BEFORE THE FULL BENCH : ODISHA SALES TAX TRIBUNAL: CUTTACK.

S.A. No. 696 of 2007-08

(Arising out of order of the learned ACST, Sambalpur Range, Sambalpur, in First Appeal Case No. AA- 348 (SA-III) of 2006-07, disposed of on dt. 21.04.2007)

Present : **Smt. Suchismita Misra**, **Chairman**
Shri Subrat Mohanty, 1st Judicial Member
&
Shri Prabhat Ch. Pathy, Accounts Member-I

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

- V e r s u s –

M/s. Issar Engineers (P) Ltd., At- Old Cinema Road, Sundargarh. . . . Respondent

For the Appellant … Mr. M.L. Agarwal, S.C. (CT)
For the Respondent … Mr. A.N. Mohanty, Advocate

Date of hearing: 01.08.2019 **** Date of order: 26.08.2019

O R D E R

This appeal is directed against the order dated 21.04.2007 passed by the Asst. Commissioner of Sales Tax, Sambalpur Range, Sambalpur (in short, "first appellate authority") in First Appeal Case No. AA- 348 (SA-III) of 2006-07 confirming the order of assessment passed by the Sales Tax Officer, Sambalpur-III Circle, Jharsuguda (in short, "assessing officer") u/S.12(4) of the Odisha 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 that the dealer-assessee M/s. Issar Engineers (P) Ltd., Sundargarh is a Private Limited Company which carries on the business in execution of works contract with different agencies. Responding a notice issued u/S. 12(4) of the OST Act the Manager of the dealer-contractor had appeared before the assessing officer and submitted the copies of agreements in respect of its execution of works contract, TDS certificates, statement showing the detail purchase of materials duly signed by the authorized officer of the agencies under whom the works contract were executed, copy of the balance sheet for the year 2002-03 and the revised return for the year 2002-03. On perusal of the aforesaid documents the assessing officer could find that the dealer-contractor had received gross payment of ₹5,23,86,711.00 during the year 2002-03 towards execution of works contract from different agencies. Then on verification of the revised return furnished by the authorized representative of the dealer-contractor he found that the dealer-contractor had claimed deduction of ₹3,87,00,203.00 and ₹1,17,01,090.00 towards labour and service charges and on purchase as well as utilization of materials in the execution of works contract respectively. The dealer had also claimed refund of ₹19,21,599.00 for the year under assessment. However, the

dealer-contractor failed to produce labour payment register, register and documents in respect of payment towards service charges before the assessing officer. He rather gave an explanation that the dealer had maintained all registers and kept all the documents but those were produced before their Auditor for audit purpose. Further those documents were sent to their Head Office for Income Tax assessment for which they were not in a position to file the same before the assessing officer. The assessing officer then verified the purchases made by the contractor by examining the purchase bills submitted by the dealer before him. He found that the dealer could justify its claim for deduction upto ₹90,84,775.00 only out of its total claim amount of ₹1,17,01,090.00 on this count. Thereafter considering the nature of works executed by the dealer, copies of bills furnished by it he determined that a sum of ₹3,32,38,793.00 to be deducted from the gross payment received by the dealer towards labour and service charges. Thus ultimately the GTO of the dealer-assessee was determined at ₹1,91,47,918.00 out of which a sum of ₹28,40,731.00 was again deducted by the assessing officer on account of his allowing the dealer's claim towards its purchases and utilization of materials in execution of the works contract. The assessing officer then determined its TTO at ₹1,63,07,187.00 and on calculating its tax dues @8% on the TTO as well as surcharge @ 10% on the tax dues held that the dealer

was to pay ₹14,35,032.00 towards tax for that period. As the dealer had already paid ₹20,96,315.00 by way of TDS he passed an order for refund of ₹6,61,283.00 as per the provision of law.

Being aggrieved the dealer-assessee preferred an appeal before the first appellate authority assailing the order of assessment on the ground of same being bad in fact as well as law and further the assessing officer had incorrectly determined its claim towards purchase of materials which were used in execution of the works contract. The first appellate authority after examining the nature of work done by the dealer-assessee as well as other aspects such as the amount allowed by the assessing officer towards deduction for purchases and utilization of tax paid materials held that the assessing officer having meticulously examined all the papers and documents to find out the exact amount towards the claim advanced by the dealer-assessee had determined the entitlement of the dealer. Further as the dealer had no books of account he (the first appellate authority) concluded that the order of assessment was just and proper and ultimately rejected the appeal.

3. The State then not being satisfied with the aforesaid order of the first appellate authority preferred this second appeal challenging the legality of the same with following contentions.

