



Date of Hearing : 13.08.2025 :: Date of Order : 13.08.2025

ORDER

- 1.** In the garb of challenging order dated 21st August, 2024 passed by the Assistant Commissioner of State Tax, Dhenkanal Circle, Angul, Odisha-opposite party no.2 under Section 73 of the Central Goods and Services Tax Act, 2017 and the Odisha Goods and Services Tax Act, 2017 (collectively be called “the GST Act”) for the tax periods from April, 2019 to March, 2020, the petitioner craves to question the exercise of power under Section 168A to issue Notification No.09/2023-Central Tax, dated 31st March, 2023 *vide* Annexure-6 and Notification No.56/2023-Central Tax, dated 28th December, 2023 *vide* Annexure-7 by the Government of India in Ministry of Finance (Department of Revenue) Central Board of Indirect Taxes and Customs extending the period of limitation to pass an order under Section 73 by way of filing this writ petition invoking provisions under Articles 226 & 227 of the Constitution of India.
- 2.** Facts as adumbrated by the writ petitioner reveals that upon scrutiny of returns filed by the petitioner-assessee under Section 39 of the GST Act, in response to notice dated 18.03.2021 in GST ASMT-10 on the allegation of understatement of tax liability in terms of facts and figures disclosed in Form GSTR-3B as against Form



GSTR-1, the Assistant Commissioner of State Tax, Dhenkanal Circle, Angul, Odisha-opposite party no.2 a reply in Form GST ASMT-11 under Section 61 was submitted on 30.06.2021 and payment made in Form GST DRC-03 contemplated under Rule 142(2) and Rule 142(3) was also furnished. Nevertheless, a show cause notice dated 18.05.2024 in Form DRC-01 was issued invoking Section 73. In absence of any reply, the adjudicating authority proceeded to pass order dated 18.05.2024. Accordingly, a summary of the order dated 21.08.2024 in Form GST DCR-07 was also issued directing the petitioner to make payment of Tax of Rs.14,27,419.56, interest of Rs.10,48,156.14 and penalty of Rs.1,42,741.96 by the Assistant State Tax Officer, Dhenkanal Circle, Angul.

2.1. Said order is under challenged in the present writ petition on the premise that the said adjudication order is hit by limitation contained under Section 73(10) of the GST Act, notwithstanding such statutory period has been extended from time to time in exercise of powers under Section 168A of the GST Act by virtue of Notifications dated 31st March, 2023 and 28th December, 2023 under Annexures-6 & 7 respectively.

3. Mr. Madhab Lal Agarwal along with Ms. Zenish Mary Wallace, learned Advocates appearing for the petitioner submitted that the order impugned cannot be sustained



inasmuch as the statutory period of limitation specified under Section 73 of the GST Act could not be extended by virtue of Notifications issued under Section 168A of the GST Act.

- 4.** Mr. Sunil Mishra, learned Standing Counsel for CT & GST Department along with Mr. Avinash Kedia, learned Junior Standing Counsel for Central Excise, GST and Customs Department unison submitted that the petitioner has alternative remedy to challenge the order dated 21st August, 2024, but circumventing such remedy, the petitioner should not have approached this Court straightway by way of this writ petition on the specious plea that the authority concerned has transgressed his power under Section 73(10) read with Notifications issued under Section 168A of the GST Act.

- 4.1.** Laying emphasis on the pleading contained at Ground no. 'S' of paragraph-18 of the writ petition it is submitted that the mistake in the claim of exemption/tax free transactions in returns has been admitted by the petitioner. Therefore, he fervently prayed not to entertain this writ petition, as adjudication on facts needs to be resolved by the authorities vested with power under the GST Act and Rules thereunder.

- 5.** Heard Mr. Madhab Lal Agarwal, learned counsel along with Ms. Zenish Mary Wallace, learned counsel



appearing for the petitioner and Mr. Sunil Mishra, learned Standing Counsel for CT & GST Department along with Mr. Avinash Kedia, learned Junior Standing Counsel for Central Excise, GST and Customs Department.

6. Considered the material available on record. It is revealed from ground no. 'S' of paragraph-18 of the writ petition as follows:

*“S. For that the petitioner is not liable to pay tax has demand under Annexure-4. The petitioner has effected tax free/exempted supplies during the year. **However, due to clerical mistake and inadvertently, the tax free and exempted supplies were wrongly reported in GSTR 1 as taxable supplies, giving rise to the difference in tax liability declared in GSTR 1 vis-à-vis GSTR 3B.**”*

- 6.1. In view of clear and candid admission of the petitioner with respect to mistake of fact in claiming tax free and exempted supplies, this Court is not inclined to entertain this writ petition, for such factual aspect is subject to scrutiny and appreciation of evidence by the fact-finding authorities empowered under the GST Act and Rules framed thereunder.

