

**BEFORE THE ODISHA SALES TAX TRIBUNAL (FULL BENCH),  
CUTTACK  
S.A.No. 45/2012-13**

(From the order of the Id.DCST, Ganjam Range,  
Berhampur, in Appeal No. AA-161/2008-2009,  
dtd.17.08.2012 modifying the assessment order  
of the Assessing Officer)

**P R E S E N T :**

**Smt. Suchismita Misra    Sri S. Mohanty    &    Sri R.K. Rout  
Chairman                      Judicial Member-II    Accounts member-II**

M/s. Akshaya Kumar Pujari,  
Works Contractor,  
Badakhemundi Street,  
Manjari Nagar, 7<sup>th</sup> line,  
Berhampur.

... Appellant

**-Versus -**

State of Odisha, represented by the  
Commissioner of Sales Tax,  
Orissa, Cuttack

... Respondent

**Appearance :**

For the Appellant    ... Mr. A.K. Pujari, A.R.

For the Respondent    ... Mr. S.K. Pradhan, A.S.C. (C.T.)

(Assessment Year : 2004-05)

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Date of Hearing: 28.02.2019    \*\*\*    Date of Order: 01.03.2019  
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**ORDER**

This is an appeal by the unsuccessful dealer against the order of learned First Appellate Authority/Deputy Commissioner of Sales Tax, Ganjam Range, Berhampur (in short, FAA/DCST) passed in an assessment u/s.12(4) of the Odisha Sales Tax Act, 1947 (in short, OST Act) for the assessment period 2004-05.

2.                      The facts in brief giving rise to this appeal are : The dealer being a works contractor executed different works contract under different Government Departments. In the assessment year

2004-05, the dealer had received a sum of Rs.4,81,68,899/- against the job done. The Assessing Authority/Sales Tax Officer, Bhanjanagar Circle, Bhanjanagar, Ward-A (in short, AA/STO) on rejection of books of account and then by application of the principle of best judgment assessment allowed deduction @47% on the gross value of Rs.3,45,52,433/- received for repair of road and deduction @62% on the gross value of Rs.1,36,16,466/- received against irrigation work.

3. Being dis-satisfied with the percentage of deduction, the dealer knocked the door of the Id.DCST/FAA, Ganjam Range, Berhampur seeking higher amount of deduction towards labour and service component. The FAA determined the deduction towards labour and service charges independently and he enhanced the deduction on the gross value received against repairing of road work from 47% to 55%. So far as the deduction @62% on irrigation remained undisturbed, the total deduction became enhanced to Rs.2,74,46,047.07. Resultantly, the dealer was found entitled to refund of Rs.6,69,946/-.

4. Being aggrieved, the dealer preferred this appeal claiming more percentage of deduction.

5. Before delving into the questions raised for decision such as : (i) Whether the deduction allowed by the FAA is in lower side ? and (ii) Whether the dealer is entitled to get more amount towards labour and service charges ? it is brought to the notice of the Bench by both the sides that, the impugned order was also challenged by the State in S.A.No. 59/2012-13 and the same is already decided by the Division Bench vide Order dtd.25.07.2018. Perused the order of Division Bench. The order as it revealed, the matter is remitted back to the AA with a direction to assessment afresh on application of provision under Rule-4B of the OST Rules. Since the period for assessment is 2004-05, which is squarely covered under Rule-4B of the OST Rules, the Division Bench

remanded the matter. However, the said order was decided in absence of the dealer for his non-attendance in the hearing on receipt of notice. The dealer present in the hearing in person submits, he has no objection in the event of application of Rule-4B to the case in hand.

6. Learned Addl. Standing Counsel also filed another order passed by Division Bench of this Tribunal in S.A.No. 541/2008-09 relating to same dealer for the assessment period 2003-04, wherein and whereby, the Division Bench has taken the same view and remanded back the matter to the AA for fresh assessment.

When the appeal preferred by the State is decided finally, the impugned order became merged in the appeal as per the theory of merger. Be that as it may, once the matter is remanded back to the AA and thereby the impugned order when merged in the said order the irresistible conclusion is, the present appeal loses its force in the eye of law. It stands infructuous keeping in view the doctrine of merger. Accordingly, it is ordered.

The appeal is dismissed with the observation that, the AA in remand assessment will not be guided in any manner by the order of dismissal of this appeal.

Dictated & corrected by me,

Sd/-  
(S. Mohanty)  
Judicial Member-II

Sd/-  
(S. Mohanty)  
Judicial Member-II

I agree,

Sd/-  
(Suchismita Misra)  
Chairman

I agree,

Sd/-  
(R.K. Rout)  
Accounts Member-II

