

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.6803 of 2022

***L&T Sambalpur-Rourkela Tollway
Limited Old TAD Office Building***

Petitioner

Mr. Sujit Ghosh, Advocate

-versus-

***CT and GST Officer, CT & GST
Circle, Rourkela II Panposh Circle
Sundargarh & Another***

Opp.Parties

Mr. Sunil Mishra, ASC (CT & GST)

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER (Oral)
21.03.2022

Order No.

01. 1. This matter is taken up by virtual/physical mode.
2. Writ Petitioner has come up before this Court challenging the order dated 28th January, 2022 passed U/s 74(9) of the Odisha Goods & Services Tax Act, 2017 (OGST Act).
3. It is submitted by the counsel for the Petitioner that the Petitioner was registered under the *erstwhile* Odisha Value Added Tax Act, 2004 and also the Finance Act, 1994. On introduction of GST regime both the registrations are migrated and given separate

registration bearing No. GSTIN 21AACCL6065D1ZY (OGST) and No. GSTIN21AACCL6065D2ZX (CGST) respectively.

It is contended by the counsel for the Petitioner that it has disclosed all the transactions under the CGST registration, since its OGST registration was kept dormant till it was cancelled with effect from 22nd January, 2019. He further contends that though it had received certain amount towards “Viability Gap Fund” from the Government for its work undertaken under PPP mode, it claimed exemption from levy of GST, in view of the definition of the term “consideration” U/s 2(31) which excludes “subsidy given by the Central Government or the State Government”.

4. Placing stress on the findings of the adjudicating authority vide order dated 28th January, 2022 vide Annexure-1, Mr. Mishra, learned Additional Standing Counsel for the CT & GST, appearing on advance notice, submitted that the Viability Gap Fund as received from the Government being deposited with the account under “GSTIN21AACCL6065D1ZY”; it was obligated on the part of the Petitioner to have disclosed the same by filing returns under the OGST Act. He further argued that Viability Gap Fund cannot be construed to be “subsidy”, thereby he attempted to justify the levy of tax on the said amount. He urged that there being factual dispute involved in the matter, the Petitioner is required to be directed to file alternative remedy available under the statute.

5. At this stage, the counsel for the Petitioner opposing vehemently submitted that it was placed under the domain of CGST

Authority and its assessment should have been undertaken by the Central Government Authorities but not the State Government Revenue Authorities.

Be that as it may, the counsel for the Opposite Parties sought for an opportunity to file counter affidavit in the matter.

6. Issue notice for 12th May, 2022.

Mr. Sunil Mishra, Addl. Standing Counsel (CT & GST) appears and waives notice on behalf of both the Opposite Parties.

Let requisite number of copies of the writ petition be served on him within three working days.

7. As an interim measure, subject to the Petitioner depositing a sum of Rs.65.00 lakhs on or before 31st March, 2022, no coercive steps shall be taken to recover the remaining demand.

Issue urgent certified copy as per rules.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge