

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

**S.A. No. 697 of 2004-05**

(Arising out of order of the learned ACST, Appellate Unit,  
Bhubaneswar in First Appeal No. AA- 92/BH-I/03-04,  
disposed of on dated 25.05.2004)

Present: **Shri A.K. Das, Chairman**  
**Shri S.K. Rout, 2<sup>nd</sup> Judicial Member**  
**&**  
**Shri S. Mishra, Accounts Member-II**

M/s. B. Engineers & Builders Ltd.,  
72-A, M.I. Estate, Bhubaneswar ... Appellant

-Versus-

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

For the Appellant : Sri D.K. Mohanty, Advocate  
For the Respondent : Sri D. Behura, S.C. (CT) &  
Sri S.K. Pradhan, Addl.SC (CT)

-----  
Date of hearing: 08.06.2022 \*\*\* Date of order: 10.06.2022  
-----

**O R D E R**

This second appeal is directed against the  
order dated 25.05.2004 passed by the learned Asst.  
Commissioner of Sales Tax, Appellate Unit, Bhubaneswar  
(hereinafter called as 'first appellate authority') in Appeal No.  
AA- 92/BH-I/03-04 thereby confirming the order of  
assessment dated 31.03.2003 passed by the Taxing

Authority, Bhubaneswar-I Circle, Bhubaneswar (in short, 'assessing authority') raising an extra demand of ₹5.75,194.00 for the year 1999-2000 in the assessment framed u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act').

2. The facts relevant for adjudication of the present second appeal are that the dealer-assessee executes works contract both inside and outside the State and also manufactures vertical and horizontal gates for use in dams. The gates manufactured by the assessee are exclusively used by it in the execution of works contract. The assessee in the return filed by it disclosed the TTO for the year 1999-2000 at ₹10,97,52,514.40 claiming deduction of ₹28,00,47,579.60 towards labour and service charges and ₹2,27,48,142.00 towards the cost of materials purchased by it. The assessee was subjected to assessment u/s. 12(4) of the OST Act and notice was issued to it. Pursuant to such notice, the dealer-assessee appeared through its authorized agent and disclosed receipt of ₹41,25,48,236.00 from different authorities towards execution of the works contract. The assessing authority on examination of books of account and other relevant documents produced by the

dealer-assessee, allowed deduction of ₹21,05,02,427.74 towards labour and service charges and deduction of ₹1,97,05,033.00 towards tax paid and tax exempted goods for execution of the works contract. The TTO was determined at ₹18,23,40,775.26 on which tax and surcharge was calculated at ₹1,67,75,351.32. After allowing deduction of ₹1,62,00,157.00 towards TDS, balance tax payable was determined at ₹5,75,194.00.

2(a). The dealer-assessee challenging such demand raised by the assessing authority, preferred appeal before the first appellate authority on the ground that determination of GTO and TTO was arbitrary, illegal and unwarranted; that deduction granted towards labour and service charges was unjust and arbitrary; that adjustment of TDS of ₹1,62,00,157.00 as against the claim of ₹1,67,32,243.00 was illegal; that the assessing authority should have allowed sufficient time to the dealer-assessee to furnish the TDS certificate and that the deduction granted towards labour and service charges is contrary to the principle decided in *Gannon & Dunkerly & Co. Vs. State of Rajasthan* and another, reported in [1993] 88 STC 204 (SC). The first appellate authority on examining the impugned

order of the assessing authority vis-a-vis the materials on record, confirmed the order of assessment. The dealer-assessee being further dissatisfied with the order of the first appellate authority, filed the present second appeal.

3. The dealer-appellant in the appeal though raised several grounds, in course of hearing of the appeal he confined its argument to the order of the assessing authority allowing deduction of ₹1,62,00,157.00 as against claim of ₹1,67,32,243.00 by the assessing authority, which was also confirmed by the first appellate authority. It was vehemently urged by the learned Counsel for the dealer-assessee that both the fora below committed error of law in disallowing the claim of deduction of ₹1,67,32,243.00 towards TDS on account of non-production of the TDS certificate. The forums below should have allowed the entire claim of deduction basing on the statement filed by the dealer-assessee before the assessing authority or it could have cross-checked with the record of the contractee under whom the dealer executed the works. He, relying on the decision of the Hon'ble High Court of Orissa in case of B. Engineers and Builders Ltd. Vs. The Commissioner of Commercial Taxes and others (W.P. (C) No. 13653 of 2010, decided on

18.08.2020), submitted to remit the matter back to the assessing authority to cross-check the claim of deduction towards TDS of ₹5,13,126.00, which was disallowed by the assessing authority as well as the first appellate authority with the records of the contractee.

4. Per contra, learned Standing Counsel (CT) for the State supporting the impugned orders of the forums below vehemently urged that there is no error or any kind of illegality in the impugned orders of the forums below. The assessing authority granted deduction of TDS as per the certificates furnished by the dealer-assessee and disallowed the claim of deduction to the tune of ₹5,32,086.00 on account of non-production of TDS certificate. When the dealer claims deduction of TDS on the amount due to it from the contractee, it should have produced relevant documents to substantiate such claim. The forums below cannot be blamed for disallowing the claim of deduction of TDS to the tune of ₹5,32,086.00 when the dealer-assessee failed to substantiate such claim by producing the relevant document. There is no illegality or impropriety in the impugned orders of the forums below warranting

interference of this Tribunal. He submitted to dismiss the appeal.

