BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 2625 of 2003-04

(Arising out of order of the learned Asst. Commissioner of Sales Tax, Sundargarh Range, Rourkela, in Sales Tax Appeal No. AA 222 (RLI) 2002-2003, disposed of on dated 12.03.2003)

Present: **Shri A.K. Das, Chairman**
Shri S.K. Rout, 2nd Judicial Member
&
Shri S. Mishra, Accounts Member-II

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

-Versus-

M/s. Engineering Project (I) Ltd., Inside RSP, Rourkela. ... Respondent

For the Appellant : Mr. D. Behura, S.C. &
Mr. S.K. Pradhan, A.S.C.
For the Respondent : Mr. J.K. Das &
Miss Sanjukta Mohanty, Advocate

Date of hearing: 08.03.2022 *** Date of order:17.03.2022

O R D E R

This appeal is directed at the instance of the State challenging the order dtd.12.03.2003 passed by the Asst. Commissioner of Sales Tax, Sundargarh Range, Rourkela (hereinafter referred to as, the learned FAA) in Sales Tax

Appeal No. AA 222 (RLI) 2002-2003, thereby reducing the tax demand of Rs.28.87.290.00 raised by the Sales Tax Officer, Rourkela I Circle, Uditnagar for the assessment year 1993-94 invoking power u/s.12(8) of the Orissa Sales Tax Act, 1947 (hereinafter referred to as, the OST Act) that resulted in a return of Rs.52,25,204.00.

2. The relevant facts of the case in nutshell are that, the dealer-assessee is a company registered under the Companies Act, 1956 having its registered office at Dhrwa, Ranchi and head office at Kasurba Gandhi Marg, New Delhi-1 and is engaged in execution of works contract under M/s. SAIL, RSP, Rourkela on modernisation programme. During the relevant period i.e. 1993-94, the dealer executed works contract under M/s. SAIL, Rourkela Steel Plant, Rourkela and was assessed for the same period u/s.12(4) of the OST Act. The assessing authority in the original assessment raised an extra demand of Rs.11,15,452.00 for the quarter ending 6/93; Rs.8,78,000.00 for the quarter ending 9/93; Rs.36,82,499.00 for the quarter ending 12/93 and 3/94, as against which the dealer preferred appeal before the first appellate authority which was disposed of on exparte confirming the original assessment. The dealer-assessee, challenging the order of the first appellate authority, filed writ application before the Hon'ble High Court vide OJC No.802/1998, pending which another proceeding u/s.12(8) of the OST Act was initiated on the basis of

information received about the escaped assessment. Pursuant to the notice issued to the dealer-appellant, it appeared through its advocate and filed relevant documents to substantiate different claims of deduction from the gross receipts received during the year 1993-94 for execution of the works contract. On verification of the documents, the learned assessing authority found that the dealer-assessee received Rs.58,17,29,789.37 in respect of four different projects executed by it and there was payment of Rs.3,79,07,051.00 directly by M/s. SAIL, RSP, Rourkela to the sub-vendors issuing payment vouchers. Accordingly, the learned assessing authority determined the gross receipt of the dealer-assessee for the year 1993-94 at Rs.61,96,36,840.37. The assessing authority found that gross payment of Rs.30,46,72,935.07 had not been considered in the original assessment and thus had escaped assessment.

2(a). The dealer-assessee claimed different deductions from the gross receipt for determination of the gross turnover before the learned assessing authority. It claimed deduction of Rs.57,26,457.01 towards labour escalation, Rs.20,83,12,414.00 towards advance taken from the contractee for mobilisation of works, Rs.3,66,84,429.44 towards design and engineering, Rs.20,16,03,994.68 towards interstate supplies made by the dealer-assessee from its head office which is outside the State of Orissa, Rs.2,52,12,552.00 towards erection and installation

works being 100% labour oriented works. The learned assessing authority considering the various claims of the dealer-assessee allowed deduction from the gross receipt as follows:-

(i) Advance and loan advance - Rs.23,75,19,465.00
(ii) Design & engineering charges- Rs.3,11,20,470.40
(iii) Labour escalation charges - Rs. 1,03,656.00
(iv) Consumables such as gas - Rs. 47,707.00
(v) Hire charges - Rs. 43,530.00

2(b). The learned assessing authority determined the gross receipt for civil and erection works at Rs.23,61,25,871.97 and allowed deduction of Rs.7,55,60,279.03 towards labour and service charges @ 32% of the gross receipt. Accordingly, the LAO determined the gross turnover of the dealer-assessee at Rs.27,52,41,732.94 and allowed deduction of Rs.2,11,00,823.00 towards the first point tax paid materials on iron and steel goods against the total claim of Rs.10,37,91,653.45. The total taxable turnover of the dealer-assessee was determined at Rs.25,41,40,909.94 which was taxed @ 4% on which surcharge of Rs.10,16,563.64 was determined and penalty of Rs.1,00,000.00 imposed. The learned assessing authority disallowed the claim of deduction towards interstate supplies on the ground that the dealer-assessee failed to produce documentary evidence to that effect.

