

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.29687 of 2023

M/s J.B.Construction and Services, Petitioner
Cuttack

Mr.Subash Chandra Sahoo, Adv

-versus-

The Additional CT & GST Officer, Opposite parties.
Cuttack & others

Mr. Digant Das, Additional Standing Counsel for Tax

CORAM:

DR. JUSTICE S.K. PANIGRAHI

MR JUSTICE G. SATAPATHY

ORDER

27.09.2023

Order No.

01. **I.A. No.14383 of 2023**

1. This matter is taken up through hybrid arrangement.
2. For the reasons stated therein, the application is allowed. Filing of certified copies of the orders under Annexures-1 and 2 is dispensed with. The application is disposed of.

W.P.(C) No. 29687 of 2023 & I.A. No.14288 of 2023

3. This matter is taken up through hybrid arrangement.
4. The present writ petition is being entertained only because the Second Appellate Tribunal has not yet been constituted.
5. The petitioner has filed this writ petition challenging

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Signed by: LINGARAJ BEHERA
Designation: Sr. Stenographer
Reason: Authentication
Location: Orissa High Court, Cuttack
Date: 29-Sep-2023 11:41:37



1st appellate order dated 24.04.2023 by the Joint

Commissioner of State Tax(Appeal)Territorial Range, Cuttack-1, Cuttack by which said authority has not admitted the appeal preferred by the petitioner, as the same is in contravention to Sub- Sections(1) & (4) of Section 107 of the GST Act and has rejected the appeal filed under Sub-Section(1) of Section 107 of the Odisha Goods and Services Tax Act, 2017.

6. Learned counsel for the petitioner contended that the petitioner is not liable to pay the tax and penalty and, as such, against the order passed by the 1st appellate authority though second appeal lies, the 2nd Appellate Tribunal has not yet been constituted. It is contended that the petitioner has already deposited 10% of the demanded tax amount before the first appellate authority and as there is no second appellate forum, this Court should entertain this writ petition.

7. Mr. Digant Das, learned Additional Standing Counsel vehemently contended that since there is delay in preferring the appeal, this Court may not be in a position to condone the delay beyond four months, particularly when appellate authority has not been vested with discretion to condone the delay beyond one month after lapse of three months from the date of communication of order impugned therewith. It is further contended that this case stands in different footing

and as such, the petitioner is liable to pay the tax. In the event the petitioner wants to avail the remedy by preferring appeal before the 2nd Appellate Tribunal then the petitioner is liable to pay 20% balance disputed tax for consideration of its appeal by the 2nd Appellate Tribunal.

8. Further, at this juncture, this Court observes that despite the GST Act is in operation since 1st July 2017 the Tribunal has not been constituted so far which is resulting in pressure on all the High Courts in dealing with such matters. Since creation of Tribunal is a statutory mandate which cannot be ignored, nor can it be given go by. Hence, the Central Government is duty bound to create the GST Tribunal for adjudication of the GST case.

9. In such view of the matter, let notice be issued to the opposite parties as well as Mr. P.K.Parhi, learned counsel for the Central Government taking into account the observation as made in Paragraph 4 who can better explain regarding non constitution of 2nd Appellate Court to deal with the GST matters.

10. Mr.Digant Das, learned Additional Standing Counsel for the department accepts notice for the opposite parties, let required number of copies of the writ petition be served on him within three working days. Reply be filed within two

weeks and rejoinder thereto, if any, be filed before the next date.

11. Further, the notice be issued to Mr. Parhi, learned DSGI who usually appears for the Central Government through Regd. Post with A.D/Speed Post returnable on 30th October, 2023. Requisites shall be filed within three working days.

12. Since the petitioner wants to avail the remedy under the provisions of law by approaching 2nd Appellate Tribunal, which has not yet been constituted, as an interim measure subject to the petitioner depositing entire tax demand within a period of fifteen days from today, the rest of the demand shall remain stayed during the pendency of the writ petition.

13. The I.A. stands disposed of.

14. List this matter on 31st October, 2023.

(Dr.S.K.Panigrahi)
Judge

(G.Satapathy)
Judge

Lingaraj

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