IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 61 of 2011

M/s. National Building Construction Corporation Ltd. .... ***Petitioner***

Mr. T.K. Satapathy, Advocate

-versus-

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

Mr. S.K. Pradhan, Addl. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

<u>ORDER</u>
28.06.2022

<u>Order No.</u>

11. 1. This revision petition by the Assessee, National Building Construction Corporation Ltd. (NBCC) is directed against an order dated 21st March, 2011 passed by the Orissa Sales Tax Tribunal dismissing the Assessee's appeal in S.A. No.1177 of 2007-08 which in turn was directed against an order dated 2nd September, 2007 of the Assistant Commissioner of Sales Tax, Cuttack I Range, Cuttack (ACST) which confirmed the assessment order passed by the Sales Tax Officer (STO), Cuttack for the year 2000-01 under Section 12(4) of the Orissa Sales Tax Act, 1947 (OST Act) raising an extra demand of Rs.82,722/-.

2. One of the questions that the Assessee seeks to urge is whether the Tribunal was justified in disallowing the payment made by the Assessee to the Sub-Contractor, who also is a registered dealer under the OST Act for execution of the works entrusted to the Petitioner?

3. Factually, the Tribunal has disallowed the payment of Rs.48,52,422/- made by the Assessee to the Sub-Contractor. The contention that such payment was not amenable to sales tax was negatived by the Tribunal on the following reasoning:

> "8. We have heard both the parties, also gone through the orders of the fora below. From the assessment order it appears that the ld. STO has allowed 5% towards labour and service charges as the dealer had not kept detail books of account towards labour and service charges. The l. ACST has also confirmed the order of ld. STO. As per the decision of the Hon'ble Apex Court discussed above, the deduction from the payment to sub-contractors is to be allowed to sub-contractors is to the extent of labour and service charges. The dealer was not maintaining labour and service charges account. Hence, the ld. STO had allowed 35% labour and service charges as no books of account was produced before him. The ld. ACST has also confirmed the assessment. We are of the view that the ld. STO and ld. ACST have rightly completed the assessment. Hence, there is no reason to interfere in the order of assessment and the order of ld. ACST is confirmed."

4. Learned counsel for the Department has produced before the Court the record of assessment of the Sub-Contractor i.e. M/s. Sarkhel Developers and Builders Pvt. Ltd. which does not reveal any payment having received by it from the present Petitioner-Assessee. Consequently, there is no material to show that there was outsourcing and the aforementioned amount was in fact paid towards execution of the works.

5. The Court is unable to find any error having been committed by the Tribunal or the ACST and the STO in coming to the above conclusion. No substantial question of law arises.

6. The revision petition is dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/Secy.