

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:  
CUTTACK**

**S.A. No. 68 of 2007-08**

(Arising out of order of the learned ACST (Appeal), Puri Range,  
Bhubaneswar in First Appeal No. AA- III/BH-I/06-07,  
disposed of on 30.12.2006)

Present: **Shri G.C. Behera, Chairman**  
**Shri S.K. Rout, 2<sup>nd</sup> Judicial Member, &**  
**Shri M. Harichandan, Accounts Member-I**

State of Odisha, represented by the  
Commissioner of Sales Tax, Odisha,  
Cuttack ... Appellant

-Versus-

M/s. Rithwik Projects,  
Harmony Villa, Vivekananda Marg,  
Bhubaneswar ... Respondent

For the Appellant : Sri D. Behura, S.C. (CT)  
For the Respondent : N o n e

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Date of hearing : 15.09.2022      \*\*\*      Date of order : 23.09.2022  
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**ORDER**

State assails the order passed on 30.12.2006 by the Assistant Commissioner of Sales Tax (Appeal), Puri Range, Bhubaneswar (hereinafter called as 'First Appellate Authority') in F A No. AA- III/BH-I/06-07 quashing the order of the Taxing Authority, Bhubaneswar I Circle, Bhubaneswar (in short, 'Assessing Authority').

2. The case of the Dealer-respondent, in short:

M/s. Rithwik Projects Limited Company is engaged in the business of execution of works contract. The assessment relates to the year

2002-03. The Assessing Authority raised tax demand of ₹14,88,790.00 u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act').

Dealer preferred first appeal before the First Appellate Authority and the First Appellate Authority quashed the order of the Assessing Authority. Being aggrieved with the order of quashing assessment by the First Appellate Authority, the State prefers this appeal. Hence, this appeal.

3. The respondent did not appear and was set at *ex parte*. Respondent files no cross-objection.

4. Learned Standing Counsel (CT) for the State submits that the order of the First Appellate Authority is erroneous and contrary to the provisions of law and fact involved. He submits that the First Appellate Authority has not examined the documents and materials available on record and passed the order mechanically. He further submits that the Dealer failed to appear before the Assessing Authority and produced any document, but the First Appellate Authority passed the order without going through the materials available on record. So, he submits that the order of the First Appellate Authority is bad in law and the same requires interference in appeal.

5. On the materials available on record, we formulate the following question for adjudication of the appeal :-

“Whether in the facts and circumstances of the case, the First Appellate Authority is justified in quashing the order of assessment of the Assessing Authority ?”

6. On perusal of the impugned order and the order of the Assessing Authority, it is found that the First Appellate Authority has clearly mentioned that no sale has been made by the Dealer except procuring the plant and machineries to the tune of ₹1,47,11,364.00. When there is no sale, no tax liability can be fastened on the Dealer. So, on such finding, the First Appellate Authority quashed the order of the Assessing Authority.

7. On the foregoing discussions, we do not find any impropriety or illegality in the order of the First Appellate Authority as the First Appellate Authority has passed a reasoned order, which requires no interference in this appeal. Hence, it is ordered.

8. Resultantly, the appeal is dismissed being devoid of merit. The order of the First Appellate Authority is hereby confirmed.

**Dictated & Corrected by me**

**Sd/-  
(G.C. Behera)  
Chairman**

**Sd/-  
(G.C. Behera)  
Chairman**

**I agree,**

**Sd/-  
(S.K. Rout)  
2<sup>nd</sup> Judicial Member**

**I agree,**

**Sd/-  
(M. Harichandan)  
Accounts Member-I**