

Cuttack (in short, Id.ACST/FAA) in First Appeal Case Nos.AA-111 & 112-CU-11-3/2000-2001 and AA-277/CU-II-J/02-03 enhancing the orders of assessment in first appeal case nos.AA-111 & 112-CU-II-J/2000/2001 and confirming the order of assessment in first appeal case No.AA-277/CU-II-J/02-03 against the orders passed by the learned Sales Tax Officer, Jagatsinghpur Circle, Paradip, Jagatsinghpur (in short, Id.STO/AO) u/s.12(4) of the Odisha Sales Tax Act, 1947 (in short, OST Act) for the assessment year 1996-97, 1997-98 and 1998-99 respectively.

3. The brief facts of S.A.Nos.1173-74/2004-05 is that the dealer-appellant M/s. Khazana Projects & Industries (P) Ltd. being a works contractor, executed works for Sr. Project Manager, S.E. Railway, Bhubaneswar. The dealer executed the work of execution of earth work and other allied works between K.458.6 Km to 461.70 Km for doubling between Raghunathpur and Rahama Stations of Cuttack-Paradip Section (Orissa) vide Agreement No.50/CPM/BBS/SER/97 and execution of earth work and other allied works between 461.70 Km to 465.00 Km for the doubling between Raghunathpur and Rahama stations of Cuttack-Paradip Section (Orissa) vide Agreement No.51/CPM/BBS/SER/97. At the assessment stage, dealer-appellant produced (a) statement of payments received (b) original TDS certificate (c) copy of Running Account bills (d) copies of the contract agreement No.50/CPM/BBS/SER 97 & No.51/CPM/BBS/SER/97 and (d) Itemwise analysis of the contract work but failed to produce books of accounts relating to labour and service charges. In absence of accounts, learned

STO proceeded to assess the dealer. During course of assessment for the year 1996-97, ld.STO found that the gross amount received by the dealer was to the tune of Rs.45,37,035/. Accordingly, he determined the GTO at Rs.45,37,035/- and allowed deduction of Rs.40,83,331.50 (90% of the gross value of bills) towards labour and service charges and took the balance as TTO. Accordingly, tax payable including surcharge was calculated at Rs.39,925.90 on computation of tax @8% on TTO of Rs.4,53,703.50. After giving credit of Rs.1,81,482/- towards deduction u/s.13AA of the OST Act; an amount of Rs.1,41,556/- was allowed towards refund. Similarly, the gross turnover during the year 1997-98 was determined at Rs.1,23,24,801/-. The TTO was determined at Rs.12,32,480.10 after allowing deductions of Rs.1,10,92,320.90 (90% of the gross receipt) towards labour and service charges. Accordingly, tax payable including surcharge was calculated at Rs.1,08,458.24. After giving credit of Rs.3,28,550/- towards deduction u/s.13AA of the OST Act, refund of an amount of Rs.2,15,097/- was allowed.

The fact of S.A.No.981/2004-05 is that the dealer being a works contractor executed works contract under Sr. Project Manager, S.E. Railway, Bhubaneswar. The scope of work relates to the execution of earth work and other allied works between 461.70 Km to 455.00 Km for doubling between Raghunathpur-Rahama station in Cuttack Paradeep section. The dealer received Rs.84,14,401/- from the contractee which was treated as the gross turnover of the dealer. After examination of the books of account produced before the ld.AO, order of assessment was passed allowing deduction of 40% of

the gross receipts towards labour and service charges resulting extra demand of Rs.3,37,545/-.

4. Being aggrieved with the orders of assessment, dealer preferred First Appeal Nos. AA-111 & 112 CU-II-J-2000-2001 & AA.277-CU-II-J/2002-03 before the Id.Asst. Commissioner of Sales Tax, Cuttack-II Range, Cuttack wherein assessment was enhanced in First Appeal Nos. AA.111 & 112/CU-II-J/2000-2001 but confirmed in First Appeal Case No.AA.277-CU-II-J/2002-03.

5. Further being aggrieved with the orders of the Id.FAA, present set of appeals are preferred by the dealer before this forum with the prayer to set aside the same.

6. No cross objection is filed by the State-respondent in any of these cases.

7. Heard the contentions and submissions of both the parties in this regard. Perused the impugned orders of both the fora below vis-à-vis the grounds of appeal and the materials available on record. In S.A.No.1173-1774/2004-05, the contention of the dealer is that the deductions allowed by the Id.STO towards labour and service charges @90% of the gross receipt is justified. So, let us have a glance to it's justification. The case record reveals that the dealer-appellant had entered into two numbers of agreements with the Sr. Project Manager, S.E. Railway, Bhubaneswar. The Agreement No.50/CPM/BBS/SER/97 is for undertaking the work of "Execution of Earth work and other allied works between 458.6 Km to 461.70 Km and Agreement No.51/CPM/BBS/SER/97 is also for the same work from 461.70 to 465.00 Km for the

doubling between Raghunathpur and Rahama stations of Cuttack-Paradip section (Orissa). It becomes evident that the Id.AO had allowed 90% deduction towards labour and service charges from the payments received by the dealer from the Sr.Project Manager, S.E. Railway, Bhubaneswar even if the dealer-appellant had supplied "Moorum and sand" for the doubling between Raghunathpur and Rahama stations of Cuttack-Paradeep Section. As per the agreement executed, the dealer had to supply moorum and sand by mechanical means from approved quarry. For better appreciation of the involvement of materials and labour so also the amount received by the dealer for the years 1997-98 as per Agreement No.50/CPM/BBS/SER/97 be looked into which is as follows :