- 6.2. Further scrutiny of writ petition does not disclose any plausible reason, much less reason, to demonstrate the circumstances which prevented the petitioner from



approaching this Court within reasonable period challenging the order under Section 73 of the GST Act. Whereas said order was framed on 21st August, 2024, the petitioner has filed this writ petition on 8th July, 2025.

- 6.3. This Court is conscious that no time limit is prescribed to approach writ Court, yet the petitioner is required to ascribe reason explaining the inordinate delay in filing application to invoke the writ jurisdiction.
- 6.4. This Court, appreciating the objection against entertainment of writ petition as set forth by the learned Standing Counsel for the CT & GST Department that the petitioner should have filed the writ petition within the normal time specified under the relevant provisions of the statute, restrains to exercise its discretionary power to entertain writ jurisdiction. No semblance of dispatch has been shown by the petitioner to challenge the order, which was passed way back on 21st August, 2024.
- 6.5. The maxim “*Vigilantibus non dormientibus jura subveniunt*” which means that the law assists those who are vigilant with their rights and not those that sleep thereupon is very seemly applicable to the case of the petitioner as the impugned order has been assailed in the writ petition after a gap of around 11 months since it is made.



6.6. In the case of *State of Madhya Pradesh Vrs. Nandlal Jaiswal*, (1986) 4 SCC 566, the Hon'ble Supreme Court has held as follows:

“24. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. **If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction.** The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. **We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised time**



and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal. We may only mention in the passing two decisions of this Court one in *Ramana Dayaram Shetty Vrs. International Airport Authority of India*, (1979) 3 SCC 489 = AIR 1979 SC 1628 = (1979) 3 SCR 1014 and the other in *Ashok Kumar Mishra Vrs. Collector*, (1980) 1 SCC 180 = AIR 1980 SC 112 = (1980) 1 SCR 491. We may point out that in *R.D. Shetty* case, even though the State action was held to be unconstitutional as being violative of Article 14 of the Constitution, this Court refused to grant relief to the petitioner on the ground that the writ petition had been filed by the petitioner more than five months after the acceptance of the tender of the fourth respondent and during that period, the fourth respondent had incurred considerable expenditure, aggregating to about Rs 1.25 lakhs, in making arrangements for putting up the restaurant and the snack bar. **Of course, this rule of laches or delay is not a rigid rule which can be cast in a strait jacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But, such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the court; ex hypothesi every discretion must**



be exercised fairly and justly so as to promote justice and not to defeat it.”

6.7. In the case of *Chennai Metropolitan Water Supply and Sewerage Board Vrs. T.T. Murali Babu*, (2014) 1 SCR 987, the Hon’ble Supreme Court has held as follows:

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. **As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not.** Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant— a litigant who has forgotten the basic norms, namely, ‘procrastination is the greatest thief of time’ and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis. In the case at hand, though there has been four years’ delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the



court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons— who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. **In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."**

6.8. In *Maharashtra SRTC Vrs. Balwant Regular Motor Service*, AIR 1969 SC 329 it has been observed as follows:

"11. * It is well-established that the writ of certiorari will not be granted in a case where there is such negligence or omission on the part of the applicant to assert his right as, taken in conjunction with the lapse of time and other circumstances, causes prejudice to the adverse party. The principle is to a great extent,**



similar to though not identical with the exercise of discretion in the Court of Chancery. The principle has been clearly stated by Sir Barnes Peacock in Lindsay Petroleum Co. Vrs. Prosper Armstrong Hurd, Abram Farewall, and John Kemp, (1874) 5 PC 221 at p 239 as follows:

*‘Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. **But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.**’*

This passage was cited with approval by this Court in a recent case— Moon Mills Ltd. Vrs. M.R. Mehar, President, Industrial Court, Bombay, AIR 1967 SC



1450, 1454. In our opinion, the principle of this decision applies to the present case and since Respondent 1 and the other private operators had not even pleaded any circumstances justifying the delay or their conduct, the High Court was in error in granting a writ of certiorari in their favour.”

6.9. The conspectus of above legal perspective manifestly illustrating the concept of delay and laches juxtaposed with the material projected in the case at hand that approach by way of application has been made after a gap of about 11 months from the date of impugned order without ascribing any reason therefor, leads this Court to opine that because of the inordinate delay and laches, and the non-disclosure of circumstance to by-pass the alternative remedy available under the statute do not warrant exercise discretion in favour of the petitioner by issue of writ.

