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HIGH COURT OF ORISSA: CUTTACK

W.P.(C) No. 14163 of 2022

(In the matter of an application under
Articles 226 & 227 of the Constitution of India, 1950)

M/s. ATLAS PVC PIPES LIMITED ...

Petitioner

Mr. Sudepta Kumar Singh,
Advocate

-versus-

STATE OF ODISHA & OTHERS ...

Opposite Parties

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

Date of Hearing and Judgment: 29.06.2022

CORAM:

JUSTICE KRUSHNA RAM MOHAPATRA

AND

JUSTICE MURAHARI SRI RAMAN

JUDGMENT

BY THE COURT

This matter is taken up by virtual/physical mode.

2. Questioning the propriety of the Order dated 23.05.2022 whereby the Joint Commissioner of CT&GST, Cuttack-I Central Circle, Cuttack (opposite party No.2) rejected the Appeal bearing ARN#AD210421003076Y, filed on 21.04.2021 *vide* Reference No.ZD210522012469R, assailing the Order dated 20.01.2021 passed by the CT&GST Officer, Cuttack-I Central Circle, Cuttack (Opposite Party No.3) under Section 74 of the Odisha Goods and

Services Act, 2017 (for brevity hereinafter referred to as “the OGST Act”), the Petitioner has filed this writ application with a prayer to set aside the impugned order and sought for a direction to the Appellate Authority (opposite party No.2) to entertain the appeal on merit.

3. The Petitioner, M/s. ATLAS PVC PIPES LIMITED, a Company incorporated under the provisions of the Companies Act, 1956, deals in supply of pipes. It claims to have participated in the proceeding under Section 74 of the OGST Act. Ultimately, the CT&GST Officer of Cuttack-I Central Circle-Opposite Party No.3 by order dated 20.01.2021 raised a demand to the tune of Rs.8,20,042/- (comprising tax of Rs.3,99,630/-, interest of Rs.53,212/- and penalty of Rs.3,67,200/-) pertaining to the tax periods from 1st April, 2019 to 31st March, 2020. Being aggrieved, on 21.04.2021 the Petitioner filed an appeal under Section 107 of the OGST Act. It is asserted by the Petitioner that in order to comply with the condition for filing of the appeal, although it deposited an amount of Rs.39,964/- being 10% of the tax in dispute in terms of sub-section (6) of Section 107, but could not submit the certified copy of the impugned order along with the appeal memo.

3.1. It is submitted by Mr. Singh, learned Advocate for the Petitioner that in addition to filing of the appeal by electronic mode, self-attested hardcopies of the documents including copy of the impugned order as made available to it in the GST web portal were furnished to the Appellate Authority-Opposite Party No.2. Nonetheless, the Petitioner received notice dated 13.05.2022 *vide* ARN/Appeal Case No. AD210421003076Y (Annexure-3 series), wherein it was

indicated that the tax payer-Appellant was required to submit the certified copies within seven days of filing of the appeal. However, the Appellate Authority directed the Petitioner to submit the certified copy of the said document on or before 21.05.2022.

- 3.2. Mr. Singh with humility submitted that the Appellate Authority by issue of notice dated 13.05.2022 impliedly extended the period for submission of certified copy of order appealed against. In order to comply with the direction contained in said notice dated 13.05.2022, which was served on 20.05.2022, the Petitioner applied for and obtained certified copy of the required document on 21.05.2022 from the Office of Opposite Party No.3. Since the office of the Opposite Party No.2 was closed on 22.05.2022, being Sunday, step could only be taken on 23.05.2022 to comply with the terms of notice dated 13.05.2022. Although the Petitioner offered to submit the certified copy on 23.05.2022, the Opposite Party No.2 refused to receive the same on the plea that he had already passed the order of rejection of appeal and uploaded the same in the GST portal on 23.05.2022.
- 3.3. It is submitted by learned counsel that hyper-technical approach of the Appellate Authority rendered the Petitioner remediless inasmuch as there is no scope for approaching the Appellate Tribunal under Section 112 in view of the fact that as yet said Tribunal has not been constituted.
- 3.4. Learned counsel for Petitioner to buttress his argument placed reliance on the decision of this Court *vide* Order dated 07.06.2021 rendered in the case of *Shree Jagannath Traders Vrs. Commissioner of State Tax, Odisha, Cuttack (W.P.(C) No.15061*

