

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) Nos. 17366, 17364 & 17365 of 2022

Sanjay Singal

(In W.P.(C) No.17366 of 2022)

Hardev Chand Verma

(In W.P.(C) No.17364 of 2022)

Petitioners

Ravi Prakash Goyal

(In W.P.(C) No.17365 of 2022)

Mr. Tarun Gulati, Senior Advocate
Assisted by Mr. S. Panda, Advocate
-versus-

Union of India and others

Opposite Parties

Mr. R. Chimanka, Senior Standing Counsel for OP No.3
Mr. T.K. Satapathy, Senior Standing Counsel for OP Nos.2 & 4

**CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN**

**ORDER
03.01.2023**

Order No.

02. 1. These three writ petitions have been filed challenging the Show Cause Notice (SCN) dated 8th February, 2022 issued by the Directorate General of Goods and Services Tax Intelligence calling upon the Petitioners to reply to the allegations in the SCN within a period of 30 days of service of the notice.
2. The impugned SCN has been issued invoking *inter alia* Section 122(1A) of the Central Goods and Services Tax Act, 2017 (CGST Act), which provides for penalties.

3. The SCN has been issued to these Petitioners on the basis that they were associated in various capacities either as ‘Outgoing Chairman & Managing Director’ or ‘Outgoing Director’ or ‘Director’ of M/s. Bhushan Power & Steel Limited (BPSL) and for transactions relating to the period from July 2017 to March 2018, i.e., the period prior to coming into force of the aforementioned provision of the CGST Act.

4. The SCN, issued on 8th February, 2022 was required to be replied within a period of 30 days of the receipt of that notice. The present writ petitions were filed some time in July 2022 and were listed first for hearing before this Court on 7th December, 2022, when at the request of learned counsel for the Petitioners, it was listed for today. Throughout this period, there has been no stay of the proceedings pursuant to the impugned SCN. The Court is nevertheless informed by Mr. Tarun Gulati, learned Senior Counsel appearing for the Petitioners, that notwithstanding the Petitioners not having replied to the SCN till date, the adjudication proceedings have not yet taken place.

5. Mr. Gulati urged that the proceedings initiated against the Petitioners was without jurisdiction as BPSL was itself before the National Company Law Tribunal (NCLT) in proceedings initiated under the Insolvency and Bankruptcy Code, 2016 (IBC) and a Corporate Insolvency Resolution Process (CIRP) was initiated. An Interim Resolution Professional (IRP) appointed in respect of BPSL which ended in approval by the NCLT of an Insolvency Resolution Plan on 5th September, 2019. Relying on the decision of the

Supreme Court of India in ***Ghanashyam Mishra v. Edelweiss Asset Reconstruction Company Ltd. (2021) 9 SCC 657***, Mr. Gulati urges that none of the present Petitioners could be made liable for the dues of BPSL for a period prior to the period covered by the aforementioned Insolvency Resolution Plan. He submitted that the legal position in this regard has been settled by this Court following the decision of ***Ghanashyam Mishra (supra) in Ferro Alloys Corporation Ltd. v. State of Odisha AIR 2022 Ori 17.***

6. As regards the issue of the Court entertaining the present writ petitions at the stage of SCN, Mr. Gulati relied on the decision of the Supreme Court of India in ***Raza Textiles Ltd. v. Income Tax Officer, Rampur (1973) 1 SCC 633*** and certain observations of the Supreme Court in ***Ghanashyam Mishra (supra)***.

7. Having considered the above submissions, the Court is of the view that since the adjudication proceedings are yet to commence, the better course would be to permit the Petitioners to raise all the pleas that they have urged in the present petitions in their reply to the impugned SCN that has been challenged in these writ petitions and for the adjudication proceedings to be concluded in a time-bound manner. The Court also does not consider it appropriate therefore to express any view on any of the contentions raised in these writ petitions at the present stage.

8. Accordingly, the following directions are issued:

(i) Each of the Petitioners will file their replies to the impugned SCN positively on or before 1st March, 2023;

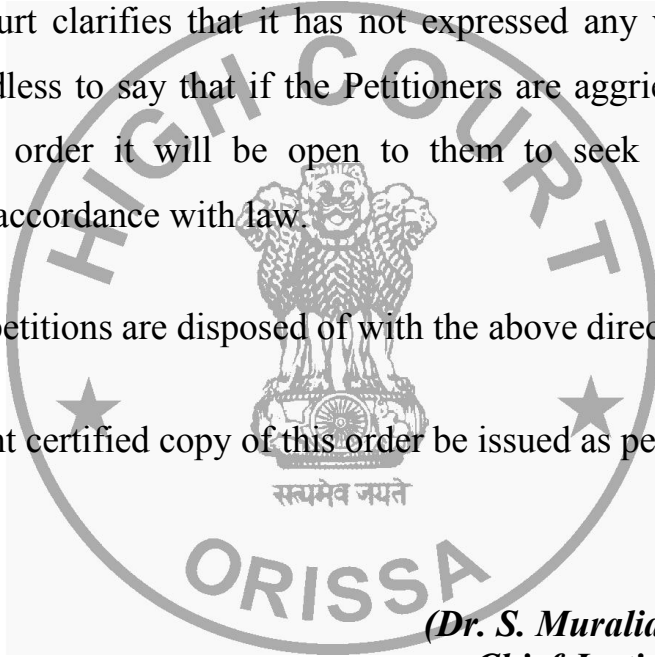
(ii) The Petitioners are permitted to urge all the pleas available to them in law, including the ones urged in the present petitions, in their reply to the impugned SCN.

(iii) The adjudicating authority will take into account all such pleas and deal with them in the adjudication order to be passed after giving the Petitioners an opportunity of hearing and considering their requests, if any, as regards summoning persons or documents in accordance with law.

(iv) The Court clarifies that it has not expressed any view in the matter. Needless to say that if the Petitioners are aggrieved by the adjudication order it will be open to them to seek appropriate remedies in accordance with law.

9. The writ petitions are disposed of with the above directions.

10. An urgent certified copy of this order be issued as per rules.



(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S. Behera