

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:
CUTTACK**

S.A. No. 1848 of 2004-05

(Arising out of order of the learned ACST, Sambalpur Range, Sambalpur in First Appeal Case No. AA- 69 (SA-I) of 2004-05, disposed of on dated 26.07.2004)

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. H.S. Kabli,
Budharaja, Sambalpur ... Respondent

For the Appellant : Sri S.K. Pradhan, Addl.SC (CT)
For the Respondent : N o n e

Date of hearing: 07.12.2021 *** Date of order: 14.12.2021

O R D E R

The State has preferred this appeal assailing the order dated 26.07.2004 passed by the learned Asst. Commissioner of Sales Tax, Sambalpur Range, Sambalpur (hereinafter called as 'first appellate authority') in Appeal Case No. AA- 69 (SA-I) of 2004-05 thereby confirming the order of assessment dated 29.03.2004 passed by the Sales Tax Officer, Sambalpur-I Circle, Sambalpur (in short,

‘assessing authority’) directing refund of ₹4,42,384.00 excess tax paid by way of TDS for the assessment period 2002-03 by exercising power u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, ‘OST Act’).

2. When the appeal was called on for hearing, none appeared on behalf of the dealer-respondent inspite of valid service of notice. So, this Tribunal was left with no other option except to hear the appeal *exparte* in the presence of the learned Addl. Standing Counsel (CT) representing the State.

3. In course of hearing of the second appeal, Mr. S.K. Pradhan, learned Addl. Standing Counsel (CT) for the State vehemently urged that the deduction allowed by the forums below towards labour and service charges is contrary to Rule 4-B of the Odisha Sales Tax (Amendment) Rules, 2010 (in short, ‘OST Rules’) which came into force w.e.f. 30.07.1999 though notified on 06.02.2010 and submitted to set aside the orders of the forums below with a direction to the assessing authority to recompute the tax liability of the dealer-respondent keeping in view the amending Rules 4-B. No other contention was raised by the learned Addl. Standing Counsel (CT) for the State.

4. In view of the limited contention raised by the learned Addl. Standing Counsel (CT) for the State, the only question emerged for determination in the present second appeal is whether the deduction allowed by the forums below towards labour and service charges is contrary to Rule 4-B of the OST Rules.

5. Before addressing the issue raised by the learned Addl. Standing Counsel (CT) for the State, it is necessary to briefly narrate the relevant facts for effective adjudication of the issue involved in the present appeal. The respondent-dealer is a works contractor and is engaged in execution of works contract under the Executive Engineer, Canal Division, Bargarh; Executive Engineer, R.W. Division, Sambalpur and Executive Engineer, R.W. Division, Deogarh. The dealer executed works i.e. improvement to Canal surface road from RD 00 KM to 16.00 Km. vide WRCP package No. 9(a) under the Executive Engineer, Canal Division, Bargarh. It also executed works of improvement to road and CD works under PMGSY. Under Executive Engineer, Rural Works Division, Deogarh, the nature of works executed was improvement of road and CD works under PMGSY scheme. In the assessment proceeding initiated u/s. 12(4) of the OST

Act for the year 2002-03, the dealer produced three payment certificates issued by the contractees and TDS certificates. Learned assessing authority examined the documents submitted by the respondent and found that the dealer had received payment of ₹31,74,097.00 for work of improvement to Canal surface road which was a carryover works of previous year. He observed that during the assessment year 2001-02 the respondent was allowed 80% deduction for the same works towards labour and service charges in assessment. Accordingly, the assessing authority allowed 70% deduction towards labour and service charges. Similarly, on verification of the payment certificate issued by the Executive Engineer, Rural Works Division, Sambalpur, the learned assessing authority found that the dealer had executed improvement to road and CD works under PMGSY which was also a carryover works of previous year. Examining the nature of works, he allowed deduction of 70% towards labour and service charges. Likewise, on verification of certificate issued by the Executive Engineer, R.W. Division, Deogarh, the assessing authority found that the dealer executed improvement of road and CD works under PMGSY and received payment of ₹1,24,42,946.00. Basing on

the letter No. 772 dated 04.09.2003, he observed that the dealer-respondent had not executed the metalling and black taping works for the project and there was involvement of more labour and service charges in the works. So, he allowed 80% deduction for labour and service charges amounting to ₹99,54,357.00. Learned assessing authority allowed total deduction of ₹1,83,48,204.00 towards labour and service charges out of gross payment of ₹2,44,34,156.00. He determined the GTO and TTO of the respondent at ₹60,85,952.00 and computed the total tax of ₹4,86,876.00 and surcharge of ₹48,688.00. Since the dealer had deposited tax of ₹9,77,948.00 by way of TDS directed for refund of ₹4,42,384.00, the excess tax paid by it.

6. The dealer being aggrieved with the aforesaid findings of the assessing authority preferred appeal before the first appellate authority, who also concurred with the view of the assessing authority, dismissed the appeal and confirmed the order of assessment.

7. The State being aggrieved with the order of the first appellate authority confirming the order of assessment preferred the present second appeal. Mr. Pradhan, learned Addl. Standing Counsel (CT) fairly

submitted that on the date the assessment as well as the first appellate orders were passed, the Amending Rules 4-B was not there for consideration of both the authorities below. Therefore, they had no occasion to deal with Rule 4-B of the OST Rules. So, the deduction allowed by the forums below towards labour and service charges is contrary to Rule 4-B of the OST Rules. On perusal of the impugned orders of the forums below, we find that the rate of deduction allowed towards labour and service charges is higher than the rate of deduction prescribed in Rule 4-B of the OST Rules. Therefore, the orders of the forums below cannot be sustained in the eye of law. Undisputedly, in the present case no books of account were produced with regard to the expenditure incurred towards labour and service charges. The forums below taking note of the nature of works executed by the dealer-respondent, cost of materials used and probable labour and service expenditure incurred in the same, allowed the deduction hypothetically. The nature of works executed by the dealer-respondent are squarely covered under Rule 4-B of the OST(amending) Rules. Therefore, granting of deduction towards labour and service charges more than the rate prescribed in Rule 4-B of the

OST Rules is illegal and unsustainable in the eye of law. Thus, we are of the unanimous view that the matter should be remitted back to the assessing authority to recompute the tax liability of the dealer-respondent keeping in view the Rule 4-B of the OST Rules which prescribes different rates of deduction towards labour and service charges.

8. In view of the discussions made above, the appeal filed by the State is allowed. The impugned orders of the forums below are hereby set aside and the matter is remitted back to the assessing authority for de novo assessment keeping in view the observations made herein above within three months from the date of receipt of the order.

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