the materials available on record and arguments advanced by counsels from both the sides. After careful consideration of the documents and materials available on the record, it is

found that, although the counsel for the dealer produced detail statements of his transactions for the period under assessment, but neither could produce any supporting documents nor any cogent evidence before this Tribunal to establish his claim upto the satisfaction of this authority. On the other hand, when we look upon the Appendix to Rule 6(e) of the OVAT Rules, it is found quite obvious that, in absence of any genuine or cogent evidence to claim exemption towards labour and service charges, the rate of tax will definitely be fixed as per the rules prescribed in the Appendix. So, the dealer is no way eligible to get refund as allowed by the FAA, which is otherwise unacceptable and contrary to the provisions of law. So, it is a fit case to be remanded back to the AA for assessment afresh keeping in view the aforementioned provisions of law as observed above. Accordingly, it is ordered.

The appeal by the State is allowed and the impugned order passed by the FAA is set-aside. The AA is hereby directed to assess the dealer afresh and raise demand accordingly.

Dictated and Corrected by me,

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

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

