BEFORE THE SINGLE BENCH-II, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 657 of 2007-08

(Arising out of order of the learned Asst. Commissioner of Sales Tax, Koraput Range, Jeypore, in First Appeal Case No. AA (KOII)55/1999-2000), disposed of on dated 12.07.2007)

Present: **Shri Sanjeeb Dubey,**
1st Judicial Member

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

-Versus-

M/s. Bhagheeratha Engineering Ltd., Antamoda, Rayagada. ... Respondent

For the Appellant : Mr. D. Behura, S.C. &
Mr. N.K. Rout, A.S.C.
For the Respondent : N o n e

Date of hearing: 26.07.2024 *** Date of order: 01.08.2024

O R D E R

The State-appellant has preferred this appeal challenging the assessment order dtd.30.03.1999 passed by the Sales Tax Officer, Koraput II Circle, Rayagada, Ward-A-assessing authority.

2. The respondent being a public limited company had executed works contract awarded by S.E. Railways for construction of Koraput-Rayagada Railway line. The assessing authority carried out assessment of the works contract u/s.12(4) of the Orissa Sales Tax Act, 1947 for the assessment year 1995-96. In course of such assessment, the assessing authority determined the net taxable turnover after allowing deduction towards labour and service charges @ 43% and 2% respectively on the gross turnover. Accordingly, tax @ 4% was imposed on the net taxable turnover which came to Rs.13,928.00. Since the respondent had already paid tax of Rs.15,819.00 in shape of TDS, the same was adjusted against the arrear tax and refund of Rs.1,891.00 was ordered.

3. Despite due service of notice, none appeared for the respondent. As such, the matter was heard in absence of the respondent.

4. The appellant-State has challenged the rate of deduction towards labour and service charges allowed by the assessing authority so also the rate of tax thus imposed. It was contended by the learned Standing Counsel for the appellant that the assessing authority could have followed the standardized deduction towards labour and service charges basing upon the circular issued by the Works Department, in absence of any books of account maintained in this regard. It was further

argued by the State that the assessing authority should have taxed @ 8% instead of 4% on the net taxable turnover.

5. Evidently, the respondent could not produce any books of account to show his expenditures towards labour and service charges for the works contract undertaken by him. As per sec.5(2)(AA)(i), "taxable turnover" in respect of "works contract" shall be deemed to be the gross value received or receivable by a dealer for carrying out such contract, less the amount of labour charges and service charges incurred for the execution of the contract. During the assessment period in question, there was no standard fixed to ascertain the labour and service charges for the purpose of deduction. Such deductions were being permitted basing upon the proper books of account maintained in this regard. It is only by way of Orissa Sales Tax (Amendment) Rules, 2010, Rule 4-B of the OST Rules was introduced making standardized deductions towards labour and service charges by works contractors. The said amendment is having retrospective effect from 30th July, 1999. In the instant case, since the respondent could not produce any proof to establish his expenditures towards labour and service charges, the assessing authority to the best of his judgment, allowed deduction @ 43% and 2% towards labour and service charges respectively. This apart, imposition of rate of 4% sales tax on execution of works

contract was there at the relevant period of assessment. This rate of 4% was enhanced to 8% vide notification No.CTA/116/95F-32008 dtd.18.08.95 issued by the Finance Department. The transaction in question had taken place during the month of April, 1995. As such, the assessing authority has not done any wrong in imposing tax @ 4% which was prevalent at that time.

6. In the wake of the above, this forum does not find any infirmity in the impugned assessment order. Consequently, the appeal is dismissed sans any merit.

Dictated & corrected by me,

Sd/-
(S. Dubey)
1st Judicial Member

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(S. Dubey)
1st Judicial Member