

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.13892 of 2018**

***M/s. Neelachal Ispat Nigam Ltd. .... Petitioner***

Mr. Abhratosh Majumdar, Senior Advocate with  
Ms. Pami Rath, Advocate

*-versus-*

***Commissioner, GST & Central Excise, .... Opposite Parties  
Bhubaneswar Commissionerate and  
another***

Mr. T.K. Satapathy, Senior Standing Counsel

**CORAM:  
THE CHIEF JUSTICE  
JUSTICE M.S. RAMAN**

**ORDER  
07.12.2022**

**Order No.**

19. 1. The challenge in the present petition is to both a show cause notice (SCN) dated 25<sup>th</sup> /26<sup>th</sup> February 2010 issued by the Commissioner, Central Excise as well as to the adjudication order dated 27<sup>th</sup> April 2018 passed by him confirming the demand raised in the SCN.
2. On 3<sup>rd</sup> April 2019, this Court directed that no coercive action would be taken pursuant to the order dated 27<sup>th</sup> April, 2018. On 23<sup>rd</sup> October 2019, it was clarified that the order impugned if implemented shall be subject to the result of the writ petition. Again, on 20<sup>th</sup> November 2019, the earlier interim order of 3<sup>rd</sup> April 2019 was continued.
3. This Court has heard the submissions of Mr. Abhratosh Majumdar, learned Senior Advocate appearing for the Petitioner

and Mr. T.K. Satapathy, learned Senior Standing Counsel for the Department.

4. The main ground on which the impugned adjudication order has been challenged is that the Commissioner travelled beyond the scope of the original SCN as reflected in the impugned order. It is submitted by Mr. Majumdar that the impugned order was based on certain audit objections which did not form the subject matter of the original SCN. Further, he submits that by virtue of the amendment to Rule 6 of the Cenvat Credit Rules 2004 by Section 73 of the Finance Act 2010, the jurisdictional fact regarding wrongful availment of credit by the Petitioner no longer survived; by then the Petitioner had reversed the credit and paid the interest amount.

5. Admittedly, the adjudication order is an appealable one. All the grounds urged by the learned Senior Advocate appearing for the Petitioner before this Court and as pleaded in the petition can well be urged in the statutory appeal to be filed in the Tribunal against the impugned order.

6. Consequently, while not being inclined to interfere with the impugned order at this stage, the Court permits the Petitioner to file an appeal thereagainst as provided in the statute in question in accordance with law. If such appeal is filed not later than 9<sup>th</sup> January 2023 accompanied by an application for condonation of delay, explaining the delay on account of the pendency of the present writ petition, it will be considered in accordance with law by the Tribunal. Till such time the Tribunal passes an order on the application for interim relief, the interim order passed by this Court

on 3<sup>rd</sup> April 2019 will continue. It will be open to the Petitioner to request the Tribunal for expeditious disposal of the appeal.

7. The writ petition is disposed of in the above terms.

8. Issue urgent certified copy of this order as per rules.

***(Dr. S. Muralidhar)***  
***Chief Justice***

***(M.S. Raman)***  
***Judge***

*S.K. Guin*

