



passed by the Sales Tax Officer, Assessment Unit, Titilagarh (in short, 'assessing officer') u/S. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') for the period 2004-05.

2. The facts as revealed from the case record are that the dealer-assessee is a works contractor and as such had undertaken the work under the Executive Engineer, Rural Works Division, Balangir and Divisional Engineer, South Eastern Railway, Sambalpur. During the relevant period he received `3,20,70,842.00 only towards his payment and while completing the assessment the assessing officer determined the GTO at `3,20,70,842.00 and TTO at `57,45,298.66 after allowing him deduction of `2,32,21,535.34 towards labour and service charges and `31,04,008.00 towards tax paid materials used in the construction works. He calculated tax @ 8% on the TTO and added surcharge @ 10% on the same. Thus the total tax to be levied from the dealer-assessee was calculated at `5,05,586.00. Since the dealer had already paid a sum of `12,82,434.00 in shape of TDS the assessing officer passed an order for refund of `7,76,848.00 to the dealer-contractor.

However, the dealer not being satisfied with this order of assessment preferred an appeal before the first appellate authority describing the order of assessment as illegal and arbitrary. The dealer-assessee further pleaded that being a works contractor he had undertaken works contract from Sr. Divisional Engineer, East Coast Railways, Sambalpur and the Executive Engineer, Rural Works Division, Balangir. He had maintained accounts of purchases, receipt of payments from contractee and labour register in detail and had produced the same before the assessing officer but the assessing officer did not make the assessment properly and without advancing any reason in estimating its (dealer-assessee's) TTO at a higher side passed the order of assessment. Learned first appellate authority, however, confirmed the order of assessment and dismissed his appeal.

3. Now the State, being aggrieved with the order of first appellate authority, preferred this second appeal on the ground that the orders passed by the assessing officer as well as first appellate authority are not appropriate as the deduction allowed on labour and service charges is found to be very high. The work undertaken by the dealer-assessee reveals that some construction work i.e. cement concrete foundation and cement works in culverts and concrete pipes etc. were

done by the contractor for which both the authorities below should have limited the deduction on labour and service charges to 32% only and for the road work the deduction of labour and service charges should have been limited to 42%. Again supply of RCC pipes culverts, stone, granite stone etc. should have been treated as supply contract. In the instant case the dealer-assessee had failed to maintain books of account and no documentary evidence was produced by him before both the authorities concerned. Therefore, the authorities below should have applied Rule 4B of the OST Rules in the instant case while computing the tax liability of the dealer-assessee.

4. In the present appeal the respondent-dealer has filed cross-objection stating therein that the order of assessment passed by the assessing officer having been passed on misconception of facts is illegal and arbitrary. It is further stated by the dealer-assessee that it had maintained accounts of gross receipt, labour payments and goods purchased from inside the State of Odisha on payment of Odisha Sales Tax and maintained the accounts in detail. It had received the gross amount of its payment from Railways which was completely 100% labour oriented work as no property was transferred to the contractee.

Therefore, allowing the dealer-assessee only 72% of deduction in such a case is illegal and arbitrary.

5. On a bare perusal of the impugned order it is found that the first appellate authority after going through the order of assessment, grounds of appeal and other connected papers and also having heard the learned Counsel appearing on behalf of the dealer-assessee before him came to know that the dealer-assessee had performed road works and the nature of work involved cleaning of grass, removal of rubbish on both sides of the road to facilitate widening of berms, disposal of the stuff including all labour, T&P articles required, earth work in embankment in all sorts of soils with all leads and lifts including breaking of clods, ramming, sectioning, watering and compacting. The first appellate authority had examined the agreement copies as well as work orders pertaining to aforesaid work. He also found that the work in the present case involved filling of sand, watering and applying priming coat over the prepared surface of WBM with bitumen boiler fitted with spray set as well as some other works etc. It is revealed from his (the first appellate authority) order that he had meticulously gone through all the papers related to the works contract of this dealer-assessee and then found that the dealer-assessee had not

maintained any books of account and further could not produce any documentary evidence to substantiate his claim for deduction @ 85% of the gross receipt towards labour and service charges. It is clearly revealed from the impugned order that the dealer-assessee had failed to produce the books of account as well as any other document before him and it was further noticed that he had neither maintained nor produced any document showing his payment towards labour i.e. the muster roll etc. He (the first appellate authority) pointed out that under such circumstances the assessing officer had to reject the claim advanced by the dealer-assessee seeking 85% deduction towards labour and service charges for execution of works though he still had allowed the dealer-assessee deduction @ 72% towards labour and service charges and had then determined its tax liability. The assessing officer had also found that the dealer-assessee had made some construction work and had not maintained the register to show the payment of labour and service charges incurred by him in respect of the works as mentioned above to have been executed by him. Admittedly in the instant case as neither the assessing officer nor the first appellate authority found any books of account pertaining to the works executed by the dealer-assessee they made their own conclusions regarding the percentage of deduction to be

made towards labour and service charges in favour of the dealer-assessee. This assessment was done for the period 2004-05 when Rule 4B of the OST Rules was not in existence but this Rule 4B was inserted in the year 2010 by way of amendment with retrospective effect from 30.07.1999. As the case is still continuing it is felt that this matter be remitted back to the assessing officer to make a fresh assessment keeping in view the nature of works executed by the dealer-assessee and applying the provision of Rule 4B of the OST Rules for determination of the quantum of labour and service charges to be deducted from the gross receipt of the dealer-assessee.

So far as the claim of 100% deduction of the dealer-assessee on account of maintenance of Railway track by engaging labours is concerned it could be gathered from the impugned order that the first appellate authority has confirmed the deduction of 85% as allowed by the assessing officer for the reason that the dealer-assessee could not produce any agreement copy/work order in that regard. The dealer-assessee also could not produce any material evidence before this forum to substantiate his aforesaid claim. So we have no reason to disagree with the findings of the authorities below in this regard.

6. In the result, the appeal is allowed and the impugned order passed by the first appellate authority is hereby set aside. The matter is remitted back to the assessing officer for fresh assessment as per the observations made by this Tribunal in the above paragraph within three months from the date of receipt of this order. 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)**  
**2<sup>nd</sup> Judicial Member**

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