



u/S.12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') for the period 2004-05.

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

The dealer-assessee M/s. R.P.G. Transmission Limited, Bhaskarganj, Balasore carries on business of executing works contract i.e. Railway electrification. In response to statutory notice the authorized representative of the dealer-contractor appeared before the assessing officer and produced the books of account as well as relevant documents before him. The assessing officer verified all those documents and found that the dealer had maintained proper accounts in respect of its inter-State purchases as well as inside the State purchases on payment of 1<sup>st</sup> point tax. Since the dealer was engaged in raising of 25 KV, AC 50 hertz. Single phase traction, overhead equipment, switching station, booster transformer station and LT supply transformer station at different places of the State as per agreements it raised a bill of ₹9,42,33,153.00 during the period under assessment and claimed deduction of ₹7,20,26,918.00 towards its inter-State transactions. He also claimed deduction towards labour and service charges to the extent of ₹1,60,92,154.00 and ₹30,66,850.00 towards 1<sup>st</sup> point tax paid goods. Further the dealer had purchased goods worth ₹1,62,68,282.00 from outside the State against Government way bills. As the dealer had

maintained proper accounts and submitted some xerox copies of documents relating to tax deducted at source; billwise payments received by it from the Railway and proper accounts in respect of labour and service charges, the assessing officer had allowed its claim towards deduction of labour and service charges. So far as purchase of goods by the dealer from outside the State on utilization of Government way bills and Form 'C' are concerned the assessing officer treated the same as sale in course of execution of works contract and taxed the same at the rate applicable to the goods inside the State. Thus on calculation the assessing officer held the GTO and TTO of the dealer at ₹5,53,26,375.00 and ₹2,34,89,810.00 respectively after allowing it deductions towards labour and service charges and also on 1<sup>st</sup> point tax paid goods. Ultimately the assessing officer determined the tax to be paid by the dealer at ₹16,26,015.44 and surcharge thereon at ₹1,17,406.51, thus in total ₹17,43,421.95 for which a demand notice was sent to it.

The dealer being aggrieved with the aforesaid order of assessment filed an appeal before the first appellate authority on the grounds of same being illegal, arbitrary and bad in law. It was then contended on behalf of the dealer that the Sales Tax Officer (in short, 'STO') should not have determined the GTO of the dealer on the basis of gross amount received by it during the period of assessment. Further the STO did not allow any deduction towards materials supplied by the

Railway and procured from the vendors approved by the Railway for which the TTO determined by the STO became illegal. It was also pointed out by the dealer in its grounds of appeal before the first appellate authority that procurement of goods from outside the State on inter-State sale should not have been taxed again in execution of works contract since those goods had already suffered tax in another State. The first appellate authority considering all these grounds raised by the dealer in its appeal as well as on perusing the order of assessment and documentary evidence on record such as deduction certificate issued by the Deputy Chief Electrical Division, Bhubaneswar concluded that goods procured from outside the State through Government way bills and statutory Form 'C' and utilization of such goods in execution of works contract had been appropriately taxed by the STO. Further the first appellate authority though was of the opinion that the STO had already allowed deduction towards labour and service charges at a higher rate than claimed by the dealer yet did not feel it proper to interfere with the same as the STO had allowed the same on examination of the books of account of the dealer. He also did not interfere with the fixation of GTO of the dealer-assessee by the STO on the gross amount received by the dealer during the period under assessment as per rule and therefore, on overall examination of the books of account and non-submission of detailed deposits of TDS made by the contractee and due to want of

complete TDS certificate in original he (the first appellate authority) confirmed the order of assessment.

3. The dealer then came up with this second appeal on the grounds that determination of the gross turnover on the basis of TDS certificate by the assessing authority which was upheld by the first appellate authority is not correct and further levy of tax under the OST Act in respect of goods which were moved from one State to another as a result of a covenant or incidental to a contract as held by the forums below is also not correct since the same is contrary to the settled position of law. Similarly determination of taxable turnover of the dealer at ₹2,34,89,810.00 and levy of tax @ 12% on purchase of electrical goods, copper and cables from outside the State and @ 4% on purchase of iron and steel used in construction work without assigning reasons therefor is wrong, arbitrary and illegal. Similarly rejection of TDS certificate and credit thereon amounting to ₹22,13,055.00 on the ground of non-receipt of confirmation from Bhubaneswar Circle is also not correct. Therefore, on the aforesaid grounds the dealer-assessee urged before this forum to set aside the impugned order and consequentially the order of assessment as well.

No cross-objection has been filed on behalf of the State-respondent.

