



12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') pertaining to the tax period 1997-98.

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

The dealer-assessee M/s. Blue Star Ltd., Keonjhar House, Cuttack is a works contractor. As such it had executed works relating to design, supply, installation, testing, commissioning of air conditioning and ventilation system under various work executing authorities namely M/s. Instrumentation Ltd., Koshika Telecom Ltd., M/s. Penner India Ltd., M/s. Steel Authority of India, Rourkela, Infosys Trishna, Kalinga Hospital Ltd., O.P.G.C. at Ib Thermal Power Station and Indian Oil Corporation Ltd. Besides the aforesaid works the dealer-assessee had also executed the works of laying pipe lines for tank wagon gentry at Paradeep Lightenage terminal during the year 1997-98. It (the dealer-assessee) had also undertaken repair, service and maintenance works under different principals and thus it had received a gross payment of ₹2,45,22,457.55 during that relevant period and out of this amount a sum of ₹28,40,967.00 relates to repair and service charges. On receipt of a notice from the assessing officer the Executive Accountant of the dealer's establishment had appeared before him with documents and statements relating to the transactions of the dealer's business establishment pertaining to the period 1997-98. The assessing

officer verified the same and allowed the dealer's claim for deduction of ₹77,374.64 towards utilization of first point tax paid goods. Then on verification of the agreements between the dealer and the contractees regarding movement of goods for execution of works contract the assessing officer declined the dealer's claim for deduction made towards value of Central Sales Tax suffered goods. Further as the dealer could not furnish the accounts in detail justifying its claim for deduction towards labour and service charges the assessing officer after taking into consideration the nature of works executed by it allowed deduction of 35% of the gross payment received by it for execution of works consisting of designing, manufacturing, supply and installation etc. and 50% from the payments received by it (the dealer) towards repair and service charges. The assessing officer had also allowed adjustment of TDS for ₹4,63,339.00 and disallowed the remaining claim towards adjustment of TDS as the corresponding TDS certificates were not properly filled up then. Accordingly the assessing officer passed an order of assessment raising an extra demand of ₹2,46,498.00 under the OST Act against the dealer.

Being aggrieved with the aforesaid order of the assessment the dealer preferred an appeal before the first appellate authority with the contentions that the dealer had filed TDS certificates issued by the Government Department for an amount of ₹9,65,405.00

but the assessing officer allowed adjustment of ₹4,63,339.00 only out of the said amount without assigning any reason for his rejection in respect of the rest amount of ₹5,02,066.00. Similarly the assessing officer had disallowed the claim of the dealer for deduction of ₹16,82,944.76 which was made towards utilization of materials in the works contract by way of sales in course of inter-State trade and commerce from other States coming within the meaning of Section 3 of the Central Sales Tax Act despite production of relevant documents before him justifying the above claim. The assessing officer also reduced the claim for deduction towards labour and service charges in violation of the directions of the Hon'ble Apex Court in this regard.

The first appellate authority considering all the aforesaid grounds as raised before him by the dealer examined all the documents vis-à-vis the order of assessment and concluded that the assessing officer had justifiably determined the percentage of deduction towards labour and service charges which the dealer was entitled to have in the instant case. He also agreed with the finding of the assessing officer given in respect of the claim advanced by the dealer for deduction of a sum of ₹16,82,944.76 towards the value of the goods purchased in course of inter-State trade and commerce and utilized by it (the dealer) in the works contract after verifying the agreements pertaining to those work contracts himself. However, considering the

correspondences received from the Circle Officers of different Circles who were contacted by the assessing officer through letters to ascertain credits of TDS he (the first appellate authority) allowed adjustment of ₹4,12,938.00 more in addition to the adjustment of ₹4,63,339.00 already allowed by the assessing officer. Thus, he upheld the GTO and TTO as determined by the assessing officer. He calculated the tax including surcharge which came to ₹13,65,669.00. As the dealer had already paid a sum of ₹15,32,109.00 he ordered for refund of ₹1,66,440.00 in its favour.

3. The State being dissatisfied with the aforesaid order of the first appellate authority brought this appeal on the grounds of its being illegal, unjust and arbitrary. It is contended on behalf of the State that the first appellate authority failed to appreciate the facts and circumstances of the case while allowing refund of ₹1,66,440.00 to the dealer when it (the dealer) was supposed to pay the extra demand of ₹2,46,498.00 as per the order of the assessing officer. Further both the assessing officer and the first appellate authority have allowed deduction towards labour and service charges at a higher percentage even though the expenditure incurred on this count for air conditioning and ventilation system might not have been more than 10%. The State-appellant thus urged before this forum to give a direction for fresh assessment in the case.

No cross-objection has been filed on behalf of the dealer-respondent in this case.

4. On a thorough scrutiny of the order of assessment as well as the impugned order before us it is found that both the forums below had examined the documents placed before them in detail. They exactly found out as to what were the terms and conditions agreed upon between the works contractor and the contractees respectively as well as the connected work orders. From those documents they ascertained the nature of works executed by the dealer. They had verified the bills raised by the dealer and the materials procured for utilization of the same in the works executed by the dealer. From the connected documents they determined as to what extent the dealer's claim for deductions were to be allowed. The assessing officer and the first appellate authority concurred in their findings with regard to the percentage of deduction to be allowed in favour of the dealer towards labour and service charges. The first appellate authority has agreed with the finding of the assessing officer in disallowing the claim advanced by the dealer for deduction towards value of Central Sales Tax suffered goods when he found from the agreements that goods purchased by the dealer from outside the State and utilized in the works contract were not in course of inter-State trade and commerce. They both, however, allowed deduction claimed by the dealer towards utilization of first point tax paid goods in the works executed by it.

5. The first appellate authority has categorically mentioned in his order (in Pages 6 & 7) as to how he found out the reported credits of TDS amounting to ₹8,76,277.00 in favour of the dealer. Since the assessing officer had already allowed adjustment of ₹4,63,339.00 therefrom the first appellate authority at the stage of appeal allowed adjustment of the balance amount of ₹4,12,938.00 and calculated the tax dues of the dealer which in fact occasioned refund of some amount to the dealer already paid by it u/R. 36 of the OST Rules. No infirmity or illegality is noticed in the impugned order.

In the circumstances as per the discussion made in the foregoing paragraphs we observed that there is absolutely no reason or necessity to interfere with the order passed by the first appellate authority in the case. Accordingly, we confirmed the same.

6. In the result, the appeal is dismissed being devoid of merit.

Dictated & Corrected by me,

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

**Sd/-**  
**(Smt. Suchismita Misra)**  
**Chairman**

I agree,

**Sd/-**  
**(Subrat Mohanty)**  
**1<sup>st</sup> Judicial Member**

I agree,

**Sd/-**  
**(Prabhat Ch. Pathy)**  
**Accounts Member-I**