BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.

S.A.No. 119(V)/2017-18

(From the order of the ld. JCST (Appeal), Cuttack-II Range, Cuttack, in Appeal No. AA/47/OVAT/CUIIJ/2015-16, dtd.10.04.2017, allowing in part the assessment order of the Assessing Officer)

Present: Sri S. Mohanty
2nd Judicial Member

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

-Versus-

M/s. Susanta Kumar Mohapatra, Dist. Jagatsinghpur. ... Respondent

For the Appellant : Mr. S.K. Pradhan, Addl. Standing Counsel (C.T.)
For the Respondent : Mr. K. Sharma, Advocate

Date of Hearing: 21.07.2018 Date of Order: 21.07.2018

ORDER

This appeal is directed against the order of the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Cuttack-II Range, Cuttack (in short, FAA/JCST) whereby deduction towards labour and service charges was enhanced as against the determination of the same by the Assessing Officer/Sales Tax Officer, Jagatsinghpur Circle, Paradeep (in short, AO/STO) in a proceeding u/s.42 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act).

2. The assessee-dealer was a works contractor. In an assessment u/s.42 of the OVAT Act for the tax period 01.04.2010 to 31.03.2014, the AO found the dealer had executed 24 number of contract jobs under different Government Departments morefully mentioned in the impugned order. The dealer was found to have received gross amount of Rs.19,41,80,447/- under different works contract and had paid Rs.79,60,543/- as VAT. The Audit team

disputed the dealer's claim of ITC of Rs.1,00,302/- on non-transferable goods. Further, they disputed the amount of labour and service charges claimed by the dealer. The AA on the basis of these two allegations in the AVR and on confrontation of the same with the dealer disallowed the claim of ITC whereas allowed deduction towards labour and service charges at Rs.2,91,27,067/- out of the total GTO determined at Rs.19,41,80,447/-.

3. When the matters stood thus, the dealer preferred first appeal claiming for more percentage of deduction.

The FAA in consideration of all 24 numbers of works contract prepared a chart reflecting therein civil/erection work and the electrical work and thereafter allowed deduction @30% against the civil/erection work and 15% towards electric work i.e. in application of Rule-6 of the OVAT Rules, Sl.No.22 of the Appendix. As a result of that, the deduction for labour and service charges became enhanced to Rs.3,76,33,598.49.

4. Being aggrieved by such enhancement in deduction towards labour and service charges, Revenue has preferred this appeal on the following contentions :

The AO had rightly applied the proviso to Rule 6(e) of the OVAT Rules whereas the FAA without proper scrutiny of the nature of works enhanced the deduction. So the deduction allowed by the FAA is wrong and it should be allowed strictly in accordance to the Rule 6(e) of the OVAT Rules.

5. The dealer by way of cross objection supported the impugned order. It is contended that the percentage of deduction towards labour and service charges @15% against electrical works and 30% against composite work are allowed in accordance to the authorities laid by the Hon'ble Courts and has prayed for dismissal of the appeal.

6. The only question raised in this appeal to be determined is : Whether the deduction towards labour and service charges by the

FAA is sustainable in accordance to law and facts involved in this case?

Admittedly, the dealer is a works contractor and he has undertaken works under different heads of the State Government and Central Government and are relates to the electrification power supply work. The AO as it reveals, on application of Sl.No.2 to Appendix of Rule 6 of the OVAT Ruels, 2005 has allowed deduction. Sl.No.2 under Appendix to Rule 6 denotes, deduction for 15% towards supply of electric goods, electric equipments etc. i.e. under Clause 'd'. But on the other hand, when it comes to the impugned order, the FAA has applied the Appendix to Rule 6 but as per the amendment to the Appendix came into force w.e.f.19.07.2012 and in accordance to the new amended appendix its Sl.No.22 contemplates the electric contracts. For better appreciation of the case in hand, relevant entries under the Appendix after amendment is reproduced here :

"2. Supply and fixing/instllation of –

(a) Door, windows, grills including its frames & furniture and fixtures.	- 15%
(b) Air-conditioning equipments including Deep Freezer.	-15%
(c) Air-conditions and air-coolers	- 10%
(d) Electrical goods	- 15%

After substitution w.e.f. 19.07.2012

22. (A) Electrical contracts

(i) HT Transmission lines	- 20%
(ii) Sub-station equipment	- 15%
(iii) Power house equipment and Extensions	- 15%
(iv) 11 and 33 kv and L.T. distribution Lines 12+5	- 17%

(v) All other electrical contracts - 25%
(B) All Structural Contracts - 35%"

Keeping in mind the chart above, adverting to the case in hand, as it revealed from the order passed by both the fora below, the AO has applied Sl.No.2 of the appendix where it relates to supply of electric goods. The assessment order was passed on 03.02.2016 and by then the amendment has already came into force i.e. from 19.07.2012. So, at the outset, it can safely be said that, the deduction calculated by the AO applying the Sl.No.2 of the chart is not sustainable. In consequence thereof, it is held that, the FAA has rightly applied the Sl.No.22 as per amended Appendix which relates to Electrical contracts and Structural contract, the FAA has gone into the details of the nature of job undertaken by the dealer and bifurcating the same like electric fittings and civil work, he has allowed 15% and 30% respectively.

Learned Counsel for the dealer vehemently argued that, the deduction given to the dealer is at lesser side. The dealer is entitled to deduction @35% against the civil/structural work whereas against the electrical goods the deduction should be 15% and more. Though not filed cross objection, but he has vehemently argued that higher rate of deduction on due application of appendix to Rule 6(e) should be granted. It is noteworthy to mention here that, in his cross objection the dealer has not claimed for any higher rate of deduction as argued by the Counsel.

Per contra, learned Addl. Standing Counsel for the State has argued that, on application of Rule 6(e), the dealer should be given less percentage of deduction. On the contrary, he also argued that, in no case without cross objection, the dealer cannot ask for more percentage than what was allowed by the FAA. According to him the appellant cannot be put to a position where he was not before preferring the appeal.

7. In the case in hand, the percentage of deduction towards labour and service charges must be in accordance to Sl.No.22 of the Appendix to Rule 6(e). The deduction allowed by the FAA seems the authority has considered the nature of work and divided the same under two different heads i.e. civil and electrical works. Copy of the work orders furnished by the dealer reveals two kinds of jobs were done by the dealer, one is supply and other is erection. The FAA has taken consideration of all 24 number of works contract. He has allowed 30% deduction against erection work and 15% deduction against supply part. Supply part necessarily covered under Sl.No.22 read with Sl.No.2 and in that case deduction at 15% in no case is in higher side.

Coming to the erection part, as per the learned Counsel for the dealer, the deduction should be @ 35% as per Sl.22 Clause 'B'. The fact of the matter is, deduction @30% given by the FAA is not challenged by the dealer. The dealer has agreed with the determination at 30%. Court should not make out a third case for the parties. Moreover, principle is well settled as submitted by Addl. Standing Counsel (C.T.) earlier that, appellant cannot be put to a position worse than what he was before the appeal. Moreover, as per the cross objection, the dealer has stood by the percentage of deduction allowed by the FAA. Thus, this Tribunal in its considered view held that, the deduction given by the FAA which is accepted by the dealer should not be disturbed. On the other hand, it is found that, the deduction allowed by the FAA is in no case in higher side or not in accordance to Rule 6(e) of the OVAT Rule. Accordingly, it is ordered.

The appeal by the State is dismissed on contest as of no merit.

Dictated and Corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

Sd/-
(S. Mohanty)
2nd Judicial Member