



assessment stage, the LAO observed that during the year 2001-02, the assessee has executed works contract under two divisions namely, i) Executive Engineer, Podgada Dam Division, Kathiguda and ii) Executive engineer, Upper Indravati Left Canal Division-III, Dharamgarh.

Under Executive Engineer, Podgada Dam Division, Kathiguda, the assessee has executed the following works:

- a. Restoration and rehabilitation of penstock grade civil works and erection of penstock liner vide agreement No.2/95-96 against which he has received a gross payment of Rs.2,33,76,328.00 in which a sum of Rs.13,09,159.00 relates to tax paid materials supplied by the contractee duly certified as tax-suffered.
- b. Manufacture, testing, transportation, supply and erection of 24 numbers of expansion joints vide agreement No. LCB-01/97-98 against which a sum of Rs.5,82,852.00 has been received by the assessee that includes a sum of Rs.46,780.00 towards supply of tax-paid materials by the contractee, duly certified.
- c. Construction of Upper Indravati Power House including transition of Civil Works (balance works) vide agreement No.5F2/2000-01 against which the assessee has received a sum of Rs.11,22,376.00 that includes tax-paid materials supplied by the contractee for Rs.80,113.00.

Under Executive Engineer, Upper Indravati Left Canal Division-III, the LAO observed that the assessee has received a sum of

Rs.1,40,00,000.00 vide bill No.17<sup>th</sup> R/A for the work construction of canal syphon of Golamunda distilliary across river Tel near Dharamgarh vide agreement No.30F2/01-02.

Accordingly, the LAO determined the gross receipt at Rs.3,90,81,556.00. In the absence of books of accounts like muster roll, accounts of material utilized and copies of relevant agreement, he determined the labour and service charges @32% towards deduction from the gross receipt as per works department circular No.10273/W. dtd.07.04.1986 read with CCT Circular No.16715/CT dtd.30.07.1999. He further allowed deductions towards cost of tax paid materials supplied by the contractee valued Rs.14,36,052.00 and accordingly determined the TTO at Rs.2,51,39,406.08 on which he calculated tax @8% and surcharge @10% on the tax so calculated, resulting in tax due of Rs.22,12,267.72. Since, a sum of Rs.16,63,558.00 has already been deducted at source towards tax as per section 13-AA of OST Act, he demanded the balance tax of Rs.5,48,680.00 which was challenged by the assessee before the ld. FAA in shape of first appeal.

3. At appellate stage, the ld. FAA after due examination of the case, reduced the tax demand raised by the LAO that resulted in a refund of Rs.3,55,296.00 with following observations:

- i. He allowed a sum of Rs.1,40,00,000.00 towards deduction from the gross receipt as advance taken that doesn't form part of the GTO.

- ii. He allowed first point tax paid materials of Rs.14,36,052.00 towards deduction as has been allowed by the LAO in his assessment order.
- iii. He allowed labour and service charges @35% towards deduction from the GTO on the ground that that the work of restoration and rehabilitation of penstock grade civil work and erection of penstock and liners is situated in a very difficult terrain of steep hill slope and as such, it is difficult to execute the structural work through unskilled labourers for which the assessee has engaged skilled/expert nature of work men with experienced supervisory staff.

With these observations, the ld. FAA reduced the demand that resulted in a refund of Rs.3,55,296.00 for the material year which is now challenged by the state in shape of second appeal before the Tribunal mainly on following grounds appended to the memorandum of appeal:

- A. "That the deduction of Rs.14,36,052.00 towards first point tax paid materials allowed by the learned ACST without verifying the authenticity of the claim of the dealer-appellant is unjust and improper.
- B. That the deduction of 5% towards service charges allowed by the learned ACST against 2% allowed by the learned Assessing Officer is erroneous."

4. During the course of hearing, the ld. Standing Counsel (C.T.) for the State vehemently argued against the appeal order passed by the ld. FAA being unjust, illegal, improper, arbitrary and bad in law and accordingly argued to quash the said order with a prayer for restoration of the assessment order of LAO relating to the impugned year.

5. Per contra, the ld. Counsel for the dealer-respondent argued in favour of the order of ld. FAA, being just and proper in the facts and circumstances of the case.

6. On examination of the orders of forums below, it is revealed that both the fora below have allowed first point tax paid materials valued Rs.14,36,052.00 supplied by the contractee and duly certified towards deduction from the gross receipt which is sustainable in the eyes of law as OST Act provides for single taxation at any point of purchase/sale and the question of double taxation for the same commodity under the Act is not permissible as per Statutory Provision. As such, we are of the considered view that both the forums below have rightly allowed deductions of first point tax paid materials supplied by the contractee from the gross receipt that doesn't warrant any further interference by this Tribunal.

Addressing to issue no.ii raised by the State above, we observe that the ld. FAA has allowed 35% deduction towards labour and service charges on the ground that the work to be executed is situated in a very difficult terrain of steep hill slope that requires skilled labourer with

experienced supervisory staff. Accordingly, for this structural work, the ld. FAA allowed labour and service charges @35% against 32% determined by the LAO in his assessment order. We, now, further observe that basing on Works Department Circular No.10273/W. dtd.07.04.1986 read with CCT Circular No.16715/CT dtd.30.07.1999, the LAO has allowed 32% towards deduction on labour and service charges that doesn't have any legal sanction by the Statute. On the contrary, we rely on rule 4-B of the OST Rules (OST Amendment Rules, 2010) inserted Vide Notification dtd.06.02.2010 effective from 30.07.1999 that prescribes the following percentage of labour and service charges to be allowed in absence of books of accounts or non-credible books of accounts maintained:

<b>Sl.No.</b>	<b>Nature of the works</b>	<b>Percentage of labour, service and like Charges of the total value of the works.</b>
1.	Structural works	35%
2.	Earth works, canal work Embankment work etc.	65%
3.	Bridge work	35%
4.	Building work	35%
5.	Road work	45%

Since, in the instant case, the assessee has executed structural works and since he has not maintained books of accounts towards labour and service charges, he is entitled for deduction @35% towards labour and service charges from the gross receipts as determined by the

Ld. FAA in his order. We don't find any irregularity or illegality committed by the ld. FAA on this score.

7. As we have properly addressed both the points raised by the State-appellant as per our above observations, it is now, ordered.

The appeal filed by the State is rejected being devoid of any merit and the order passed by the ld. FAA for the impugned year is confirmed.

Dictated & Corrected by me,

Sd/-  
**(Srichandan Mishra)**  
Accounts Member-II

Sd/-  
**(Srichandan Mishra)**  
Accounts Member-II

I agree,

Sd/-  
**(A.K. Das)**  
Chairman

I agree,

Sd/-  
**(S. K. Rout)**  
2<sup>nd</sup> Judicial Member