



IN THE HIGH COURT OF ORISSA, AT CUTTACK

W.P.(C) No. 14540 of 2024

*M/s. Atulya Minerals, Jurudi,
Jajang, Kendujhar*

.....

Petitioner

Mr. J.M. Patnaik, Advocate

Vs.

*Commissioner of State Tax, Cuttack
and another*

.....

Opposite Parties

Mr. Sunil Mishra, Standing Counsel for Revenue

CORAM:

**DR. JUSTICE B.R. SARANGI
MR. JUSTICE G. SATAPATHY**

**ORDER
20.06.2024**

**Order No.
01**

This matter is taken up through hybrid mode.

2. Heard Mr. J. Patnaik, learned counsel for the petitioner and Mr. Sunil Mishra, learned Standing Counsel for Revenue.

3. The petitioner has filed this writ petition seeking to quash the letter dated 30.03.2024 under Annexure-1 and the letter dated 20.05.2024 under Annexure-5 issued by the Deputy Commissioner of State Tax and to declare that the blocking of ITC in question is bad in law,

4. Mr. J.M. Patnaik, learned counsel for the petitioner contended that the orders impugned having been passed by the Deputy Commissioner of State Tax, CT & GST Enforcement, the said orders cannot be sustained in the eye of law as he has no jurisdiction to pass such orders. He further contended that, the orders impugned also have been passed without complying the principles of natural justice, for which the same should be quashed. In support of his contention, reliance has been placed on the circular dated 02.11.2021 under Annexure-2 issued by the Principal Commissioner (GST),



Government of India, to the Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All).

5. Mr. Sunil Mishra, learned Standing Counsel for the Revenue contended that the reliance placed to the circular of the Central Government under Annexure-2 has no application to the State GST, because the circular has been specifically addressed to the Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All). The above circular is applicable to the Central GST and not to the State GST, whereas the present case is covered by the OGST Rules, 2017, more particularly Rule 86A (1) of the said Rules, wherein it has been indicated that the Commissioner or an officer authorized by him in this behalf not below the rank of an Assistant Commissioner can pass the order. In the instant case, the Deputy Commissioner, who is the higher officer in rank to the Assistant Commissioner having passed the orders impugned, it cannot be said that the Deputy Commission has no jurisdiction to pass such order. So far as compliance of principle of natural justice is concerned, he relied on the orders passed by this Court in W.P.(C) No. 25433 of 2023 decided on 22.09.2023 (*M/s. Bizzare Ispat Pvt. Ltd, Chhatisgarh v The Commissioner of CT & G.S.T., Cuttack*) and in W.P.(C) No. 22236 of 2023 decided on 31.07.2023 (*M/s. Innojet Projects Pvt. Ltd., Khordha v. The Commissioner of Commercial Taxes & Goods & Services Tax, Cuttack & Ors*). According to him, in view of the aforesaid decisions, the petitioner cannot raise the ground of non compliance of principle of natural justice in the instant case.

6. Having heard learned counsel for the parties, as it appears, the orders impugned relates to State GST and the same having been



passed by the Deputy Commissioner of the State Taxes, the contention raised that he has no jurisdiction to pass the order, cannot be a justifiable ground in view of Rule 86 A (1) of the OGST Rules, 2017. For a just reference, Rule 86 A (1) of the OGST Rules, 2017 is quoted herein below:-

86 A

Conditions of use of amount available in electronic credit ledger-

(1) The Commissioner or an officer authorized by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as-

7. In view of the aforesaid provision, it is made clear that the Commissioner or an officer authorized by him in this behalf, not below the rank of an Assistant Commissioner, can pass the order and in the instant case, the impugned orders having been passed by the Deputy Commissioner, who is higher in rank to Assistant Commissioner, it is well within his jurisdiction to pass such orders. So far as the contention raised with regard to the Circular issued by Government of India dated 02.11.2021 under Annexure-2 is concerned, that *ipso facto* can only be applicable to the Central GST and not to the State GST unless the said circular is adopted by the State Government by making a declaration. Nothing has been placed on record to show that the said circular has been adopted by the State Government for State GST.

8. In view of such position, the claim made by the petitioner that the orders impugned under Annexures-1 and 5 have been passed by an officer having no jurisdiction, cannot be sustained in the eye of law. So far as compliance of principle of natural justice is concerned



the same has already been set at rest by this Court in the case of *M/s. Bizzare Ispat Pvt. Ltd.* and *M/s. Innojet Projects Pvt. Ltd., Khordha* (supra).

9. In view of the above, this Court is not inclined to entertain the writ petition, which is accordingly disposed of.

(DR. B.R. SARANGI)
JUDGE

Arun

(G. SATAPATHY)
JUDGE