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

**S.A. Nos. 550 & 551 of 2003-04**

(Arising out of the order of learned ACST, Koraput Range, Jeypore, in Sales Tax Appeal No. AA- (KOI) 485-487/2002-2003, disposed of on dt. 31.03.2003)

**Present** : **Smt. Suchismita Misra**, **Chairman**
**Shri Subrat Mohanty, 1st Judicial Member**
**&**
**Shri Rabindra Ku. Pattnaik, Accounts Member-III**

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

**- V e r s u s –**

M/s. Sree Construction Co.
Prasadrao Peta, 4th Line,
Jeypore. . . . Respondent

For the Appellant … Mr. M.S. Raman, Addl. S.C. (CT)
For the Respondent … Mr. N. Ananda Rao, A/R.

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Date of hearing: 05.09.2019 **** Date of order: 01.10.2019

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***O R D E R***

These two Second Appeals bearing Nos. 550 & 551 of 2003-04 are directed against the common order dated 31.03.2003 passed by the Asst. Commissioner of Sales Tax, Koraput Range, Jeypore (in short, "first appellate authority") while disposing of three appeals i.e. Sales Tax Appeal No. AA- (KOI) 485-487/2002-2003 preferred by the dealer-assessee challenging the orders of assessment passed by the

Sales Tax Officer, Koraput-I Circle, Jeypore (in short, 'assessing officer') u/S. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') pertaining to the tax period Q/E 3/2001 and the year 2001-02 respectively. For the sake of convenience these two appeals are being disposed of by this common order.

2. The facts as revealed from the case record are that the dealer-assessee M/s. Sree Construction Co., Jeypore is a works contractor and as such it executed works contract under M/s. Ballarpur Industries Ltd., Unit SEWA, Gaganpur during the relevant periods. Pursuant to notices served on the dealer-assessee for both the periods, the dealer-contractor had appeared before the assessing officer through its Advocate and submitted a written note of argument mentioning therein the nature of work executed by its establishment. It also mentioned the gross payment received by it during the relevant period as well as the materials supplied to it by the contractee as per the terms and conditions of the contract executed between them. The dealer-assessee claimed 100% deduction towards labour and service charges on the ground that the materials such as cement and steel were supplied by the contractee free of cost and some other building materials such as tools and tackles which were required for executing the work were provided by the contractor itself. The dealer-contractor had brought to the notice of the assessing officer that most of the works

executed by it were labour and service oriented and utilization of materials by the contractor itself in those works was very negligible. The assessing officer on examination of the relevant documents and hearing the submissions made before him on behalf of the dealer-assessee concluded that the dealer had used materials like sand and metal alongwith tools and tackles from its side to execute the work and further it (the dealer) failed to produce the details of materials used by it in execution of those works contract. Similarly the assessing officer, in course of his assessment proceeding, did not find any account revealing the expenditure incurred by the dealer-assessee towards labour and service charges. However, considering the scope and nature of work executed by the dealer-contractor he concluded that deduction to the extent of 80% of the gross payment against 100% as demanded by the dealer-assessee towards labour and service charges would serve the purpose of justice. He thus determined the gross turnover of the dealer-assessee for the Q/E. 3/2001 at ₹2,52,534.00 and taxable turnover at ₹50,506.82 after allowing deduction of ₹2,02,027.00 towards labour and service charges. He determined the tax liability including surcharge to be levied on the tax dues of the dealer at ₹4,444.60. As the dealer had already paid a sum of ₹10,101.00 through TDS which exceeded the amount of tax liability of the dealer an order was passed for refund of ₹5,656.00 in its favour for the Q/E. 3/2001. Similarly for the tax period

2001-02 the assessing officer followed the same method as described above for determination of the tax liability of the dealer and determined the gross turnover of the dealer at ₹1,33,32,789.90. After allowing deduction of ₹1,06,66,231.92 towards labour and service charges he calculated the taxable turnover of the dealer at ₹26,66,557.98. He thus determined the tax liability including surcharge of the dealer at ₹2,45,323.34. As the dealer had already paid ₹5,33,219.00 through TDS which exceeded the amount of its tax liability an order was also passed by the assessing officer for refund of ₹2,87,896.00 in its favour for the relevant period.