7. Another aspect which requires to be taken note of is that, the prayers of the petitioner run as follows:

“Under the aforesaid circumstances it is prayed therefore that this Hon’ble Court may be graciously pleased to:-

- a. Admit the writ petition;*
- b. Issue Rule nisi calling upon the opposite parties as to why Notification dt.31.03.2023 vide Annexure-6 and 28.12.2023 vide Annexure-7 extending the time limit to pass Order under Sub-Section 10 of Section 73 of the OGST/CGST Act, 2017 is in clear*



transgression power available U/s. 168 r/w Section 73 (10) of the OGST/CGST Act, 2017, therefore the said impugned Notification are illegal, arbitrary, without jurisdiction and is liable to be quashed.

- c. Issue Rule nisi calling upon the opposite parties as to why show cause notice dated 18.05.2024 and the impugned order dated 21.08.2024 issued by the opposite party No.2 vide Annexure-3 & 4 without considering the reply of the petitioner under Annexure-2 shall not be quashed;*
- d. If the opposite parties fails to show cause or show insufficient cause, make the rule absolute;*
- e. Issue necessary directions directing opposite parties to pass reasoned order afresh on merits after giving opportunity of hearing to the petitioner in accordance with law;*
- f. Direct the opposite parties to open the portal permitting the petitioner to revise/amend the GSTR 1 for the year 2019-2020;*
- g. To pass such further order/orders, direction/directions, writ/writs as may be deemed fit and proper in the circumstances of the case;*

And for the act of kindness the petitioner shall as in duty bound and ever pray.”

7.1. In a case where assessment order was challenged, the High Court quashed the same invoking writ jurisdiction; however, the Hon’ble Supreme Court in the matter of *Commissioner of Income Tax Vrs. Chhabil Dass Agarwal*, (2014) 1 SCC 603 = 2013 SCC OnLine SC 717 = (2013)



357 ITR 357 (SC) reiterated the scope and purport of exercise of power under Article 226 of the Constitution of India and re-stated the self-imposed restrictions *qua* entertainment of writ petition:

“12. *The Constitution Benches of this Court in K.S. Rashid and Son Vrs. Income Tax Investigation Commission, AIR 1954 SC 207, Sangram Singh Vrs. Election Tribunal, AIR 1955 SC 425, Union of India Vrs. T.R. Varma, AIR 1957 SC 882, State of U.P. Vrs. Mohd. Nooh, AIR 1958 SC 86 and K.S. Venkataraman and Co. (P) Ltd. Vrs. State of Madras, AIR 1966 SC 1089 have held that though Article 226 confers very wide powers in the matter of issuing writs on the High Court, the remedy of writ is absolutely discretionary in character. **If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of the principles of natural justice or the procedure required for decision has not been adopted.** [See *N.T. Veluswami Thevar Vrs. G. Raja Nainar, AIR 1959 SC 422, Municipal Council, Khurai Vrs. Kamal Kumar, AIR 1965 SC 1321 = (1965) 2 SCR 653, Siliguri Municipality Vrs. Amalendu Das, (1984) 2 SCC 436, S.T. Muthusami Vrs. K. Natarajan, (1988) 1 SCC 572, Rajasthan SRTC Vrs. Krishna Kant, (1995) 5 SCC 75, Kerala SEB Vrs. Kurien E. Kalathil, (2000) 6 SCC 293, A. Venkatasubbiah Naidu Vrs. S. Chellappan, (2000) 7 SCC 695, L.L. Sudhakar Reddy Vrs. State of A.P., (2001) 6 SCC 634, Shri Sant Sadguru Janardan**



Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha Vrs. State of Maharashtra, (2001) 8 SCC 509, Pratap Singh Vrs. State of Haryana, (2002) 7 SCC 484 and GKN Driveshafts (India) Ltd. Vrs. ITO, (2003) 1 SCC 72.]

15. ***Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, AIR 1964 SC 1419, Titaghur Paper Mills Co. Ltd. Vrs. State of Orissa, (1983) 2 SCC 433 and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.”***

- 7.2. Applying the parameters laid down by the Hon’ble Supreme Court of India for invoking discretionary writ jurisdiction to the instant fact-situation as enumerated by the petitioner along with prayers made in the writ



petition would make it clear that no case is made out so as to entertain this writ petition.

8. This Court having come to the conclusion that the case of the petitioner cannot stand on the ground of principle of delay and laches, and in view of illustrative tenet handed out by the Hon'ble Supreme Court of India in *Godrej Sara Lee Ltd. Vrs. Excise and Taxation Officer-cum-Assessing Authority*, (2023) 3 SCR 871, the issues raised in the writ petition, if it is so advised, can be agitated before the competent authority vested with power to adjudicate the factual disputes under the GST Act and Rules framed thereunder.
9. In the aforesaid premises, this Court has no option but to dismiss the writ petition and, also all the pending Interlocutory Applications, if any.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE