

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX TRIBUNAL,
CUTTACK.**

S.A.No. 189(V)/2017-18

(From the order of the Id.JCST (Appeal), Balasore Range, Balasore,
in Appeal No. AA-70/MB-2016-17 (VAT), dtd.17.05.2017,
modifying the assessment order of the Assessing Officer)

**Present: Sri S. Mohanty
2nd Judicial Member**

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

-Versus-

M/s. B.K. Enterprises,
Mayurbhanj.Respondent

For the Appellant : Mr. M.L. Agarwal, Standing Counsel
For the Respondent : Mr. F.M. Behera, Advocate

(Assessment Period : 01.04.2010 to 31.03.2015)

Date of Hearing: 16.03.2019 *** Date of Order: 16.03.2019

ORDER

What is the correct percentage of deduction under the head of labour and service charges in a works contract executed by the assessee-dealer is the question in an audit assessment u/s.42 of the Odisha Value Added Tax Act, 2004 (in short, OVAT Act) has reached this second appellate stage on the filing of this appeal by the Revenue against a modifying order enhancing the percentage of deduction by the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Balasore Range, Balasore (in short, FAA/JCST).

2. The instant dealer is a manufacture, trader and works contractor. It effects purchases from, inside and outside of State

and effects intra-state only. Besides, he also executes works contract for the assessment period dt.01.04.2010 to 31.03.2015, the dealer was assessed u/s.42 of the OVAT Act on the basis of Audit Visit Report (AVR) submitted by the Audit assessment wing, Rairangpur. The dealer has deposited the tax due as determined on purchase and sale of turnover as per the audit team suggestion, but the dispute remained alive regarding the labour and service charges. The audit team had reported that, the dealer had received a gross amount of Rs.1,53,91,993/- against the execution of works contract but the AA in the assessment found the said amount for Rs.1,75,12,275/-. However, the AA accepted the suggestion of the Audit team and allowed 30% deduction for the works executed by the dealer, which includes road construction and building construction. In the result, the balance tax due and penalty raised against the dealer at Rs.29,14,987/-.

3. The matter was carried before the learned FAA/JCST at the instance of the dealer, who in turn, re-calculated the tax liability by applying the appendix to Rule 6(e) of the OVAT Rules against the amount received under the works contract and thereafter, allowed deduction @50% towards labour and service charges against the road work. In the result, the tax due from the dealer was reduced to Rs.5,662/-.

4. When the matter stood thus, Revenue has preferred this appeal with the contentions like, the FAA has committed wrong in allowing 50% on flat on entire amount received by the dealer against the works contract, even though, admittedly the dealer has executed road work and building work.

5. The appeal is heard with cross objection by the dealer. The limited question raised for decision in this appeal is (i) whether

the percentage of deduction allowed by the FAA is wrong and (ii) what order ?

6. At the outset, it is pertinent to mention here that, the question of wrong calculation of the TDS was put to rest as decided by the FAA. It is only the percentage of labour and service charges is raised here in this appeal. The dealer has not disputed the percentage in accordance to the appendix to Rule 6(e) of the OVAT Act. As per appendix to Rule 6(e), for the road work, deduction @50% was available up to dt.19.12.2012, whereas deduction at 30% was allowed against the building work. Claim of the State is, the FAA has given 50% on gross amount. The dealer has produced a chart of the payment received from the contractee, which depicts the details of the amount received towards road work and building work. Here in this case, it is admitted and accepted by either side, so far as the application of appendix Rule 6(e) for determination of labour and service charges. The only question is, the calculation and tax due as determined by the FAA is correct or not? It is only limited to arithmetical calculation and correction if any. It is apt to mention here that, the ex-parte order of assessment by the AA is not in accordance to the percentage as per the chart, hence the same has been rightly set-aside by the FAA. However, the order of the FAA, as it revealed, the FAA has allowed deduction @50% on entire amount. Though the FAA has categorically mentioned that, the dealer is entitled to 50% on road work as per appendix Rule 6(e).

On the above backdrop of the case, it is believed that, the matter should be remitted back to the AA for the limited purpose of calculation of the tax liability of the dealer in the light of observation above. Hence, ordered.

The appeal is allowed. The impugned order is set-aside to the extent of calculation afresh of the labour and service charges. The AA will do well to apply the appendix to Rule 6(e) by giving deduction @50% on the road work and 30% on the building work. So far as the findings of the FAA on other counts are remained undisturbed, the AA is requested to complete the assessment within a period of 3 months hence. It is also made clear that, in the event the parties are not satisfied by the order of the FAA, they should approach this Tribunal directly.

Dictated and Corrected by me,

Sd/-
(S. Mohanty)
2nd Judicial Member

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