The dealer-assessee then preferred appeals against the abovesaid orders of assessment before the first appellate authority raising various issues. After hearing the dealer the first appellate authority dismissed its appeals and confirmed the orders of assessment.

3. Being aggrieved with the findings of the first appellate authority the State preferred these second appeals before this forum on the ground that the first appellate authority though observed that the dealer-assessee had executed civil construction work involving excavation of foundation, RCC works etc. yet he erred in law and on facts by endorsing the orders of the assessing officer as correct when the assessing officer had allowed 80% deduction towards labour and

service charges. The first appellate authority should have enhanced the assessment.

In both the appeals no cross-objection has been filed on behalf of the dealer-assessee.

4. In course of hearing argument learned Add. Standing Counsel (CT) appearing on behalf of the State very strenuously urged before the Bench to apply the provision of Rule 4-B of the OST Rules in this case for determination of the percentage of deduction towards labour and service charges. He vehemently submitted that the dealer in the instant case had failed to produce its books of account or any other papers from which the expenses incurred by the contractor towards labour and service charges could have been ascertained. Therefore, it is a fit case where application of the provision of Rule 4-B of the OST Rules is a must and the case should be remitted back to the assessing officer for fresh assessment.

5. Learned Authorized Representative appearing on behalf of the dealer-assessee submitted that both the authorities below have properly verified the papers and documents available before them and they could gather from those documents that the work executed by the contractor mostly involved labour work and accordingly they determined the percentage of deduction from the gross turnover of the dealer towards labour and service charges. In such circumstances there

is absolutely no necessity to stir up again their orders on the ground advanced by the State. In order to fortify his argument he also cited an order of this Tribunal passed in S.A. No. 1304 of 2007-08 wherein this Tribunal had granted 72% deduction towards labour and service charges.

6. The order cited by the dealer was passed in the Second Appeal bearing No. 1304 of 2007-08 being preferred by the State against this dealer and another pertaining to the tax period 2003-04 and on perusal of the said order it is noticed that this Tribunal had not appreciated allowance of 90% deduction towards labour and service charges in favour of the dealer in absence of any details books of account even though the materials were supplied free of cost by the contractee. However, ultimately keeping in view that materials have been supplied by the contractee for the sake of balance of convenience the Tribunal in their considered view held that such deduction should be allowed @ 72% to meet the ends of justice. However,in this regard we would like to mention here that when a law or statute is very clear in its application this Tribunal has got very little scope to interpret the same by using their discretion. Admittedly in the present case the dealer-assessee is a works contractor and both the authorities below had verified its documents before passing their orders respectively. As revealed from their orders they had verified the copies of agreements

between the works contractor and the contractee. They had ascertained the nature of work executed by the dealer under the contractee. They found that the dealer had executed civil work which involved earth work, sand filling in foundation, providing and laying plain cement concrete under foundation, ramming, curing, leveling, providing and laying reinforcement cement concrete in all types of RCC works and further as per their agreement the contractee had supplied cement and iron (steel) which constituted major cost of the works. The dealer had utilized other materials like sand, chips, bricks etc. in execution of said works. It had also engaged labourers and rendered service in course of execution of such works. However, as the dealer could not produce any accounts regarding use of materials of his own and further accounts showing its expenditures towards labour and service the assessing officer as well as the first appellate authority felt constrained to allow its (the dealer's) claim for 100% deduction towards labour and service charges and reduced the same to 80% in favour of the dealer-contractor. The impugned order was passed on 31.03.2003 confirming the orders of assessment dated 20.02.2003. At that time the amended provision i.e. Rule 4-B of the OST Rules had not come into force. This provision was introduced on 06.02.2010 and was given effect retrospectively from 30.07.1999. Therefore, it is obvious that the impugned order was passed much before the aforesaid amendment in

OST Rules introducing Rule 4-B came into existence. Under such circumstances when we do not find any justifiable reason to disturb the impugned order and consequentially the orders of assessment on the ground of those being unreasonable or suffer from any sort of illegality we have to affirm the same in the interest of justice. Accordingly the impugned order is hereby confirmed.

7. In the result, the appeals are dismissed.

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