5. We have heard rival submissions of the parties, gone through the grounds raised in the memorandum of appeal vis-a-vis the impugned orders of the forums below and the materials on record. The only dispute as it appears from the rival contentions of the parties is whether the forums below were correct in their approach in disallowing the claim of deduction of TDS to the tune of ₹5,32,086.00 on account of non-production of TDS certificate. There is no dispute that the dealer-assessee is a Limited Company, who executes works contract under different authorities and also manufactures vertical and horizontal gates for use in dam, which it uses in the execution of works contract. The dealer-assessee received gross payment of ₹41,25,48,236.00 and claimed deduction of ₹28,00,47,579.60 towards labour and service charges and ₹2,27,48,142.00 towards materials purchased on payment of tax. The assessing authority as against such claim of deduction allowed deduction of ₹21,05,02,427.74 towards labour and service charges and ₹1,97,05,033.00 towards tax paid and tax exempted goods used in execution of works

contract. The first appellate authority confirmed the above deduction allowed by the assessing authority. The dealer-assessee's only grievance before this forum is with regard to disallowing deduction of ₹5,13,126.00 (as per the grounds raised in the memorandum of appeal) towards TDS by the forums below. It mainly challenged the impugned orders of the forums below in disallowing such claim relying upon the statement filed by it before the assessing authority showing the GTO for the year ending 31.03.2000. It appears from the statement so submitted by the dealer-assessee before the assessing authority that the dealer executed works under Richardsons Cruddas, who deducted ₹2,17,755.00 towards TDS and another work under NPCC Work at Duburi, who deducted ₹2,95,371.00. Learned Counsel for the dealer-assessee basing on this statement produced before the assessing authority vehemently urged that the assessing authority should have cross-checked the statement with the records of the concerned contractees for satisfying itself about the deduction of TDS at their end but the assessing authority simply rejected the claim of deduction of TDS of ₹5,32,086.00 only on account of non-production of TDS certificates, which are not in the hand of the dealer-

assessee. The first appellate authority without applying its mind to the facts and circumstances of the case confirmed the order of the assessing authority disallowing the claim of TDS. He submitted that both the forums below committed grave error of law in rejecting the claim of TDS simply because of the dealer-assessee's failure to produce the TDS certificates. Accordingly, he submitted to allow the appeal and remit the matter back to the assessing authority to cross-check the statement filed by it from the records of the contractees. The argument advanced by the learned Counsel for the dealer-assessee is not acceptable to us in view of the fact that the statement filed by the dealer-assessee before the assessing authority is a self serving document on which no reliance can be placed. When the dealer claims deduction of ₹5,13,126.00 towards TDS, it should have filed relevant documents to substantiate such claim. There is nothing on record to show that the dealer has made any attempt to obtain the TDS certificates from the concerned authorities under whom it executed the works and who said to have deducted the TDS at their end. The forums below cannot be blamed in disallowing the claim of the dealer-assessee as it (dealer-assessee) failed to produce the relevant document

such as TDS certificate or any other relevant document showing deduction of TDS by Richardsons Cruddas and NPCC Work, who alleged to have deducted TDS of ₹5,13,126.00. When the dealer claims deduction of TDS, the onus lies on it to substantiate such claim by producing TDS certificate granted by the deducting authority as per Rule 37-B of the OST Rules. We cannot place burden on the assessing authority to substantiate the claim of the dealer. There being no relevant document whatsoever except the self serving statement submitted by the dealer-assessee showing deduction of TDS by Richardsons Cruddas and NPCC Work at Duburi, the forums below were fully justified in their approach in disallowing such claim. There is no illegality or impropriety in the impugned orders of the forums below warranting interference of this Tribunal. Moreover, the dealer before the first appellate authority took the plea that it was not given sufficient time to produce the TDS certificate to substantiate its claim of deduction. In the meantime though twenty years have passed after such claim was made, the dealer failed to obtain the TDS certificate or any other document from the concerned authorities to substantiate the claim of deduction. The aforesaid decision

of our Hon'ble High Court on which reliance was placed by the learned Counsel for the dealer-assessee has no application to the facts and circumstances of the present case. In the cited case, the assessing officer had rejected the claim of the dealer about adjustment of TDS on the ground that TDS certificates were not in proper format and some of the TDS certificates were not submitted in original and it proceeded with the assessment proceeding without awaiting the verification report sought from Asst. Commissioners of Commercial Taxes of different Circles. Under this peculiar circumstance, the Hon'ble Court considering the statutory provisions remitted back the matter to the assessing officer for fresh assessment after proper verification with a direction to the assessee to produce the original TDSs obtained by him, whereas in the present case, the dealer-assessee even after twenty years passed could not produce either the original TDS certificates or the xerox copy of the same or any declaration to that effect for proper verification and allowing the claim in that regard by the forums below as per law. In our considered opinion, mere raising claim without being supported by any documentary evidence has no meaning and such claim was rightly rejected by the

forums below. This apart also the dealer-assessee in the grounds of appeal challenged disallowance of claim of deduction of TDS to the tune of Rs ₹5,13,126.00 whereas the assessing authority has disallowed such claim to tune of Rs. ₹5,32,086.00 and such discrepancy in claim of TDS could not be explained by the appellant in course of hearing of second appeal. So, in the circumstance, we are not inclined to interfere with the impugned orders of the forums below.

6. For the foregoing discussions, the appeal filed by the dealer-assessee being devoid of any merit stands dismissed and the impugned orders of the forums below are hereby confirmed.

Dictated & Corrected by me

Sd/-  
(A.K. Das)  
Chairman

Sd/-  
(A.K. Das)  
Chairman

I agree,

Sd/-  
(S.K. Rout)  
2<sup>nd</sup> Judicial Member

I agree,

Sd/-  
(S. Mishra)  
Accounts Member-II