



ORISSA HIGH COURT: CUTTACK

AFR

W.P.(C) NO. 9545 OF 2024

In the matter of an application under Articles 226 and 227 of the Constitution of India.

M/s. Laxmi Construction Petitioner

-Versus-

State Tax Officer,
CT & GST Circle, Barbil Opp. Party

For petitioner : M/s. Kajal Sahoo, R. Ghosh,
S. Sahu, U. Sahu and
R. Panigrahi, Advocates

For opp. party : Mr. Sunil Misra, Standing
Counsel for Revenue along with
Mr. Sheshadeba Das, Addl.
Standing Counsel, CT & GST.

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MR JUSTICE G. SATAPATHY**

Date of Judgment : 09.05.2024

DR. B.R. SARANGI, J. The petitioner has filed this writ petition seeking to quash the order dated 07.12.2021 passed under Section 74 of the Odisha Goods and Services Tax Act, 2017 by the CT & GST Officer, Barbil



Circle, Jajpur, Odisha under Annexure-4, by which a demand of Rs.1,25,240.00 has been raised against the petitioner towards tax, interest and penalty.

2. The factual matrix of the case, in brief, is that the petitioner is a proprietorship concern and is registered under the Goods and Services Tax Act, 2017. The opposite party issued a show cause notice on 01.10.2021 to the petitioner under Section 74 of the Odisha Goods and Services Tax Act, 2017 (for short "OGST Act, 2017") alleging that although the petitioner has received an amount of Rs.4,14,427/- for execution of works contract, as ascertained from the WAMIS Data, but the petitioner has entered 'NIL' in the GSTR 3B returns filed by it for the period December, 2018, for which the petitioner is liable to pay Rs.1,23,398.00. The petitioner filed its reply contending therein that it had received the payment for the period December, 2018 on 28.12.2018, which is after the due date of filing of GSTR 3B for the said month. Consequentially, the petitioner has shown the said transaction for the subsequent tax



period in the GSTR 3B filed by the petitioner for the month of February, 2018 which is within the Financial Year : 2018-19 and falls before the due date of filing of Annual return for the aforesaid period. The petitioner, after receipt of the show cause notice dated 01.10.2021, brought the aforesaid facts and documents to the notice of the opposite party and explained the same for such filing of 'NIL' return for the period December, 2018. The opposite party, however, passed an order 07.12.2021 under Section 74 (9) of the OGST Act, 2017 directing the petitioner to make payment of an amount of Rs.1,25,240/- by 07.01.2022, failing which recovery proceedings would be initiated against the petitioner under Section 79 of the OGST Act, 2017. Hence, this writ petition.

3. Ms. Kajal Sahu, learned counsel for the petitioner contended that even though the order was passed on 07.12.2021, the same was brought to the notice of the petitioner very recently, for which the petitioner could not avail the alternative remedy and



approached this Court challenging the same. She further contended that the order impugned has been passed without verifying the returns filed by the petitioner and, as such, the same is illegal, arbitrary and suffers from violation of principle of natural justice.

4. Mr. Sunil Mishra, learned Standing Counsel for Revenue contended that since statutory remedy of filing appeal is available to the petitioner, as against the order impugned, the present writ petition is not liable to be entertained. That apart, much after expiry of the prescribed period of limitation, the petitioner having approached this Court by filing the present writ petition, the same is not maintainable. In support of such stand, he has placed reliance on the decision of the apex Court in the case of the **Assistant Commissioner (CT) LTU, Kakinada & Ors. v. M/s. Glaxo Smith Kline Consumer Health Care Limited** [Civil Appeal No.2413/2020 arising out of SLP(C) No.12892/2019] and the decision of the High Court of Judicature for Rajasthan at Jodhpur in the case of **Malik Khan v Chief**



Commissioner, GST and Central Excise and another

(D.B. Civil Writ Petition No. 2785 of 2023 decided on 03.05.2023).

