

BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL, CUTTACK.
S.A.No. 20/2013-14

(Arising out of order of the Id.DCST (Appeal), Balasore Range, Balasore, in
Appeal No. AA-16/BA 2008-2009 (OST),
disposed of on dtd.19.02.2013)

Present: Sri S. Mohanty
2nd Judicial Member

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

.... Appellant

-Versus-

M/s. Success Engineering,
Inchudi, Sahada,
Dist. Balasore.

... Respondent

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

For the Respondent : R.K. Das, Proprietor

Date of Hearing: 01.06.2018

Date of Order: 01.06.2018

ORDER

The moot question raised for decision in this appeal preferred by the State is, whether Rule 4-B of the Odisha Sales Tax Rules should be applied to the case in hand for determination of labour and service charges.

2. The dealer was subjected to Audit assessment u/s.12(4) of the OST Act, 1947 for the assessment year 2004-05. The Assessing Officer, on due consideration of the nature of works undertaken by the dealer i.e. mostly miscellaneous repairing or construction work, had allowed 52% deduction towards labour and service charges. It was assessed applying the principle of best judgment assessment since the dealer had failed to produce the books of account and connected documents to ascertain the exact percentage towards labour and service charges. Besides, the dealer was also filed to avail TDS for want of proof before AO. The dealer had preferred first appeal whereby the FAA in the impugned judgment did not disturb the percentage of deduction towards labour and service charges. Thus, it remained as it is, i.e. 52% whereas, the

FAA allowed TDS keeping in view the documentary evidence like confirmation Letter No.9358/CT/dtd.11.02.2013 i.e. to the tune of Rs.4,999/-. When the matters stood thus, State has come up with this appeal on the sole contention like the deduction towards labour and service charges given to the dealer is on higher side. Since the matter is a construction work, deduction should be limited to 35% as per provision under Rule 4-B of the OST Rules of the OST Rules.

3. The dealer was present in person during hearing and furnished some of the agreement entered between him and the Executive Engineer, which indicate the dealer had undertaken the work of special repairing of electrical installation work. The dealer has submitted that, the work is mostly labour oriented and the deduction @52% is also quite low. However, being a very petty contractor, he did not challenge the order of the FAA before higher forum, rather preferred to deposit the demand i.e. Rs.2,2787/-

4. Here it is found that, State has preferred this appeal for the sake of statistical purpose only. The works undertaken by the dealer does not fall under any of the category as stipulated under Rule 4-B. In that event, there is no option before the AA but to apply the best judgment principle i.e. in adherence to the decision in **Gannon Dunkerley & Co. Vrs. State of Rajasthan & others (1993) 88 STC 204**. Needless to mention here that, as per the direction given by the Hon'ble Supreme Court in the above decision, Rule 4-B has been promulgated. When the category of work mentioned in Rule 4-B does not squarely cover the work undertaken by the instant dealer, then, by necessary implication, best judgment principle should be applied. It is well accepted principle that, one best judgment assessment should not be replaced by another best judgment at the sweet will and caprice of the authority. When both the fact findings authorities and the assessing authority as well have taken into consideration of the nature of work and allowed deduction @52%, there is no reason before the Tribunal either to enhance or to reduce the percentage of deduction without any materials produced before us. Thus, it is

held that, the impugned order under challenge calls for no interference. Accordingly, it is ordered.

The appeal by the State has no merit, hence dismissed.

Dictated & corrected by me,

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

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(S. Mohanty)
2nd Judicial Member