

Orissa High Court

Orissa High Court Case Details

Case Type	: WP(C)		
Filing Number	: 278/2020	Filing Date:	06-01-2020
Registration Number	: 278/2020	Registration Date:	07-01-2020
CNR Number	: ODHC01-000627-2020		

Case Status

First Hearing Date	:
Decision Date	: 09th January 2020
Case Status	: CASE DISPOSED
Nature of Disposal	: Contested--Disposed Off
Coram	: 2963MR. JUSTICE BISWAJIT MOHANTY , MR. JUSTICE B. P. ROUSTRAY
Bench	: Division Bench
State	: WEST BENGAL
District	: Kolkata
Judicial	: Civil Section
Causelist Name	: Supplementary(Daily)

Petitioner and Advocate

1) M/S.SERAJUDDIN AND CO. Advocate- SARADA PRASANNA SARANGI,D.K.DAS, V.MAHAPATRA, S.SAHU, S.SIVAD.K.DAS, V.MAHAPATRA, S.SAHU, S.SIVA 2) SERAJ YUSHA

Respondent and Advocate

1) UNION OF INDIA 2) STATE OF ODISHA 3) COMMISSIONER OF COMMERCIAL TAXES,ODISHA 4) STATE TAX OFFICER,CT AND GST CIRCLE,BARBIL
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Acts

Under Act(s)	Under Section(s)
CONSTITUTION OF INDIA, 1950	226,227

IA Details

IA Number	Party	Date of Filing	Next Date	IA Status
IA/119/2020	M/S.SERAJUDDIN AND CO. UNION OF INDIA	06-01-2020	--	Pending

Linked Cases

Filing Number	Case Number
WP(C)/278/2020 (main)	WP(C)/278/2020 (main) (Disposed)
WP(C)/288/2020	WP(C)/288/2020 (Disposed)
WP(C)/386/2020	WP(C)/386/2020 (Disposed)

History of Case Hearing

Cause List Type	Judge	Business On Date	Hearing Date	Purpose of hearing
Supplementary(Daily)	MR. JUSTICE C.R.DASH , MR. JUSTICE BISWAJIT MOHANTY		09-01-2020	FRESH ADMISSION
	MR. JUSTICE BISWAJIT MOHANTY , MR. JUSTICE B. P. ROUSTRAY			Disposed
	MR. JUSTICE C.R.DASH , MR. JUSTICE BISWAJIT MOHANTY			Disposed
	MR. JUSTICE C.R.DASH , MR. JUSTICE BISWAJIT MOHANTY		09-01-2020	Revoked

Orders

Order	Judge	Order Date	Order Details
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Number			
1	MR. JUSTICE BISWAJIT MOHANTY,MR. JUSTICE B. P. ROUTRAY	09-01-2020	

Category Details

Category	INDIRECT TAXES MATTERS (17)
Sub Category	CENTRAL EXCISE & SALT ACT, 1944 (2)

OBJECTION

Sr.No.	Scrutiny Date	OBJECTION	Compliance Date	Receipt Date
1	07-01-2020	All Objections are Complied	07-01-2020	--

05. 09.01.2020

Heard Mr. Ashok Mohanty, learned Senior Advocate appearing for the petitioners and Mr. Sunil Mishra, learned Additional Standing Counsel appearing for the Commercial Tax-State.

According to Mr. Mohanty, a show cause notice dated 04.11.2019 vide Annexure-3 was issued to the petitioners under Section 73 of the OGST Act, 2017 for non-payment of OGST/CGST for the period January, 2019 to March, 2019 making two things clear. First, that the reply has to be submitted to the show cause notice by 04.12.2019 and secondly if the petitioner No.1 wishes to be heard in person before the case is adjudicated, the same should be intimated in writing. Upon receipt of show cause notice, vide letter dated 03.12.2019 under Annexure-4, the petitioner No.1 prayed for four weeks time to file the reply and further on 04.12.2019 also vide Annexure-4, the petitioners intimated their wishes to be heard in person. However, without responding to the prayer of the petitioners for time and without giving them an opportunity of personal hearing, the impugned orders were passed on 09.12.2019 and 10.12.2019 vide Annexure-5 series, which are under challenge here.

In this context, Mr. Mohanty, learned Senior Advocate draws the attention of this Court to sub-sections 4 & 5 of Section 75 of the OGST Act, 2017 for short 'the Act'. According to him, as per sub-section 5 of Section 75 of "the Act", if sufficient cause is shown for grant of time, the proper officer should grant time. According to him, the petitioner No.1 in his letter dated 03.12.2019 under Annexure-4 has shown

sufficient cause. Further even as per proviso to sub-section 5 of Section 75, such adjournment can also be granted for three times. In the instant case without passing any order on the prayer/petition for adjournment, the impugned orders under Annexure-5 series have been passed. Relying sub-section 4 of Section 75 of “the Act”, he submits that whenever an assessee makes a request for granting an opportunity of hearing, the same should be given to him. In the present case, despite such request under Annexure-4, the impugned orders have been passed without giving such opportunity. Accordingly, he submits that there has been a violation of statutory requirements and this vitiates the entire decision-making process. For these reasons, the impugned orders should be set aside.

Mr. Mishra, learned Additional Standing Counsel, Commercial Taxes vehemently defends the impugned orders and submits that no illegality has been committed while passing the same. However, upon query, he does not dispute receipt of letter dated 3.12.2019 under Annexure-4 and Form GST DRC – 06 under Annexure-4 by the authorities.

A perusal of sub-section 4 of the Section 75 of “the Act” makes it clear that whenever an assessee, chargeable with tax and penalty makes a request in writing for opportunity of hearing, such an opportunity should be granted to him. Here, admittedly though a request was made on 4.12.2019 under Annexure-4 for personal hearing, however, without granting the same the impugned orders have been passed. Further, despite receipt of the request dated 3.12.2019 under Annexure-4 for grant of additional time for filing show

cause, without passing any order on the same, the impugned orders have been passed.

In such background, we have no hesitation in coming to a conclusion that the impugned order under Annexure-5 Series have been passed in violation of the statutory requirements as indicated above. Therefore we quash the impugned orders and remand the matter back to State Tax Officer, CT & GST Circle, Barbil – opposite party no.4 to proceed with the matter strictly in accordance with law. The petitioners are also directed to cooperate in the proceeding.

The writ application is disposed of.

Issue urgent certified copy.

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Biswajit Mohanty,J.

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B.P. Routray,J.