

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No.34951 of 2023

M/s Swastik Agency

.....

Petitioner

Mrs. K.R. Choudhury, Advocate

Vs.

***Commissioner of CT & GST,
Cuttack & Ors.***

.....

Opposite parties

***Mr. Sunil Mishra, SC, CT & GST
Organization***

CORAM:

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

ORDER

08.11.2023

Order No.

02

This matter is taken up through hybrid mode.

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

3. The petitioner has filed this writ petition making an innocuous prayer that the order dated 02.07.2021 under Annexure-4 passed by the second appellate authority should be set aside and the petitioner should be given opportunity of hearing, as he has already deposited pre-deposit amount on 10.10.2021.

4. Mr. Sunil Mishra, learned Standing Counsel appearing for the CT & GST Organization vehemently raised objection contending that the petitioner filed the first appeal causing delay of 361 days and also it had not deposited the mandatory amount of 20% of the demanded tax, as required under Section 77(4) of the OVAT Act. It is further contended that after disposal of the first appeal vide order dated 19.09.2018, the pre-deposit amount was paid in March, 2021 after a long lapse of two years. Now the petitioner cannot state that it has paid the pre-deposit amount of 20% of the demanded tax, as required under the law. Therefore, the appeal suffered from 361 days

delay. Apart from the same, the order dated 19.09.2018 was challenged before the Second Appellate Tribunal and the second appellate authority dismissed the said appeal by order dated 02.07.2021 in S.A. No.292(v) of 2018. At this point of time, the petitioner cannot take a different stand. Therefore, the writ petition should be dismissed.

5. Considering the contentions raised by learned counsel for the parties and after going through the records, this Court finds that against the orders passed by the first appellate authority and the second appellate authority under Annexures-2 & 4, the petitioner has approached this Court stating that the first appellate authority while adjudicating the matter has not taken into consideration the pre deposit made under Annexure-3. As it appears, the first appeal has been filed after a delay of 361 and also without furnishing pre-deposit amount, as required under the law. Therefore, the first appellate authority passed order on 19.09.2018, that appeal suffers from delay as well as non-deposit of pre-deposit, as required under the law. The contention raised by learned counsel for the petitioner that the petitioner has deposited pre-deposit under Annexure-3 that has not been taken into consideration while passing the order by the second appellate authority that itself is absolutely a misconceived statement made by the learned counsel for the petitioner. The learned counsel for the petitioner stated that the petitioner has deposited the pre-deposit of 20% of the demanded tax for consideration in second appeal, but not the first appellate authority. If that be so, as per Section 77(4), OVAT Act, the requirement of pre-deposit is for the purpose of entertainment of first appeal, but not the second appeal. Therefore, the Sales Tax Tribunal is correct in passing order dated 02.07.2021.

6. In that view of the matter, the contention raised by learned counsel for the petitioner that the pre deposit has been made in

connection with the second appeal that is also misconceived one. At this stage, learned counsel for the petitioner stated that the pre-deposit has been made towards entertainment of the first appeal. It is also made clear that the petitioner has filed the writ petition for grant of following reliefs:

“In the facts and under the circumstances stated above, the Hon’ble Court would graciously be pleased to admit this Writ application and issue;

- a) Rule NISI calling upon the opp. Parties to show cause as to why the impugned Order under Annexure-4 shall not be set aside/quashed;*
 - b) And if the O.P. fail to show cause or show insufficient cause make the said Rule absolute by issuing a Writ in the nature of Certiorari quashing the impugned Annexure-4;*
 - c) Issue a writ in the nature of Mandamus restraining the Opposite Parties from proceeding against the petitioner w.r.t. Annexure-4 during pendency of this writ application.*
 - d) Issue any appropriate writ(s)/direction(s)/order(s) deemed fit in the fact and circumstances of the case.*
- And for which act of your kindness, the petitioner shall remain ever pray as in duty bound.”*

On perusal of the aforementioned prayer (s), the petitioner has never asked to quash the order of the first appellate authority. Hence, the writ petition has no merit.

7. In view of such position, this Court is not inclined to entertain this writ petition. Accordingly, the same is dismissed.

Alok

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

(M.S. RAMAN)
JUDGE