HIGH COURT OF ORISSA : CUTTACK

W.P.(C) No. 10052 of 2022

M/s. JSW STEEL LIMITED ... ***Petitioner***

Mr. Tarun Gulati, Sr.Advocate,
with M/s. Adhiraj Mohanty,
Nitya Thakur, K. Visalaksh,
Ajitesh Dayal Singh,
Advocates for the petitioner

-versus-

UNION OF INDIA & OTHERS ... ***Opposite Parties***

Mr. Lalatendu Samantaray,
Additional Government Advocate
Mr. Sunil Mishra, Additional Standing Counsel
(CT&GST Organisation)

CORAM:

JUSTICE JASWANT SINGH
AND
JUSTICE MURAHARI SRI RAMAN

ORDER
07.07.2022

Order No.4 **I.A. No.8421 of 2022**

1. This matter is taken up by virtual/physical mode and heard counsel for respective parties.

2. I.A. No.8421 of 2022 has been filed on 23.06.2022 by the petitioner for advancing the date of posting from 12th August, 2022, as directed *vide* Order dated 17th May, 2022, to any earlier date.

3. It is submitted by the counsel for the petitioner that after passing of Order dated 17th May, 2022 in the aforenoted writ petition, the petitioner-company has taken a decision to withdraw the writ petition in order to avail statutory remedy. Accordingly, memo has been moved before this Court for urgent listing of the matter which being allowed the matter is placed today for consideration.

4. The counsel for the opposite parties have no objection.

5. In view of the above, the date specified *vide* Order dated 17th May, 2022 is ordered to be advanced and with the consent of the counsel for the parties matter is taken up today itself for consideration of petition for withdrawal of writ petition as per I.A. No.8013 of 2022.

6. The I.A. No.8421 of 2022 stands allowed.

Main Case along with I.A. No.8013 of 2022

1. On the consent of counsel for the both the parties, this matter is taken up for consideration of petition for withdrawal of writ petition in view of contents of I.A. No.8013 of 2022.

Background:

2. Assailing the Order dated 28th March, 2022 passed by the Deputy Commissioner of State Tax, CT & GST Enforcement Unit, Barbil under Section 74 of the OGST Act/the CGST Act for the tax periods from April, 2020 to March, 2021, the Petitioner has filed writ petition invoking provisions of Article 226/227 of the Constitution of India with the following prayers:

"(a) *A writ of and/or order and/or direction in the nature of Certiorari commanding the Opp.Parties to transmit and certify the records relating to Impugned Order dated 28.03.2022 under Annexure-1 so that the said Impugned Order dated 28.03.2022 under Annexure1 so that the said Impugned Order and all proceedings relating thereto may be set aside and/or quashed and conscionable justice might be rendered;*

(b) *A writ of and/or order and/or direction in the nature of Mandamus commanding the Opp.Parties to not give any effect to and/or take any step whatsoever pursuant to and/or in furtherance of the Impugned Order dated 28.03.2022;*

(c) *A writ of and/or order and/or direction in the nature of Prohibition commanding the Opp.Parties to forebear from giving any effect to and/or taking any step whatsoever pursuant to and/or in furtherance of the Impugned Order dated 28.03.2022;*

(d) *Costs of any incidental to this application be paid by the Opp.Parties;*

(e) *Such further or other order or orders be made and/or directions be given as would afford complete relief to the Petitioner."*

3. On 17th May, 2022 the matter was on board for consideration of petition along with I.A. No.5190 of 2022 with a prayer to pass interim order granting stay of recovery of demand. This Court considering the submission of counsel for the respective parties observed in relevant paragraphs 7 to 9 as under:

"7. *We have patiently heard both the sides, and with able assistance of counsel perused the pleadings. It is apparent that JSW Steel Ltd., public limited company, has units located in different States including the State of Odisha with its Head Office at Mumbai. The Head Office at Mumbai is registered as ISD bearing GSTIN 27AAACJ4323N2ZF. It is also registered as normal taxpayer being GSTIN*

27AAACJ4323N3ZE in the State of Maharashtra. No doubt JSW-Company from its Head Office at Bombay had applied and participated in the tender process, however it cannot be lost sight of that its JSW-Company, and not Head Office, Bombay, which has been granted the mining lease for the four Iron mines situated within the State of Odisha. The Company to undertake the process of mining had to get itself registered in State of Odisha as per the statutory provisions of CGST/OGST to undertake the execution of the mining lease. It is conceded that the execution of work and all transactions including payment of tax being input recipient have been conducted by the JSW-Company from its office Barbil (Odisha). It cannot also be disputed that the outward supply of goods and services of the Company has been provided by the unit at Odisha to other units of the Company and other parties upon payment of tax for supply of such outward goods and services, thereby providing the JSW units in other States to avail the input tax credit on the tax paid to JSW Odisha for their outward supplies from such locations outside the State. It is conceded that the Input Tax Credit with JSW Steel Limited (in the State of Odisha) was found in excess, which remained unutilized. This excess input tax credit has been sought to be utilized by raising tax invoices in favour of JSW Steel Ltd. in the State of Maharashtra, declared ISD, in the garb of support service. That apart, it is not clear at all as to what is support service which has been provided by JSW Steel Ltd. (Odisha) to JSW Steel Ltd.-ISD at Mumbai, much less any common services which could be utilized by other units located in other parts of the country. It also emerges that JSW Steel Ltd. in Odisha has utilized JSW Steel Ltd.-ISD Mumbai as wrongful conduit and facilitated the utilization of input tax credit by other units of JSW Steel Ltd., which in this manner have availed input tax credit twice, i.e., once on the strength of the purchase invoices of supply of iron ore and the other on the strength of the tax invoices for alleged services issued by JSW Steel Ltd.-ISD at Mumbai.

