

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 8935 of 2022

*M/s. Ipinit Vanaspati Ltd.,
Cuttack & Ors.*

.....

Petitioners

*Mr. S. Palit, Sr. Advocate
along with Mr. A. Kejriwal, Advocate*

Vs.

*Principal Commissioner, GST
& Central Excise,
Bhubaneswar, Odisha*

.....

Opposite Parties

*Mr. C.S. Mishra, Sr. Standing
Counsel, GST & Central Excise*

CORAM:

**ACTING CHIEF JUSTICE DR. B.R. SARANGI
MR. JUSTICE MURAHARI SRI RAMAN**

ORDER

10.01.2024

Order No.

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This matter is taken up through hybrid mode.

2. Heard Mr. S. Palit, learned Senior Counsel along with Mr. A. Kejriwal, learned counsel appearing for the petitioners and Mr. C.S. Mishra, learned Senior Standing Counsel appearing for the opposite party.

3. The petitioners have filed this writ petition seeking to quash the order dated 22.11.2021 under Annexure-5, by which the opposite party, while confirming the demand of Central Excise duty of Rs.2,46,93,468/- against the petitioner-company under Rule 9(2) of the Central Excise Rules, 1944 read with Section 11A(2) of the Central Excise Act, 1944, dropped the rest of the demand amount of Rs.5,51,323/-, imposed a penalty of Rs.30,00,000/- under Rule 173Q of Central Excise Rules, 1944, a penalty of Rs.5,00,000/- under Rule 209A of Central Excise Rules, 1944, a penalty of Rs.25,000/- under Rule 209A of Central Excise Rules, 1944 and further a penalty of Rs.10,000/- on the petitioner-company.

4. Mr. Subir Palit, learned Senior Counsel appearing along with Mr. Chittaranjan Das, learned Advocate for the petitioners contended that the opposite party-Principal Commissioner, GST & Central Excise, Bhubaneswar has passed the order impugned dated 22.11.2021 under Annexure-5 without giving opportunity of hearing to the petitioners and without compliance of the principle of natural justice, since certain documents, which were asked for by the petitioners, were not supplied to them. Consequentially, the order impugned, having been passed by the authority without application of mind cannot be sustained in the eye of law. It is contended that once the Customs Excise and Service Tax Appellate Tribunal (CESTAT), Eastern Bench, Kolkata pointed out the errors in the order of the authority and remanded the matter to the authority for fresh adjudication, it was incumbent upon the authority to give opportunity of hearing to the petitioners in compliance of the principles of natural justice and also provide documents asked for by the petitioners for just and proper adjudication. It is further contended that even though learned counsel had entered appearance for participating in the hearing, and due to COVID-19 situation, facility to appear through virtual mode was sought for, they were not not given scope to participate in the hearing. Consequentially, the petitioner-company was grossly deprived of the principles of natural justice. As a result of which, the petitioners have approached this Court by filling this writ petition against the confirmation of demand raised by the authority.

5. Mr. Ch. Satyajit Mishra, learned Senior Standing Counsel appearing for the GST & Central Excise Department vehemently contended that though the Authority has given opportunity of hearing, the petitioners did not avail it. It is further contended that against the order impugned, appeal lies. Instead of preferring appeal, the petitioners have approached this Court directly by filing this writ

petition, which is not maintainable due to availability of alternative remedy.

6. Considering the contentions raised by learned counsel for the parties and after going through the records, this Court finds that vide order dated 06.08.2007, the Customs Excise and Service Tax Appellate Tribunal, Eastern Bench, Kolkata remanded the matter as it found errors in the process of adjudication of the matter. Therefore, it is incumbent upon the authority to give due opportunity of hearing to the petitioners adhering to the direction of the CESTAT. If the authority did not follow the direction of the CESTAT, there is gross laches on the part of the authority in passing the order. Had the petitioners brought the fact to the notice of the CESTAT with regard to laches of the authority, in that event the CESTAT could have considered the same. Without doing so, the petitioners having approached this Court, the writ petition is not maintainable.

7. In the above view of the matter, this Court is not inclined to entertain this writ petition. However, liberty is granted to the petitioners to prefer appeal. It is made clear that this Court has not made any observation with regard to merits of the case.

8. With the above observation, the writ petition stands disposed of.

(DR. B.R. SARANGI)
ACTING CHIEF JUDGE

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(M.S. RAMAN)
JUDGE