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IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 35 of 2004

M/s. Hindustan Construction Co. Ltd., Cuttack .... ***Petitioner***

Mr. Anup Narayan Mohanty, Advocate

-versus-

State of Orissa represented through Commissioner of Sales Tax .... ***Opposite Party***

Mr. Sunil Mishra, Additional Standing Counsel
For Sales Tax Department

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
29.11.2022

Order No.

Dr. S. Muralidhar, CJ.

12. 1. Mr. Anup Narayan Mohanty, Advocate and Associates are now appearing for the Petitioner and their Vakalatnama is taken on record.

2. The present revision petition arises from an order dated 10th November, 2003 of the Orissa Sales Tax Tribunal (Tribunal) in S.A. No.1111 of 2001-02 filed by the Department whereby the matter was remanded to the Sales Tax Officer (STO) for re-examining the issue concerning labour and service charges and amount allegedly received as hire charges by the Assessee for the year 1996-97.

3. While admitting the present revision petition on 3rd March 2005, this Court stayed the operation of the impugned order and the consequential proceedings as per notice dated 18th March, 2004. That interim order has continued.

4. The following questions are framed for consideration by this Court:

> "(a) Whether in the factual position coupled with settled position of law in the matter, the Tribunal is correct to hold that the deductions towards labour and service charges can be limited to 34% in the 1st year of the project work which is to be completed within a period of five years?
>
> (b) Whether in the facts and circumstances of the case the Tribunal is correct to hold that the petitioner in execution of works contract has received any amount towards hire charges?
>
> (c) Whether in the facts and circumstances of the case the Tribunal is correct to remit the matter back to the assessing officer for re-computation with an observation that the petitioner ever received any amount towards hire charges?"

5. The background facts are that the Petitioner-Assessee is a construction company and was engaged by the State of Orissa for construction of water barrier over the river Kathajodi and Naraj at Cuttack. The Petitioner was duly assessed for the Assessment Year (AY) 1996-97 under Section 12 (4) of the Orissa Sales Tax Act (OST Act). An assessment order was passed on 28th March, 2000 determining the refund of Rs.46,63,322/- was due to the Petitioner-Assessee against the claim for Rs.53,90,859/- bring the tax already deducted at source during the execution of the works contract.

According to the Petitioner, it had to undertake a substantial amount of labour and service works in the process of executing the aforementioned contract.

6. Since the STO allowed only Rs.46,63,322/- as refund, the Petitioner preferred a First Appeal before the Assistant Commissioner of Sales Tax (ACST), Cuttack-II Range, Cuttack. This appeal was dismissed on 28th August, 2001. Thereafter, the Petitioner applied for refund under Section 14 of the OST Act. At that stage, the State filed Second Appeal before the Tribunal challenging the dismissal order passed by the ACST.

7. On two aspects in the impugned order, the Tribunal has remanded the matter to the STO. First, on the issue of labour and service charges, the Tribunal came to the conclusion that it would be judicious and reasonable to limit the labour and service charges to 34% of the gross bills received towards execution of the works contract. Secondly, for the first time, State raised an additional ground before the Tribunal regarding alleged receipt of Rs. 1.34 Crores by the Petitioner towards hire charges of equipments and machinery. Although the Assessee disputed having received such an amount, the Tribunal considered it necessary to remand this issue also to the STO.

8. This Court has heard the submissions of Mr. Anup Narayan Mohanty, learned counsel for the Petitioner and Mr. Sunil Mishra, learned Additional Standing Counsel for the Department.

9. The Tribunal has in the impugned order, referred to Clause VII (e) of the agreement signed between the State and the Petitioner where certain percentages are indicated against Labour, Cement, Steel, POL and other materials and observed as under:

> "As the agreement stands, the work is to be completed within a period of 60 months from the date of issue of letter of commencement. The respondent-dealer might have incurred more expenses towards labour and services during the first year of the work. But, to be rational and in order to keep a parity of deductions on labour and services throughout the period of execution of works by respondent-dealer, it will be judicious and reasonable to allow expenditures towards labour and service charges at the ratio of 34% of the total gross amount received for execution of such works contract as per the agreement."

10. As rightly pointed out by learned counsel appearing for the Petitioner, the above percentages were indicative of the escalation that was permissible on these items in terms of the agreement and did not reflect on the actual expenditure incurred on the ground of labour and services. On the other hand, the books of account produced by the Petitioner-Assessee were accepted as such both by the STO as well as the ACST. They examined the books of account thoroughly and found that the amounts were properly accounted for. In fact, the STO also noted that the Assessee had produced "Labour payment register, vouchers, Cash book, muster rolls and copies of the trial balance (audited) for the year 1996-97." With both the STO and the ACST having accepted the books of account produced by the Assessee without any reservation, there was no occasion for the Tribunal to have limited the labour and service charges to 34%. The said conclusion of the Tribunal is based on mistaken notion of what Clause VII (e) of the agreement stood for.

11. Accordingly, Question No.(a) is answered in the negative i.e. in favour of the Assessee and against the Department.

12. As regards Question Nos.(b) and (c) concerning hire charges purportedly received by the Assessee, the fact remains that no material whatsoever was produced by the Department to substantiate even prima facie that the Assessee had received that amount. In fact, the Tribunal notes that the Assessee disputed having ever received such an amount. There was accordingly no occasion again for the Tribunal to have remanded this issue to the STO for determination. Consequently, the Court answers the Question Nos.(b) and (c) also in the negative, i.e., in favour of the Petitioner-Assessee and against the Department.

13. For the aforementioned reasons, the impugned order of the Tribunal is hereby set aside. The revision petition is allowed in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S. Behera