IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 14896 of 2022

Subash Chandra Mohanty .... ***Petitioner***
Mr. Sukant Kumar Dalai, Advocate

-versus-

State of Odisha & Others .... ***Opposite Parties***

Mr. S. Padhy, Advocate for the CT & GST Organisation

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER (Oral)
12.07.2022

Order No.

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

2. Challenging the assessment order dated 4.4.2022 passed under Section 63 of the Odisha Goods and Services Tax Act, 2017 (for short, 'the OGST Act') by the CT & GST Officer, Puri Circle, Puri raising a demand of Rs.1,75,32,014/- for the tax period relating to the year April, 2020 to March, 2021, the Petitioner has come up before this Court invoking provisions under Article 226/227 of the Constitution of India.

3. It is alleged by the Petitioner that after introduction of GST regime with effect from 1.7.2017, extra burden of tax has been saddled in respect of spilled over works from VAT regime. Nonreimbursement of differential tax component by the Government led to non-furnishing of return with tax. Consequently, the Department cancelled the registration certificate. While the matter stood thus, the department treating the Petitioner as unregistered person has proceeded to assess under Section 63 of the Act for the period April, 2020 to March, 2021.

4. Mr. Sukanta Kumar Dalai, counsel for the Petitioner submitted that the assessment order under Section 63 of the Act cannot sustain. He further submitted that against the order of cancellation of registration certificate, the appeal has been pending. Therefore, he submitted that the assessing authority should have waited for the outcome of appeal.

5. Mr. Sidharth Sankar Padhy, counsel for the CT & GST Organisation vehemently opposed entertainment of writ petition and submitted that the Petitioner has not exhausted efficacious alternative remedy available under the GST Act and Rules framed thereunder to challenge the order passed under Section 63 of the Act. He further submitted that the authority concerned is justified invoking power under Section 79 of the Act for taking steps to recover the amount demanded in the said assessment order.

6. It is conceded at the Bar that the writ petition being filed on 13th June, 2022 challenging the assessment order dated 4th April, 2022, the writ petition has been filed within the period envisaged under sub-section (1) of Section 107 of the Act and therefore, the Petitioner can be relegated to prefer statutory appeal.

7. In view of conceded position, the Petitioner is directed to file appeal under Section 107 of the Act along with a petition for condonation of delay within a period of two weeks from today. The appellate authority shall consider the delay in filing such appeal keeping in mind the period for which the writ petition was pending before this Court for disposal. Subject to Petitioner complying with other statutory mandatory requirements, the appeal shall be heard and disposed of on its merit in accordance with law.

8. In terms of the above observation, the writ petition stands disposed of.

Issue urgent certified copy as per rules.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Aks July 12, 2022 Cuttack