As regards the contention of the petitioner with regard to service of the impugned order on the petitioner, Mr. Mishra contended that Section 169 (1) (d) of the OGST Act, 2017 provides that if the order is made available on the common portal, the same will be treated to have been served on the petitioner. Since the petitioner is a registered dealer and the order was made available in the common portal, the petitioner cannot raise the issue that it has no knowledge of passing of said adjudicatory order.

5. This Court heard Ms. Kajal Sahoo, learned counsel for the petitioner and Mr. Sunil Mishra, learned Standing Counsel for Revenue in hybrid mode and perused the records. Considering the nature of dispute involved, with the consent of learned counsel for the



parties, the writ petition is being disposed of finally at the stage of admission.

6. On perusal of the records, it appears that the impugned order was passed on 07.12.2021 under Section 74 of the OGST Act, 2017 by the adjudicatory authority, which has been challenged before this Court in the present case only on 18.04.2024. Thus, the order having been passed on 07.12.2021, the present writ petition has been filed after the period of limitation prescribed under the Act. It is also not in dispute that against the order impugned the petitioner has not exhausted the alternative remedy by way of filing appeal, as available under the statute. As such, the present writ petition, having been filed without availing the alternative remedy, cannot be entertained.

7. In ***Assistant Commissioner (CT) LTU, Kakinada*** (supra), the apex Court at paragraphs-14 and 15 held as follows:-

“14. A priori, we have no hesitation in taking the view that what this Court cannot do in exercise of its plenary powers under Article 142 of



the Constitution, it is unfathomable as to how the High Court can take a different approach in the matter in reference to Article 226 of the Constitution. The principle underlying the rejection of such argument by this Court would apply on all fours to the exercise of power by the High Court under Article 226 of the Constitution.

15. *We may now revert to the Full Bench decision of the Andhra Pradesh High Court in Electronics Corporation of India Ltd. (supra), which had adopted the view taken by the Full Bench of the Gujarat High Court in Panoli Intermediate (India) Pvt. Ltd. v. Union of India and Ors. and also of the Karnataka High Court in Phoenix Plasts Co. v. Commissioner of Central Excise (Appeal-I), Bangalore. The logic applied in these decisions [2023/RJJD/012624] (7 of 8) [CW-2785/2023] proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as Section 31 of the 1995 Act, cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the Assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction-by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and Rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three-Judge Bench of this Court in Oil and Natural Gas*



Corporation Limited (supra). In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose."

8. Relying on the aforesaid decision of the apex Court, the High Court of Judicature for Rajasthan in Malik Khan (supra) dismissed the writ petition which was filed after eight months of expiry of limitation.

9. So far as communication of the order is concerned, Section 169 (1) (d) provides as follows:-

"169. Service of notice in certain circumstances:-

(1) Any decision, order, summons, notice or other communication under this Act or the rules made there under shall be served by any one of the following methods, namely:-

xxx xxx xxx

*(d) by making it available on the common portal;
or"*

In view of the aforesaid provision, it is made clear that even though the petitioner has not been communicated with the order physically, but since the same was made available on the common portal, it is deemed to have



been served on him. Therefore, such plea is of no use for the petitioner.

10. In view of the foregoing discussions and by applying the aforesaid principles to the present case, this Court is of the considered view that since the petitioner has not filed any statutory appeal before the appellate authority within the limitation period and has directly filed this writ petition before this Court after two years and five months of passing of the impugned order, the writ petition filed by the petitioner cannot be entertained as being not maintainable.

11. Thus, the writ petition merits no consideration and the same is accordingly dismissed. But, however, in the facts and circumstances of the case, there shall be no order as to costs.

(DR. B.R. SARANGI)
JUDGE

G. SATAPATHY, J. I agree.

(G. SATAPATHY)
JUDGE

Orissa High Court, Cuttack
The 09th May, 2024, Arun