3. The dealer-assessee challenging the aforesaid demand raised by the assessing authority preferred appeal before the first appellate authority who partly allowed the appeal resulting in a return of Rs.52,25,204.00. The first appellate authority observed that the documents filed by the dealer-assessee shows about the receipt of Rs.3,88,72,075.40 and in the order of reassessment, the dealer-assessee having been allowed deduction of Rs.3,11,20,470.40, it was entitled further deduction of Rs.77,51,605.00 towards design and engineering. The first appellate authority was also pleased to allow further deduction of Rs.1,08,11,000.00 towards advance receipt over and above the deduction of Rs.23,75,19,465.00 allowed by the assessing authority. The dealer-assessee was further allowed deduction of Rs.7,33,91,706.00 towards interstate sale by it (dealer-assessee) and claim of Rs.13,82,12,288.68 towards interstate sales was disallowed on account of failure of the dealer-assessee to produce the relevant documents. It further allowed deduction @ 30% towards labour and service charges in case of construction works and @ 72% in case of erection and installation works. The first appellate authority also allowed claim of deduction of Rs.6,42,64,719.28 towards purchase of first point tax paid materials i.e. iron and steel and Rs.85,11,832.00 towards first point tax paid cement over and above Rs.2,11,00,823.00 allowed by the assessing authority. Accordingly, the first appellate

authority reduced the tax demand raised by the assessing authority and directed refund of Rs.52,25,204.00 as the dealer-assessee had deposited a sum of Rs.83,94,910.00 for the year 1993-94.

4. The State being aggrieved with the reduction of demand raised by the assessing authority preferred the present second appeal mainly on the ground that the forums below were not correct in their approach in treating the entire contract as divisible one and calculating the tax liability of the dealer-assessee accordingly. It was vehemently urged by the learned Standing Counsel for the State that the entire contract work was a single and turnkey contract, so the property in the plant and equipment passed to the contractee after installation and successful commissioning of the project. The forums below under misconception of law treated the contract as divisible one and allowed deduction on different heads. He submits to allow the appeal, set aside the impugned orders of the forums below and remand the matter back to the assessing authority for recomputing the tax liability of the dealer-assessee treating the entire contract as indivisible one.

5. Per contra, learned Counsel for the dealer-assessee supporting the impugned order of the first appellate authority vehemently urged that after 46th Amendment of the Constitution, the contract which is single and indivisible has been altered by legal fiction into

a contract which is divisible into one for sale of goods and other for supply of labour and service and as a result, such contract which is single and indivisible has been brought at par to the contract containing two separate agreements. After 46th Amendment of the Constitution, the State is precluded from taking the plea that the contract entered into between the parties was single and indivisible and the authorities below should have computed the tax liability of the dealer-assessee accordingly. The first appellate authority was fully correct in its approach in treating the supply of plant and equipments from outside the state as inter-State sale and allowing deduction thereof from the gross payment received by the dealer-assessee while determining the TTO. The assessing authority also illegally collected tax on purchase of first point tax paid goods which were utilised in execution of works contract and the same was rectified by the first appellate authority. There is no illegality or impropriety in the order of the first appellate authority warranting interference of this Tribunal.

6. We have heard the rival submissions of the parties, gone through the impugned orders of the forums below, grounds of appeal vis-a-vis the materials on record. The only contention that was raised before this forum while challenging the impugned orders of the forums below was that the contract entered into between the parties was single and indivisible contract and the

authorities below erred in law in treating the contract as divisible while computing the tax liability of the dealer-assessee. Such contention raised by the learned Standing Counsel for the State, in our humble view, is against the principles of law laid down by the Hon'ble Apex Court in the cases of **Gannon Dunkerley & Co. and others Vs. State of Rajasthan and others, reported in [1993] 88 STC 204 (SC)**. The Hon'ble Apex Court in the aforesaid decisions categorically held as a result of 46th Amendment, the contract which was single and indivisible has been altered by the legal fiction into a contract which is divisible into one for sale of goods and other supply of labour and services and as a result, such a contract which was single and indivisible has been brought at par with contract containing two separate agreements. On perusal of the impugned orders of the forums below, we find that they have taken into consideration the law laid down by the Hon'ble Apex Court in the case of Gannon Dunkerley & Co. and others (supra) and accordingly, computed the tax liability of the dealer-assessee. The deduction so allowed by the first appellate authority is based on the relevant documents on record and according to law. The learned Standing Counsel for the State could not point out anything from the materials on record that the first appellate authority committed any illegality in allowing the above deductions. The assessing authority had allowed different deductions claimed by the dealer-assessee partly

due to non-production of relevant documents and those documents were produced by the dealer-assessee before the first appellate authority who duly took into consideration those documents and deductions were allowed according to law. There is no illegality or impropriety in the assessment made by the first appellate authority reducing the tax demand and allowing deduction under different heads as claimed by the dealer-assessee.

7. In view of the discussions made above, we are of the unanimous view that there is no illegality or impropriety in the view expressed by the first appellate authority in treating the contract as divisible one and allowing deduction claimed by the dealer-assessee under different heads. Accordingly, the appeal filed by the State, being devoid of merit, stands dismissed and the impugned order of the first appellate authority is hereby confirmed.

Dictated & Corrected by me

Sd/-
(A.K. Das)
Chairman

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(S.K. Rout)
2nd Judicial Member

I agree,

Sd/-
(S. Mishra)
Accounts Member-II