8. In view of the foregoing Para, we are not very impressed by the argument that it is the JSW Steel Ltd.-ISD Mumbai which has been awarded with the contract for four mines in *the State of Odisha and therefore whatever tax has been deposited by its unit in Odisha, the same is actually paid on behalf of the JSW Steel Ltd.-ISD in Maharashtra, which we find is not supported by any documentary evidence nor has the statutory backing.*

9. It is pertinent to notice that in view of definition of "Input Service Distributor" contained in Section 2(61), it is necessary that the ISD as an office is required to receive tax invoices towards inward supply. Since no such supply being shown to have been made by JSW Steel Ltd. of Odisha to JSW Steel Ltd. of Maharashtra, no prima facie case is made out by the Petitioner. Thus transactions in question prima facie amount to siphoning of tax amounts, therefore, apparently warrant invocation of proceeding under Section 74 of the OGST/CGST Act."

4. Despite objection raised in view of availability of alternative remedy, the counsel for the petitioner insisted for a decision on the jurisdictional aspect of the matter. Therefore, considering the challenges as to jurisdiction (lack of jurisdiction or otherwise) of the State of Odisha as set out in the writ petition and vehemently pressed into service by the senior counsel for the Petitioner, while declining to allow prayer for restraining the opposite parties from effecting recovery of demand, this Court issued notice in W.P.(C) No.10052 of 2022 along with I.A. No.5190 of 2022.

5. It is conceded by the counsel for the petitioner that against the said interim Order dated 17th May, 2022, the petitioner approached the Hon'ble Supreme Court of India in S.L.P.(C) No.9995 of 2022. By way of affidavit in I.A. No.8013 of 2022, the petitioner has submitted that said petition is yet to be taken up for admission by said Hon'ble Court.

Prayer for withdrawal of writ petition:

6. It is submitted by the petitioner in the I.A. No.8013 of 2012 filed on 17.06.2022 as follows:

> *"*** the petitioner has elected to avail the statutory remedy of appeal under Section 107 of the Central Goods and Services Tax Act, 2017, and therefore, the petitioner is constrained to file the present application for withdrawal of the petition since the limitation period for exercising its said right of appeal expires on 27 June 2022."*

7. It is stated by the petitioner that it has also filed a petition for withdrawal of SLP bearing No.9995 of 2022 before the Hon'ble Supreme Court of India which would be slated for listing after 11th of July, 2022.

8. At this juncture it is brought to the notice of this Court by both sides that appeal under Section 107 of the OGST Act has already been filed within the period stipulated therein. It is submitted by senior counsel Sri Gulati that GST portal does not facilitate filing of appeal unless pre-deposit as envisaged under sub-section (6) of Section 107 is made within period stipulated for challenging the order in appeal. Therefore, the petitioner-company has filed appeal before the Appellate Authority on 27.06.2022.

9. In view of the above, the writ petition stands dismissed as withdrawn and the Petitioner may pursue already filed appeal under the OGST Act/the CGST Act. In order to enable the petitioner to comply with the requirement of Rule 108(3) of the CGST/OGST Rules, registry is directed to return the impugned order at Annexure-1 by substituting with photocopy of the same.

10. Before parting with the case, it is felt apt to make observation that on 17th May, 2022 when the writ petition was taken up for entertainment, it was cautioned to the counsel for the petitioner to opt for appellate remedy available under the statute; nonetheless, the counsel insisted for adjudication as to jurisdiction of the State of Odisha to raise demand on the nature of transaction involved in the present case. When this Court was not persuaded for grant of interim relief as sought for, the petitioner has approached the Hon'ble Supreme Court challenging the Order dated 17.05.2022. But the petitioner-company now changed its stand/approach and sought to challenge the Order of Assessment passed under Section 74 of the OGST Act invoking statutory remedy. It, thus, appears from the conduct that the petitioner has been more interested in obtaining interim order rather than to settle issues on question of law, as contended to have been raised in the writ petition. Entire gamut of stance taken by the petitioner seems to be luxury litigation and calculated to overburden this Court by wasting valuable time of this Court.

(JASWANT SINGH)
JUDGE

(MURAHARI SRI RAMAN)
JUDGE

Aswini

High Court of Orissa, Cuttack
The 7th July, 2022