

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No.7910 of 2022

M/s Nath Enterprises

....

Petitioner

Mr. Tushar Kanti Satapathy, Advocate

-versus-

Union of India & Others

....

Opposite Parties

Mr. Radheshyam Chimanka,

Sr. Standing Counsel for O.P. Nos. 1,2 & 3

Mr. Sunil Mishra,

ASC (CT & GST Organization) for O.P. Nos. 4 & 5

CORAM:

JUSTICE JASWANT SINGH

JUSTICE M.S. RAMAN

ORDER (Oral)

22.07.2022

W. P. (C) No. 7910 of 2022

&

W.P. (C) No. 8037 of 2022

Order No.

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

2. **W.P. (C) No. 7910 of 2022**

Assailing Order dated 28th February, 2022 *vide* reference No.ZD2102220202790 passed by the State Tax Officer, CT & GST Circle, Dhenkanal raising a demand of Rs.21,53,089/- pertaining to the tax periods from 1st April, 2017 to 31st March, 2018 (Financial Year 2017-18) for delayed payment of CGST & OGST invoking provisions of Section 50 of the Odisha Goods and Service Tax Act (for short “The OGST Act”), the Petitioner has approached this Court by way of writ petition under Article 226/227 of the Constitution of India with following prayers:

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ii) Issue an appropriate writ/writ(s) by quashing the adjudication order dtd.28.02.2022 passed under Section 75 of the OGST Act, 2017 for payment of interest on delayed payment of tax liability for the period 2017-18 in Form DRC-07;

*iii) To declare that Section 50(1)(2) of the OGST/CGST Act is illegal, arbitrary, discriminatory and unreasonable and are violative of Article 14 and 19(1)(g) of Constitution of India, hence the same may be declared as Ultra-Vires. ***”*

3. **W. P. (C) No. 8037 of 2022**

This matter, not on board today in the cause list published for the day, is directed against Order dated 28th February, 2022 vide reference No.ZD210222020304F passed by the State Tax Officer, CT & GST Circle, Dhenkanal raising a demand of Rs.54,77,746/- tax periods from 1st April, 2018 to 31st March, 2019 (Financial Year 2018-19) for delayed payment of CGST & OGST invoking provisions of Section 50 of the OGST Act. However, Mr. Tushar Kanti Satapathy, counsel for the Petitioner mentioned that W.P.(C) No. 7910 of 2022 pertaining to the same Petitioner in respect of assessment for another Financial Year, i.e., 2017-18 is on board today and prayed for taking up the present writ petition pertaining to other financial year along with the same. Mr. Sunil Mishra, learned Additional Standing Counsel for CT&GST Organisation for O.P. Nos. 4 & 5 and Sri Radhey Shyam Chimanka, learned Senior Standing Counsel for O.P. Nos. 1,2 & 3 appearing on advance notice have no objection to such proposal. Accordingly, special notice is circulated by the Registry for taking up W.P. (C) No. 8037 of 2022 today.

4. Since common issues are raised in both the writ petitions with identical prayers, both the writ petitions, pertaining to assessment for the tax periods 1st July, 2017 to 31st March, 2018 [Financial Year 2017-18] and 1st April, 2018 to 31st March, 2019 [Financial Year 2018-19], are heard and disposed of by way of this common order.

5. At the time of hearing, Mr. Tushar Kanti Satapathy, counsel for the Petitioner submitted that the Petitioner does not wish to press the challenge as to *vires* of sub-sections (1) and (2) of Section 50 of the OGST/CGST Act and prayed for leaving the issue open to be agitated in appropriate case. Such a prayer being not unreasonable, the same is allowed.

6. As regards challenge against the adjudication Order dated 28th February, 2022 passed under Section 75(12) of the OGST/CGST Act for payment of interest on delayed payment of tax under Section 50 and recovery thereof under Section 79, the counsel for the Petitioner sought for withdrawal of the writ petition to avail the efficacious remedy of appeal as available under Section 107 of the said Act(s).

7. Mr. Radheshyam Chimanka, Senior Standing Counsel for Central Goods and Service Tax (Opp. Party Nos.1, 2 & 3) and Mr. Sunil Mishra, Additional Standing Counsel for CT & GST Organization, Odisha (Opp. Party Nos. 4 & 5) have no objection for such proposal as advanced by the counsel for the Petitioner.

8. It is seen that the adjudication Order being passed on 28th February, 2022 in respect of both the Financial Years in questions as referred to above, the writ petitions have been filed on 25th

March, 2022 and 28th March, 2022 respectively; as such, said writ petitions have been filed within the period prescribed under Section 107 of the CGST/OGST Act. In consideration of above submission at the Bar, this Court is inclined to dispose of both the writ petitions with the observation that in the event appeal(s) is filed within a period of two weeks hence, subject to compliance of statutory requirements, the Appellate Authority shall do well to admit the appeal(s) and decide the same on merits in accordance with law.

9. The petitioner is required to file petition(s) for condonation of delay along with appeal(s) which shall be considered favourably keeping in view the fact of pendency of writ petition(s) before this Court in terms of Section 14 of the Limitation Act, 1963 read with Section 107 of the CGST/OGST Act.

10. With the aforesaid observation, both the writ petitions stand disposed of.

11. In view of disposal of the writ petitions, pending I.As are also disposed of accordingly.

Issue urgent certified copy as per rules.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge