BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 1232 of 2006-07

(Arising out of order of the learned ACST (Appeal), Puri Range, Bhubaneswar in Appeal No. AA- 160/BH-II/2005-06, disposed of on 16.08.2006)

Present: **Shri G.C. Behera, Chairman**
Shri S. Dubey, 1st Judicial Member &
Shri B. Bhoi, Accounts Member-I

M/s. Power Planner & Engineers Pvt. Ltd.,
At- 121/A, Satya Nagar, Bhubaneswar ... Appellant

-Versus-

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

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

Date of hearing : 08.10.2024 *** Date of order : 07.11.2024

O R D E R

Dealer is in appeal against the order dated 16.08.2006 of the Asst. Commissioner of Sales Tax (Appeal), Puri Range, Bhubaneswar (hereinafter called as 'First Appellate Authority') in F A No. AA- 160/BH-II/2005-06 partly reducing the demand raised in assessment order of the Sales Tax Officer, Bhubaneswar II Circle, Bhubaneswar (in short, 'Assessing Authority).

2. Briefly stated, the facts of the case are that –

M/s Power Planner & Engineers Pvt. Ltd. is engaged in trading of electrical goods and execution of electrical works contract. Assessment relates to the year 2001-02. The Assessing Authority raised tax demand of

₹6,98,399.00 u/s. 12(4) of the Odisha Sales Tax Act, 1947 (in short, 'OST Act') in *ex parte* assessment.

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the demand to ₹6,71,859.00 and allowed the appeal in part. Being aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

The State files no cross-objection.

3. There is no appearance from the side of the Dealer despite notice. Learned Standing Counsel (CT) & Addl. Standing Counsel (CT) are present for the State. Hence, the matter is disposed of *ex parte* basing on the materials available on record.

4. It is urged in the grounds of appeal that the First Appellate Authority and Assessing Authority have not applied their judicial mind while disposing the proceeding. It has been specifically averred in the grounds of appeal that the First Appellate Authority and Assessing Authority have not considered the material facts available on record. He further averred that the turnover for entire works done by the Dealer during the year under assessment is not liable to tax as the same are exempted under the OST Act. So, the Dealer prays in the grounds of appeal that the impugned order suffers from infirmity and requires interference in appeal.

5. Per contra, the learned Standing Counsel (CT) for the State submits that the Dealer did not appear before the Assessing Authority. He further submits that the Assessing Authority completed the assessment on best judgment principle in absence of books of account. He also contends that the finding of the First Appellate Authority cannot be interfered in absence of any material documents. He urges that the labour and service charges allowed on best judgment principle by the Assessing Authority cannot be varied unless any contrary materials are brought to record. So, he submits that the order of the First Appellate Authority needs no interference in appeal.

6. Heard the learned Standing Counsel (CT) for the State, gone through the orders of the Assessing Authority and First Appellate Authority *vis-a-vis* grounds urged in the grounds of appeal and the materials available on record.

The assessment order reveals that the Dealer had purchased materials against Form XXXIV, Form 'C' and way bills for utilization in execution of works contract. The Dealer claims to have executed erection and installation works. The Assessing Authority allowed ₹48,07,578.61 towards erection and installation charges. Accordingly, he determined the GTO & TTO and computed the tax liability of the Dealer in *ex parte* assessment. In appeal, the First Appellate Authority reduced the tax liability.

The assessment order transpires that the Assessing Authority completed the assessment in absence of the books of account on best judgment principle. The First Appellate Authority recomputed the tax liability as per the materials available on record. The Dealer did not appear before this forum to substantiate its claim. In absence of material evidence, this Tribunal cannot disturb the finding of the First Appellate Authority. Hence, it is ordered.

7. Resultantly, the appeal stands dismissed and the impugned 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. Dubey)
1st Judicial Member

I agree,

Sd/-
(B. Bhoi)
Accounts Member-I