

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

S.A. No. 2436 of 2004-05

(From the order of the ld.ACST, Balangir Range, Balangir,
in First Appeal Case No. AA-65 (KA) of 2004-2005 dtd.30.05.2004, modifying
the assessment order of the Assessing Officer)

Present: **Smt. Suchismita Misra, Chairman,**
Sri Subrata Mohanty, 2nd Judicial Member
&
Sri R.K. Pattnaik, Accounts Member-III

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

-Versus-

M/s. Subash Chandra Panda Builder (P) Ltd.,
Dharamgarh. Respondent

For the Appellant : Mr. S.K. Pradhan, A.S.C. (C.T.)
For the Respondent : Mr. S.K. Mishra, Advocate

Date of hearing: 17.01.2019 **** Date of order: 17.01.2019

O R D E R

Revenue being aggrieved with the order of the learned First Appellate Authority/Asst. Commissioner of Sales Tax, Balangir Range, Balangir (in short, FAA/ACST) whereby the deduction towards labour and service charges allowed by the Sales Tax Officer/Assessing Authority, Kalahandi Circle, Bhawanipatna (in short, STO/AA) became enhanced, this second appeal is preferred challenging the sustainability of the impugned order and with a prayer for application of Rule 4-B of the OST Rules, 1999 in the case in hand for determination of labour and service charges.

2. Percentage of deduction towards labour and service charges against the works contracts undertaken by the dealer as assessed by both the fora below is questioned in this second appeal above by the State on the contention like the fora below have allowed deduction at higher rate.

3. It is the assessee-dealer who had undertaken job under different contracts as a works contractor was subjected to regular assessment for the period of assessment i.e. 2002-03. The dealer had undertaken the job work containing type of work like canal work of PKG No.7(B) and 8 vide contract Agreement OECP/LCB No.1 of 1997-98 and OECP/LCB No.1 of 2001-2002 for left Bank Canal of Raengali Irrigation Project and had received gross payment of Rs.16,04,94,611.00 for the assessment year in question. The assessing authority in consideration of the nature of work undertaken by the dealer when found the dealer had not maintained the labour and service account, then he applied the best judgment principle and determined the labour and service charges @ 80% of the total GTO. Felt aggrieved, the dealer with a hope of getting more amount of deduction towards labour and service charges knocked the door of the first appellate authority in First Appeal Case No. AA-65 (KA) of 2004-2005. The first appellate authority in turn, un due consideration of the nature/type of work undertaken by the dealer held that the deduction allowed by the assessing authority was reasonable, as such the percentage of deduction towards labour and service charges i.e. @ 80% remained as it is and the tax due as calculated by the assessing authority also remained undisturbed. When the matter stood thus, as the State being aggrieved with the order of the fora below has

preferred this second appeal with a contention that the deduction as allowed exorbitant without proper verification of the details of the job work and the materials utilized by the dealer.

4. The only question to be determined in this appeal is whether the deduction towards labour and service charges allowed by the fora below is in higher side and if yes whether a fresh judgment assessment should be made to determine the same or if Rule 4-B of the OST Rules should be applied for the purpose to the case in hand.

5. Learned Counsel for the dealer at the outset advanced a copy of the order of this Tribunal relating to the same dealer for different tax period determining the same question i.e. S.A. No.989 of 2006-07, whereby this Tribunal has not interfered with the deduction allowed by the authorities below. It is also argued by the learned Counsel for the dealer that Rule 4-B of the OST Rules cannot be applied to the case in hand since the dealer had maintained the books of account and the nature of work undertaken by the dealer are not squarely covered under the types of work enumerated under Rule 4-B of the OST Rules. Per contra, learned Addl. Standing Counsel for the State vehemently argued that Rule 4-B of the OST Rules should be applied to the case in hand as it has got retrospective effect w.e.f. 30.07.1999. It is argued that as because this Rule has got retrospective effect, it is applicable to the cases for appeals pending.

In no case it can be imagined that original assessment can still remain pending till date in view of the time stipulation under the Act for completion of the assessment. While communicating the provision under

Rule 4-B of the OST Rules the legislature have within their wisdom knew about fact that while making rule as its retrospective effect since 1999, they have intended to cover the assessments pending in any forum including the appellate forum. Unless and until the validity of the Rule 4-B of the OST Rules is not declared ultravires by the competent authority, this Tribunal or any subordinate authorities under the tax law is not competent to interpret the correctness or enforceability of the provision under Rule 4-B. In many of the orders of this Tribunal we have been applying the Rule in appropriate cases such as where the type of job squarely false within the category of work included in the Rule 4-B of the OST Rules. In absence of any entry in other types of work it can safely be said that, where the type of work is not exact to the same type of work as per Rule 4-B, in that case the Rule cannot be applied.

6. Coming to the case in hand, it is found that the assessing authority had allowed deduction @ 80% for the assessment period 2002-03. The works contractor-dealer had applied to the first appellate authority for higher amount of deduction. The taxing authority though had no scope under law to knock the door of the first appellate authority but the revisional jurisdiction under the statute was not close for them. When the appellate authority also confirms the order of the first appellate authority then only they preferred this second appeal (because there was no provision to file appeal for that reason it cannot be said that the taxing authority was handicapped to challenge the order of the assessing authority.) Further, there is no dispute on the proposition that the first appellate authority is an

extended forum of assessment and as the power to vary the assessment which includes enhancement also by giving an opportunity of being heard to the dealer. Similarly, well settled principle is that an appellant cannot place to a position worse than where he was not before preferring the appeal. As because the dealer had preferred appeal and thereby the taxing authority got a scope to file second appeal the relief which was granted to the dealer which was no way illegal can be re-agitated and interfered with at the instance of the taxing authority ? The answer is no.

7. Rule of consistency in tax law is a well accepted principle. As against the assessment for other periods of the instant dealer the Full Bench of this forum had opined that Rule 4-B of the OST Rules cannot be applied to the case in hand. In that event, it is believed that, the same ratio is applicable to the present case also.

8. As both the learned forums below have arrived at a concurrent finding after due consideration of the nature of work undertaken by the dealer and allowed deduction towards labour and service charges, it is not desirable to interfere with the best judgment assessment of the two number of fact finding authorities below without any rebuttal from the side of the State. It is pertinent to mention here that, State has not filed a scrap of paper in support of his claim that the determination of labour and service charges by the fora is arbitrary, whimsical or unreasonable. Since the order impugn suffers from no illegality, the same needs no interference by this forum. Hence, ordered.

9. The appeal is dismissed on contest as devoid of merit.

Dictated & corrected by me,

(Subrata Mohanty)
2nd Judicial Member

(Subrata Mohanty)
2nd Judicial Member

I agree,

(Suchismita Misra)
Chairman

I agree,

(R.K. Pattnaik)
Accounts Member-III