

2. The case at hand is that, the dealer-respondent being a works contractor executed works contract under the Executive Engineer, Left Canal Division III, Dharamgarh, Executive Engineer, Right Canal Division, No.II Junagarh, Executive Engineer, Lower Indra Canal Division and received gross payment of Rs.14,24,06,244/- which was determined as GTO. The nature of work related to canal works. The Assessing Authority allowed the deduction of Rs.7,40,51,257/- which was 52% of the gross receipt towards labour and service charges. After such deduction, the TTO was determined at Rs.6,83,54,987/-. Taking into consideration the nature of works and goods utilised in the contract works, the material component was determined at Rs.3,42,12,261/- at 4% tax group and Rs.3,41,42,726/- at 12.5% taxable group as against Rs.2,73,69,809/- and Rs.2,71,89,260/- as disclosed by the dealer in the same category of tax rate. Pursuant to the purchase value of materials disclosed by the dealer-respondent, the sale value of each item was determined on the basis of addition of 25% profit margin on the purchase value. Accordingly, tax was calculated @4% on Rs.3,42,12,261/- and 12.5% on Rs.3,41,42,726/- and as such in-toto the tax due amounted to Rs.56,36,332/-. Thus, the ITC of Rs.34,63,532/- and tax payment in shape of TDS of Rs.57,88,183/- were allowed. Accordingly, learned STO allowed refund of Rs.36,15,383/-.

3. Being aggrieved with such order of assessment, the dealer-respondent preferred first appeal, which was partly allowed and order of refund was allowed by the learned STO was enhanced by Rs.3,58,377/-.

4. Being dis-satisfied with the order of the learned FAA/JCST, Balangir Range, Balangir, State preferred the

present appeal with the prayer to quash the same, which is violative of the settled principles of law.

5. No cross objection is filed by the dealer-respondent in this case.

6. In spite of service of notice on the dealer, he neither appeared nor engaged anybody to defend him before this Tribunal. So, this Tribunal heard the argument advanced by Mr. S.K. Pradhan, learned Addl. Standing Counsel (C.T.) appearing for the Revenue and proceeded to dispose of the matter on ex-parte basis on merit.

7. Perused the materials available on record. Learned Addl. Standing Counsel for the State, Mr. Pradhan during course of argument forcefully submitted that, the orders of both the forums below are not in consonance with the settled principles of law. He further argued that, Rule-6 of OVAT Rules coupled with the substituted Appendix should be adhered to the instant case.

8. On a bare reading of substituted Appendix of Rule-6 of OVAT Rules w.e.f. dt.19.07.2012 by the Odisha Value Added Tax (Amendment Rules), 2012 vide Finance Department Notification No.26619-FIN-CTI-TAX 0040/2012/F (SRO No.368/2012) dtd.19.07.2012 published in Odisha Gazette Extraordinary No. 1383 dtd.19.07.2012, we find that, Sl.No. 15 entails a deduction of 20% for,

“all other works contract”.

In the instant case, the dealer executed canal work which comes under Sl.No.15 of Appendix to Rule-6 of OVAT Rules. It is found from the order of Assessing Officer, that it allowed 52% deduction towards labour and service charges and learned FAA allowed deduction @55%. Deduction allowed by both

forums below is contrary to Appendix to Rule-6 of OVAT Rules. Therefore, the orders of both fora below are not legally sustainable. In view of this, we are of the considered view that, the matter should be remanded to the learned Assessing Officer for re-assessment. Hence, ordered.

9. In the result, the appeal filed by the State is allowed and the order of the learned First Appellate Authority is hereby set-aside. The matter is remanded to the learned Assessing Officer for re-assessment as provided u/r.6 of the OVAT Rules read with amended Appendix as mentioned (supra) within a period of three months from the date of receipt of this order after giving an opportunity to the dealer-respondent of being heard.

10. Accordingly, the appeal is disposed of.

Dictated and Corrected by me,

Sd/-
(S.K. Rout)
2nd Judicial Member

Sd/-
(S.K. Rout)
2nd Judicial Member

I agree,

Sd/-
(A.K. Das)
Chairman

I agree,

Sd/-
(S.M. Dash)
Accounts Member-III