HIGH COURT OF ORISSA : CUTTACK

W.P.(C) No. 10053 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.2 **I.A. No.8422 of 2022**

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

2. I.A. No.8422 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.

P.T.O.

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.8012 of 2022.

6. The I.A. No.8422 of 2022 stands allowed.

Main Case along with I.A. No.8012 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.8012 of 2022.

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, 2021 to August, 2021, the Petitioner has filed writ petition invoking provisions of Article 226/227 of the Constitution of India.

3. On 17th May, 2022 the instant case was on board for consideration of petition along with I.A. No.5191 of 2022 with a prayer to pass interim order granting stay of recovery of demand along with W.P.(C) No.10052 of 2022 and I.A. No.5190 of 2022 which are filed by the petitioner-company pertaining to the period April, 2020 to March, 2021.

4. It is submitted by the petitioner in I.A. No.8012 of 2012 filed on 17.06.2022 in the present writ petition 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."*

5. It is stated by the petitioner that challenging the interim order dated 17.05.2022, the petitioner-company filed petition before the Hon'ble Supreme Court being SLP (C) No. 9998 of 2022. It is further stated that it has also filed a petition for withdrawal of said SLP being No.9998 of 2022 before the Hon'ble Supreme Court of India which would be slated for listing after 11th of July, 2022.

6. 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.

7. In view of the above, the writ petition stands dismissed as withdrawn in the same terms of the order passed today in W.P.(C) No.10052 of 2022 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.

(JASWANT SINGH)
JUDGE

(MURAHARI SRI RAMAN)
JUDGE

Aswini

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