

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 12455 of 2023

M/s Sourav Satapathy, Nayagarh

.....

Petitioner

Mrs. K.R. Choudhury, Adv.

Vs.

*Commissioner of CT & GST,
Odisha and another*

.....

Opposite Parties

Mr. Sunil Mishra, SC [CT & GST]

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE M.S. RAMAN

ORDER

02.05.2023

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mrs. K.R. Choudhury, learned counsel for the petitioner and Mr. Sunil Mishra, learned Standing Counsel for CT & GST.

3. The petitioner has filed this writ petition seeking to quash the demand raised by the authority under Annexures-7 and 8 series considering the payment made through statutory return form GSTR-3B under Annexure-5 series.

4. Mrs. K.R. Choudhury, learned counsel for the petitioner contended that though the petitioner deposited the amount, demand for 2017-18 has been raised by the authority by issue of DRC-07 dated 18.10.2019, which was rectified vide order dated 17.03.2020, which the petitioner claimed that he is not liable to pay. Again, vide notice dated 17.03.2020 pertaining to 2018-19 under Annexure-8 series the demand has been raised vide assessment order dated 29.07.2021 pursuant to notice dated 17.03.2020 issued under Section 63 of the OGST Act. Therefore, the petitioner has approached this Court by filing the present writ petition. She also brought to the notice of the Court the assessment order dated 29.07.2021 and contended that the petitioner has provisional ID for enrolment on the common portal, but the authority has assessed on the basis of provisional ID, which the petitioner was not aware.

5. Mr. Sunil Mishra, learned Standing Counsel for CT & GST

vehemently contended that the demand was raised for 2017-18 vide Annexure-7 dated 17.03.2020 and for 2018-19 vide Annexure-8 dated 29.07.2021, but the petitioner has challenged the same in the year 2023. Therefore, the same is grossly barred by limitation under Section 107 of the OGST Act so as to be entertained in this writ petition. More so, the assessment order dated 29.07.2021 clearly indicates that the petitioner has been allotted with a provisional ID for enrolment on the common portal, but he has failed to enroll on the common portal and, therefore, the assessment has been made. It is further contended that the order of assessment passed by the authority is appealable one and instead of preferring appeal, the petitioner has approached this Court by filing the present writ petition, after long lapse of more than two years, which is not maintainable. Consequentially, dismissal of the writ petition is sought for.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that the petitioner has approached this Court challenging the demands raised by the authority vide Annexure-7 and Annexure-8. The contention of the petitioner is that he has already paid the amount vide Annexure-5 series. If the contention of the petitioner, that he has already paid the demands raised by the authority is accepted, then it is the responsibility of the petitioner to apprise the authority concerned indicating that the demands raised are erroneous and, as such, in view of the dues already paid vide Annexure-5 series, the demand notices be rectified. But instead of doing so, the petitioner waited for three years and, thereafter, approached this Court challenging the assessment orders passed by the authority on 17.03.2020 for 2017-18 and 29.07.2021 for 2018-19. But the assessment order is very clear that the petitioner has been issued with a provisional ID for enrolment on the common portal, but he has failed to enroll on the common portal. Therefore, the provisional certificate of

registration was cancelled as per the provision contained in Section 139 (1) of the CGST/OGST Act. The rate of GST for works contract service has been prescribed in Sl.No.3 of the Notification No.11/2017 Central Tax (Rate) dated 28.06.2017 of Ministry of Finance, Govt. of India and Notification bearing S.R.O. No.305/2017 dated 29.06.2017 of Finance Department, Govt. of Odisha, as amended by Notification No.20/2017 Central Tax (Rate) dated 22.08.2017 and Notification No.24/2017 Central Tax (Rate) dated 21.09.2017 at the rate of 12% (CGST @6% & SGST @6%). Therefore, if the petitioner is aggrieved by such assessment order, he could have preferred appeal within the time specified. Now, at a belated stage, the petitioner could not have approached this Court making request to remand the matter to the Assessing Officer for re-assessment. As such, extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India cannot be exercised, particularly when an alternative remedy is available.

7. In the above view of the matter, the writ petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

Ashok

(M.S. RAMAN)
JUDGE