

BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 762 of 2006-07

(Arising out of the order of the learned ACST, Balangir Range,
Balangir, in First Appeal Case No. Nil,
disposed of on dtd.21.04.2006)

Present: **Shri Ashok Kumar Panda**, 1st Judicial Member,
Shri Subrata Mohanty, 2nd Judicial Member,
&
Shri P.C. 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. Shree Balajee Engicons (P) Ltd.,
Belpahar, Sambalpur.

... Respondent

For the Appellant : Mr. S.K. Pradhan, A.S.C.
For the Respondent : Mr. U. Behera, Advocate

Date of Hearing: 07.12.2018 **** Date of Order: 24.12.2018

ORDER

This appeal is directed against the order passed by the learned Asst. Commissioner of Sales Tax, Sambalpur Range, Sambalpur (hereinafter referred to as, the learned ACST) in First Appeal Case No. Nil dtd.21.04.2006, wherein and whereby he has dismissed the first appeal by confirming the order of the learned Sales Tax Officer, Sambalpur III Circle, Jharsuguda (hereinafter referred to as, the learned STO) passed in an assessment u/s.12(4) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, the OST Act) in respect of the respondent-dealer for the assessment year 2003-04.

2. The respondent-dealer is a private limited company bearing Regd. No.SAIII-1908. It being a works contractor executed certain works

under different authorities and received a gross amount of Rs.4,92,61,637.67 for the same in the assessment year 2003-04. In an assessment u/s.12(4) of the OST Act for the assessment year in question i.e. for the assessment year 2003-04, being noticed, the authorized representative of the respondent-dealer appeared before the learned STO and produced the relevant documents which were duly been examined by him. During assessment, the learned STO found out that, though the respondent-dealer has claimed deduction of Rs.3,42,81,312.00 towards the labour and service charges, it has not maintained any account in that respect and as such finding no other way he proceeded to assess it to the best of his judgment and after ascertaining the nature of works, allowed deduction of 65%, 62%, 62%, 62%, 65%, 42%, 80%, 62%, 62% and 62% amounting to Rs.3,00,40,818.13 in total towards the labour and service charges which relate to the balance earth work in railway siding, strengthening of roads, strengthening and repair of roads, widening and improvement of roads, balance earth work in railway siding and other related works, repair and renovation of hospital, track maintenance works, improvement to riding quality, improvement to roads and C.D. works and construction of approach road respectively. Similarly, the learned STO also allowed deduction of Rs.78,27,380.00 towards the utilization of the first point tax paid goods in the execution of the works contract and determined the TTO at Rs.1,14,01,439.54 and levied tax thereon @ 8% which came to be Rs.9,12,115.16. Then, he also levied surcharge thereon at the appropriate rate of 10% which came to be Rs.91,211.52 and as such both the tax and surcharge came to be Rs.10,03,326.68 in total. As the respondent-dealer had already paid tax to the tune of Rs.10,02,944.00 earlier by way of TDS, subject to confirmation, the learned STO directed for refund of an amount of Rs.5,99,617.00 in accordance with law.

3. After the assessment, being aggrieved with the order of the learned STO, the respondent-dealer preferred an appeal before the learned ACST bearing First Appeal Case No. Nil as mentioned above. On hearing and on consideration of the materials on record, the learned ACST found out the

deduction allowed towards the labour and service charges and towards the first point tax paid goods utilized in the execution of the works contract to be proper and justified and accordingly dismissed the appeal by confirming the order of the learned STO. But, thereafter, being aggrieved with the order of the learned ACST relating to the allowance of deduction towards the labour and service charges, the appellant-Revenue has preferred this second appeal.

4. No cross objection has been filed by the respondent-dealer.

5. Heard the learned Addl. Standing Counsel appearing for the appellant-Revenue and the learned Counsel appearing for the respondent-dealer. The learned Addl. Standing Counsel appearing for the appellant-Revenue submitted that, in spite of failure of the respondent-dealer to produce any account relating to the expenses incurred towards the labour and service charges, the learned forums below have allowed deduction of the same at a higher percentage which is not proper and justified in the present case and as such the order passed by them needs to be rectified by this forum by allowing deduction towards the labour and service charges at the prescribed rates on application of Rule 4-B of the OST Rules. On the other hand, the learned Counsel appearing for the respondent-dealer supported the order of the learned forums below and urged for dismissal of the appeal.

6. Perused the orders of both the learned forums below and the other materials available on record. There is no dispute that, the respondent-dealer has executed certain works under different authorities and received a gross amount of Rs.4,92,61,637.67 for the same in the assessment year 2003-04. But, it is also not in dispute that, during assessment, it has failed to produce any account relating to the labour and service charges, which was to be deducted from the received amount for assessment of its sales tax liability. In absence of any account relating to labour and service charges, the learned STO allowed deduction of 65%, 62%, 62%, 62%, 65%, 42%, 80%, 62%, 62% and 62% amounting to Rs.3,00,40,818.13 in total towards the labour and service charges which is relate to the balance earth work in railway siding, strengthening of roads,

strengthening and repair of roads, widening and improvement of roads, balance earth work in railway siding and other related works, repair and renovation of hospital, track maintenance works, improvement to riding quality, improvement to roads and C.D. works and construction of approach road respectively on consideration of the available materials on record. On further consideration of the available materials on record, the learned ACST found out the percentage of deduction allowed towards the labour and service charges by the learned STO to be proper and justified and accordingly confirmed his order passed in this regard. In cases, where the dealer does not maintain proper accounts towards the labour and service charges or the accounts maintained by him are not found credible, then the deduction towards such charges shall be made in a prescribed formula as furnished by the State fixing the percentage of the value of the works contract. The State of Orissa has made provision in Rule 4-B of the OST Rules w.e.f. 30.07.1999 prescribing such deduction, which read as follows: -

“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%

”

7. Admittedly, the respondent-dealer has not maintained any account towards the labour and service charges in execution of the works contract. But, that is not the sole condition for application of Rule 4-B of the OST Rules, rather the application of the rule is subject to certain other conditions like failure to produce evidence in support of expenses incurred towards the labour and service charges or failure to ascertain the expenses from the terms and conditions of the contract.

8. On perusal of the available materials on record, it is seen that, the respondent-dealer has executed certain works under different authorities and on examination of the available materials, the learned forums below have ascertained the nature of works properly and have allowed deduction towards the labour and service charges and have determined the TTO accordingly. As the learned forums below have arrived at a concurrent finding after determining the nature of works on examination of the entire materials available on record and have allowed deduction towards the labour and service charges properly, it can clearly be said that, the order passed by them suffers from no infirmity and hence needs no interference of this forum.

9. In the result, the appeal is dismissed being devoid of merit.

Dictated & Corrected by me,

Sd/-
(Ashok Kumar Panda)
1st Judicial Member

Sd/-
(Ashok Kumar Panda)
1st Judicial Member

I agree,

Sd/-
(Subrata Mohanty)
2nd Judicial Member

I agree,

Sd/-
(P.C. Pathy)
Accounts Member-I