

(in short, the AVR), the learned STO initiated a proceeding u/s.42 of the OVAT Act against the respondent-dealer for its assessment for the assessment period from 01.04.2012 to 31.03.2014 and issued a notice to appear and to produce the books of account and in response to the notice, though the authorized representative of the respondent-dealer firm appeared initially did not appear at a subsequent stage and as such the learned STO proceeded to assess it exparte on examination of the available material including the AVR and on consideration of all the transactions, determined the GTO at Rs.8,96,81,985.00 and after allowing deduction of Rs.47,66,050.00 towards collection of tax, determined the TTO at Rs.8,49,15,935.00 and levied tax at the appropriate rate of 5% and 13.5% on different transactions which came to be Rs.47,66,050.30. Then, after allowing the admissible ITC amounting to Rs.9,67,048.00 and after consideration of the payment of tax made earlier amounting to Rs.37,29,443.00, the learned STO raised the balance tax demand of Rs.69,660.30 and also imposed a penalty of Rs.1,39,120.00, equal to twice of the balance tax demand and as such both the balance tax demand and penalty came to be Rs.2,08,681.00 in total, to be paid by the respondent-dealer.

3. After the assessment, being aggrieved with the order of the learned STO, the respondent-dealer preferred an appeal before the learned JCST bearing First Appeal Case No. AA/37/OVAT/CUII/2015-16. On hearing and on consideration of the materials on record, the learned JCST arrived at a conclusion that, the respondent-dealer should get an opportunity to put forth its contention before the learned STO and accordingly set aside the order passed by him and remanded the matter for fresh consideration on examination of the documents produced by the respondent-dealer at the first appeal stage. But, being aggrieved with the order of the learned JCST relating to certain observations made by him, the Revenue as appellant has preferred this second appeal.

4. In its grounds of appeal the appellant-Revenue has taken the following grounds:-

- (i) That, the order of the 1st appellate authority appears to be unjust and improper.
- (ii) That, the 1st appellate authority has directed the STO by way of accepting the connection of the dealer that ITC on purchase of welding gas & Rod should be given to the dealer, without assigning any reason thereof. Further, no such description of GTO & TTO pertaining to welding gas & rod has been shown in his order.
- (iii) That, the order of the Ld. 1st appellate authority may be set aside for reassessment with justified reason in the order.
- (iv) That, other points/grounds, if any will be urged at the time of hearing of appeal.

5. No cross objection has been filed by the respondent-dealer.

6. Heard both the sides. The learned Standing Counsel appearing for the appellant-Revenue submitted that, without proper examination of certain documents produced by the respondent-dealer, the learned JCST has made some directions to the learned STO relating to the allowance of ITC and it being improper and unjustified in the facts and circumstances of the present case, the same is liable to be set aside and an appropriate direction is required to be given to the learned STO instead of the said direction. On the other hand, the learned Counsel appearing for the respondent-dealer supported the order of the learned JCST and urged for dismissal of the appeal.

7. Perused the orders of both the learned forums below and the other materials on record. From the materials on record, it is seen that, the proceeding has been initiated against the respondent-dealer basing upon an AVR and as such the allegation leveled therein is required to be confronted to it during the assessment. Though the order passed by the learned STO reveals issuing of due notice to the respondent-dealer and its initial appearance before him, it is not in dispute that, the order has been passed *exparte* in its absence. Considering the fact that, the assessment proceeding has been initiated basing upon an AVR and the claim of ITC advanced by

the respondent-dealer is totally based upon the production of relevant documents, the learned JCST has remanded the matter to the learned STO for fresh assessment. Of course, it is true that, he has given certain directions to the learned STO relating to the allowance of ITC. But, as he has not examined the documents himself, produced by the respondent-dealer, the opinion formed by him and the related direction given in this regard appears to be undesirable. However, on scrutiny of the materials available on record, it can be said that, the setting aside of the order of the learned STO and the remanding of the matter to him for fresh consideration as directed by the learned JCST suffers from no infirmity.

8. In the result, the appeal is allowed to the extent indicated above. The order of remand for fresh consideration of the matter as passed by the learned JCST is hereby confirmed. The respondent-dealer is at liberty to produce the relevant documents before the learned STO. The learned STO is directed to take note of the documents produced by the respondent-dealer and to consider the matter of its own merit without taking note of the direction as given by the learned JCST relating to the allowance of ITC. There is no necessity of issuance of any notice to the respondent-dealer by the learned STO for appearance. The respondent-dealer is directed to appear suo motu before the learned STO within two months of passing of this order to receive further instruction from him. The learned STO is further directed to complete the proceeding within a very reasonable period.

Dictated & corrected by me,

Sd/-
1st Judicial Member,
Odisha Sales Tax Tribunal

Sd/-
1st Judicial Member,
Odisha Sales Tax Tribunal

I agree,

Sd/-
Accounts Member-III,
Odisha Sales Tax Tribunal