



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.13535 of 2024

M/s. Sundar Pravat Das

.....

Petitioner

Mr. S.K. Das, Advocate

Vs.

***Additional Commissioner of State
Tax (Appeal), Cuttack and others***

.....

Opposite Parties

Standing Counsel for the Revenue

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE G. SATAPATHY

ORDER

18.06.2024

Order No.

01.

This matter is taken up by hybrid mode.

2. Heard learned counsel for the parties.

3. The petitioner has approached this Court invoking provisions of Articles 226 and 227 of the Constitution of India challenging the first appellate orders, whereby the appeals have been rejected being barred by period stipulated in sub-section (1) read with sub-section (4) of Section 107 of the OGST/CGST Act. It is submitted that as yet 2nd appellate Tribunal has not been constituted; as such they are prevented from availing alternative remedy provided under Section 112 of the said Act.

4. During pendency of these writ petition, the Ministry of Finance, Department of Revenue (Central Board of Indirect Taxes and Customs) has issued Notification No.53/2023-Central Tax [S.O.4767(E)], dated 2nd November 2023, by which it has been notified that taxable persons, who could not file an appeal on or before the 31st day of March, 2023 against the order passed under section 73 or 74 of the Central Goods and Services Tax Act, 2017 by the proper officer within the time period specified in sub-section (1)



of section 107 read with sub-section (4) of section 107 of the Act, and the taxable persons whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in section 107, as the class of persons, shall follow certain special procedure for filing appeals in such cases. The relevant portion of the said Notification reads as under:

“S.O.4767(E)-In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies taxable persons who could not file an appeal against the order passed by the proper officer on or before the 31st day of March, 2023 under section 73 or 74 of the said Act (hereinafter referred to as the said order), within the time period specified in sub-section (1) of section 107 read with sub-section (4) of section 107 of the said Act, and the taxable persons whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in section 107, as the class of persons (hereinafter referred to as the said person) who shall follow the following special procedure for filing appeals in such cases: 2. The said person shall file an appeal against the said order in FORM GST APL-01 in accordance with subsection (1) of Section 107 of the said Act, on or before 31st day of January 2024:

Provided that an appeal against the said order filed in accordance with the provisions of section 107 of the said Act, and pending before the Appellate Authority before the issuance of this notification, shall be deemed to have been filed in accordance with this notification, if it fulfills the condition specified at para 3 below.

3. No appeal shall be filed under this notification, unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to twelve and a half per cent. of the remaining amount of tax in dispute arising from the said order, subject to a



maximum of twenty-five crore rupees, in relation to which the appeal has been filed, out of which at least twenty percent should have been paid by debiting from the Electronic Cash Ledger.

4. No refund shall be granted on account of this notification till the disposal of the appeal, in respect of any amount paid by the appellant, either on their own or on the directions of any authority (or) court, in excess of the amount specified in para 3 of this notification before the issuance of this notification, for filing an appeal under subsection (1) of Section 107 of the said Act.

5. No appeal under this notification shall be admissible in respect of a demand not involving tax.

6. The provisions of Chapter XIII of the Central Goods and Service Tax Rules, 2017 (12 of 2017), shall mutatis mutandis, apply to an appeal filed under this notification.

[F. No.CBIC-20001/10/2023-GST]
(Raghavendra Pal Singh) Director”

5. In view of the aforesaid Notification, the impugned orders, against which the writ petition is filed, is set aside and the matter is now remanded to the Appellate Authority to proceed with it in accordance with law. As such, by virtue of either of the interim order passed by this Court or in suo motu the Petitioner, who has deposited the entire amount of tax that should be taken into account while deciding the cases on merit and the refund, if any, would be subject to the outcome of the appeal itself.

6. With the above observation and direction, the writ petition stands disposed of.

(DR. B.R. SARANGI)
JUDGE

(G. SATAPATHY)
JUDGE