of 2021). He further submitted that instead of showing pedantic approach, the Appellate Authority ought to have been pragmatic by taking into consideration the COVID-19 pandemic situation that persisted during the relevant period.

4. Mr. Mishra, learned Additional Standing Counsel (CT&GST) on the other hand, without objecting to the factual position, as stated above, urged that having filed the appeal in Form GST APL-01 as prescribed under sub-rule (1) on 21.04.2021, the Petitioner was required to furnish the certified copy of the impugned order dated 20.01.2021 within seven days of filing of said appeal in terms of sub-rule (3) of Rule 108 of the OGST Rules. As is apparent from the contents of the writ petition, the Petitioner took step to obtain certified copy only on 21.05.2022, *i.e.*, the last date for complying with the direction contained in the notice dated 13.05.2022. It is, therefore, urged by Mr. Mishra that in such view of the matter, the Appellate Authority has committed no illegality in passing the impugned order rejecting the appeal, after adhering to the principles of natural justice by affording opportunity specifying date for compliance. Mr. Mishra further submitted that the requirement of sub-rule (3) of Rule 108 remained unsatisfied for more than one year of the filing of appeal, and as a consequence therefor, the matter does not warrant indulgence.
5. Fact available on record reveals that copy of the impugned order as made available to the Petitioner formed part of the Memo of Appeal. It is also apparent from the pleading that the Petitioner had only one day left for compliance from the date of service of the said notice. Accordingly, the Petitioner applied for certified copy of the

impugned order on the very next day of receipt of aforesaid notice. Thus, it would have been better on the part of the Appellate Authority to verify the date of service of notice dated 13.05.2022 on the Petitioner (which was issued around one year from the date of filing of Memo of Appeal, *i.e.*, 21.04.2021), before passing order dated 23.05.2022 rejecting the Memo of Appeal.

- 5.1.** Further, it is not clear from the material on record as to whether the Authority had ever informed the noticee-appellant/assessee and/or his counsel, about the next date of proceeding. This obligation is *sine qua non* for compliance of the rules of natural justice.
- 6.** This Court finds it apt to refer to the following provisions so far as relevant for the present purpose:

The OGST Act, 2017	The OGST Rules, 2017
<p>107. <i>Appeals to Appellate Authority.—</i></p> <p>(1) <i>Any person aggrieved by any decision or order passed under this Act or the Central Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.</i></p> <p>(2) * * *</p> <p>(3) * * *</p> <p>(4) <i>The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months * * * allow it to be presented within a further period of one month.</i></p> <p>(5) <i>Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.</i></p> <p>(6) <i>No appeal shall be filed under sub-section (1), unless the appellant has paid—</i></p>	<p>108. <i>Appeal to the Appellate Authority.—</i></p> <p>(1) <i>An appeal to the Appellate Authority under sub-section (1) of Section 107 shall be filed in Form GST APL-01, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner, and a provisional acknowledgement shall be issued to the appellant immediately.</i></p> <p>(2) <i>The grounds of appeal and the form of verification as contained in Form GST APL-01 shall be signed in the manner specified in Rule 26.</i></p>

