IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 22709 of 2022

M/s. Sree Metaliks Ltd. .... ***Petitioner***

Mr. Sidhartha Ray, Advocate
and Mr. Kshirod Kumar Sahoo, Advocate

-versus-

Commissioner of CT & GST Odisha, Cuttack & Others .... ***Opposite Parties***

Mr. Sunil Mishra,
Additional Standing Counsel
(CT & GST Organization)

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER (Oral)
08.09.2022

Order No.

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

1. Complaining that the Joint Commissioner of Sales Tax, Barbil Circle, Barbil on erroneous appreciation of factual position communicated vide Letter No.2453/CT & GST(Refund), dated 23rd August, 2022 (Annexure-1) rejected the application dated 17th June, 2022 for refund of Rs.10,04,886/- claimed under the Central Sales Tax (CST) Act, 1956 for the tax periods from 01.04.2012 to 31.03.2013, the Petitioner has approached this Court by way of filing petition under Article 226/227 of the Constitution of India.

2. It is submitted by the Counsel for the Petitioner that against the order of remit dated 27th April, 2021 passed by the

Additional Commissioner of Sales Tax, Territorial Range, Jajpur, Jajpur Road in First Appeal Case No.AA-1046-KJB(C) of 2020-21, whereby the provisional assessment order dated 11.01.2018 formulated under Rule 12(1)(b) of the Central Sales Tax (Odisha) Rules, 1957 pertaining to tax periods 01.04.2012 to 31.03.2013 was set aside with a direction to reframe the assessment, the Petitioner had preferred Second Appeal No.31(C) of 2021-22 before the Odisha Sales Tax Tribunal, Cuttack under Section 9(2) of the Central Sales Tax read with Section 78 of the Odisha Value Added Tax Act, 2004. The Odisha Sales Tax Tribunal vide order dated 21st May, 2022 while disposing of the Second Appeal observed that no explanation was rendered by the Standing Counsel appearing before it with respect to delay in service of copy of provisional assessment order dated 11th January, 2018, and the appellate authority instead of deciding the matter himself should not have remitted the matter to the Assessing Authority. The said Tribunal further taking note of certain Judgments of Supreme Court of India as also this Court under the Insolvency and Bankruptcy Act, 2016, set aside not only the Appellate Order, but also the Assessment Order.

3. It is further submitted by the counsel for the Petitioner that consequent upon disposal of the Second Appeal, the Petitioner filed application for refund of Rs. 10,04,886/- for the tax periods from 1st April, 2012 to 31st March, 2013 under the provisions of the Central Sales Tax Act on 17th June, 2022. Even though reply dated 10th August, 2022 has been furnished by the Petitioner in response to notice dated 4th August, 2022, the Joint Commissioner of Sales Tax has rejected the claim for refund on the specious plea that the application for refund does not arise from any order of refund, as the order of the Tribunal is silent about grant of refund.

4. When the matter is taken up today, on advance notice Mr. Sunil Mishra, Additional Standing Counsel for CT & GST Organization appears and furnished a copy of communication bearing No. 2754/CT & GST (Refund), dated 7th September, 2022, whereby the Joint Commissioner of Sales Tax, Barbil Circle, Barbil. The said communication is extracted herein below:-

> "To
> M/S. Sree Metaliks Limited
> Barbil, Keonjhar
> TIN-21881402377
>
> Sub- Regarding withdrawal of rejection order dated 23.08.2022
>
> Ref:- This Office letter No.2453 dated 23.08.2022
>
> In view of the decision of the apex court in case of Ghanashyam Mishra & Sons (P) Ltd. v. EDELWEISS Asset Reconstruction Co. LTD (2021) 9SCC 657 and in view of the Hon'ble OSTT dated 21.05.2022, the rejection order dated 23.08.2022 is here by withdrawn.
>
> Seal Sd/-
> Joint Commissioner of Sales Tax
> Barbil Circle, Barbil"

5. In view of the aforesaid circumstance, the writ petition is dismissed as infructuous. It is directed that the Petitioner shall appear before the Joint Commissioner of Sales Tax, Barbil Circle, Barbil on 20th September, 2022 as undertaken and produce all relevant documents for facilitating adjudication of claim of refund. On appearance, the said authority shall fix a date for production of documents for the said purpose and pass necessary orders in accordance with law. It is hoped that the entire exercise shall be completed within a period of two months from the date of appearance of the Petitioner.

Issue urgent certified copy as per rules.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Laxmikant September 08, 2022 Cuttack