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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 26443 of 2022

M/s. Simon India Ltd. ***Petitioner***

Mr. Jagabandhu Sahoo, Senior Advocate
-versus-

CT and GST Officer, Cuttack-II Circle, ***Opposite Parties***
Cuttack and another

Mr. Sunil Mishra
Additional Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
09.11.2022

Order No.

Dr. S. Muralidhar, CJ.

01. 1. Issue Notice. Mr. Sunil Mishra, learned Additional Standing Counsel accepts notice on behalf of the Opposite Parties.
2. The challenge in the present writ petition is to both a draft audit report dated 30th June, 2022 issued by the Head of the Audit Team-1, CT & GST Circle, CU-II, Cuttack as well as the final audit report of the same date under Section 65(6) of the Orissa GST Act, 2017 (OGST Act).
3. Mr. Jagabandhu Sahoo, learned Senior Advocate appearing for the Petitioner, at the outset, draws attention to Rule 101(4) of the OGST Rules, 2017 which reads as under:

“4. The proper officer may inform the registered person of the discrepancies noticed, if any, as observed in the audit and the said person may file his reply and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.”

4. He points out that in the present case, there was no opportunity granted to the Petitioner to file a reply to the draft audit report and paradoxically, on the same day that the draft audit report was issued, the final audit report was also issued.

5. Secondly, he points out that under Section 65(4) of the OGST Act, the audit under Section 65(1) had to be completed “within a period “within a period of three months from the date of commencement of the audit”. In terms of the proviso to Section 65(4) of the OGST Act, where the Commissioner is satisfied that the audit cannot be completed within three months then “for the reasons to be recorded in writing” he may extend the period for completion of the audit “by a further period not exceeding six months”.

6. In the present case, admittedly, the audit exercise commenced on 8th October, 2021 but the three months’ period commenced on 22nd March, 2022 when the Petitioner was stated to have submitted the documents called for by the authorities. At this stage, it is necessary to refer to Section 65(4) and Section 65(6) of the OGST Act which read as under:

“65 (4) The audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit:

Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

EXPLANATION.—

For the purposes of this sub-section, the expression “**COMMENCEMENT OF AUDIT**” shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

.....

6. On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.”

7. In view of the Explanation to Section 65 (4) of the OGST Act, the 3-month period within which the audit had to be completed commenced, in the present case, on 22nd March, 2022. In other words, the entire audit exercised had to be completed with the submission of final audit report in terms of Section 65 (6) of the OGST Act on or before 22nd June, 2022.

8. Perhaps knowing that the deadline of 3-month period had already been crossed, the authorities issued both the draft audit report as well as the final audit report on the same day, i.e., 30th June, 2022.

9. On a plain reading of Section 65 (4) together with Section 65 (6) of the OGST Act and Rule 101(4) of the OGST Rules, it is plain that the procedural requirement of the Petitioner having to be given 30 days' time to file a reply to the draft audit report was not followed in the present case. On that short ground, this Court sets aside the final audit report dated 30th June, 2022 issued under Section 65 (6) of the OGST Act.

10. The position would, therefore, revert to the stage, at which the draft audit report was issued on 30th June, 2022. However, even if the Petitioner is afforded an opportunity at this stage to file a reply to the above draft audit report, followed by the authorities issuing the final audit report, the original deadline of three months would be crossed on 21st December 2022. If the exercise is not completed by that date, the entire exercise would be rendered futile. Therefore, the following directions are issued by this Court subject to the condition that the Commissioner will by a reasoned order in terms of the proviso Section 65(4) of the OGST Act extend the time for completion of the audit by the maximum permissible further period of six months in terms thereof.

11. It is accordingly directed as under:

(i) The Petitioner will file its reply to the draft audit report accompanied by all the documents that the Petitioner wishes to rely on not later than 28th November, 2022.

(ii) After considering the reply of the Petitioner, the final audit report will be issued by the Opposite Party Department under Section 65 (6) of the OGST Act not later than 21st December, 2022.

12. It is reiterated that the above directions will be subject to the Commissioner granting extension of time for the issuance of the final audit report in terms of the proviso to Section 65(4) of the OGST Act. In other words, if such extension is not granted, then even the draft audit report (Annexure-1) would stand automatically quashed.

13. The petition is disposed of in the above terms.



S. Behera