<p>(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; and</p> <p>(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed.</p> <p>Provided that no appeal shall be filed against an order under sub-section (3) of Section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.</p> <p>(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.</p> <p>(8) The Appellate Authority shall give an opportunity to the appellant of being heard.</p> <p>(9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:</p> <p>Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.</p> <p>(10) * * *</p> <p>(11) * * *</p> <p>(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.</p> <p>(13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:</p> <p>Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.</p> <p>(14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.</p> <p>(15) A copy of the order passed by the Appellate Authority shall also be sent to the Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of central tax or an authority</p>	<p>(3) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the appeal under sub-rule (1) and a final acknowledgement, indicating appeal number shall be issued thereafter in Form GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf:</p> <p>Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the Form GST APL-01, the date of filing of the appeal shall be the date of issue of provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of submission of such copy.</p> <p>EXPLANATION.—</p> <p>For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number is issued.</p>
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<i>designated by him in this behalf.</i>	
(16) <i>Every order passed under this section shall, subject to the provisions of Section 108 or Section 113 or Section 117 or Section 118 be final and binding on the parties.</i>	

- 6.1.** The provisions of Section 107 suggest that the appeal is required to be filed within stipulated period as envisaged under sub-section (1) and the filing of such appeal is hedged with conditions *inter alia* that besides admitted tax, interest, fine, fee and penalty, a sum equal to ten per cent of the remaining amount of tax in dispute arising from order challenged in appeal is required to be deposited. As is required under sub-section (5) *ibid.* read with the definition of the term “prescribed” in Section 2(87), the appeal is to be filed in the form along with verification in the manner prescribed. It is understood by having a glance at notice dated 13.05.2022 that but for the defect in terms of sub-rule (3) of Rule 108, there is no deficiency in filing the appeal as required under Section 107.
- 6.2.** Accepting notice on behalf of the Opposite Parties, namely the Commissioner of CT&GST, the Joint Commissioner of State Tax (Appeal), CT&GST Territorial Range, Cuttack-I and CT&GST Officer, Cuttack-I Central Circle, Mr. Mishra, learned Additional Standing Counsel, therefore, has made fair admission of the fact that the defect as pointed out by the CT&GST Organisation, being technical, the pedantic reason ascribed by the Appellate Authority cannot be countenanced on the face of decision of this Court *vide* Order dated 07.06.2021 rendered in the case of *Shree Jagannath Traders Vrs. Commissioner of State Tax, Odisha, Cuttack, (W.P.(C) No.15061 of 2021)*, wherein identical issue as that of the

present case fell for consideration. This Court framed the following question for adjudication:

“The short point for determination in the present writ petition is whether the Appellate Authority under the OGST Act, 2017, was justified in dismissing the Petitioner’s appeal, by the impugned order dated 10th March, 2021, on the grounds that the appeal was not presented within the time prescribed under law?”

6.3. Answering the said question in the negative against the Revenue and in favour of the petitioner-appellant, this Court has made the following observation:

“12. Considering that the explanation offered by the petitioner is a plausible and not an unreasonable one, especially in these Covid times, and further considering that a downloaded copy thereof was in fact submitted along with the appeal which was otherwise filed within time, this Court is of the view that the mere delay in enclosing a certified copy of order appealed against along with the appeal should not come in the way of the Petitioner’s appeal for being considered on merits by the Appellate Authority. This is a case of substantial compliance and the interests of justice ought not to be constrained by a hyper technical view of the requirement that a certified copy of the order appealed against should be submitted within one week of the filing of the appeal. To repeat, in these Covid times when there is a restricted functioning of Courts and Tribunals in general, a more liberal approach is warranted in matters of condonation of delay, which cannot be said to be extraordinary.”

6.4. In this context this Court also takes note of the decision *vide* Order dated 10.06.2021 passed in *Shree Udyog Vrs. Commissioner of State Tax, (W.P.(C) No.14887 of 2021)*, which is in similitude with that of *Shree Jagannath Traders (supra)*.

