

Sales Tax Act, 1947 (in short, 'OST Act') against the dealer-assessee for the period 2002-03.

2. The facts as revealed from the case record are as follows :-

The assessee in the instant case named and styled as M/s. Jagabandhu Enterprisers (P) Ltd. as an unregistered dealer was engaged in execution of works contract in the year 2002-03. Pursuant to a statutory notice served on it by the Sales Tax Officer it appeared before the authority concerned through its Advocate with books of account for assessment pertaining to the year 2002-03. The Advocate of the dealer had also produced copy of the agreement/ works order, original TDS certificate, statement of payments received, sale statement, accountant audit report as well as a written note of compliance before the assessing officer and those documents were also examined by the assessing officer in detail. The dealer-contractor had claimed deduction of 90% of the gross payment received by it towards labour and service charges while submitting before the assessing officer that the works contract executed by it was purely labour oriented. The assessing officer also noticed that as per the contract documents the total materials needed for execution of the works contract were supplied by the contractee and as such the amount of materials transferred from the contractor to the contractee in course of execution of work was

almost negligible. However, at the same time as the assessing officer found out that the nature of work involved in the aforesaid works contract though labour oriented only yet the dealer had not maintained any books of account showing its expenditure towards labour and service charges. Therefore, the assessing officer allowed deduction to the extent of 62% only towards labour and service charges from the gross payment received by the dealer. The assessing officer completed the assessment to his best judgment and after due calculation of dealer's tax liability for that relevant period held that the dealer was entitled to get refund of ₹1,24,507.00 as per the provision of law.

The dealer being dissatisfied with this order of assessment preferred an appeal before the first appellate authority seeking his intervention on the ground that since the works executed by it was purely labour oriented it should get at least 90% deduction towards labour charges from its gross payment and 5% towards service charges. The first appellate authority after considering all the materials available on record held the assessment just and proper in the instant case as the assessing officer had allowed 62% deduction towards labour and service charges after going through the contract documents in detail. He , therefore, confirmed the order of assessment.

3. Being aggrieved the State preferred this appeal challenging the order passed by the first appellate authority on the

ground of its being unjust, illegal, arbitrary and bad in law. In addition to this further contention of the State is that the dealer-contractor being an unregistered dealer having previous continuous liability had received a gross payment of ₹1,89,79,856.00 from M/s. Jyoti Structures Ltd., Bhubaneswar during the period under assessment for construction of switch yard foundation associated work of GRIDCO Dubri sub-station and in the absence of its books of account both the authorities below had allowed it to have 62% deduction towards labour and service charges from the gross payment received by it in violation of Rule 4B of the OST Rules. Further as per amended provision of Section 12(5) of the OST Act penalty is also leviable equal to one and half times of the tax assessed which was not imposed by both the authorities concerned.

4. The dealer-assessee filed its cross-objection mentioning therein that the second appeal preferred by the State is liable to be dismissed for the reasons that the order of assessment concluding with a direction to refund some amount to the dealer-assessee was confirmed by the first appellate authority and as such the dealer-assessee was not liable to pay further tax for that particular period. On the other hand the forums below were not justified in determining its GTO at ₹1,89,79,856.00, TTO at ₹72,12,345.28 and OST dues at ₹6,34,686.00 instead of determining its TTO as 'Nil' for the said period on account of sole reason that most of the materials were supplied to it

by the contractee and other materials utilized in the work being first point tax paid goods. The dealer had executed the works contract by engaging labourers only under its supervision. Therefore, Rule 4-B of the OST Rules being an amendment with retrospective effect has no bearing on the issue. The dealer thus urged before this forum to reject the State appeal. Its further contention is that the forums below were also not justified in taxing the materials brought by the dealer-assessee from outside the State and utilized in the works contract in separate tax group. Then the dealer-assessee also challenged the assertion of the State regarding imposition of penalty by the authority which is a quasi-criminal proceeding and apart from the same as TDS had been deducted from the gross bills in the instant case and the dealer was allowed to get refund from the Department as per the orders of the forums below the appellant's claim for imposition of penalty u/S. 12(5) of the OST Act against the dealer should be considered as baseless.

5. In course of hearing learned Addl. Standing Counsel (CT) brought to the notice of the Bench the provision of Rule 4-B of the OST Rules which is quoted here for better appreciation.

Quote :

"4-B Deduction of Labour and Service Charge by Works Contractors :

In case of works contract, deduction of the expenditure incurred towards labour and service as provided in Section -5(2)AA of the Act shall be subject to production of evidence in support of such expenses to

the satisfaction of the Assessing Authority. In the Cases where a dealer executing works contract, fails to produce evidence in support of expenses incurred 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 are found to be not credible, expenses on account of labour and service shall be determined at the rate specified in the table below:

Sl.No.	Nature of the Works contract	Percentage of labour, service and like charges of the total value of the works
(1)	(2)	(3)
1	Structural Works	35%
2	Earth Work, Canal Work Embankment Work etc.	65%
3	Bridge Work	35%
4	Building Work	35%
5	Road Work	45%

Unquote

6. It is clearly revealed from the aforesaid provision that when a dealer entrusted with execution of works contract fails to produce documents/evidence from which the total amount spent by it towards labour and service charges could have been determined then this rule i.e. 4B of the OST Rules is required to be applied for calculating the percentages for deduction towards labour and service charges and further this amendment though came into force in the year 2010 yet it was given retrospective effect from 30.07.1999. Admittedly in the instant case the order of assessment was passed on 25.01.2007 and the first appeal was disposed of on 22.03.2011. At the time of hearing of

the first appeal the authority concerned should have come to a conclusion regarding applicability of Rule 4-B of the OST Rules in the present case because he was also aware that the dealer in the instant case had failed to produce its books of account or any relevant document from which its expenditure towards labour and service charges could have been ascertained or determined then. Both the authorities below have not mentioned anything regarding the nature of works executed by the dealer pertaining to the relevant works contract. Therefore, the matter certainly requires to be remitted back to the assessing officer who had gone through the works contract in detail as revealed from the impugned order and concluded that the works executed by the dealer-assessee was mostly labour oriented. He would do well in applying Rule 4-B of the OST Rules to find out the exact nature of works executed by the dealer and corresponding percentage of labour and service charges to which the dealer would be entitled for deduction from the gross payment received by it. So far as imposition of penalty u/S. 12(5) of the OST Act is concerned, the assessing officer must follow the statutory requirement in its proper perspective to come to a just conclusion in this regard while passing the order of assessment afresh.

7. With the aforesaid observation the appeal preferred by the State is allowed and the impugned order is set aside. Cross-objection is disposed of accordingly.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Subrat Mohanty)
1st Judicial Member

I agree,

Sd/-
(Prabhat Ch. Pathy)
Accounts Member-I