BEFORE THE FULL BENCH: ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 756 of 2006-07

(Arising out of the order of the learned ACST, Sambalpur Range, Sambalpur, in First Appeal Case No. AA-439 (SAI) of 05-06, disposed of on dtd.28.04.2006)

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. C.L. Patel,
At/P.O.- Budharaja,
Dist.- Sambalpur. ... Respondent

For the Appellant : Mr. M.S. Raman, A.S.C.
For the Respondent : Mr. S.K. Mishra, Advocate

Date of Hearing: 27.11.2018 ******** Date of Order: 05.12.2018

O R D E R

This appeal is directed against the order dtd.28.04.2006 passed by the learned Asst. Commissioner of Sales Tax, Sambalpur Range, Sambalpur (hereinafter referred to as, the learned ACST) in First Appeal Case No. AA-439 (SAI) of 05-06, wherein and whereby he has dismissed the first appeal by confirming the order of the learned Sales Tax Officer, Sambalpur I Circle, Sambalpur (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 2004-05 directing for a refund amounting to

Rs.1,13,974.00 subject to verification of PCR relating to earlier payment of tax by way of TDS.

2. The respondent-dealer being a works contractor executed certain works under different authorities and received a gross amount of Rs.6,45,93,193.00 for the same in the assessment year 2004-05. In an assessment u/s.12(4) of the OST Act for the assessment year in question i.e. for the assessment year 2004-05, 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, the respondent-dealer has not maintained any account towards the labour and service charges and as such on examination of the relevant materials, he ascertained the nature of works and divided the works into four categories and allowed deduction @ 85%, 85%, 40% and 55% towards the labour and service charges relating to the earth work, labour work, construction work and other works respectively. Similarly, he also allowed deduction of Rs.94,92,855.00 towards the utilization of the first point tax paid goods in the execution of the works and determined the TTO at Rs.1,77,63,493.00 and levied tax thereon @ 8% which came to be Rs.14,21,079.44. Then, he also levied surcharge thereon at the appropriate rate of 10% which came to be Rs.1,42,107.94 and as such both the tax and surcharge came to be Rs.15,63,187.38 in total. As the respondent-dealer had already paid tax to the tune of Rs.16,77,161.00 earlier by way of TDS, the learned STO directed for refund of an amount of Rs.1,13,974.00 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. AA-439 (SAI) of 05-06. On hearing and on consideration of the materials on record, the learned ACST found no merit in the contentions raised by the respondent-dealer and accordingly dismissed the appeal by confirming the order of the learned STO. As regard the claim of the respondent-dealer relating to earlier payment of tax amounting to Rs.25,68,881.00 by way of TDS, he directed for verification of the PCR and for refund of the payment in excess. But, thereafter, being

aggrieved with the order of the learned forums below, 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, though the respondent-dealer has failed 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.6,45,93,193.00 for the same in the assessment year 2004-05. 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 @ 85%, 85%, 40% and 55% towards the labour and service charges relating to the earth work, labour work, construction work and other works respectively on consideration of the available materials on record and the same has further been confirmed by the learned ACST at the first appeal stage. 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. 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 the works and have allowed deduction @ 85%, 85%, 40% and 55% towards the labour and service charges relating to the earth work, labour work, construction work and

other works respectively and have determined the TTO accordingly. As both the learned forums below have arrived at a concurrent finding determining the nature of works after examination of the entire materials available on record and have allowed deduction towards the labour and service charges accordingly, it is not desirable for this forum to disturb the said finding and to interfere in the order passed by them. Similarly, the learned ACST has also ordered for verification of the PCR in connection with the payment of tax made by the respondent-dealer by way of TDS and the said order can clearly be said to be suffers from no infirmity.

9. On a close scrutiny of the entire materials available on record, it can clearly be said that, the order passed by the learned forums below relating to the deduction allowed towards the labour and service charges and the further order passed by the learned ACST directing verification of the PCR in connection with the payment of tax made by the respondent-dealer by way of TDS suffers from no infirmity and hence needs no interference of this forum.

10. 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