IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.12549 of 2022

Pramod Kumar Sahoo .... ***Petitioner***
Mr. Prasanta Kumar Sahoo, Advocate

-versus-

State of Odisha and Others .... ***Opp. Parties***
None

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER (Oral)

Order No.

04.08.2022

02. 1. This matter is taken up through virtual/physical mode.

2. The Petitioner, registered assessee under the GST regime being allotted GSTIN-21ACBPS9303H1ZU At-Shanti Devi Stone Crusher, Palaspanga District-Keonjhar, has challenged the five show cause notices dated 13th April, 2022 issued under Section 74 of the Central Goods and Service Tax and the Odisha Goods & Services Tax Act, 2017 (for short, 'the CGST/OGST Act, 2017') for five periods i.e. 2017-2018, 2018-2019, 2019-2020, 2020-2021 and 2021-2022 available under Annexure-2 series.

3. The primary ground is that no GST is leviable for the business of quarrying of minor minerals, i.e. "stone/sand" in the light of the issue pending before the larger Bench of the Hon'ble Supreme Court in the case of Minteral Area Development Authority vrs. Steel Authority of India, (2011) 4 SCC 450.

4. Since the Petitioner has challenged the statutory notices issued under Section 74 of the CGST/OGST Act, 2017, he is supposed to file appropriate reply to the show

cause. This Court is of the view that at this stage of the show cause notices entertainment of writ petition in exercise of Article 226 of the Constitution of India is premature. In this regard, this Court vide judgment dated 26th July,2022 in the case of ***Mitambini Mishra -vrs.-Union of India and Others***, W.P.(C) No.8492 of 2022 has elaborately discussed identical issue of non-levy of GST on royalty vis-à-vis show cause notice.

5. In the aforesaid view of the matter, this Court is not inclined to entertain the present writ petition challenging the show cause notice issued under Section 74 of the CGST/OGST Act, 2017 in terms of the aforesaid judgment delivered by this Court.

6. Accordingly, the writ petition is disposed of. However, in case the proceeding still remains in complete before the Adjudicating Authority, namely, Deputy Commissioner of State Tax, CT & GST Circle, Keonjhar, the Petitioner may file reply/objection within a period of fifteen days from today to said show cause notices and it is open for the Petitioner to participate in the proceeding raising all such contentions, which shall be dealt with by the said Authority in accordance with law.

Issue urgent certified copy as per rules.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Jyostna August 4th, 2022
Cuttack