

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 21687 of 2023

***M/s. Ashish Kumar Kar,
Cuttack***

.....

Petitioner

*Mr. R.P. Kar, Sr. Advocate along with
Mr. A.N. Ray, Advocate*

Vs.

***Central Board of Indirect Taxes
and Customs Dept of Revenue,
New Delhi and others***

.....

Opposite Parties

*Mr. A. Kedia, SC (Central) for Revenue (O.P.1)
Mr. Sunil Mishra, SC for Revenue (O.Ps. 2 to 4)*

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE MURAHARI SRI RAMAN

**ORDER
20.07.2023**

**Order No.
01.**

This matter is taken up through hybrid mode.

2. Heard Mr. R.P. Kar, learned Senior Advocate appearing along with Mr. A.N. Ray, learned counsel for the petitioners; Mr. A. Kedia, learned Standing Counsel (Central), appearing for opposite party no.1 and Mr. Sunil Mishra, learned Standing Counsel for Revenue appearing for opposite party nos.2 to 4.

3. The petitioner has filed this writ petition seeking to quash Form GST APL-02 issued by opposite party no.2 dated 17.05.2022 and the order passed by the opposite party no.4 under Section 63 of the OGST Act dated 09.04.2021, vide Annexures-1 and 2 respectively.

4. Mr. R.P. Kar, learned Senior Advocate appearing for the petitioner contended that the petitioner preferred an appeal on 28.06.2021 challenging the order of determination of Tax dated

09.04.2021, but the same was rejected on 17.05.2022 due to non supply of certified copy of the order. It is further contended that in view of the order passed by the apex Court owing to COVID-19, the delay in filing the appeal could not have been the cause for rejection. However, it is contended that even though the petitioner filed the appeal on 28.06.2021, but he has not been intimated about the defect in the appeal itself. Had the petitioner been intimated that there is defect in the appeal, then, he would have taken step for compliance thereof. As such, the authorities in a mechanical manner rejected the appeal filed by the petitioner on the flimsy ground. More so, the order of rejection has been passed without giving any opportunity of hearing to the petitioner. It is also brought to the notice of this Court about the order dated 07.06.2021 passed by this Court in W.P.(C) No. 15061 of 2021 (*M/s. Shree Jagannath Traders v. Commissioner of State Tax Odisha, Cuttack and others*), whereby the authorities were directed to condone the delay in filing the certified copy of the order and to decide the appeal in accordance with law.

5. Mr. Sunil Mishra, learned Standing Counsel appearing for the Revenue contended that the amendment carried out in the Odisha Goods and Service Tax Rules, 2017 has already been notified on 31.12.2022 wherein Sub Rule (3) of Rule 108 has been amended. However, he contended that though the application was filed on 28.06.2021, but the same was rejected due to non-filing of the certified copy. Therefore, there is no error apparent on the face of the order itself, so as to cause interference by this Court since the rejection of the appeal is well justified.

6. Having heard learned counsel for the parties and after going

through the record there is no dispute that the petitioner preferred the appeal on 28.06.2021. If the authority found some defect, the obligation casts on the appellate authority to intimate the appellant with regard to the defect in the appeal itself. But as it appears nothing has been placed on record nor any argument has been advanced by the Revenue Department with regard to intimation of any defect, but rejected the same after long lapse of around 11 months only on 17.05.2022. Even if that will also be taken into consideration, the action of the opposite parties is absolutely arbitrary, unreasonable and contrary to the provisions of law and in violation of the principle of natural justice, reason being, if the party files an appeal in ignorance of the position that he has to file the certified copies of the order and the filing of appeal is defective one, then the appellate authority has to intimate the applicant with regard to the defect in the appeal by giving him opportunity to rectify the defect, so that the appellant can remove the same within the time stipulated. If that would have been adhered to after grant of such opportunity, then certainly right accrues in favour of the appellate authority to reject the same since the Principle of Natural Justice has been complied with. Nothing has been placed on record to that extent and mechanically the same has been rejected showing non-supply of the certified copies, which this Court does not accept.

7. In view of such position, the order passed by the appellate authority under Annexure-1 in rejecting the appeal preferred by the petitioner for non-supply of the certified copies, cannot sustain and the same is hereby set aside and the matter is remitted back to the appellate authority to entertain the same and pass order after allowing the petitioner to remove the defect as would be pointed out by the appellate authority. So far as the applicability of the case of *M/s. Shree*

Jagannath Traders (supra) is concerned, though the same is altogether in different context, but the principle laid down in the said judgment will apply in the present case.

8. Accordingly, the writ petition stands disposed of.

(DR. B.R. SARANGI)
JUDGE

Arun

(M.S. RAMAN)
JUDGE

