

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.13302 of 2022

M/s. Shivom Minerals Limited ***Petitioner***
Mr. Jagabandhu Sahoo, Sr. Advocate with
Ms. K. Sahoo, Advocate

-versus-

Union of India & Others ***Opp.parties***
Mr. P.K. Prahi, ASGI for Opp.Party No.1
Mr. M.K. Khuntia, Addl. Govt. Advocate
for Opp.Party No.2
Mr. Sunil Mishra, Addl. Standing Counsel
for CT & GST Organisation (Opp.Party Nos.
3 to 5)

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER (Oral)

सम 03.08.2022

Order No.

- 01.**
1. This matter is taken up by virtual/physical mode.
 2. The Petitioner by way of filing the writ petition has challenged the vires of Clause (c) of Sub-Section (2) of Section 16 of the Odisha Goods and Services Tax Act, 2017 (in short, “the OGST Act”)/ Central Goods and Services Tax Act, 2017 (in short, “the CGST Act”) which provides for a registered person is entitled to credit of input tax, if the tax charged in respect of supply has been actually paid to the Govt., either in cash or through utilisation of input tax credit admissible in respect of the said supply. The Petitioner, therefore, challenged the order dated 12th May, 2022 passed by CT & GST Officer, Rourkela-II, Sundargarh Circle under

Section 73 of the CGST/OGST Act raising a demand to the tune of Rs.12,74,61,516.34, comprising tax of Rs.8,19,02,778/-, interest of Rs.3,73,68,460/- and penalty of Rs.81,90,277/-with respect to tax periods June, 2019 to February, 2020.

3. It is contended by Mr. Jagabandhu Sahoo, Senior Counsel for the Petitioner that by invoking provisions of Section 73 of the OGST/CGST Act, the Petitioner has been assessed to tax for the tax period from June, 2019 to February, 2020 on the ground that the supplier namely, OCL Iron and Steel Ltd. bearing GSTIN-21AAACO8611JIZO has remained non-filer of Form-GSTR-3B. It is submitted that it is inconceivable that for the default on account of supplier, the Petitioner-recipient, who has already suffered tax can be saddled with further levy of tax, interest and penalty.

4. Mr. Sunil Mishra, Addl. Standing Counsel for the CT & GST Organisation though made an attempt to convince the Court that there is availability of remedy of appeal under Section 107 of the OGST/CGST Act, since vires of the statutory provision has been challenged on the anvil of Articles 14 and 19 (1) (c) read with Article 265 of the Constitution of India, he prayed to grant opportunity to file counter affidavit.

5. Issue notice for 15th November, 2021.

6. The Petitioner is directed to supply a copy of the writ petition to the Assistant Solicitor General on behalf of the Opposite Party No.1

7. Mr. M.K. Khuntia, Additional Govt. Advocate and Mr. Sunil Mishra, Addl. Standing Counsel appear and waive notice on

behalf of the Opposite Party No.2 and Opposite Party Nos. 3 to 5 respectively.

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

8. Requisite for issuance of notice to the Opposite Party No.6 by speed post with A.D. be filed within three working days.

I.A. No. 7004 of 2022

9. In this I.A., the Petitioner has prayed for stay of further proceeding pursuant to order dated 12th May, 2022 vide Annexure-6 and prayed for issuance of direction to the Opposite Parties not to take any coercive action till disposal of the writ petition.

10. Considering the submission of respective parties, the Petitioner is directed to deposit 20% of the tax as determined vide assessment order dated 12th May, 2022 passed under Section 73 of the OGST/CGST Act within a period of four weeks from today. In the event of such deposit, no coercive action shall be taken against the Petitioner till disposal of the writ petition.

Issue urgent certified copy as per rules.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge