

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

S.A. No. 1027 of 2002-03

(Arising out of order of the learned ACST, Puri Range,
Bhubaneswar in Sales Tax Appeal No. AA- 60/BH.II/2002-03,
disposed of on dated 31.05.2002)

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

M/s. Md. Kutabuddin,
Plot No. 614, Bomikhal,
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: 08.02.2022 *** Date of order: 17.02.2022

O R D E R

This is an appeal u/s. 23(3) of the Odisha
Sales Tax Act, 1947 (in short, 'OST Act') at the instance of
the dealer-appellant against the order dated 31.05.2002
passed by the learned Asst. Commissioner of Sales Tax, Puri
Range, Bhubaneswar (hereinafter called as 'first appellate

authority') in Appeal No. AA- 60/BH.II/2002-03 thereby confirming the order of assessment dated 08.03.2002 passed by the Sales Tax Officer, Bhubaneswar-II Circle, Bhubaneswar (in short, 'assessing authority') directing refund of ₹17,28,375.00 relating to the tax period 1999-2000 by invoking the power u/s. 12(4) of the OST Act.

2. The relevant facts leading to the filing of the present appeal are that the dealer-appellant, who is a works contractor, executed works under different Executive Engineers of Water Resources Department. The dealer-assessee during the relevant period executed works with Executive Engineer, Sapua Irrigation Division, Badajore; Executive Engineer, Manjori Irrigation Division, Athamallik; Executive Engineer, Harabhangi Irrigation Division No.III, Adava; Executive Engineer, Puri Investigation Division, Puri; Executive Engineer, Chikiti Irrigation Division; and Executive Engineer, Potteru Canal Division No.III, Bhubanpalli and received gross payment of ₹8,45,45,781.00. The dealer claimed deduction of ₹7,96,80,410.00 towards labour and service charges. Learned assessing authority during assessment examined the expenditure claimed on account of labour and service charges with reference to the

contract in each and every case and on examination of the terms and conditions of the contract, it discussed deduction of ₹6,68,46,524.00 on account of labour and service charges. The assessing authority allowing deduction of ₹6,68,85,781.00 towards labour and service charges from gross receipts of ₹8,46,11,209.00 as revealed from the books of account, determined the GTO and TTO at ₹1,77,25,428.00 on which tax was calculated at ₹14,18,034.24 @ 8%, surcharge at ₹2,12,705.13 @ 15% and total tax and surcharge was calculated at ₹16,30,739.37 as against which tax deducted at source was ₹33,59,114.00. So, the assessing authority directed refund of ₹17,28,375.00.

2(a). The dealer-appellant being aggrieved with the deduction of ₹6,68,85,781.00 as against claim of ₹7,96,80,410.00 preferred appeal before the first appellate authority, who also vide order dated 31.05.2002 confirmed the order of the assessing authority. The dealer being further aggrieved with the order of the first appellate authority preferred the present second appeal.

3. In course of hearing of the second appeal, learned Counsel for the dealer-appellant challenged the impugned orders of both the fora below solely on the ground

that the deduction of ₹6,68,85,781.00 allowed by the fora below as against the claim of ₹7,96,80,410.00 is unjust, improper and without any basis. He vehemently urged that the works executed by the appellant being labour oriented works, the fora below should have allowed the entire claim of deduction towards labour and service charges. He submitted that the dealer spent more than 93% of the gross amount received by him towards labour and service charges, but both the fora below committed serious illegality in disallowing the claim of deduction made by the appellant towards labour and service charges. He submitted to allow the appeal granting deduction of ₹7,96,80,410.00 as claimed by the appellant.

4. Per contra, learned Standing Counsel (CT) for the revenue supporting the impugned orders of the forums below urged that the deduction allowed by the assessing authority is reasonable, just and proper and on thorough scrutiny of the nature of works executed with reference to the contract entered into between the parties. So, there is no illegality and impropriety warranting interference of this forum. He submitted to dismiss the appeal.

5. We have heard the rival submissions of the parties, gone through the grounds of appeal vis-a-vis the impugned orders of the forums below and the materials on record. The impugned orders of the forums below reveal that the dealer received gross payment of ₹8,46,11,209.00 for execution of excavation of R.B.C. including structure of Rengali Irrigation Project RD-69.65 KM to 74.00 KM under the Executive Engineer, Sapua Irrigation Division, Badajore; construction of spill way of Manjori Irrigation Project-i and earth dam from RD KM-590M under the Executive Engineer, Manjori Irrigation Division, Athamallik; excavation of approach channel RD- 1140 M to 500M under the Executive Engineer, Harbhangi Irrigation Division No.III, Adava; improvement to Gop branch canal under the Executive Engineer, Puri Irrigation Division, Puri; improvement to right main canal from RD 11.20 KM to tail under the Executive Engineer, Chikiti Irrigation Division; and improvement of canal work under the Executive Engineer, Potteru Irrigation Division. On perusal of the assessment order of the assessing authority, we find that the assessing authority thoroughly verified the nature of works with reference to the contract entered into between

the dealer-appellant and the Department and the involvement of labour component in each work and granted deduction of ₹6,68,85,781.00 in respect of the above work. The impugned orders of both the forums below further reveal that the appellant could not produce relevant document to substantiate the claim of deduction of ₹7,96,80,410.00 towards labour and service expenses. So, in the absence of the relevant documents justifying the claim of deduction of ₹7,96,80,410.00, the assessing authority rightly allowed deduction of ₹6,68,85,781.00 towards labour and service charges. The deduction allowed by the assessing authority and as confirmed by the first appellate authority is just, proper and reasonable vis-a-vis the nature of works executed by the dealer-appellant. The claim of deduction of ₹7,96,80,410.00 is not based on any relevant documentary evidence. So, both the forums below rightly disallowed such claim of the dealer-appellant.

6. In view of the discussions made above, we are of the view that there is no illegality and impropriety in the impugned orders of the forums below warranting interference of this Tribunal. Accordingly, the appeal 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)
2nd Judicial Member

I agree,

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