

**BEFORE THE JUDICIAL MEMBER-I: ODISHA SALES TAX TRIBUNAL:  
CUTTACK.**

**S.A. No. 57(V) of 2018**

(From the order of the Id. JCST, Puri Range,  
Puri, in First Appeal Case No. AA-106111711000047,  
dtd.30.12.2017)

**P r e s e n t :**                                 **Shri S. Mohanty,  
1<sup>st</sup> Judicial Member**

State of Odisha, represented by the  
Commissioner of Sales Tax, Odisha,  
Cuttack.   ...     Appellant

**- V e r s u s -**

M/s. Trinath Engineers,  
Pradhan Sahi, Baramunda,  
Khurda.   ...     Respondent

For the assessment period: 01.07.2011 to 31.03.2014

For the Appellant                     ...     Mr. M.L. Agarwal, S.C.  
For the Respondent                     ...     Mr. J.J. Pradhan, Advocate

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Date of hearing: 28.08.2019             \*\*\*\*             Date of order: 28.08.2019  
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**ORDER**

A modified order of audit assessment u/s.42 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act), whereby and wherein, the first appellate authority has reduced the demand towards tax and penalty, thereby the dealer found entitled to get refund of Rs.46,44,349.00, is assailed by the revenue as appellant in this second appeal.

2.             The instant dealer, a proprietorship concern, engaged in execution of different types of works contract was subjected to audit assessment u/s.42 of the OAVT Act for the tax period 01.07.2011 to 31.03.2014. In the assessment, the assessing Authority found the

dealer entitled to get refund of Rs.40,23,850.00. However, with a claim of more amount of refund, the dealer knocked the door of the first appellate authority.

Learned JCST, Puri Range, Puri as First Appellate Authority vide impugned order enhanced the refund amount to Rs.46,44,349.00. As against that, Revenue felt aggrieved and preferred this appeal with the contentions like, the fora below have committed wrong in not applying the Appendix to Rule 6 of the OVAT Rules for calculation of labour and service charges against the works contract executed by the dealer and the fora below have committed wrong in calculating the admissible ITC to the extent of Rs.46,93,925.00 without any speaking order and without going through the stock account and stock position as reflected in the audited balance sheet. It is prayed to set aside the impugned order and as well as the order of assessing authority with a direction for assessment afresh.

3. The appeal is heard with cross objection. In the cross objection, the dealer stood by the impugned order and prayed for dismissal of the appeal.

4. The questions raised for decision in this second appeal are:

- (i) Whether the calculation of labour and service component is wrong and to that effect the Appendix to Rule 6 of the OVAT Rules should be applied.
- (ii) Whether the calculation of ITC is wrong by both the fora below.

### **Findings**

5. At the outset, it is surprised to take note of the fact that the Assessing Authority has applied the Appendix-2, Rule-6 of the OVAT Rules for calculation of the labour and service component. It is interesting to take note of the fact that the deduction towards labour and service charges was in fact calculated in accordance to the Rule 6

of the OVAT Rules. So, it only can be said that the contention of the appeal is baseless and misleading.

6. So far as the question of ITC admissible to the dealer, it is also found that, the Revenue has raised this question mechanically. Calculation of ITC by the assessing authority and thereafter by the first appellate authority both are same and the confirming order of the first appellate authority regarding the ITC is beyond question without any rebuttal evidence or conceivable argument led by the Revenue.

Learned Standing Counsel made an unsuccessful attempt to show that, the tax paid goods were taken into consideration by the first appellate authority illegally. This fact is raised in the final hearing. It is not a ground in the appeal memo, hence the same is not entertainable. The grounds of appeal are filled in surmises and conjectures. They are not well founded, hence the irresistible conclusion is, the impugned order being suffered from no illegality is not interceptable by this second appeal.

In the result, it is ordered.

The appeal stands dismissed on contest.

Dictated & corrected by me,

Sd/-  
(S. Mohanty)  
1st Judicial Member

Sd/-  
(S. Mohanty)  
1<sup>st</sup> Judicial Member