IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No.15410 of 2022

Rajesh Kumar Swain .... ***Petitioner***

Mr. Jagamohan Pattanaik, Advocate

-versus-

Income Tax Officer & Others .... ***Opposite Parties***

Mr. Avinash Kedia, Jr. Standing Counsel of CGST, CX & Customs.

CORAM:
THE CHIEF JUSTICE
JUSTICE M. S. RAMAN

ORDER
14.11.2022

Order No.

01. 1. The challenge in the present writ petition is to an order dated 3rd June, 2021 passed by the Assistant Commissioner, GST & Central Excise, Cuttack-II Division, Cuttack pursuant to a show-cause notice dated 11th November, 2019 issued to the petitioner regarding alleged non-payment of the service tax of Rs.5,43,178/-.

2. By the impugned order, the above demand was confirmed and a penalty of an equal amount was also levied under Section 78(1) of the Finance Act, 1994 apart from penalty under Sections 77(1) and 77(d) thereof.

3. A short ground, on which the impugned order is assailed, is that the petitioner was called upon to produce the documents on 11th June, 2020 which was during the peak Covid-19 period and despite

the Petitioner sending an e-mail praying for time to collect the documents. The Assistant Commissioner did not permit such time, closed the case and passed an order nine months thereafter on 3rd June, 2021.

4. It is not in dispute that the aforementioned period was indeed a peak period of Covid-19 and the request made by the Petitioner for time for production of documents and personal hearing appears to be a reasonable one, which ought to have been allowed by the Assistant Commissioner. The Court is unable to appreciate the impugned order having been passed, without granting the Petitioner such time, and that too nine months after the closing of the hearing.

5. For the aforementioned reasons, the impugned order dated 3rd June, 2021 is hereby set aside and the matter is remanded to the Opposite Party No.3, the Assistant Commissioner, GST & Central Excise, Cuttack-II Division, Cuttack to once again consider the case of the Petitioner afresh. The matter will now be listed before the Assistant Commissioner, GST & Central Excise, Cuttack-II Division, Cuttack on 16th January, 2023, on which date the present Petitioner shall file all the documents sought to be relied upon along with a reply to the show-cause notice. No further time will be granted for that purpose. The Assistant Commissioner will then proceed with the matter and after hearing the Petitioner, pass a fresh order, uninfluenced by the earlier order, which has been set aside by

this Court, within a period of three months thereof. The Court clarifies that it has not expressed any view in the matter on merits.

6. The writ petition is disposed of with the above terms.

7. Urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge

MRS/AKS

HIGH COURT
ORISSA