IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 15862 of 2020

M/S. ORISSA STEVEDORES. LTD.	....	***Petitioner***

Mr. Jagabandhu Sahoo Sr. Advocate with
Miss. Kajal Sahoo, Advocate

-versus-

Union of India & Others	....	***Opposite Parties***

Mr. Sunil Mishra, Addl. Standing
Counsel for CT & GST Organisation

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER (Oral)
12.07.2022
W.P.(C) Nos. 15862, 15864, 15866 and 15868 of 2020
and
I.A. Nos. 8916, 8917, 8918 & 8919 of 2022

Order No.

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

2. Assailing the order(s) dated 24th May, 2022 passed by Additional Commissioner of Sales Tax (Appeal), Central Zone Odisha at Cuttack in Appeal Case Nos. AD2111210042370, AD211121004257Y, AD2111210042718 and AD211121004312A relating to tax periods for four years i.e. 2017-18, 2018-19, 2019-20 & 2020-21 whereby the appeal has been summarily rejected under Section 107 of the Odisha Goods and Services Tax Act, 2017 (for short, 'the OGST Act'), the Petitioner has come up before this

Court for grant of stay of recovery of demand of interest calculated on delayed payment of admitted tax.

3. It is averred that though remedy of appeal under Section 112 of the OGST Act is available to challenge the appellate order, the Petitioner is precluded as yet no Tribunal has been constituted. The grievance of the Petitioner is that on the one hand the appeal has been rejected summarily and on the other hand no scope is available for it to challenge the same in further proceeding, the GST authority has taken recourse of garnishee proceeding under Section 79 of the OGST Act.

4. Senior Counsel for the Petitioner submitted that the levy of interest for delayed payment of tax for the years 2017-18 to 2020-21 is not tenable in the eyes of law as the Petitioner does not admit the entire liability for payment of interest.

5. Perusal of identical First Appellate order (one of the appeals) reveals as follows:-

> ***"****From perusal of record and the Appeal filed by the Taxpayer it is found that the Taxpayer appellant has not paid and furnished the proof of payment which is mandatory pre-deposit of interest in full as per provision of Section 107(6) (a) of the OGST Act, 2017. The Taxpayer has filed first appeal by virtue of Section 107 of the Odisha Goods and Services Tax Act, 2017. In this regard, the relevant provision of Section 107(6) of the OGST Act, 2017 is as follows:-*
>
> *"(6) No appeal shall be filed under sub-section (1), unless the appellant has paid-*

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him,"

From the reading of above provisions it is clear t6hat the appellate authority nis comptent to "entertain" the appeal only if mandatory pre-deposit of interest in full as per provision of Section 107(6)(a) of the OGST Act, 2017 is deposited. So for the adjudication of the merit of the case the prerequisite deposit is mandatory. Since the Taxpayer appellant has not paid and furnished the proof of payment which is mandatory pre-deposit of interest in full under section 107(6)(a) of the OGST Act, 2017, there is no scope to go into and examine the merit of the contentions raised by the appellant. Considering the same, the explanation of the Taxpayer appellant is not satisfactory as the dealer appellant has not paid and furnished the proof of payment which is mandatory pre-deposit of interest in full under section 107(6)(a) of the OGST Act, 2017. So the explanation of the Taxpayer appellant has no merit for consideration at present and the appeal petition filed under the Odisha Goods and Services Tax Act, 2017 found defective as the Taxpayer appellant has not paid and furnished the proof of payment which is mandatory pre-deposit of interest in full under section 107(6)(a) of OGST Act, 2017.

In view of above discussed facts, submitted reply to show cause notice issued, papers & documents, etc., it is confirmed that the appeal petition filed under the OGST Act, 2017 is found defective as the Taxpayer appellant has not paid and furnished the proof of payment which is mandatory pre-deposit of interest in full under section 107(6)(a) of the OGST Act, 2017. Hence, the appeal filed against the order passed by the learned Deputy Commissioner of CT & GST, Cuttack-I Central Circle, Cuttack I, Odisha raising demand of Rs.45,91,619.00 (IGST Rs.2,19,810.00 + CGST Rs.22,05,027.00 + OGST Rs. 21,66,782.00) which is *demanded against Interest is not sustainable as per the provisions of law at this stage and hereby rejected.*

In the result, the appeal petition filed under Sub Section (1) of Section 107 of the Odisha Goods and Services Tax Act, 2017 by the Taxpayer being found defective is summarily rejected."

6. It is admitted fact that there was delay in deposit of admitted tax and the authority concerned on verification of self assessed returns as uploaded by the Petitioner in the web portal found that though there was late payment of tax, interest was not paid. Therefore, the Deputy Commissioner of Sales Tax, CT & GST, Cuttack-I Central Circle referring to provisions under Section 50 passed assessment order(s) under Section 75(12) of the OGST Act. The Senior Counsel submitted that proper opportunity was not afforded to the Petitioner to explain. He also disputed the quantum of determination of interest liability.

7. It is conceded that the Petitioner has deposited the admitted tax belatedly. Perusal of assessment order dated 17th September, 2021 vide Annexure-1 shows that the assessing authority has taken note of extension of the period of filing of return and proceeded to levy interest by verifying the returns that the Petitioner has not paid any interest on the belated payment of admitted tax. Reading of Section 50(1) makes it abundantly clear that interest has to be computed by the tax payer "on his own". Needless to point out that the scheme of GST statute envisages mechanism for self assessment and it is well within the knowledge of taxpayer that the time limit within which it has to discharge its tax liability. In the event of delay it is required to compute its liability with respect to interest by virtue of notification issued by competent authority specifying the rate of interest. Therefore, it is clear that the liability to pay interest under Section 50 is not only self-imposed but also automatic without any requirement for determination by any other (refer: M/s. P.K. Ores Pvt. Ltd. Vs. Commissioner of Sales Tax, WP(C) No. 10335 of 2022 vide order dated 6.5.22 of this Court and Megha Engineering and Infrastructures Ltd. Vs. Commissioner of Central Tax, WP(C) 44517 of 2018 vide judgment dated 18th April, 2019 of High Court of State of Telangana at Hyderabad).

8. Be that as it may, the learned Senior Counsel for the Petitioner furnished a statement indicating interest component on the belated payment of admitted tax by its own calculation. Paragraph-3 of said statement dated 12.07.2022 is extracted herein below:-

> ***"****The Petitioner is willing to make deposit of admitted interest amount of Rs.9,25,43,693.52 and has made a prayer before this Hon'ble Court permitting the Petitioner to pay in two monthly equal instalments. This Hon'ble Court permitted the Petitioner to deposit a sum of Rs.5,00,00,000/- as against admitted interest amount of Rs.9,25,43,693.52. The Petitioner has further submitted that since all the bank accounts as well as the companies with whom the Petitioner has transaction are issued with recovery intimations U/s. 79 of the CGST/OGST Act, 2017 it is not possible on the part of the Petitioner to make payment of the aforesaid amount Rs.5,00,00,000/- unless one of the accounts maintained by the Petitioner is defreezed to enable the Petitioner to make payment of Interest amount of Rs.5,00,00,000/-. This Hon'ble Court*

permitted the Petitioner to specify the name of the bank whichwill be allowed to be defreezed to enable the Petitioner to make such deposit of Rs.5,00,00,000/- towards interest. The Petitioner furnishes the following bank details to enable him to make the deposit which enumerates as under:-

Bank Name- *The South Indian Bank Limited*

Branch Name- *Arunodaya Market, Cuttack, Orissa*

IFSC Code- *SIBL0000569*

Account No.*-0569073000000001*

Account Holder –*Orissa Stevedores Limited."*

9. Mr. Sunil Mishra, Addl. Standing Counsel for the CT & GST Organisation filed response to the said statement of the Petitioner, wherein it has been stated that "the Petitioner has reconciled the admitted interest payable at Rs.9,25,43,693.52. The Opposite Party Department has also reconciled the amount of interest payable and after reconciliation the total interest payable has been reduced to Rs.11,66,76,288/-." It has also been conceded by the learned Addl. Standing Counsel that due to inadvertence interest was calculated on output tax liability instead of net tax payable and such rectification may be permitted.

10. Be that as it may, this Court is not inclined to go into factual disputes. However, considering the reconciliation statements filed by both sides on the peculiar facts of the present case, it would be mete and proper if the Petitioner deposits a sum of Rs.9,25,43,693.52, the order(s) dated 24th May, 2022 passed by the

Appellate Authority shall stand set aside and the appeal(s) shall be restored to file for adjudication on merits unless other defects, if any, as required under the statute is removed.

In view of submission made by the learned Senior Counsel that since all the bank accounts have been seized and the Petitioner is unable to operate, it is not possible to deposit the entire admitted interest at one go. Therefore, he prayed for lifting forthwith the attachment on the Bank as aforesaid in para-8 to enable it to deposit Rs.5,00,00,000/-(rupees five crores only) within 48 hours and the Petitioner undertakes to deposit rest of the amount out of Rs.9,25,43,693.52 in two equated fortnightly instalments but not later than 16th August, 2022.

11. Upon such deposit of the aforesaid amount, the Revenue/Opposite Parties shall forthwith ensure the withdrawal of all the attachments made in pursuance of the original demand(s).

The prayer of the Senior Counsel for the Petitioner is allowed.

12. The writ petitions (four) along with the I.As. are disposed of in the aforesaid terms.

Issue urgent certified copy as per rules.

A copy of the order under the signature of the Court Master be handed over to Mr. S. Mishra, Addl. Standing Counsel for the CT & GST Organisation for immediate compliance.

If need be, the appellate order(s) in original be returned by the Registry.

Photo copy of the order be placed on the connected files.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Aks July 12, 2022 Cuttack

Received copy of the order
dated 12.07.2022.

(Manaranjan Malla)
Registered Clerk
on behalf of ASC, CT & GST