

AFR



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.31000 of 2024

***M/s. K.P. Sugandh Limited,
Sambalpur***

....

Petitioner

-versus-

***Chief Commissioner of CT and
GST, Odisha and others***

....

Opposite Parties

Learned advocates appeared in the case:

For petitioner : Mr. R.P. Kar, Senior Advocate
Ms. I. Tripathy, Advocate
Mr. D. Behera, Advocate
Mr. R. Patra, Advocate
Mr. A.N. Ray, Advocate

For opposite parties : Mr. Sunil Mishra, Advocate
(Standing Counsel)

CORAM:

**THE HON'BLE MR. JUSTICE ARINDAM SINHA
AND
THE HON'BLE MR. JUSTICE M.S. SAHOO**

J U D G M E N T

Dates of hearing: 12th and 17th December, 2024

Date of judgment : 17th December, 2024

ARINDAM SINHA, J.

1. Mr. Kar, learned senior advocate appears on behalf of petitioner and submits, impugned is order dated 27th September,



2024 containing demand as issued under section 129 in Odisha Goods and Services Tax Act, 2017. It was made following detention of the vehicle and after receipt of notice of penalty, on the 8th day. The notice was served on 19th September, 2024. As such, impugned order made on 27th September, 2024 was beyond prescribed time of 7 days from service of the notice as under section 129 (3). He draws attention to communication dated 18th October, 2024 made by revenue on subject of intimation in furtherance of the proceeding, to demonstrate that according to the demand itself, impugned order was passed on 27th September, 2024. He seeks interference for quashing of the demand.

2. Mr. Mishra, learned advocate, Standing Counsel appears on behalf of revenue and submits, the order was made on 26th September, 2024, being 7th day from date of service of the notice on the penalty payable. This is the requirement in sub-section (3) of section 129. He then draws attention to clauses (c) and (d) under sub-section (1) in section 169. The clauses are reproduced below.

“169 (c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or”



He hands up his instruction bearing print of mail, said to be sent to petitioner on 26th September, 2024. As such, communication of the order was complete by sending it to e-mail address of petitioner as under section 169(1)(c). The order was uploaded in the portal the next day being 27th September, 2024. The uploading does not change date of the order, as made within seven days from issuance of the penalty notice. He submits, the order was duly made. The writ petition be dismissed.

3. Section 129(3), when applied to facts and circumstances of the case required the order to be made on or before 26th September, 2024. The order made, bears that date. Revenue says communication of it was made by e-mail sent on 26th September, 2024 at 22:41 hours to e-mail address of petitioner. We have looked at the print. Contents of the print talks about attached file but there is no indication of any attachment. This, added to admission on part of revenue that the order was dated 27th September, 2024 as appearing from annexure-1 does not inspire us to conclude that the order was made on 26th September, 2024.

4. Sub-section (3) in section 129 provides for a specific period of seven days for passing of an order. The seven days is to be



reckoned from date of service of the notice, specifying the penalty payable. Issuance and receipt of the penalty notice is not in dispute. For us to take a view that mere passing of the order within the time prescribed is sufficient for compliance with the provision in section 129(3) would imply that the order could thereafter be communicated at any later date. This view would then effectively enlarge the period prescribed. Indian Contract Act, 1872 provides for communication. Communication of a proposal is said to be complete, under section 4, in said Act, when it comes to knowledge of the person to whom it is made. Here the order is to be taken to be the proposal and communication of it can only be complete, when it comes to knowledge of the person against whom it is made. Revenue has not been able to satisfy us about the communication made on 26th September, 2024, by mail sent to e-mail address of petitioner on fulfilling the requirement under section 169(1)(c). Communication of the order was complete the next day, when it was uploaded in the portal as in compliance with requirement under section 169(1)(d).

5. To us it appears the print of sent mail is doubtful because petitioner filed appeal on Form GST APL-01 giving date of order as 27th September, 2024. The appeal was successfully uploaded. There is also said letter dated 18th October, 2024 written by Assistant



Commissioner of State Tax to petitioner, in which there is clear mention of 27th September, 2024 as date of the order. Furthermore, sub-rule (5) in rule 142 of Odisha Goods and Services Tax Rules, 2017 requires summary of the order issued, inter alia, under section 129, to be uploaded electronically in Form GST DRC-07. There is no dispute that this was done on 27th September, 2024.

6. In view of aforesaid, impugned order is found to have been made on the 8th day from date of service of the notice specifying penalty. It does not meet the requirement under sub-section (3) of section 129. It is therefore liable to be and is set aside and quashed.

7. Mr. Kar submits, the goods have been sold in the meantime. His client is also entitled to refund of pre-deposit on the appeal withdrawn. Petitioner must find its remedy on consequences of this judgment.

8. The wit petition is disposed of.

(Arindam Sinha)
Judge

(M.S. Sahoo)
Judge

Signature Not Verified

Digitally Signed
Signed by: PRASANT KUMAR SAHOO
Designation: PERSONAL ASSISTANT
Reason: Authentication
Location: Orissa High Court
Date: 18-Dec-2024 17:24:40
Prasant