The dealer-assessee being a Private Limited Company was engaged in works contract and had received ₹5,23,86,711.00 for construction of building and bridge as well as for one time road repair, improvements and renovation etc. by purchasing materials to be utilized in the aforesaid works. The dealer had never maintained its accounts pertaining to expenditures towards labour and service charges in detail. Therefore, both the forums below ought to have determined the amount of deductions to be allowed in favour of the dealer towards labour and service charges as per the prescribed limit of Works Department i.e. @ 32%, 42% and 62% on construction, road and earth works respectively. It is further contended on behalf of the State that the materials purchased and utilized in the works contract were required to be regulated as per the provisions contained in Section 5(2)(A)(a)(ii) of the OST Act but the authorities below had allowed the deductions unjustifiably. The first appellate authority has not discussed anything on labour component involved in the works contract or in the agreement pertaining to works contract as well as materials supplied or purchased for determination of the tax liability of the dealer-assessee specifically. Thus on the aforesaid grounds the State urged before this forum for setting aside the orders passed by the first appellate authority as well as the assessing officer.

4. No cross-objection has been filed by the dealer-assessee in the instant appeal. However, in course of argument learned Standing Counsel (CT) for the State urged before the Court to remit back the matter to the assessing officer for computation of tax liability of the dealer-assessee afresh by applying Rule 4-B of the OST Rules. He also filed a written note of argument stating therein that the State has come up with this appeal assailing the order of the first appellate authority as well as the assessing officer on account of their allowing deduction with more percentage towards labour and service charges than the dealer is actually entitled to. In the present case the order of assessment was passed on 31.03.2006 and the impugned order was passed on 21.04.2007 i.e. prior to the amendment in the Odisha Sales Tax Rules, 1947. The aforesaid amendment in the Odisha Sales Tax (Amendment) Rules, 2010 came into force with retrospective effect from 30.07.1999. As per the amended provision the assessing officer has to apply the provisions of Rule 4-B of the Odisha Sales Tax (Amendment) Rules, 2010 where percentage of labour and service charges have been provided for different nature of works when the works contractor fails to furnish its books of account before him. Admittedly in the present case the dealer-assessee had failed to furnish its books of account before both the forums below. Therefore, this

matter needs fresh consideration by the assessing officer for a just determination of the tax liability of the dealer-assessee.

5. In reply to this argument as advanced by learned Standing Counsel (CT) on behalf of the State learned Counsel for the dealer-assessee submitted that if at all this matter is going to be remanded for fresh assessment then why not the assessing officer would do the same taking into consideration all the documents which the dealer has in its possession to substantiate its claim. In this regard learned Counsel for the dealer-assessee also submitted that the dealer-assessee had categorically stated before the assessing officer that it had maintained all the registers and kept all documents in respect of payments made towards labour and service charges which they had produced before their Auditor for audit purposes. Accordingly the Auditor had also given his report. At the time of assessment the dealer had filed a copy of the audit report before the assessing officer for his perusal and submitted before him (the assessing officer) that due to Income Tax assessment which was then under process all its records and documents were sent to their Head Office at Bhubaneswar. Therefore, it was not possible on their part to produce the same before the assessing officer at that point of time. However, his (the dealer-assessee) such plea was not taken into consideration by the assessing officer at that time.

6. After hearing the aforesaid contentions of both the parties it is felt that though the dealer has not preferred any appeal against the impugned order yet it has some grievance in respect of the percentage of deduction allowed in its favour towards labour and service charges. It is also found that the dealer has no reservation or objection in respect of deduction allowed to it i.e. ₹28,40,731.00 towards purchase and use of materials as determined by the assessing officer after his detail verification of purchase bills furnished before him by the dealer-assessee. Therefore, this has to be accepted by the assessing officer while making a fresh assessment in this case to find out the entitlement of the dealer-assessee for deduction towards labour and service charges as the said amount has to be subtracted from the GTO of the dealer-assessee ultimately.

Thus after a careful perusal of the case record including the order of assessment as well as the impugned order and upon consideration of the submissions advanced by learned Counsel appearing from both sides respectively it is found that this is a fit case for remand. The assessing officer who is to make assessment of tax liability of the dealer-assessee afresh is hereby instructed to apply the provision of Rule 4-B of the OST (Amendment) Rules, 2010 for determination of the percentage of deduction to be allowed in favour of the dealer-assessee keeping in view the nature of works executed by it.

In case the dealer files sufficient documents before him (the assessing officer) from which the percentage of deduction to be allowed can be determined or is ascertainable then the assessing officer shall have no other option but to calculate the same basing upon those documents in consonance with the provisions of law. Besides the above we find no other infirmity in the impugned order.

7. In the result, the appeal preferred by the State is disposed of accordingly with the aforesaid observations.

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