IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No.21829 of 2018

M/s. Paradeep Phosphates Ltd. .... ***Petitioner***
Mr. Jnanesh Mohanty, Advocate

-versus-

Union of India and others .... ***Opposite Parties***
Mr. Radheshyam Chimanka, Sr. Standing Counsel for IT Department

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

<u>Order No.</u>

<u>ORDER</u>
31.10.2022

17. 1. On 29th November, 2021, this Court passed the following order in the present petition:

> "Counsel for the Petitioner points out that there are four prayers in the present petition as far as prayer nos. (i) and (ii) are concerned, they do not survive in view of the judgment dated 13th September, 2021 of the Supreme Court of India in Union of India Vs. VKC Footsteps India Pvt. Ltd., 2021 (52) G.S.T.L. 513 (S.C). As far as prayer nos. (iii) and (iv) are concerned, he has handed over a compilation of citations."

2. Today in the course of hearing, learned counsel for the Petitioner also did not press the prayer no.(iii) which was for a direction to the Opposite Party No.3 not to deny the refund order to sanction to the petitioner in respect of GST paid input service from July, 2017 to January, 2018 as a result of the retrospective amendment to Rule 89(5) of the CGST Rules.

3. However, counsel for the Petitioner stated that the Petitioner is still pressing for prayer (iv) which is a challenge to the show

cause notice (SCN) issued to the Petitioner on 3rd July, 2019 seeking recovery of refund sanctioned to the Petitioner for the period from July, 2017 to January, 2018. The Petitioner has also challenged the consequential order dated 8th November, 2019 passed by the Assistant Commissioner CGST & Central Excise, Cuttack-II Division asking the petitioner to return the refund amount with interest. Counsel for the Petitioner states that the Petitioner was unable to file a reply to the SCN and the impugned consequential order was thereafter passed by the Asst. Commissioner.

4. Be that as it may, the refund has become returnable by the Petitioner as a result of the retrospective amendment to Rule 89 (5) of the CGST Rule, 2017. The said amendment has been upheld by the Supreme Court. Therefore, the recovery of the refunded amount is but an automatic consequence. The mere non-filing of reply by the Petitioner to the SCN would make no difference to the result. Consequently prayer (iv) is also rejected.

5. The writ petition is accordingly dismissed

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

Laxmikanta