

**BEFORE THE DIVISION BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.**

S.A.No. 69(V)/2017-18

(From the order of the Id.ACST (Appeal), South Zone, Berhampur,
in Appeal No. AA(VAT) 11/2011-12, dtd.26.04.2017, confirming
the order of Assessing Officer)

Present: Sri S. Mohanty & Sri R.K. Pattnaik
2nd Judicial Member Accounts Member-III

M/s. Usha Projects (India) Pvt.Ltd.,
At- Syryavihar, KIIT Campus,
Patia, Bhubaneswar. Appellant

-Versus-

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

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

(Assessment period : 06/2005 to 03/2010)

Date of Hearing: 27.08.2018 *** Date of Order: 27.08.2018

ORDER

In this second appeal challenge has been made to the order of the learned First Appellate Authority/Addl. Commissioner of Sales Tax (Appeal), South Zone, Berhampur (in short, FAA/ACST) dtd.26.04.2017 in First Appeal Case No. AA(VAT) 11/2011-12 confirming thereby the order of Assessing Authority/Deputy Commissioner of Sales Tax, Bhubaneswar-III Circle, Bhubaneswar (in short, AA/DCST) passed in a proceeding u/s.42 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act).

2. The undisputed facts giving rise to this second appeal are : Being identified for tax audit as per Sec.41(1) of the OVAT

Act, audit was conducted as per sub section (3) taking the period from 01.06.2005 to 31.03.2010 relating to the dealer who was engaged in execution of works contract. The Audit team had suggested for audit assessment with the observation that, the dealer should be entitled to deduction towards labour and service charges @90% from out of the total amount received against the execution of works contract during the period. The AA took consideration of the books of account and connected documents, but since the dealer was found to have not maintained the muster roll or details of the account against labour and service charges, he reduced the deduction from 90% to 85%. In consequence thereof, the balance tax due of the dealer was calculated at Rs.6,52,811/-. In addition to that, penalty u/s.42(5) was also imposed to the extent of Rs.13,05,622/-.

3. Being aggrieved with such rate of deduction towards labour and service charges and a demand of tax and penalty, the dealer preferred appeal before the FAA. The FAA in the impugned order passed an ex-parte order and did not interfere with the order of AA, thereby the demand of tax and penalty remained undisturbed.

4. Feeling aggrieved by the order of FAA as such, the dealer has preferred this second appeal. It is contended by the dealer that, the works executed by the dealer was 100% labour oriented work and for that reason, the dealer had claimed 100% deduction towards labour and service charges. But the authorities below without application of mind has allowed deduction @85%. In cross objection the State has supported the findings of the FAA by stating therein that, the FAA has dealt each and every item under

the works contract. So, the impugned order calls for no interference.

5. The rival claims by the parties in this appeal gives rise to the following questions for decision i.e. (i) What should be the exact amount of deduction towards labour and service charges in the case in hand and (ii) What order ?

Findings :

6. In the case in hand, we found, the dealer was a works contractor engaged in execution of works contract entered between the dealer and the contractees. The Audit report as it revealed, the Audit team had scrutinized the details of the books of account relating to purchase of different goods utilized in contract jobs and the payments received towards execution of works contract. It has opined that, the deduction towards labour and service charges should not be more than 90% and accordingly it has suggested for TTO of 10% out of the total gross receipt. As per the assessment order, the AA had verified the contracts, the nature of contract such as lying and installation, testing and commissioning of pipe lines and materials used in the execution of works contract. But since the dealer could not produce the muster-roll or details of the books of account towards claim of labour charges, then on application of best judgment principle he allowed deduction @85%. On the other hand, the FAA in the impugned order has confirmed the order of AA. The fair and lengthy order of the FAA as it revealed, the FAA has gone into the details of the grounds taken by the dealer before him but in the end it is noticed that, he has passed an order, which is an ex-parte order and the order is a non-reasoned one.

7. Be it stated by the FAA that, the dealer contractor could not produce the details of the books of account in respect of the labour and service charges whereas in the grounds of appeal, the authorized representative of the dealer has admitted the fact of utilization of some materials in execution of works contract. So, in absence of any supporting documentary evidence, the deduction given by the AA is found to be reasonable.

8. The above order is under challenge before us. The Audit report contains the amount received by the dealer against the job done under works contract. It also reveals, the dealer had produced the details of the purchase bills of the goods. It is a fact that, the dealer could not produce the muster roll or account of labour charges. This leads to a definite presumption that, the dealer has not maintained the register of labour component. But if we put the facts in other way such as, if the entire amount received is known and the price of the goods utilized is known, then it can be presumed that labour and service charges can be counted. On the other hand, the impugned order before us as it revealed, the dealer has failed to produce supporting documents against the pleas taken before the FAA. However, when the dealer having books of account and connected documents to show the details of the price of the goods utilized and the details of the amount received, then the AA can determine the labour and service charges or else he should first go for application of Appendix to Rule 6(e) for determination of labour and service charges, if found applicable and only in the event the Appendix is found not proper, keeping in view the nature of work done, then he should proceed to apply best judgment principle to determine the labour component. In Sri Rajesh Panda Vrs. State of Odisha and Others in W.P.(C)

No.3681/2004 dtd.11.07.2018 it is held by the Hon'ble Court that reasons being a necessary concomitant to passing an order, it is an assurance that the authorities concerned applied its mind to the facts on record. It is vital for the purpose of showing a person that he is received justice. In **Steel Authority of India Ltv. Vrs. Sales Tax Officer, Rourkela-I Circle and Others (2008) 60 (VST) 181 (SC)** the authority is in view that, reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same it becomes lifeless. Failure to give reasons amounts to denial of justice. Therefore, in terms of the observation by the Hon'ble Court, we are of the view that, the order passed by the FAA being a non-reasoned one, is not sustainable. Accordingly, it is ordered.

The appeal by the dealer is allowed on contest. The impugned order is set-aside. The matter is remitted back to the FAA for disposal of the appeal afresh in the light of the observation above. Learned FAA is requested to dispose of the remand appeal within a period of six months hence.

Dictated and Corrected by me,

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

I agree,

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

Sd/-
(R.K. Pattnaik)
Accounts Member-III

