

u/s.42 of the Orissa Value Added Tax Act, 2004 (hereinafter referred to as, OVAT Act).

2. The brief facts of the case are that, the respondent-dealer is a works contractor who had filed return u/s.33 of the OVAT Act read with Rule 34 of the said Rules. For the tax period the business of the respondent-dealer was audited by the audit team u/s.41 of the OVAT Act. While submitting the Audit Visit Report (in short, the AVR), the STO, Audit team observed that the respondent-dealer had not produced the books of account for verification for which he suggested an assessment u/s.42 of the OVAT Act. Basing on the AVR the learned STO initiated assessment proceeding u/s.42 of the OVAT Act for the tax period. After examining the books of account the learned STO determined the GTO and TTO at Rs.18,67,75,803.00 and Rs.2,02,50,419.00 respectively. However, the learned STO allowed deduction of Rs.8,03,60,689.00 towards CST sale and Rs.8,61,64,795.00 towards labour and service charges. The learned STO computed tax at Rs.15,52,039.00 and allowed set off of ITC of Rs.7,17,084.00. So the balance output tax was arrived at Rs.8,34,955.00 against which the learned STO adjusted TDS payment of Rs.26,70,049.00 and passed order resulting in excess payment of Rs.18,35,094.00.

3. Being aggrieved by the order of the learned STO, the respondent-dealer preferred an appeal before the learned JCST who allowed the appeal and the assessment was reduced to Rs.34,37,455.00. Being aggrieved by the order of the learned JCST, the respondent-dealer has preferred this second appeal.

4. The appellant-Revenue has come up with the second appeal on the grounds that the order of the learned JCST appears to be unjust and improper who has allowed excess refund than due with reference to tax assessed and payment made; that the fora below have not properly verified the TDS certificates and supportive payment particulars submitted by the dealer for allowing credit of TDS; that the issuing authority of Form VAT-605 has put "not applicable" remark against Sl. No.14, but in the present case no document has been enclosed along with the copy of e-challan or form VAT-605 indicating the names of contractors though consolidated payment has been made for which credit of TDS appears to be improper and that the order of the learned JCST may be set aside by remanding back the case to the learned STO for re-examination of the payment details with reference to TDS documents submitted.

No cross objection has been filed by the respondent-dealer in this appeal.

5. Heard the learned Addl. Standing Counsel for the appellant-Revenue as the respondent-dealer did not choose to participate in the hearing. Although the matter was heard exparte but the matter was taken on merit. From the record it is clear that the learned JCST verified the PCR numbers of ten challans and made necessary computation. The stand taken by the learned Addl. Standing Counsel that PCR numbers were not verified is not at all true. The dispute as regards non-adjustment of balance TDS amount of Rs.14,02,361.00 was examined by the learned JCST with the relevant assessment record. It was found that the respondent-dealer had submitted

the TDS certificates issued by the contractee M/s. NALCO in the prescribed form. The copies of e-payment challans were submitted before the learned JCST who verified the same and found that the respondent-dealer had deposited Rs.40,72,410.00 by way of TDS. The learned JCST found that the e-challan copies were authentic and genuine for which he adjusted the balance amount of Rs.14,02,361.00 against the assessed amount. After allowing the same the computation was made by the learned JCST. The Revenue could not substantiate anything to support the grounds taken in the appeal. Thus, the grounds taken in the appeal have no basis at all. I do not find any infirmity in the impugned order. Hence it is ordered.

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

Dictated & corrected by me,

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

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