IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 19599 of 2022

M/s. Maa Sarala Enterprises	....	***Petitioner***
		Mr. Sudeepta Kumar Singh, Advocate for the petitioner

-versus-

Union of India & Others	....	***Opposite Parties***
		Mr. Radheyshyam Chimanka, Senior Standing Counsel for Central GST, Central Excise & Customs

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER
08.09.2022

Order No.

02. This matter is taken up by virtual/physical mode.

1. The Petitioner has invoked the extraordinary jurisdiction under Article 226/227 of the Constitution of India assailing the Order-in-Original dated 24th May, 2022 passed by the Assistant Commissioner of GST & Central Excise, Cuttack-II Division, Cuttack under Section 73(1), 75, 77(1)(c)(ii), 77(1)(a), 70 and 78 under Chapter-V of the Finance Act, 1994 pertaining to the Financial Year 2014-15, on the basis of third party data received from Central Board of Direct Taxes.

2. The case of the Petitioner in a nutshell is that the Petitioner, partnership firm, being registered with the Service Tax Authorities, is engaged in the business of civil works and supply of manpower services. During the year 2014-15, the Petitioner had executed contract of earth work and supply of manpower services to various Public Sector Undertakings situated at Paradeep and also State Government.

3. In the writ petition the Petitioner averred that the entire work executed during the said period is exempted by virtue of Mega Exemption Notification No.25/2012— Service Tax, dated 20th June, 2012, published in the Gazette of India, Extraordinary, *vide* GSR No.467(E), dated 20th June, 2012. On 7th/8th November, 2019 demand-*cum*-show cause notice was issued to the Petitioner contemplating levy of service tax based on information received by the authority concerned. Denying the exemption claimed under the said notification, the Adjudicating Authority raised a demand to the tune of Rs.26,37,369/- under Section 73 of the said Act *vide* Order-in-Original bearing No. AC/CTC-II/ST-18/2021, dated 20th January, 2021 in F.No.V(TP) 24/04/Adjn/CGST/CTC-II/2019/224. That apart, the Adjudicating Authority-Assistant Commissioner, GST and Central Excise, Cuttack-II Division, Cuttack imposed penalty of Rs.26,37,369/- under Section 78(1) and Rs.10,000/- under Section 77(1)(c)(ii). The said authority also imposed Rs.10,000/- under Section 77(2).

4. Being aggrieved, the Petitioner challenged the said Order-in-Original in Appeal before Commissioner (Appeals), Central Excise, Customs & Services Tax, Bhubaneswar on 29th April, 2022. The Counsel for the Petitioner submitted that the said appeal is pending for disposal.

5. While the matter stood thus, Assistant Commissioner, GST and Central Excise, Cuttack-II Division, Cuttack passed another order in Order-in-Original No. AC/CTC-II-

DIVN/ST/54/2022, dated 24th May, 2022 in respect of Financial Year 2014-15 raising a demand of Rs.26,37,369/- under Section 73(1) of Chapter-V of the Finance Act, 1994 besides, interest under Section 75. That apart, penalty of Rs.5,000/- under Section 77(1)(c)(ii) for failure to produce the documents called for by the Department, penalty of Rs.5,000/- under Section 77(1)(a) for non-obtaining of service tax registration, penalty of Rs.20,000/- under Section 70 for non-submission of ST-3 returns and penalty of Rs.26,37,369/- under Section 78 have been imposed. Challenging this Order-in-Original dated 24.05.2022, the petitioner has come up before this Court in the afore-noted writ petition and urged that for the self-same Financial Year 2014-15, two Assessment Orders cannot exist and the latter Assessment Order is liable to be quashed as the same is *non-est*. It is contended by Mr. Sudeepta Kumar Singh, counsel for the Petitioner that the Adjudicating Authority mechanically on the basis of third party data as received from Central Board of Direct Taxes fastened the liability again even as earlier Order-in-Original dated 19.01.2021 is *sub judice* before the Appellate Authority-Commissioner(Appeals).

6. When the matter is taken up on 22nd August, 2022, the following order was passed:-

> *"xxx xxx xxx*
>
> *2. It is contended that the self-same authority for the self-same assessment period 2014-15 has passed a fresh/second order dated 24th May, 2022 raising an identical demand as the previous order dated 20th January, 2021 qua which an appeal already stands filed and is pending. Thus, it is contended that the fresh order dated 24th May, 2022 is without jurisdiction.*
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> *3. Issue notice for 8th September, 2022.*

> *4. Mr. Radheyshyam Chimanka, Senior Standing Counsel appears and waives notice on behalf of Opposite Party Nos.1 to 3. Three extra copies of the writ petition be served on him within three working days.*
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> *5. Till the next date, operation of the order dated 24th May, 2022 (Annexure-1) shall remain stayed."*

7. On the resumed hearing today, Mr. Radheyshyam Chimanka, Senior Standing Counsel (Central Excise, Customs & Service Tax) on instruction submitted that the order dated 24th May, 2022 *vide* Annexure-1 has been passed due to inadvertence which is liable to be quashed.

8. In view of such fair submission made by Mr. Chimanka, Senior Standing Counsel, this Court has no other option left but to quash in Order-in-Original No. AC/CTC-II DIVN/ST/54/2022, dated 24th May, 2022 in F.No.V(TP) 342/04/Adjn/CGST/CTC-II/2020 (Annexure-1) pertaining to the Financial Year 2014-15.

9. Accordingly, the writ petition is allowed.

Issue urgent certified copy as per rules.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Laxmikant September 08, 2022 Cuttack