

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

S.A.No.210 of 2009-10

(Arising out of the order of the DCST, Koraput Range,
Jeypore, in First Appeal Case No. AA (KOI) 154/08-09,
disposed of on dtd.30.04.2009)

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. Sri Swarajya Kumar Sahu,
Contractor, Jagat Janani Street,
Jeypore.

... Respondent

For the Appellant : Mr. S.K. Pradhan, A.S.C.
For the Respondent : N o n e

Date of Hearing: 16.11.2018 **** Date of Order: 17.11.2018

ORDER

This appeal is directed against the order dtd.30.04.2009 passed by the learned Deputy Commissioner of Sales Tax, Koraput Range, Jeypore (hereinafter referred to as, the learned DCST) in First Appeal Case No. AA-144 (SAII) of 2002-2003, wherein and whereby, he has allowed the first appeal in part by passing an order of refund amounting to Rs.1,36,921.00 instead of a balance tax demand amounting to Rs.10,81,024.00 raised by the learned Sales Tax Officer, Koraput Circle, Jeypore (hereinafter referred to as, the learned STO) in respect of the respondent-dealer in an assessment

u/s.12(4) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, the OST Act) for the assessment year 2004-05.

2. The respondent-dealer bearing R.C. No.KOI-4002 being a works contractor executed certain works under the Executive Engineer, Koraput (R & B) Division, Executive Engineer, R.W. Division, Koraput, Executive Engineer, Jeypore (R&B) Division and Executive Engineer, RWD, Malkangiri in the assessment year 2004-05 and received a gross payment of Rs.4,04,87,685.00 for the same. In an assessment u/s.12(4) of the OST Act for the assessment year 2004-05, being noticed, the respondent-dealer appeared before the learned STO through an Advocate and produced the books of account and the other relevant documents which were duly been examined by him. On consideration of the nature of works, though the learned STO allowed deduction of Rs.1,40,63,083.20 @ 32% towards the labour and service charges, he did not allow any deduction towards the materials utilized in the execution of the works in view of lack of material in that regard. Further, on verification of the TDS certificates, the learned STO found out that, an amount of Rs.1,38,378.00 has been deducted and deposited by the Executive Engineer, R&B Division, Jeypore which has not been reflected in the certificate and the respondent-dealer has also not disclosed the turnover relating to the same in his returns or in his statement and accordingly he added the turnover of Rs.34,45,450.00 to the GTO shown by the respondent-dealer and determined the same at Rs.4,39,47,135.00. After allowing deduction of Rs.1,40,63,083.20 towards the labour and service charges, he determined the TTO at Rs.2,98,84,051.80 and levied tax thereon @ 8% and also levied surcharge further @ 10% and as such both the tax and surcharge came to be Rs.26,29,796.55. Then, on consideration of the payment of tax amounting to Rs.15,48,773.00 made earlier by the respondent-dealer by way of TDS, he raised the balance tax demand of Rs.10,81,024.00, to be paid by it.

3. After the assessment, being aggrieved with the order of the learned STO, the respondent-dealer preferred an appeal before the learned DCST bearing First Appeal Case No. AA-144 (SAII) of 2002-2003. On hearing and on consideration of the materials on record, the learned DCST accepted some of the contentions of the respondent-dealer and allowed further deduction of Rs.18,00,682.00 towards fuel and lubricants for machineries, Rs.11,94,200.00 towards hire charges of equipments, Rs.4,14,600.00 towards transportation charges and Rs.6,32,073.00 towards depreciation for machineries. Similarly, he also considered the payment of tax amounting to Rs.1,38,378.00 made by the respondent-dealer by way of TDS and found out the enhancement of GTO by Rs.34,59,450.00 in this regard to be improper and unjustified and accordingly re-determined the GTO and TTO and finally his order resulted in a direction for refund of an amount of Rs.1,36,921.00 instead of the tax demand of Rs.10,81,024.00 as raised earlier by the learned STO. Thus, thereafter, being aggrieved with the order of the learned DCST, the Revenue as appellant has preferred this second appeal.

4. In its grounds of appeal, the appellant-Revenue has taken the following grounds-

- (i) That, the order of the learned DCST reducing demand and allowing refund is arbitrary, illegal and bad in law.
- (ii) That learned DCST being extended fora of assessment should have obtained the figures of TDS deposit on the account of dealer contractor from EE., Koraput R&B Division to ascertain the actual amount of TDS before allowing credit of Rs.1,38,378.00 against tax liabilities.
- (iii) That the order of learned DCST is liable to be quashed and order of learned STO be restored.

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

6. When the matter was taken up for hearing, none appeared on behalf of the respondent-dealer and as such it was heard ex parte and is disposed of on merit. The learned Addl. Standing Counsel appearing for the appellant-Revenue submitted that, the learned DCST has allowed credit of Rs.1,38,378.00 in favour of the respondent-dealer without proper verification of the TDS certificates and the other related documents and the same being illegal, the order passed by him in this regard is liable to be set aside and the order passed by the learned STO is liable to be restored.

7. Perused the orders of both the learned forums below and the other materials on record. From the materials on record, it is seen that, the respondent-dealer being a works contractor executed certain works under the Executive Engineer, Koraput (R & B) Division, Executive Engineer, R.W. Division, Koraput, Executive Engineer, Jeypore (R&B) Division and Executive Engineer, RWD, Malkangiri in the assessment year 2004-05 and received a gross payment of Rs.4,04,87,685.00 for the same. During assessment, though the learned STO did not allow any other deduction, allowed deduction of Rs.1,40,63,083.20 @ 32% towards the labour and service charges on consideration of the nature of works. On further consideration of the materials on record, the learned DCST allowed deductions of Rs.18,00,682.00 towards the fuel and lubricants for machineries, Rs.11,94,200.00 towards the hire charges of equipments, Rs.4,14,600.00 towards the transportation charges and Rs.6,32,073.00 towards the depreciation for machineries at the first appeal stage. On examination of the entire materials available on record, it can clearly be said that, proper deductions have been allowed by the learned forums below on scrutiny of the available materials and on proper examination of the nature of the works executed by the respondent-dealer.

8. The appellant-Revenue has mainly challenged the order of the learned DCST relating to giving credit of Rs.1,38,378.00 to the respondent-

dealer without proper verification of the TDS. On perusal of the orders passed by both the learned forums below, it is seen that, there is some sort of discrepancies in this regard and as such the same needs a proper verification and passing of a fresh order on consideration of the same.

9. In view of the above observations, the appeal is allowed in part. The order passed by the learned DCST is set aside. The matter is remanded to the learned DCST with a limited question involving verification of the TDS amounting to Rs.1,38,378.00 and its connected documents for passing of a fresh order on consideration of the same. The learned DCST is also directed to take note of the other observations made above while passing the order.

Dictated & Corrected by me,

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

I agree,

I agree,

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

Sd/-
(Subrata Mohanty)
2nd Judicial Member

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