

2. The facts as revealed from the case record are as follows :-

The dealer-assessee named and styled as Shyam Sundar Sahoo is a works contractor and as such engaged in execution of works under different Government organizations. On receiving an Audit Visit Report (AVR) in Form VAT-303 submitted by the STO, Tax Audit Unit, Puri Range, Bhubaneswar in respect of the business transactions of the dealer-assessee for the tax periods from 01.04.2005 to 30.06.2009 a statutory notice in Form VAT-306 was issued to him alongwith a copy of AVR. Pursuant to the said notice the dealer-assessee appeared before the assessing officer through his Advocate and produced the books of account as well as documents such as purchase invoices, purchase register, certificates of TDS, payment receipt register and statement, utilization register of way bill, declaration Form 'C' and also copies of work orders executed by him. All these papers were examined with reference to the allegations made against him in the AVR and the periodical returns filed by him pertaining to those periods. As per the AVR the Tax Audit Team had visited the business premises of the dealer on 27.07.2009 and had verified the books of account as well as other documents and came to know that the dealer-contractor had engaged himself in execution of works contract which were of the nature of civil constructions like construction of buildings, roads and culverts etc. and

further he had supplied sanitary fittings, plumbing, painting and fixing of wooden and steel doors, windows, grills, furniture fixtures etc. They (the Audit Team) also found most of the works were executed under the supervision of Executive Engineer, CPWD Divisions, Bhubaneswar and the contractee had deducted TDS @4% against the payments made and deposited in favour of the assessing authority having territorial jurisdiction. The Audit Team also found that the dealer-contractor had not maintained stock account of goods received and utilized in course of execution of works and expenditure towards labour and service charges. However, in course of cross-verification of purchase invoices they could find that the dealer had claimed ITC of `73,183.00 erroneously as the same was not permissible as per the provisions laid down u/S. 20(8)(g) of the OVAT Act. In course of assessment the assessing officer accepted the gross payments received by the dealer at `11,54,90,222.00 during the period under assessment and considering the different nature of works executed by him allowed him (the dealer-assessee) 32% of the gross payment received towards labour and service charges which on calculation came to `3,69,56,871.04. He also verified supporting purchase invoices which were furnished before him with regard to the dealer's claim of ITC and then concluded that the dealer is entitled for ITC at `39,426.00 and thus ultimately after due calculation of tax

liability of the dealer-assesse he concluded that the dealer is entitled to get a refund of `9,12,844.00 towards excess payment of tax as per the provisions of OVAT Act.

Being aggrieved with the said order the dealer-assessee preferred an appeal before the first appellate authority who after examining the materials from all aspects came to a conclusion that the dealer is entitled to get refund of `21,01,827.00.

The State now being aggrieved with the aforesaid order of the first appellate authority so far as tax liability of the dealer is concerned preferred the present second appeal before this forum.

3. The State which has come up as the appellant, however, raised the following points while describing the impugned order as erroneous, arbitrary and bad in law. According to the State-appellant the authorities below were not justified in allowing ITC in absence of the account in detail prescribed under the OVAT Act. Further the dealer-assessee who intends to claim ITC is required to maintain purchase, sale and stock account as per Sec. 20(7) of the OVAT Act and further other records as prescribed u/R. 67(5) of the OVAT Rules.

4. Learned Counsel appearing on behalf of the dealer in terms of cross-objection contended that the order passed by the first

appellate authority is absolutely just and reasonable and as such should not be interfered with.

5. In course of hearing and on perusal of the record it was found that the Audit Team had verified the purchase register, payment receipt register including details of TDS paid, entry tax payment register, waybill, 'C' form utilization registers and TDS certificates in original received from the concerned Departments (contractees). At the same time, the Audit Team had also noticed that the dealer-contractor had not maintained stock account of goods received and utilized in execution of works contract. Thus the Audit Visit Team had also made their own calculation disallowing the dealer's claim for input tax amounting to ₹73,183.00. The first appellate authority, however, after seeing the documents produced before him and keeping in view the relevant laws and rules applicable in the instant case came to a conclusion after calculation that the dealer was entitled for a set off amounting to ₹30,25,772.54 towards admissible ITC on intra-State purchases. Thus the first appellate authority found that the balance tax payable came to ₹27,22,512.38. Since the dealer had already paid ₹48,24,339.00 towards tax for the relevant period he was found eligible to get a refund of ₹21,01,827.00 as per the provisions of law. It is also noticed from the records that the Audit Visit Team as well as the assessing officer had allowed the dealer to avail ITC though they on calculation found different amounts while determining the ITC which was to be allowed in favour of the dealer. Apart from this, law is also well settled that one cannot go beyond the Audit Visit Report. There is no denial of the facts that the dealer-assessee carries on works contract and he had produced some purchase invoices before the first appellate

authority. Further, he is found to have filed his returns regularly. Keeping in view all the facts it can be held that the dealer-assessee was correctly allowed to avail the ITC amounting to `30,25,772.54 by the forums below. Therefore, the assertion of the State-appellant that the dealer is not entitled to claim ITC in the instant case has no merit at all. Under such circumstances we find no reason to interfere with the order of the first appellate authority and as such the same is hereby upheld.

6. In the result, the appeal preferred by the State is dismissed. Cross-objection is disposed of accordingly.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Smt. Sweta Mishra)
2nd Judicial Member

I agree,

Sd/-
(Prabhat Ch. Pathy)
Accounts Member-I