

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

The appellant is a dealer-contractor and as such, he was directed to appear before the assessing authority with his books of account relating to execution of works contract for the year 1996-97 pursuant to notice issued under Sec. 12(4) of the OST Act. Accordingly, on verification of documents the assessing authority found that the dealer as a works contractor had executed works contract under the Manager, RITES, Bhubaneswar and I.O.C. Ltd., Kolkata and as such, had received gross amount of bills of `3,16,57,351.00 for execution of earth work in formation, construction of retaining wall, compound wall, culverts, drains and other incidental works for M/s. I.O.C. Ltd., Paradeep. Further, the dealer-contractor was registered under Sec. 9 of the OST Act w.e.f. 30.04.1996 under the aforesaid Unit. On verification of his TDS certificates and running account bills, it was found that he had received a sum of `3,04,88,750.00 from M/s. RITES, Bhubaneswar for the above works during the year 1996-97 and the TDS amount of `12,19,550.00 was deducted from the above gross bills received from M/s. RITES, Bhubaneswar. As per the work order dt. 09.12.1996 and running bill account submitted by the dealer-contractor, it was found that he had received gross amount of bills of `11,68,601.00 from M/s. I.O.C. Ltd., Kolkata for construction of Pump House at Paradeep and no TDS amount was deducted from the above gross bills since the dealer did not

submit the original TDS certificate from M/s. I.O.C. Ltd., Kolkata for that relevant period. Thus, on examination of relevant documents relating to the works contract of the dealer-assessee for the year 1996-97, he was saddled to pay a sum of `92,760.64 or `92,761.00 as per the terms and conditions of the demand notice issued by the assessing authority.

3. The aggrieved dealer-assessee preferred an appeal against the aforesaid order before the first appellate authority and challenged the order of assessment passed by the Sales Tax Officer, Assessment Unit, Jagatsinghpur (assessing authority) raising a demand of `92,761.00 from him. Learned first appellate authority after considering the materials on record vis-à-vis the assessment order held in the impugned order that the dealer was not liable to pay tax for the works executed as a sub-contractor of M/s. RITES, but in absence of any documentary evidence to the effect that M/s. RITES had already been assessed under the OST Act for the year 1996-97, he made the dealer liable to pay tax on the transfer of materials involved in the execution of works contract as per the provisions of the OST Act. Since the dealer could not produce detail account towards labour and service charges in appeal, considering the nature of works undertaken by the assessee learned first appellate authority allowed 50% deduction towards labour and service charges as against 45% allowed by the assessing authority. Further, on examination of bills produced, learned first appellate authority found that the dealer-contractor had purchased goods from

unregistered dealers and as such, he disallowed the claim of first point tax paid materials. That apart, learned first appellate authority observed that the assessing authority had allowed deduction of `24,98,921.94 from the TTO towards first point tax paid goods including iron and steel. However, on examination of the TDS certificates in original for `46,743.00, learned first appellate authority allowed to give credit subject to proper verification by the assessing authority. Accordingly, he remanded the matter to the assessing authority to complete the assessment afresh in the light of observations made by him in his order dt. 16.12.2000.

Being further aggrieved, the dealer-assessee has preferred this second appeal on the aforesaid grounds.

4. In course of hearing of this appeal and on perusal of the case record, it is found that on the self same matter, the State had preferred second appeal bearing S.A. No. 568 of 2001-02 arraying this appellant as respondent. In the said appeal, the respondent, i.e. the present appellant, did not appear and the issues, which he raised before this Tribunal in the present appeal had already been decided in the said appeal which was disposed of on 05.01.2010 on merit. The present appellant also did not challenge the order passed by this Tribunal in S.A. No. 568 of 2001-02. At present also the appellant has not filed any document or evidence to substantiate the pleas taken by him in this appeal. Under such circumstances, it seems that this Tribunal has got very little scope to address

the issues in this appeal preferred by the appellant since the matter has already been set at rest by virtue of the order passed by the Division Bench of this Tribunal in S.A. No. 568 of 2001-02. In the aforesaid circumstances, the present appeal has to be dismissed outrightly.

5. Accordingly, the appeal is dismissed.

Dictated & Corrected by me,

Sd/-
(Smt. Suchismita Misra)
Chairman

Sd/-
(Smt. Suchismita Misra)
Chairman

I agree,

Sd/-
(Ashok Kumar Panda)
1st Judicial Member

I agree,

Sd/-
(Prabhat Ch. Pahty)
Accounts Member-I