

dealer-assessee before him in full and reducing the assessment by ₹2,54,221.00 pertaining to the period 1999-2000.

2. The facts as revealed from the case record are as follows :-

The dealer-assessee in the instant case is a works contractor and as such during the relevant period he had undertaken execution of works contract under South Eastern Railway of Sambalpur Division, Sambalpur in 13 (thirteen) numbers of agreements executed between the parties. But out of those 13 numbers of agreements the dealer-assessee executed the contract works in respect of 8 (eight) numbers of agreements and received payment accordingly. The dealer-assessee was also furnished with a certificate issued by the Assistant Engineer, South Eastern Railway, Balangir to the effect that the payment in respect of works under the above eight agreements were 100% labour oriented works being related to improvement as well as repair and change of sleeper works and for those works the Railway Department supplied the materials on free of cost. In course of assessment it was found by the assessing officer that the dealer-assessee had maintained labour payment register showing details of payment made to the labourers and books of account from which the

assessing officer could ultimately determine the tax liability of the dealer-assessee. Then after imposing penalty as well as surcharge on tax dues of the dealer-assessee he ordered for refund of `2,68,739.00 to the dealer for the year 1999-2000 as per the provisions of the OST Act.

Being aggrieved with the order of assessment the dealer-assessee preferred an appeal before the first appellate authority who in turn reduced the assessment by `2,54,221.00 after scrutinizing the documents filed before him and thus determined the tax liability of the dealer-assessee afresh.

3. Being aggrieved with the aforesaid order the State came up with the present appeal on the following grounds:-

- (i) The order of the first appellate authority is illegal, arbitrary, unjust and improper; and
- (ii) Both the forums below have allowed labour and service charges in excess i.e. in violation of the Works Department Circular.

4. The dealer-assessee has filed its cross-objection mentioning therein that the respondent had undertaken several works contract out of which 8 nos. of works were purely labour oriented and

when there was no transfer of property there was also no deemed sale and as such the learned Asst. Commissioner of Sales Tax (the first appellate authority) has rightly reduced the demand made by the learned assessing officer.

5. In course of hearing learned Addl. Standing Counsel (CT) for the State submitted that both the assessing officer and the first appellate authority did not bother to see the nature of works executed by the dealer-assessee and to apply the provisions of Rule 4B of the OST Rules while determining the amount which was supposed to be deducted from the total gross receipt of the dealer-assessee.

In response to this argument learned Counsel for the dealer-assessee submitted that in the instant case neither the assessing officer nor the first appellate authority had got any chance to apply Rule 4B as averred by the State-appellant because the record is quite clear to the effect that the dealer-assessee had produced all the documents i.e. copies of agreements, labour payment register, payment register certificate as well as books of account before the authorities concerned. It is clearly found from the agreements that the works done by the dealer-assessee were purely labour oriented ones and as such the finding of the first appellate authority cannot be disturbed.

6. On a thorough scrutiny of the order of assessment as well as order of the first appellate authority it could be gathered that the authorities below had verified the books of account and other relevant papers during the assessment proceeding u/S. 12(5) of the OST Act and nowhere they mentioned that they did not accept the books of account as well as other documents produced by the dealer-assessee before them. In such circumstances when we go through the order passed by the first appellate authority we can clearly gather that he (the first appellate authority) had verified the works orders and the agreements entered into by the dealer-contractor bit by bit about which he also mentioned in his order quite clearly. However, he could describe about eight such agreements in his order and became convinced as well as certain that the amount involved in those eight agreements related to job works only in which involvement of labour was 100%. So far as the remaining works pertaining to rest five agreements he found that the works involved therein based upon special repair to bank such as widening and improvement to its side as well as catch water drains at the work site. Further the agreements pertaining to these works orders also reveal that the materials were supplied to the dealer-assessee by the Railway Department free of cost. He (the first appellate authority)

could find that the involvement of labour and service charges in those works was definitely more than the amount determined by the assessing officer who had allowed only 80% deduction towards labour and service charges for these works. Thus the first appellate authority calculated the tax liability of the dealer-assessee afresh and reduced the assessment by `2,54,221.00 while instructing further that excess tax, if any, paid by the dealer-assessee may be refunded.

No infirmity is found in the aforesaid order of the first appellate authority who has categorically described in his order as to how he came to aforesaid conclusion.

7. In the result, the appeal is dismissed. Cross-objection is disposed of accordingly.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Subrat Mohanty)
2nd Judicial Member

I agree,

Sd/-
(Prabhat Ch. Pathy)
Accounts Member-I