IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P (C). No. 5332 of 2022

Sri Rajendra Narayan Mohanty	....	***Petitioner***

Mr. Sanjeev Udgata,
Advocate

-versus-

CT &GST Cuttack-1 East Circle, & Others	....	***Opposite Parties***

Mr. Sidharth Shankar Padhi, Advocate
(for Opp.Party No.1& 2)
Mr. Radheshyam Chimanka, Advocate
(for Opp. Party No. 3)
Mr. S.K. Parhi, A.S.G.I
(for Opp. Party No.4)

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER
24.02.2022

Order No.

01. **1.** This matter is taken up by virtual/physical mode.

2. The Petitioner questions the Show Cause Notice dated 25.01.2022 issued by the Opposite Party No. 1 (CT and GST Officer, Cuttack-I East Circle, Cuttack) vide Annexure-2 series U/s 74 of the CGST/OGST Act on the ground that the Proper Officer has no jurisdiction to invoke said provision. By referring to instructions appended to GSTR-9 (Annual Return) as substituted

P.T.O.

by virtue of the Central Goods and Services Tax (14th Amendment) Rules, 2018, counsel for the Petitioner submits that the Opposite Parties sought to restrict him to avail input tax credit from his electronic credit ledger. He further submits that the instructions cannot have the overriding effect over the provisions of the statue.

3. Mr. Sidhartha Shankar Padhi appearing for the Opposite Party No. 1 (CT and GST Organization) submits that the Petitioner though received TDS for the months October 2018, November 2018, January 2019, February 2019 and March 2019 during the year 2018-2019, he did not discharge his tax liability. He further submits that while filing GST returns in form GSTR-3B, it has disclosed as 'Nil'. To this, the counsel for the Petitioner submits that while filing Annual Return on 20.12.2020 for the year 2018-19, he has disclosed the correct figures. Perusal of the impugned notice dated 25.01.2022, it is revealed that the Proper Officer has determined the quantum of tax short paid, interest and penalty. However, the said notice in order to afford opportunity to rebut stated as follows:

> "Therefore, you are show caused to why you should not pay the amount specified above under the provisions of this Act."

4. Since the Petitioner has come up before this Court without raising any objection or filing any reply to the said Show Cause Notice, we are not inclined to entertain the writ petition at this stage. The contentions of the Petitioner are in the nature of disputed fact which requires adjudication of fact on the basis of documents available in record and evidence to be adduced by the Petitioner during the course of adjudication process before the Proper Officer.

5. It may be pertinent to have reference to the judgment dated 26th February 2019 rendered by the Hon'ble Supreme Court in India in the case of Union of India verses Coastal Container Transporters Association, Civil Appeal No. 2276 of 2019. In the said case, the case of Respondents was that Show Cause Notice issued was contrary to circular issued by the CBEC. Hon'ble Court observed that entertaining writ petition is not proper when alternative remedy under statute is available. The Hon'ble Court in the said judgment therefore observed that the Respondents therein ought to have responded to the Show Cause Notice by placing material in support of their stand but at the same time, there was no reason to approach the High Court questioning the very Show Cause Notices.

6. During the course of hearing, the Petitioner admitted that though he had adjusted its tax liability against input tax credit available in the electronic credit ledger, he has not paid interest against such delayed adjustment/payment. We are of the view that disputed facts arising in the matter are required to be adjudicated by the Proper Officer. The Petitioner is at liberty to file his Show Cause reply and raise objections including jurisdictional issue.

7. Counsel for the Petitioner submits that the period allowed for filing Show Cause reply has been elapsed during the pendency of this writ petition. It is, therefore, directed that the Petitioner is at liberty to file its reply/objection before the Proper Officer within a period of 15days hence. It is open to the Proper Officer to deal with each objection and pass reasoned order therefor.

8. In view of the aforesaid, the writ petition is disposed of.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Laxmikant

February 24th, 2022
Cuttack