Involvement of purely materials Rs.17,85,677.64

Involvement of labour & materials Rs.31,86,811.40

and involvement of only labour Rs.6,20,015.10

So, with reference to this figure, it is apparent that the deductions allowed by the Id.AO towards labour and service charges are excess to the actual allowable ratio. So, the material portion being considered at 60%, allowing of 40% of the gross value of the bills towards labour and service charges appears to be genuine. With regard to allowance of TDS certificate, it reveals that the same stands in the name of one M/s. Anil Credit Commercial (P) Ltd. In this connection, submission of the dealer is that even if earlier the original R.C. was issued in the name of M/s. Anil Credit Commercial Pvt. Ltd. and later on it was amended to M/s. Khajana Projects & Industries Pvt. Ltd. for which the assessment proceeding was

taken up in the name of M/s. Khajana Projects & Industries Pvt. Ltd. To ascertain its genuineness, Xerox copy of R.C. is filed by the dealer. Be that as it may. But allowing credit towards tax deducted at source u/s.13AA of the OST Act in favour of M/s. Khajana Project & Industries (P) Ltd. by the Id.AO is genuine even if the same stands in the name of M/s. Anil Credit Commercial (P) Ltd. Likewise, with regard to imposition of surcharge, no explanation in conformity with the terms of the notice is offered by the dealer. It is evident that on completion of assessment for the year 1997-98, surcharge @10% was levied by the Id.STO. But the proposition of law entails that surcharge is to be levied @15% of the total tax payable by a dealer whose GTO in the year exceeds Rs.1 crore w.e.f. 15.11.1997. If that is so, the GTOs and TTOs are to be assessed as done by the Id.FAA which is as follows :

1996-97

G.T.O. (D)	Rs.45,37,035.00
(-) Labour & service charge (40%)	<u>Rs.18,14,814.00</u>
T.T.O. (D)	Rs.27,22,221.00
Tax @8% on T.T.O.	Rs.2,17,777.68
Surcharge @10%	<u>Rs. 21,777.76</u>
	Rs.2,39,558.44
Tax deducted at source U/s.13-AA of the O.S.T. Act	<u>Rs.1,81,482.00</u>
	Rs. 58,073.44
	Or
To pay	<u>Rs. 58,073.00</u>

1997-98

G.T.O. (D)	Rs.1,23,24,801.00
(-) Labour & service charge (40%)	<u>Rs. 49,29,920.40</u>
T.T.O. (D)	Rs. 73,94,880.60

Tax @8% on T.T.O.	Rs.5,91,590.48
Surcharge	<u>Rs. 71,727.88</u>
	Rs.6,63,318.36
Tax deducted at source	
U/s.13-AA of the O.S.T. Act	<u>Rs.3,23,555.00</u>
	Rs.3,39,763.36
	Or
To pay	<u>Rs. 3,39,763.00</u>

In toto, the enhancement of assessment for the year 1996-97 and 1997-98 by the Id.FAA is genuine.

With regard to S.A.No.981/04-05, the agreement executed between the contractor and contractee makes it clear that the nature of work is the execution of earth and allied works. Bereft of such, the dealer has candidly admitted that moorum road is to be constructed and for this, the dealer has to use sand, moorum during execution of such contract work. It also cannot be refuted the possibility of use of other materials for construction of such road where the transfer of property in goods constitute substantial portion. So, 40% of deduction for labour and service charges for such nature of work is proper and reasonable. Relating to acceptance of TDS of Rs.95,210/-, dealer-appellant failed to substantiate cogent evidence against such payment. If on this score, any cogent evidence could have been adduced by the dealer, certainly matter would have been otherwise.

So, the scenarios of these cases speak with certainty that all the aspects have properly been adjudicated upon by the Id.FAA in consonance with the settled position of law and as such, the same need no interference.

8. In the result, we have no hesitation to dismiss the appeals. Accordingly, the set of appeals preferred by the dealer are dismissed and the orders of the ld.FAA are hereby confirmed.

Dictated and Corrected by me,

Sd/-
(S.K. Rout)
2nd Judicial Member

Sd/-
(S.K. Rout)
2nd Judicial Member

I agree,

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(M. Harichandan)
Accounts Member-I