

the Odisha Value Added Tax Act, 2004 (in short 'OVAT Act') for the tax periods from 01.04.2005 to 31.03.2010.

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

The dealer-assessee is a works contractor and executes different works under various Government agencies. The Tax Audit in respect of his works was done u/S. 41 of the OVAT Act by the Tax Audit Team who had visited his business premises on 25.09.2010. As suggested by the Audit Visit Team in their report to make audit assessment in respect of the dealer-assessee u/S. 42 of the OVAT Act a statutory notice in Form VAT-306 was issued to the dealer. In response to the said notice the Advocate for the dealer appeared and filed the original tax invoices, copies of running accounts bills, bitumen utilization certificate and other related documents. It was mentioned in the Audit Visit Report (AVR) that the dealer-contractor had received a sum of `4,93,96,921.00 during the tax periods under audit and a sum of `19,75,827.00 was deducted by the contractees at the source in shape of TDS. The dealer had purchased goods worth `92,27,272.61 on the strength of tax invoices and as such had paid tax of `10,88,526.57. However, the Audit Team had disallowed the claim of the dealer for ITC

amounting to `92,479.00 out of `10,88,526.57 as he (the dealer) had paid VAT on the purchases against retail invoices. Thus, the Audit Team had allowed the dealer to avail ITC amounting to `9,96,048.00 for the tax periods under assessment after thorough verification of the tax invoices submitted by him. The assessing officer also allowed this amount of ITC at the stage of assessment u/S. 42 of the OVAT Act. The above amount of tax paid on the purchase point of cement and M.S. Rod and further the dealer had also purchased sand, chips, metals worth `47,63,194.00 from the unregistered sources and bitumen worth `30,00,000.00 during the period under assessment. After considering all the documents and the suggestion given in the AVR the assessing officer calculated the tax dues of the dealer-assessee which came to `7,19,942.55. As the dealer had already paid a sum of `19,75,827.00 in shape of TDS the assessing officer concluded that the dealer was entitled to get refund of `12,55,884.00 as per the provisions of law.

Being aggrieved with the aforesaid order of assessment the dealer-assessee preferred an appeal before the first appellate authority on the ground that the order of assessment as passed by the Sales Tax Officer was arbitrary and illegal and further the

TTO determined by the assessing officer was wrong and against the principle of law. The dealer-assessee also contended before the first appellate authority that the labour and service charges allowed by the assessing officer was very low in view of the nature of works undertaken by him and it had claimed that the labour and service charges should be 82% on canal works. The first appellate authority perused the order of assessment, the grounds of appeal and heard the Advocate who appeared on behalf of the dealer and then concluded that there was no good ground to interfere with the order of assessment and thus confirmed the same.

3. At present the State being aggrieved with the aforesaid order of assessment passed by the assessing officer as well as the order passed by the first appellate authority confirming the same preferred this appeal on the grounds that those orders are erroneous, arbitrary and bad in law. Both the forums below were not justified in allowing ITC in absence of detail books of account prescribed under OVAT Act, 2004 since a registered dealer who intends to claim ITC is required to maintain accounts of purchases, sales and stock in trade as required u/S. 20(7) of the OVAT Act.

4. In course of hearing learned Addl. Standing Counsel (CT) appearing on behalf of the State reiterated the grounds of appeal before this Tribunal and submitted that the dealer-assessee should not have been allowed ITC because he did not have proper books of account during the relevant period.

5. Learned Counsel appearing on behalf of the dealer, however, in terms of cross-objection contended that the AVR nowhere discloses regarding the dealer not having books of account maintained for the relevant periods. Further, the first appellate authority should have granted minimum 65% towards labour and service charges which the dealer claims at this forum.

6. It is revealed from the order of assessment as well as the impugned order that the dealer had produced all the relevant documents such as original tax invoices, copies of running accounts bills, bitumen utilization certificate and other related documents. It had also filed the TDS certificates (16 nos.) to prove that he had received a sum of `4,93,96,621.00 from which a sum of `19,75,827.00 was deducted at source by the contractees. From these documents the assessing officer could ascertain that the dealer-contractor had undertaken canal works and from the work orders as well as copies of

agreements he could find that the works executed by the dealer-contractor involved both labour and service component and the material component. He then allowed labour and service charges @ 62% from the gross amount received during the tax periods under assessment keeping in mind the scope of work and schedule specification in the copy of agreement. He (the assessing officer) also accepted the suggestion given in the AVR to allow ITC of `9,96,047.57 and then determined the tax payable by the dealer-assessee. The assessing officer has categorically mentioned the detail of gross amount received and tax deducted at source in case of the dealer-assessee and the materials utilized for execution of works contract as well as the sale value of the items purchased by the dealer-assessee by adding 34.16% towards the gross profit margin. The first appellate authority while considering the order of assessment, keeping in view the grounds of appeal raised before him, found that the dealer-assessee though asserted regarding less deduction towards labour and service charges in comparison to the nature of works executed yet could not file further documentary evidence to sustain his claim. The first appellate authority confirmed the order of assessment while disallowing the appeal preferred by the dealer-assessee before him. The dealer has not preferred appeal against the aforesaid order of the first appellate authority. In such circumstances we also found no reason to entertain

the claim for deduction of 65% towards labour and service charges as raised by the dealer-assessee before this forum.

7. However, the State filed this second appeal with only dispute that the dealer-assessee should not have been allowed ITC as allowed by the assessing officer as well as the first appellate authority. But on a thorough scrutiny of the orders as challenged by the State it could be gathered that the establishment of the dealer-assessee was visited by the Audit Visit Team and they had verified all the documents as mentioned above and then allowed the dealer to avail ITC amounting to ₹9,96,048.00. Under such circumstances it is very difficult to comprehend the submission advanced by the State that the dealer did not have books of account as required u/S. 20(7) of the OVAT Act and as such he should not be allowed ITC in the instant case. At the cost of repetition we would like to mention here that the dealer-assessee had filed the original tax invoices, copies of running accounts bills, bitumen utilization certificate, TDS certificates which were duly verified by the Audit Visit Team as well as the assessing officer at the stage of assessment. Thus the objection raised by the State in the instant appeal appears to have no merit at all.

8. In the result, as per the discussion made in the foregoing paragraphs, we find no reason to interfere with the impugned order and as such the order passed by the first appellate authority confirming the order of assessment is hereby confirmed. Thus the appeal 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/-
(Ranjit Kumar Rout)
Accounts Member-II