



aggrieved, knocked the door of this forum questioning the legal sustainability of the order of the first appellate authority.

2. The first appellate authority has allowed deduction towards labour and service charges at a higher percentage without proper verification of the nature of the works contract and the nature of the work executed by the dealer-contractor. The work executed by the dealer is road work for which deduction @ 50% towards labour and service charges up to 19.07.2012 and thereafter @ 30% as per Appendix to Rule 6 of the OVAT Rules is proper but, the deduction @ 70% against the civil work treating the same as earth work is wrong. It is further contended that, the first appellate authority has allowed ITC without proper verification.

3. The assessee-dealer in the case in hand was a works contractor engaged in execution of contract job during the tax period 01.04.2011 to 31.03.2013 under PMGSY, R&B Department, IDCO etc. under the Government of Odisha. In an assessment u/s.42 of the OVAT Act for the period of assessment from 01.04.2011 to 31.03.2013, the assessing authority has allowed deduction towards labour and service charges against the job work @ 40%. It is apt to mention here that, the audit team had suggested for deduction @ 35%. However, the assessing authority has allowed deduction @ 40% looking at the nature of work.

4. Being aggrieved, the dealer had preferred appeal before the first appellate authority who in turn allowed deduction @ 50% up to 19.07.2012 and thereafter @ 30% on application of the Appendix to Rule 6(e) of the OVAT Rules against road work and it has also allowed deduction @ 70% against earth work.

As against the percentage of deduction above as determined by the first appellate authority, the Revenue has preferred this appeal on the grounds mentioned herein above.

5. The dealer has contested this appeal by filing cross objection. Refuting the claim of the Revenue, inter alia, the dealer has pleaded that, the entire work was labour oriented. The land from which the earth removed was identified by the department, the first appellate authority has allowed

deduction in accordance to law which calls for no interference. It is further contended that, in accordance to the authority of this Hon'ble Court, the cost paid towards purchase of earth also should have deducted from the GTO for the purpose of determination of tax liability.

6. From the rival contentions above, sole question for decision in this appeal is, if the first appellate authority has committed wrong in determining the deduction towards labour and service charges in the case in hand.

7. In the hearing, the learned Addl. Standing Counsel, Mr. Pradhan argued that, the audit team has suggested for deduction towards labour and service charges @ 35% but the assessing authority has determined it @ 40%. There was no reason before the first appellate authority to enhance the deductions against earth work @ 70%, 50% against road work up to 19.07.2012 and then 30% for the later period. The first appellate authority has applied Appendix to Rule 6(e) of the OVAT Rules for determination. Plea of the Revenue is, application of the Appendix as against the road work is correct but, it is wrong against the so called earth work.

Learned counsel for the dealer placed the relevant portion of the contract and different letters issued by the authorities to the contractor to show that, the work executed by the dealer was labour oriented and it include earth work.

8. The nature of work undertaken by the dealer are construction of road, improvement of road and earth work. This is a question of subjective satisfaction of the authorities below. On verification of the nature of work, the contract agreed between the contractor and contractee while determining the labour component and sale component, the first appellate authority has the occasion to scrutinize the nature of work in one hand and the deduction allowed by the assessing authority in other hand. The assessing authority has not assigned any cogent reason, what was the parameter before him to calculate the labour and service charges. On the other hand, it is the first appellate authority, on due application of the

provision under law more to say, Appendix to Rule 6(e) of the OVAT Rules has determined the labour and service charges. The work if covered under earth work or civil work is a pure question of fact and the first appellate authority has determined the same on due application of mind to the documents relevant for the purpose. There is no reason before us to doubt the prudence of the first appellate authority particularly when, the appellant has failed to adduce any cogent evidence to rebut the findings of the first appellate authority or doubt the genuineness of the determination of labour and service charges by the first appellate authority. Then, it will be unsafe to interfere into the order of the first appellate authority on surmises and conjecture. Hence, we of the view that, the impugned order calls for no interference. Accordingly, it is ordered.

9. The appeal by the Revenue stands dismissed as of no merit.

Dictated & corrected by me,

Sd/-  
(S. Mohanty)  
1st Judicial Member

Sd/-  
(S. Mohanty)  
1<sup>st</sup> Judicial Member

I agree

Sd/-  
(R.K. Rout)  
Accounts Member-II