

2. The facts as revealed from the case record are as follows
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The dealer-assessee M/s. Mahabir Prasad Agrawal, Bhawanipatna is a works contractor. He had executed works under different agencies during the year 2002-03 and had received payments of `2,24,69,157.00, `72,58,161.00, `16,83,662.00 and `18,71,192.00 for executing the works contract under the Executive Engineers, R.W.D., Bhawanipatna and Koraput; M.I. Division, Khariar and General Manager, O.S.W.C., Bhubaneswar respectively. Thus in total he had received the gross payment of `3,32,82,172.00 during the year under assessment.

Considering the nature of works executed by the dealer the assessing officer had allowed him 42% deduction towards labour and service charges pertaining to the works contract under the Executive Engineer, R.W.D., Bhawanipatna and Koraput since those works related to improvement of roads and CD (cross drainage) works under PMGSY. Further the assessing officer had allowed 62% deduction towards labour and service charges for the works executed by the dealer under the Executive Engineer, M.I. Division since that related to D/S (Distribution System) of Godalanalla M.I.P. and then allowed 32% deduction towards labour and service charges for the works executed by the dealer under the General Manager, O.S.W.C., Bhubaneswar since that related to construction works. The assessing officer had also taken into consideration the tax paid materials

purchased and utilized in the above works contract which came to `95,44,039.00 and allowed the said amount towards deduction on production of supporting documents by the dealer. He thus completed the assessment with an order for refund of `4,91,167.00 in favour of the dealer-assessee.

However, the dealer being aggrieved by the aforesaid assessment preferred an appeal before the first appellate authority on the grounds that the order of assessment passed by the assessing officer was arbitrary and illegal. The assessing officer had not accepted the certificates furnished by the dealer-contractor which were received by him from different Executive Engineers regarding the works executed by him under them. He further contended before the first appellate authority that the PMGSY being purely rural road work, the nature of work related to earth filling, bush clearing, sand and morrum filling and spool spreading as well as metalling and surface dressing done manually. In this work a small quantity of materials were used for making concrete road, culvert and bitumen road works. The works executed by him under MI Division, Khariar related to canal work which was purely earth work. Therefore, the percentage of deduction towards labour and service charges in respect of the above works should have been allowed @ 52% instead of 42%. Similarly the percentage of deduction towards labour and service charges for earth work should have been @ 85% instead of 62% and for

construction work it should have been @ 35% instead of 32%. The dealer also brought to the notice of the first appellate authority that for road and canal work he was allowed to get deductions @ 55% and 90% respectively for the year 2003-04 as per the order passed in Appeal Case No. AA. 26 (KA) of 2005-06 vide order No. 1893 dated 10.06.2005 and also for the year 2004-05 the deductions were @ 52% and 85% respectively in Appeal Case No. AA. 149 (KA) of 2005-06 vide order No. 2474 dated 09.06.2006. The first appellate authority after considering the aforesaid averments of the dealer before him alongwith the order of assessment and documents available in the assessment record found no reason to disturb the order of assessment and as such the order of assessment was confirmed by him.

3. Now the State being aggrieved by the aforesaid order of the first appellate authority preferred this appeal before the Tribunal on the grounds that the orders passed by both the authorities below are not appropriate. They have allowed deductions towards labour and service charges in excess since the works include construction of distribution system and for execution of these works huge amount of materials had been utilized as revealed from the record. Thus it was urged on behalf of the State that the percentage of deduction towards labour and service charges for construction work should be limited to 32%.

No cross-objection has been filed on behalf of the dealer-assessee in this case.

4. In course of hearing it was found that the dealer-assessee was absent despite service of notice on him as per the AD kept on record. Therefore, the appeal was heard from the side of the State only to be disposed of exparte on merit as per Rule 60(2) of the OST Rules.

5. Learned Addl. Standing Counsel (CT) appearing for the State urged before the Bench for application of Rule 4-B of the OST Rules in the present case and submitted that the percentage of deduction towards labour and service charges should be limited to 35%.

6. However, on perusal of the order of assessment as well as the impugned order it could be gathered that both the forums below had verified the works executed by the dealer-assessee under different contractees. The assessing officer determined the percentage of deduction towards labour and service charges taking into consideration different nature of works executed by the dealer under different contractees for the relevant period. The first appellate authority had also examined the nature of works involved in the works contract which were executed by the dealer during the relevant period quite thoroughly and then he found that the assessing officer had allowed deductions towards labour and service charges as per the norms fixed by the Works Department. Therefore, the first appellate authority held the assessment done by the assessing officer as just and proper and confirmed the same.

Under such circumstances as discussed above we find absolutely no illegality or irregularity in the impugned order so as to

interfere with the same in this appeal. Accordingly the order passed by the first appellate authority needs to be confirmed.

7. In the result, the appeal preferred by the State is dismissed and the impugned order is hereby confirmed.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(A.K. Dalbehera)
1st Judicial Member

I agree,

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