

2. The facts, in brief, as revealed from the case record are that the dealer-assessee being a works contractor was assessed u/S. 12(4) of the OST Act for the year 2002-03. In the said assessment it was found that the dealer-contractor had received gross payment of `3,42,41,898.00 i.e. a sum of `1,65,75,467.00 towards execution of earth work and `1,76,66,431.00 towards execution of road works and as such the assessing officer allowed deduction of `2,17,40,260.48 towards labour and service charges which was deducted from the gross receipt. Thus the GTO was determined at `1,25,01,637.52 and then after allowing further deduction of `36,22,600.17 towards first point tax paid materials, his TTO was determined at `88,79,037.35. Accordingly, the assessing officer determined his tax liability at `7,81,355.29 and since the dealer-assessee had deposited a sum of `13,73,261.00 he passed the order for refund of `5,91,906.00.

The dealer-assessee being aggrieved with this order of assessment preferred an appeal before the first appellate authority. The first appellate authority verified the registers, vouchers, muster roll duly certified by the Labour Department which was also verified by the assessing officer with reference to periodical returns and then came to a conclusion that the dealer-assessee was entitled for deduction of `2,96,30,057.00 towards labour and service charges and further he (the dealer-assessee) was also entitled for a deduction of `36,22,600.00

towards purchase of materials on payment of tax utilized in execution of contract works which was also allowed by the assessing officer. Thus the first appellate authority determined the TTO at `9,89,241.00 which being taxed @ 8% resulted in tax liability of `79,139.28 with a surcharge of 10% thereon amounting to `7,913.92 ultimately comes at `87,053.00 in total. As the dealer-assessee had already deposited a sum of `13,73,261.00, the first appellate authority ordered for refund of `12,86,208.00 as per provision of law. He thus allowed the appeal in part.

3. However, the State being aggrieved with this order of first appellate authority preferred the second appeal challenging the order of the first appellate authority on the ground of its arbitrariness on account of its being not in consonance with law. It has been contended by the State that the first appellate authority had erroneously allowed deduction of `2,96,30,057.00 towards labour and service charges without examining the nature of work executed by the dealer.

4. In course of hearing the argument it was found that the dealer-assessee did not turn up despite receiving the notice in this appeal. Learned Addl. Standing Counsel (CT) appearing on behalf of the State reiterated the grounds of appeal and submitted that the order passed by the first appellate authority also does not disclose the reason as to why he preferred to allow the claim of the dealer-assessee for

deduction of labour and service charges on a very higher side i.e. nearly more than a crore against the deduction as determined by the assessing officer. In this way the order of the first appellate authority suffers from absolute arbitrariness and needs to be set aside. He urged before the Court to restore the order of the assessing officer.

5. On perusal of the orders passed by the assessing officer as well as the first appellate authority it is found that the first appellate authority has given a chart mentioning therein specifically as to how much money was received by the dealer-assessee in respect of his execution of earth work and road work respectively. He totally deducted the amount received by the dealer in respect of his execution of earth work from the GTO of the dealer-assessee as that amount does not attract levy of tax. So far as his (first appellate authority) allowing further deduction in favour of the dealer-assessee is concerned it is found that he (first appellate authority) had verified all the relevant registers, vouchers, muster roll duly signed by the Government authorities in Labour Department as well as the books of account of the dealer-assessee and then came to a conclusion that the dealer-assessee was entitled for deduction to the tune of `2,96,30,057.00 towards labour and service charges. Thus after allowing the said deduction out of the gross payment of `3,42,41,898.00 he determined the GTO at `46,11,841.00 and then allowed further deduction of `36,22,600.00

towards purchase of materials utilized in execution of contract works on payment of tax which was also allowed by the assessing officer after verifying the purchase vouchers and other relevant documents produced before him at the time of assessment. If both the orders will be compared then it could be gathered that the assessing officer who had not rejected the books of account placed before him by the dealer-assessee rather made all the calculations with regard to the tax liability of the dealer –assessee without any basis and as such the said order rather seems to have suffered from total arbitrariness. In the present appeal the revenue alleges that the order of the first appellate authority is arbitrary, unjust and erroneous but at the same time it does not come forward with a single paper or document to find as to why and in what manner the order of the first appellate authority would be treated as illegal and unjustified. He (the first appellate authority) rather specifically mentioned the contract works executed by the dealer-assessee and the amount he received for that and the nature of work undertaken by him during the relevant period with connected documents including the muster roll which was duly certified by the Labour Department as correct.

6. In the circumstances we find that the order of the first appellate authority is certainly based upon with good reasons to arrive at a conclusion of reducing the order of assessment. On the contrary it

is found that the order of assessment cannot be taken as legal and valid because the assessing officer is found to have arrived at certain conclusions without any basis.

7. In the result, as per the discussion made in the foregoing paragraphs we find no reason to interfere with the order of the first appellate authority and accordingly the same is hereby confirmed. Hence, the appeal filed by the State is dismissed.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Subrat Mohanty)
2nd Judicial Member

I agree,

Sd/-
(Rabindra Ku. Pattnaik)
Accounts Member-III