

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)No.31710 of 2021

M/s. Krishna Marndi ***Petitioner***
Ms. Kananbala Roy Choudhury, Advocate
-versus-
Additional Commissioner of State ***Opposite Parties***
Tax (Appeal) CT & GST
Territorial Range, Balasore and
others

Mr. Sunil Mishra,
Additional Standing Counsel for
CT & GST Organization-Opposite Party Nos.1 to 3
Mr. L. Samntaray,
Additional Government Advocate for Opposite Party No.4

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER (Oral)

01.08.2022

Order No.

W.P.(C)No.31710 of 2021
& I.A.No.14596 of 2021

- 05.
1. This matter is taken up through virtual/physical mode.
 2. Challenging the appellate order dated 12th May, 2021 passed under Section 107 of the Odisha Goods & Services Tax Act, 2017 (for short, 'the OGST Act, 2017') in Appeal Case No.AD211220005356X and the order dated 15th July, 2021 passed on the application for rectification being made under Section 116 of the said Act by the Additional Commissioner of State Tax (Appeal), Balasore, the Petitioner has contended in the writ petition that the Appellate Authority has not taken into consideration the figure of taxable turnover and thereby erroneously computed the tax liability.

Ms. Roy Choudhury, learned counsel for the Petitioner has further brought to the notice of this Court that the aforesaid appeal was at the behest of the tax payer-assessee pertaining to the period April, 2018 to March, 2019 in connection with adjudication made under Section 74 of the OGST Act, 2017 by the Additional State Tax Officer, CT & GST Circle, Mayurbhanj, Baripada; however, further notice dated 13th September, 2021 has been issued initiating proceeding under Section 73 of the OGST Act, 2017 for the tax period 1st December, 2018 to 31st December, 2018. Ms. Roy Choudhury has urged that since the adjudication order under Section 74 of the OGST Act, 2017 has been merged in the appellate order dated 12th May, 2021, the subsequent action by issue of notice dated 13th September, 2021 issued under Section 73 of the OGST Act, 2017 involving a period (December, 2018), which was subject-matter of appeal, is not tenable in the eye of law.

3. Mr. Sunil Mishra, learned Additional Standing Counsel for the CT & GST Organization objecting to such contention submitted that the figures have been obtained from the data available in WAMIS [Works and Accounts Management Information System]. Since the Petitioner filed returns disclosing *NIL* figures, the revenue authorities have ascertained the figures from data available in WAMIS and appropriately determined the tax liability.

4. With regard to contentious issues raised in the writ petition, Mr. Sunil Mishra, learned Additional Standing Counsel for the CT & GST Organization sought for four weeks' time to file counter affidavit.

5. Issue notice for 23rd November, 2022.

6. Mr. Sunil Mishra, Additional Standing Counsel for CT & GST organization appears and waives notice on behalf of Opposite Party Nos.1 to 3. Three extra copies of the writ petitions be served on him within three working days.

Mr. L. Samantaray, Additional Government Advocate appears and waives notice on behalf of Opposite Party No.4. One extra copy of the writ petition be served on him within three working days.

7. Considering the fact that as yet to challenge the first appeal order, the Tribunal contemplated under Section 109 of the OGST Act, 2017 has not been constituted, it is directed that subject to the Petitioner depositing 20% of the tax amount as determined by the Appellate Authority *vide* order dated 12th May, 2021, no coercive action shall be taken against the Petitioner till the next date. It is, further, directed that there shall be stay of further proceeding pursuant to the notice dated 13th September, 2021 issued under Section 73 of the OGST Act, 2017 till the next date.

Issue urgent certified copy as per rules.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Jyostna August 1st, 2022
Cuttack