IN THE HIGH COURT OF ORISSA AT CUTTACK
STREV No. 9 of 2011

M/s. Sarat Kumar Sahu	....	***Petitioner***

Mr. Basudev Panda, Senior Advocate
-versus-

State of Odisha, represented by the Commissioner of Sales Tax	...	***Opposite Party***

Mr. S.S. Padhy, Addl. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

<u>Order No.</u>

<u>ORDER</u>
29.06.2022

05. 1. While admitting the present revision on 9th October, 2015 the following questions of law were framed by this Court for consideration:

> "(i) As to whether in the facts and circumstances of the case, claim of the petitioner towards labour and services as indicated in the books of account as well as in the returns could have been rejected and without rejecting the books of account could the Assessing Officer has resorted to an estimate of the extent to which deductions for labour and services ought to be extended?
>
> (ii) As to whether the principles in the amended Rule-4(b) could have been utilized by the Tribunal for arriving at a conclusion adverse to the interest of the Petitioner ?

2. The background facts are that the Petitioner, who is a registered dealer carried on execution of works contract under the Steel Authority of India Limited, Rourkela Steel Plant, during the year

in question i.e. 1993-94. The Assessee shown to have received from SAIL Rs.73,79,952.60 against execution of the works contract.

3. The Sales Tax Officer (STO) by the assessment order dated 28th February, 1995 noted that the dealer had failed to produce the labour register showing involvement of the labour in execution of the works. Consequently, the STO completed the assessment by resorting to the best judgment assessment by allowing 30% towards labour and 2% towards service charges. This resulted in a tax demand of Rs.87,869/-. When the matter went on appeal before the Assistant Commissioner of Sales Tax (ACST), he held that 42% towards labour and service charges should be allowed as deduction and accordingly, the assessment order of the STO was modified and the tax demand was reduced from Rs.87,869/- to Rs.31,879/-.

4. The State then went on appeal before the Tribunal which has restored the order of the STO and set aside the order of the ACST. The Tribunal held that the allowing of 42% towards labour and service charges by the ACST was not supported by reasons. The Tribunal found that if the mandate of Rule 4(b) of the OST Rules is adhered to, the deduction towards labour and service charges as prescribed would be 35% whereas the STO had allowed only 32% i.e. at a lower percentage. The Tribunal concurred with the view of the STO and accordingly, quashed the order of the ACST.

5. Mr. Basudeb Panda, learned Senior Counsel for the Petitioner submits that without rejecting the books of account of the

Assessee, the STO could not have resorted to best judgment assessment.

6. Having perused the assessment order of the STO, the Court finds that there is a valid reason for the STO to have not allowed the entire labour and service charges as claimed but only a percentage thereof. This was because the Assessee failed to produce the labour registers. Further allowing of deduction at 42% towards labour and service charges of the ACST, indeed is not supported by any reasons. Question (i) is answered accordingly.

7. As regards question (ii), it is seen that the Tribunal has noted that if Rule 4(b) of the OST Rules were to be applied, the deduction allowable was at 35%. In that view of the matter, the order of the Tribunal is modified by allowing deduction towards labour and service charges at 35%. Question (ii) is answered accordingly.

8. The revision petition is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/Secy.