4. In course of hearing argument in the instant appeal learned Counsel for the dealer-assessee submitted that the dealer has filed a confirmation certificate showing deduction of TDS and that document should be taken into consideration while deciding this matter. He also filed a memo enclosing the original TDS (WCT) certificate for an amount of ₹22,13,055.00 and copy of confirmation of payment of TDS (WCT) in case of M/s. KEC International Ltd. formerly known as RPG Transmission Ltd. bearing RC No. BA-5108 for the year 2004-05 issued by the Sales Tax Officer, Bhubaneswar-II Circle, Bhubaneswar for an amount of ₹22,42,548.00. It was further submitted by the learned Counsel for the dealer that it (the dealer) now confined its grounds of appeal to the issues regarding rejection of TDS certificate and credit thereon amounting to ₹22,13,055.00 and non-receipt of confirmation from Bhubaneswar Circle which can be taken care of only by accepting and considering the aforesaid documents as placed by the dealer before this forum. In reply to this submission advanced on behalf of the dealer learned Addl. Standing Counsel (CT) appearing for the State submitted that the State had no objection if the documents concerned filed at the instance of the dealer would be accepted but he also urged before the Bench that at the same time the dealer should be instructed to file these documents in original before the assessing officer for getting the order

of assessment modified accordingly. Besides this the dealer did not press other issues as raised by it in the grounds of appeal.

5. While perusing the order of assessment it is noticed that the assessing officer held that a sum of ₹22,13,055.00 was deducted as TDS by the contractee on the payment made to the contractor. This amount is deductible from the gross amount of ₹5,53,26,375.00. However, it is found that he (the assessing officer) concluded the assessment with an observation that the dealer was being assessed every year basing on the TDS received to avoid disparity between the agreed value of the whole work and total payment received in different years till the end of the work. Hence he rejected the books of account and completed the assessment to his best judgment. Similarly the first appellate authority rejected the claim of the dealer-assessee for deduction of TDS from the tax assessed amount on the ground that the xerox copy of deduction certificate for ₹22,13,055.00 issued by the Deputy Chief Electrical Division, Bhubaneswar did not reveal Treasury Challan No., date, Bank Draft No. and cheque No. with date of payment to consider the adjustment of TDS in favour of the dealer. Further it is revealed from the impugned order that as the original copy of tax deduction certificates were not submitted before him he had made a correspondence with the ACCT, Bhubaneswar-II Circle, Bhubaneswar about the same vide his office letter No. 13126/CT dated

01.10.2010 to communicate him the detail deposits alongwith PCR No. by 18.10.2010 but before getting any reply from the concerned authority he passed the order without assigning the reason for his such hasty decision in the matter. The dealer has filed the xerox copies of certain documents such as certificate of deduction of tax for the year 2004-05 issued by the Dy. Chief Electrical Engineer, Bhubaneswar and copy of letter No. 3344/CT dated 09.04.2009 issued by Sales Tax Officer, Bhubaneswar-II Circle, Bhubaneswar with regard to confirmation of payment of TDS in case of the dealer-assessee including certificate of registration of orders of Court confirming amalgamation of Companies i.e. M/s. RPG Transmission Limited with M/s. KEC International Limited issued by Registrar of Companies, M.P. and Chhattisgarh, Gwalior before this forum which are found to be quite relevant for the purpose of this case and would enable the authority concerned to come to a just conclusion with regard to determination of the tax liability of the dealer. Therefore, it is very strongly felt that this matter needs to be remanded to the assessing officer to make a fresh assessment of the dealer pertaining to the period 2004-05 by taking into consideration the relevant documents such as original TDS (WCT) certificate for an amount of ₹22,13,055.00 and copy of confirmation of payment of TDS (WCT) issued by the Sales Tax Officer, Bhubaneswar-II Circle vide his letter No. 3344/CT dated 09.04.2009.

6. In the aforesaid circumstances as discussed in the foregoing paragraph the matter is remitted back to the assessing officer with a direction to make fresh assessment keeping in view the observations made by us in this order in the event of the dealer- assessee producing the documents as mentioned above before him within one month from the date of its receiving the order. Further such assessment must be completed by him within three months from the date of receipt of this order. Accordingly the appeal is allowed.

Dictated & Corrected by me,

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

I agree,

**Sd/-**  
**(Smt. Sweta Mishra)**  
**2<sup>nd</sup> Judicial Member**

I agree,

**Sd/-**  
**(Rabindra Ku. Pattnaik)**  
**Accounts Member-III**