

Sambalpur (hereinafter referred to as, the learned DCST) for the assessment period 01.04.2011 to 31.03.2013 u/s.42 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, the OVAT Act).

2. The brief facts of the case are that, respondent-company is engaged in manufacturing and sale of lubricants. It receives goods on stock transfer basis from outside the State against form 'F'. The assessment was framed on the basis of an Audit Visit Report (in short, the AVR) submitted by the departmental Audit officer. The findings of the Audit Team were that the respondent-company had not reflected Rs.4,78,166.00 in the periodical returns but included the same amount in annual return, secondly there was also decrease of output tax of Rs.52,804.00 in the annual return due to issue of credit notes. On receipt of AVR, the learned DCST initiated assessment proceeding and issued notice to the respondent-company to produce the books of account. In response to the notice, the learned Advocate for the respondent-company appeared and rebutted the allegations. The learned DCST did not consider the contention of the learned Advocate and the allegations revealed in the AVR was considered as established. Accordingly, a sum of Rs.4,78,166.00 was added to the sale turnover of the respondent-company. Tax @ 13.5% on the said turnover was calculated at Rs.64,552.00. ITC of Rs.52,804.00 was disallowed due to non-receipt of debit notes. Thus, tax was calculated at Rs.1,17,356.00 and two times penalty of it was imposed which came to Rs.2,34,712.00. The tax and penalty

together was computed at Rs.3,52,068.00 against the respondent-company.

3. Being aggrieved by the order of the learned DCST, the respondent-company preferred an appeal before the learned JCST who allowed the appeal in part. Being aggrieved by the order of the learned JCST, the appellant-Revenue has preferred this second appeal.

4. The Revenue has come up with the second appeal on the grounds that the order of the learned JCST appears to be unjust and improper; that the learned JCST citing the case of M/s. Bhusan Power & Steel Ltd. v. State of Orissa reached to the conclusion that the learned DCST cannot go beyond the purview of the audit visit authority being swayed by the contention of the dealer without verifying the fact and substances of the said case and that the facts of this case are very much distinguishable; that in Bhusan case the fraud case report has been tagged with the AVR while disposing of the case u/s.42 of the Act, but in this case the learned DCST rightly taxed the amount of Rs.52,804.00 which was deducted from the input tax in the absence of debit notes; that Sec.42(4) of the OVAT Act speaks “where the dealer to whom a notice is issued under sub-section (1) produced the books of account and other documents, the assessing authority may after examining all the materials available with him in the record and those produced by the dealer and after causing such other enquiry as he deems necessary, assess the tax due from the dealer accordingly”; that the fact was very much apparent

on the books of account produced by the dealer and that it is immaterial whether the audit visit authority has reported the same or not; that when anything is detected from the books of account there should be assessment u/s.42(4) by the learned DCST and that the order of the learned JCST may be set aside and that of the learned DCST may be restored.

Cross objection has been filed by the respondent-company supporting the impugned order.

5. Heard the learned Addl. Standing Counsel appearing for the appellant-Revenue and the learned Counsel for the respondent-company. Perused the materials available on record so also the orders of both the fora below. I also perused the grounds of appeal and the plea taken in the cross objection. On comparing the AVR with that of the findings of the learned JCST it is seen that the learned JCST has accepted the so called discrepancy as found in the second part of the discrepancy noted therein and hence justified to disallow the net effect of adjustment/reduction of output tax of Rs.52,804.00 on account of issuance of credit notes for sale during the year 2012-13 on the total output tax liability of that year due to non-receipt of requisite debit notes from the purchasing dealer. The learned JCST is correct to hold that when disallowance of the net effect of adjustment/reduction of tax for Rs.52,804.00 from the total output tax liability on account of issuance of credit notes is made on non-receipt of the requisite debit notes, the same cannot again enhance the total determined output tax liability by Rs.52,804.00 made by

the learned DCST. The learned JCST rightly concluded that the learned DCST failed to take into consideration the payment of Rs.11,750.00 and interest of Rs.1,600.00 thus totaling to Rs.13,350.00 paid vide e-challan No.0040/30874 dtd.27.09.2013 for the year 2012-13 which is apt clear from the e-challan. The learned JCST acted appropriately with the provisions of the OVAT Act and Rules made thereunder while allowing the appeal partly by deleting the output tax of Rs.52,804.00 from the total output tax liability. On perusal of the grounds of appeal it is reflected therein that the learned JCST relied upon the decision of the Hon'ble High Court of Orissa in case of M/s. Bhusan Power & Steel Ltd. Vrs. State of Orissa but in fact such case law has not been cited anywhere in the impugned order. Thus the stand taken by the Revenue on this score is vague. The learned JCST rightly held that the learned DCST determined the tax beyond the AVR. Needless to point out that audit assessment has to be completed on the basis of the materials available in the AVR. No other materials can be utilized for making audit assessment. The learned DCST was supposed to make audit assessment on the basis of the materials available in the audit report. Moreover, in absence of credit notes and evidence on return of goods, the audit officials had not taken into consideration of determination of tax of Rs.52,804.00 after proper verification of books of account as held by the learned JCST. Thus, the learned JCST rightly deleted the disallowance of ITC of Rs.52,804.00 and determination of tax on the said amount. From such discussion it is clear that there is no infirmity in

the impugned order which does not require any interference.
Hence, it is ordered.

6. The appeal stands dismissed being devoid of any merit and the impugned order is hereby confirmed. The cross objection is disposed of accordingly.

Dictated & corrected by me,

Sd/-
(A.K. Dalbehera)
1st Judicial Member

Sd/-
(A.K. Dalbehera)
1st Judicial Member