NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No.251 of 2021

1. M/s Shri Sshantanu Steel Traders P-1 2nd Floor, Rishabh Green City, Phoolgaon Naka, Durg (Chhattisgarh) Proprietorship Firm Through Its Proprietor Shri Vikash Kumar Mittal, S/o Late Shri Bhagwandas Mittal, Aged About 42 Years, R/o P-1, 2nd Floor, Rishabh Green City, Phoolgaon Naka, Durg Chhattisgarh, District : Durg, Chhattisgarh

2. Shri Vikash Kumar Mittal, S/o Late Shri Bhagwandas Mittal, Aged About 42 Years R/o P-1 2nd Floor, Rishabh Green City, Phoolgaon Naka, Durg Chhattisgarh, District : Durg, Chhattisgarh

---- Petitioners

Versus

1. State Of Chhattisgarh Through The Secretary, Ministry Of Commercial Tax, Mantralaya Mahanadi Bhawan, Capital Complex, Naya Raipur District Raipur (Chhattisgarh), District : Raipur, Chhattisgarh

2. The Commissioner, State Taxes, Gst Bhawan, Sector-19, Atal Nagar, Naya Raipur, District Raipur, District : Raipur, Chhattisgarh

3. The Joint Commissioner, State Taxes Durg, District Durg (Chhattisgarh), District : Durg, Chhattisgarh

4. The Assistant Commissioner, State Taxes, Circle-4, Durg, District Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Respondents

For Petitioner:	Shri Amit Banarjee, Advocate.
For Respondents/State:	Shri Avinash K. Mishra, G.A., on advance copy

Hon'ble Shri Justice Sanjay S. Agrawal

Order on Board

16.12.2021

1. The petitioner has filed this petition questioning the propriety of order dated 04-12-2021 (Annexure P-1) passed by the respondent No.3-Joint Commissioner, State Taxes, Durg, whereby the appeal preferred under Section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “Act of 2017”), has been rejected.

2. From perusal of the record, it appears that the order dated 25-03-2021

& 01-04-2021 (Collectively filed as Annexure P-2) was passed by the respondent No.4-Assistant Commissioner, State Taxes, Circle-4, Durg, imposing tax liability to the tune of Rs.1,14,80,992/- (One Crore fourteen lakh eighty thousand & nine hundred ninty two only) with regard to the disputed period commencing with effect from 01-06-2018 up to 31-01-2019. It appears that being aggrieved with the said order, the petitioner had preferred an appeal as per the provisions prescribed under Section 107 of the Act of 2017 before the Appellant Authority, who in turn, has rejected the same vide order dated 04-12-2021 (Annexure P-1) as the petitioner has failed to deposit 10% of the remaining tax amount required to be made mandatorily under clause(b) of sub section(6) of Section-107 of the Act of 2017, which is relevant for the purpose, reads as under:-

> **Section-107. ------ (1) to (5) ----**
>
> (6) “No appeal shall be filed under sub-section(1), unless the appellant has paid—
>
> (a) ---- xx--- xx --
>
> (b) a sum equal to ten percent of the remaining amount of tax in dispute arising from the said order,{subject to a maximum of twenty-five crore rupees,} in relation to which the appeal has been filed.”

4. In view of the aforesaid provision, it is evident that while preferring an appeal against the order passed by the respondent No.4-Assistant Commissioner, State Taxes, Circle-4, Durg, 10% of the remaining amount of tax in dispute arising for the said period was required to be deposited. However, the petitioner has admittedly not complied with the same and in view thereof, I do not find any infirmity in the order impugned.

5. Be that as it may, the order impugned as passed by the respondent No.3-Joint Commissioner, State Taxes, Durg, is appealable one as statutory appeal is provided under Section 112 of the Act of 2017 before the Appellate Tribunal and without filing the said remedy, the instant petition has been filed, which is rather pre-matured in nature and deserves to be rejected.

6. In view of above, I am not inclined to entertain this petition at this

stage. However, the liberty is granted to the petitioner that if he moves an appropriate application before the said appellate authority, seeking for the deposition of said 10% of the remaining tax amount, in strict compliance with the provisions referred hereinabove, the said authority shall decide the same in accordance with law.

7. With the aforesaid observations, this petition is accordingly disposed off at this stage. No order as to costs.

SD/-
(**Sanjay S. Agrawal)**
Judge

Tumane