6.5. It is *ex facie* clear from the copy of Memo of Appeal in Form GST APL-01 *vide* Annexure-2 series to the writ petition that having received the Order passed under Section 74 of the OGST Act on 20.01.2021, the Petitioner filed the appeal invoking Section 107 on 21.04.2021. The statutory prescribed period for preferring appeal fell within the extended period in consonance with Finance

Department Notification bearing No.13898-FIN-CT1-TAX-0002/2020 [SRO No.129/2021], dated 07.05.2021 issued in exercise of powers under Section 168A of the OGST Act read with Judgment(s)/Order(s) of Hon'ble Supreme Court rendered in the case of *In Re: Cognizance For Extension Of Limitation, SMW(C) No. 3 of 2020*.

- 6.6. It may be worthwhile to reiterate what has been noticed in the case of *Smt. Basanti Shial Vrs. The Proper Officer, Additional CT&GST Officer, CT&GST Circle, Balasore, W.P.(C) No. 7490 of 2021* in connection with extension of period of limitation envisaged under Section 107. *Vide* Order dated 11.03.2022, a co-ordinate Bench of this Court made the following observation:

“* * *

8. *From the above narration of facts, it is apparent that the period of three months from the date of communication of order sought to be appealed against got lapsed during period when the effect of COVID-19 virus was at its peak. Noteworthy here to refresh that the lock-down was imposed on 24.03.2020 and there was impediment for the petitioner to file the appeal on or before 05.06.2020.*

9. *The Hon'ble Supreme Court of India In re: Cognizance for Extension of Limitation, Suo Motu Writ Petition (Civil) No. 3/2020 [2020 SCC OnLine SC 343 = (2020) 19 SCC 10] vide Order dated 23.03.2020 considering the challenge faced by the country on account of COVID-19 Virus and resultant difficulties that would be faced by litigants across the country in filing their petitions/applications/ suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Law (both Central and/or State), directed as follows:*

“To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of

the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.”

6.7. The Hon'ble Supreme Court of India in the case of *In Re: Cognizance For Extension Of Limitation* being Miscellaneous Application No. 21 of 2022 : *In Miscellaneous Application No. 665 of 2021 in Suo Motu Writ Petition (C) No. 3 of 2020 with Miscellaneous Application No.29 of 2022 in Miscellaneous Application No.665 of 2021 in Suo Motu Writ Petition (C) No. 3 of 2020. Vide Order dated 10.01.2022 [reported in (2022) 3 SCC 117 = (2022) 1 SCC (Cri) 580 = 2022 SCC OnLine SC 27] pronounced as follows:*

- “1. *In March, 2020, this Court took Suo Motu cognizance of the difficulties that might be faced by the litigants in filing petitions/ applications/ suits/ appeals/ all other quasi proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) due to the outbreak of the COVID19 pandemic.*
2. *On 23.03.2020, this Court directed extension of the period of limitation in all proceedings before Courts/Tribunals including this Court w.e.f. 15.03.2020 till further orders. On 08.03.2021, the order dated 23.03.2020 was brought to an end, permitting the relaxation of period of limitation between 15.03.2020 and 14.03.2021. While doing so, it was made clear that the period of limitation would start from 15.03.2021.*
3. *Thereafter, due to a second surge in COVID-19 cases, the Supreme Court Advocates on Record Association (SCAORA) intervened in the Suo Motu proceedings by filing Miscellaneous Application No.*

665 of 2021 seeking restoration of the order dated 23.03.2020 relaxing limitation. The aforesaid Miscellaneous Application No.665 of 2021 was disposed of by this Court vide Order dated 23.09.2021, wherein this Court extended the period of limitation in all proceedings before the Courts/Tribunals including this Court w.e.f 15.03.2020 till 02.10.2021.

