BEFORE THE ODISHA SALES TAX TRIBUNAL (FULL BENCH), CUTTACK

S.A.No. 352/2004-05

(From the order of the ld.ACST, Sundargarh Range, Rourkela, in Appeal No. AA.488 (RL-I) of 2003-04, dtd.26.03.2004 confirming the assessment order of the Assessing Officer)

P R E S E N T :

Smt. Suchismita Misra Sri S. Mohanty & Sri P.C. Pathy
Chairman Judicial Member-II Accounts Member-I

M/s. Engineering Project (India) Ltd.,
Inside Rourkela Steel Plant,
Rourkela. ... Appellant

-Versus -

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

Appearance :
For the Appellant ... None
For the Respondent ... Mr. S.K. Pradhan, A.S.C. (CT)

(Assessment Year : 2000-01)

Date of Hearing: 26.02.2019 *** Date of Order: 26.02.2019

ORDER

This is a dealer's appeal against the confirming order of the learned First Appellate Authority/Asst. Commissioner of Sales Taxes, Sundargarh Range, Rourkela (in short, FAA/ACST) in an assessment u/s.12(4) of the Odisha Sales Tax Act, 1947 (in short, OST Act) for the period of assessment 2000-01 relating to the dealer, a works contractor.

2. M/s. Engineering Project Ltd., the dealer is a Government of India undertaking having it's Head office at Kolkata and additional place of business inside the State of

Odisha. The branch office was awarded with contract M/s. N.T.P.C., Kaniha and M/s. M.C.L., Basundhara during the year under appeal. The ld.STO at the time of examination of books of account found that the contract awarded by M/s. N.T.P.C., Kaniha was for excavation and civil work and erection work for Rs.29,83,29,714/-. The entire work was off loaded on back to back basis to 3 (three) sub-contractors namely M/s. Flex Engg. Ltd., Talcher, M/s. Delite Engineering Co., Rourkela and M/s. R.C. Samal, Kharagprasad, Dhenkanal. The appellant-company provided the technical know how and over all supervision of the projects. The ld.STO on examination of contract papers found that the entire works awarded in the contracts was off loaded to the aforenamed contractors whose names appeared in the contract itself and out of the gross receipt of Rs.8,09,43,702/- by the Appellant an amount of Rs.6,98,70,056/- was given to the sub-contractors after retaining Rs.1,10,73,646/- towards expenses incurred on drawing and designing, providing technical know how, over all supervision and site expenses not liable to pay tax. Such was also the case of Package No.II contract for Rs.57,58,05,272/- which was given to the sub-contractors M/s. Mukand Engineers Ltd., M/s. Sushree Hi-tech Construction Pvt.Ltd., and M/s. Tata Construction Pvt. Ltd., N.T.P.C. The ld.STO on examination found the sub-contractors to be liable for payment of Orissa Sales Tax and absolved the appellant from payment of tax. Apart from executing works with M/s. N.T.P.C. Ltd., the appellant also executed works with M/s. M.C.L., Basundhara in 6(six) packages involving the works of widening and strengthening the Road from Sundargarh to Duduka and the entire packages were also off loaded to 6(six) number of sub-contractors on back to back

basis and the tax liability was with the appellant-company. The total gross receipt during the year towards execution of work with M/s. M.C.L. stood at Rs.6,85,20,870.43 on consideration of the nature of works executed, the ld.STO allowed deduction towards labour and services @10% and put the rest amount to tax. The appellant had also received an amount of Rs.8,27,625/- from M/s. SAIL, R.S.P., Rourkela for a previous erection job. The ld.STO allowed 42% deduction towards labour and services and the rest amount to tax.

3. Being not satisfied with the percentage of deduction towards labour and service charges, the dealer had preferred appeal before the learned FAA. The learned ACST as FAA, revisited into the works contract, agreements, the nature of work and then held that, the deduction given by the AA was correct. As such, the assessment and the determination of the tax liability as per the assessment order remained undisturbed.

4. When the matter stood thus, being aggrieved with the orders of both the fora below, the dealer has preferred this appeal. It is contended by the dealer that, the fora below has erroneously allowed deduction @42%. The dealer had allowed deduction @75% for the self-same nature of work during other period of assessment. So, the dealer has prayed for enhancement of the deduction towards labour and service charges.

5. The dealer-appellant remained absent in the hearing as such the appeal is heard setting him ex-parte.

6. Here in this case, the facts remained undisturbed that, the dealer is a works contractor. He has executed job works under different contracts entered into between the N.T.P.C. and the dealer. The dealer had engaged other sub-

contractors for execution of the work. The terms and conditions of the contract were explicit regarding the supply component and labour components to be engaged by the dealer. The AA had scrutinised the nature of work and the contract and agreement and allowed deduction at different rate. The FAA has reiterated the findings of the AA. The plea of the dealer as per the appeal memo is, the dealer was allowed higher percentage of labour and service charges during other assessment periods regarding to the similar nature of works. It is well settled that, provision of *res judicata* has no application in the tax matters. The assessment for another period is once passed on separate cause of action than the assessment in present period. So whatever deduction allowed for the other period is not a binding precedent for the subsequent periods. On the other hand, when we look into the assessment order and then the impugned order, it is found that, both the authorities below have gone into in-depth analysis of the nature of work and then on scrutiny of the terms of the agreements relating to the supply of materials of labour component have determined the percentages of deduction. It is also not out of place to mention here that, the grounds in appeal memo are factually incorrect and the grounds are mechanically raised for the sake of appeal only.

7. This is a finding on scrutiny of the relevant facts by both the fora below. Such findings on fact cannot be upset on mere allegation that, the findings are without application of judicial mind. In absence of any cogent and rebuttal evidence to the findings on fact by both the fora below cannot be disturbed. At the cost of repetition, it is mentioned here that, the dealer who has preferred this appeal for the year 2004 has not bothered to advance his case in the final hearing. So, it is

presumed that, the dealer has no more to say. At the same time, it is found that, the findings of the fora below suffers from no illegality. Hence, calls for no interference. In the result, it is ordered.

8. The appeal is dismissed as of no merit.

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/-
(P.C. Pathy)
Accounts Member-I