4. The present Miscellaneous Application has been filed by the Supreme Court Advocates-on-Record Association in the context of the spread of the new variant of the COVID-19 and the drastic surge in the number of COVID cases country. Considering the prevailing conditions, the applicants are seeking the following:
 - i. allow the present application by restoring the order dated 23.03.2020 passed by this Hon'ble Court in Suo Motu Writ Petition (C) No. 3 of 2020; and
 - ii. allow the present application by restoring the order dated 27.04.2021 passed by this Hon'ble Court in M.A. No. 665 of 2021 in Suo Motu Writ Petition (C) No. 3 of 2020; and
 - iii. pass such other order or orders as this Hon'ble Court may deem fit and proper.
5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No.21 of 2022 with the following directions:
 - I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021 it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.
 - II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.
 - III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. *It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.*

6. *As prayed for by learned Senior Counsel, M.A. No. 29 of 2022 is dismissed as withdrawn.”*

6.8. If present case is considered in the light of aforesaid Order dated 10.01.2022 of the Hon’ble Apex Court, the petitioner is entitled to the benefit of exclusion of limitation of 7 days as stipulated in Rule 108(3) of the OGST Rules inasmuch as the certified copy of the Order dated 20.01.2021 being obtained on 21.05.2022 and offered to the Appellate Authority on 23.05.2022 for consideration in connection with the defect pointed out *vide* notice dated 13.05.2022, the same fell well within the 90 days period granted by the Hon’ble Supreme Court in the Order dated 10.01.2022.

6.9. Support can also be derived from the Full Bench decision of this Court rendered in the matter of *Akshaya Kumar Parida Vrs. Union of India*, AIR 2015 Ori 49 (FB) = 2015 SCC OnLine Ori 22. This Court in no uncertain terms held as follows:

“20. In view of the authoritative pronouncement of the Apex Court in the case of Mukri Gopalan [Mukri Gopalan Vrs. Cheppilat Puthanpurayil Aboobacker, (1995) 5 SCC 5], a situation wherein a period of limitation is prescribed by a special or local law for an application of review and for which no provision is made in the Schedule to the Act, the second condition for attracting Section 29(2) of the Act is attracted. From the enunciation of law laid down in Mukri Gopalan (supra), it must be held that in view of Section 29(2) of the Limitation Act, the Tribunal has the jurisdiction to

entertain and dispose of the application under Section 5 of the Limitation Act, since applicability of Section 5 of the Limitation Act has not been expressly excluded thereby.”

6.10. It may be pertinent to refer to a decision of the Hon’ble Supreme Court in the case of *Superintending Engineer Dehar Power House Circle Bhakra Beas Management Board v. Excise & Taxation Officer*, (2020) 17 SCC 692 = 2019 SCC OnLine SC 1400 wherein the context of absence of specific provision contained in the special or local law excluding applicability of Section 5 of the Limitation Act, 1963, has been discussed and the said Hon’ble Court held as follows:

“29. The High Court has relied upon the decision of this Court in Patel Brothers (Patel Brothers Vrs. State of Assam, (2017) 2 SCC 350) in the context of the Assam VAT Act in which the abovementioned provision of section 84 made the difference, which makes specific provision that only sections 4 and 12 of the Limitation Act are applicable. Consequently, it follows that other provisions are not applicable. The decision in Hongo India Private Limited (Commissioner of Customs and Central Excise Vrs. Hongo India Private Limited, (2009) 5 SCC 791) also turned on the scheme of the Excise Act. The scheme of the Excise Act is materially different than that of the Himachal Pradesh VAT Act. Thus, the decision in Hongo India Private Limited (supra) also cannot be said to be applicable to interpret the Himachal Pradesh VAT Act. As the revision under the Act of 2005 lies to the High Court, the provisions of Section 5 of the Limitation Act are applicable, and there is no express exclusion of the provisions of Section 5 and as per Section 29(2), unless a special law expressly excludes the provision, Sections 4 to 24 of the Limitation Act are applicable. When we consider the scheme of the Himachal Pradesh VAT Act, 2005, it is apparent that its scheme is not ousting the provisions of the Limitation Act from its ken which makes principles of Section 5 applicable even to an authority in the matter of filing an appeal but for the said provision the authority would not have the power to condone the delay. By implication also, it is apparent that the provisions of Section 5 of the Limitation Act have not been ousted; they have the play for condoning the limitation under Section 48 of the Act

of 2005. Suo motu provision of revisional power is also provided to the Commissioner within 5 years. Thus, the intendment is not to exclude the Limitation Act. We condone the delay in filing of revision.”

- 6.11.** Investigating further into the instant matter, this Court finds that Rule 108(3) has not prescribed for condonation of delay in the event where the Petitioner would fail to submit certified copy of the order impugned in the appeal nor is there any provision restricting application of Section 5 of the Limitation Act, 1963, in the context of supply of certified copy within period stipulated in sub-rule (3) *ibid*.
- 6.12.** The requirement to furnish certified copy of the impugned order within seven days of filing of appeal is provided as a procedural requirement.
- 6.13.** On the altar of default in compliance of such a procedural requirement, merit of the matter in appeal should not have been sacrificed. Since the Petitioner has enclosed the copy of impugned order as made available to it in the GST portal while filing the Memo of Appeal, non-submission of certified copy, as has rightly been conceded by the Additional Standing Counsel appearing on behalf of CT&GST Organisation, is to be treated as mere technical defect.
- 6.14.** Keeping in view the concern and context reflected in the Judgments, amendments to the statute and executive instruction/clarification during the COVID-19 pandemic period, and the decisions rendered by the Courts as referred to above, it is apt to say that the Appellate Authority has not exercised its power

in proper perspective and the Petitioner cannot be said to be indolent, rather he it has pursued its matter diligently.

- 6.15.** In view of the above, the writ petition deserves to succeed.
7. In the above perspective, the impugned Order dated 23.05.2022 contained in Form GST APL-02 *vide* Annexure-5 issued by the Joint Commissioner of State Tax (Appeal), CT&GST Territorial Range, Cuttack-I, Cuttack rejecting the appeal on the ground of non-submission of certified copy of the impugned order dated 20.01.2021 passed by the CT&GST Officer, Cuttack-I Central Circle under Section 74 of the OGST Act is hereby set aside. The appeal bearing ARN#AD210421003076Y is restored to file of the Joint Commissioner of State Tax (Appeal), CT&GST Territorial Range, Cuttack-I, Cuttack.
8. It is further directed that the Petitioner shall appear before the Joint Commissioner of State Tax (Appeal), CT&GST Territorial Range, Cuttack-I, Cuttack on or before 11.07.2022 along with the certified copy of this order and submit the certified copy of the Order dated 20.01.2021 passed by the CT&GST Officer, Cuttack-I Central Circle as claimed to have been obtained on 21.05.2022 and in that event the Appellate Authority shall proceed to decide the appeal on merits and make endeavor to dispose of the same by a reasoned order in accordance with law.
9. The writ petition is allowed to the extent as indicated hereinabove. Nothing stated in this writ application shall affect the merits of the case. However, before parting, anxious consideration is posed by reiterating the following words which have already been indicated

by co-ordinate Bench of this Court in the case of *Shree Jagannath Traders Vrs. Commissioner of State Tax, Odisha, Cuttack, W.P.(C) No.15061 of 2021, vide Order dated 07.06.2021:*

“14. Before parting with the case, this Court must note that it was brought to its attention that in other similar matters, the Appellate Authority has declined to condone the delay in the appellants filing a certified copy of the order appealed against. It is clarified that the Appellate Authority may adopt a liberal approach considering that these are times of restricted functioning of Courts and tribunals due to the COVID pandemic. As long as the appeal is accompanied by an ordinary downloaded copy of the order appealed against, verified as a true copy by the Advocate for the Appellant, the delay in filing such certified copy, subject to it not being extraordinary, the Appellate Authority may, as long as the restricted functioning of the Court and Tribunals due to the COVID pandemic continues, be condoned.”

10. With the above observations and directions, the present writ petition stands disposed of. No costs.

(MURAHARI SRI RAMAN)
JUDGE



(KRUSHNA RAM MOHAPATRA)
JUDGE

Aswini

High Court of Orissa, Cuttack
The 29th June, 2022