

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.34787 of 2022

Shri D. Murali Mohan Patanaik ***Petitioner***

Mr. J. Pattanaik, Advocate

-versus-

Secretary to Government of Odisha, Opposite Parties
Finance Department and others

Mr. Sunil Mishra, A.S.C. for the Revenue

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

Order No.

ORDER
31.01.2023

02. 1. The challenge in the present petition is to a notice dated 19th February 2022 issued by the Deputy Commissioner of CT and GST to the Petitioner requiring him to produce the documents related to stock retention and vehicles used in generation of e-way bills for inward and outward supplies as well as to the intimation dated 31st March 2022 of the tax ascertained as payable under Section 73 (5) of the Odisha Goods and Service Tax Act (OGST Act) including liability under the Central Goods and Service Tax Act (CGST Act) for the period October 2018 to March 2019, April 2019 to February 2020 and April 2020 to March 2021.
2. The further prayer is that the Opposite Parties should be asked for refund of tax and to allow the Petitioner to prefer an appeal in the portal against the orders at 'Annexure-1' series.
3. The background facts are that the Petitioner is a registered dealer and he is a distributor of "Grasim Cement" for Koraput District. It

is stated that four vehicles loaded with 'Grasim Cement' were detained by the authorities asking for production of documents. Although the Petitioner states in para 6 of the present petition that payment of the demanded tax was made "on protest in order to release the detained vehicle", the fact remains that no such letter recording any 'protest' has been produced before this Court. It certainly was not made at the time of payment. What has been shown to the Court is a letter written by the Petitioner to the Department on 6th July 2022 disowning the payment of tax and interest. The exact wording of the said letter reads as under:

"Sub: Case Proceeding Reference No. AD2109210041210-
Payment/Submissions in response to liability intimated under
Section 73 (5)/74(5)-reg.

Please refer to Intimation ID ZD210322020836W in
respect of Case ID AD2109210041210 vide which the
liability of tax payable as ascertained under section 73
(5)/74 (5) was intimated.

In this regard,

The said liability is not acceptable and the submissions
regarding remaining liability are attached/given below:

Reply"

4. In other words even the above letter does state that the payment made earlier was under protest.

5. At this juncture, it is necessary to note that under Rule 142 (1A) and (2A) of the OGST Rules, it is open to a person against whom a demand is raised to make a 'partial payment' and also to "file any submissions against the proposed liability" in Part-B of Form-GST DRC-01A. The Petitioner did not opt for the above procedure. Instead, he made the full payment of the tax demanded by the Department without any protest. It is only three months after

making such payment that he chose to write a letter disclaiming any liability and neither saying that the earlier payment was made under protest nor demanding refund of the payments so made.

6. On 1st August 2002, the Petitioner was communicated the following letter by the Department:

FORM GST DRC-05
[See rule 142 (3)]

Reference No: ZD2108220004243 Date:01/08/2022

To

GSTIN/Temporary Id: 21AFKPD0058G2Z1
Name: MURALIMOHAN PATNAIK DONKADA
Address: RLY STATION ROAD, JEYPORE,
RLY STATION ROAD, JEYPORE, Koraput,764001

Tax Period: OCT 2018 to MAR 2019 F.Y. 2018-2019
SCN Ref. No.: ZD210322020836W Date:31/03/2022
ARN: AD2103220124008 Date:31/03/2022

Intimation of Conclusion of proceedings

This has reference to the show cause notice referred to above. As you have paid the amount of tax and other dues mentioned in the notice along with applicable interest and penalty in accordance with the relevant provisions of Act, the proceedings initiated vide the said notice are hereby concluded.

Signature:
Name: PRAN SHANKAR DEOTA
Designation/Status:Deputy
Commissioner of CT & GST
Jurisdiction: Odisha

7. Initially, Mr. Pattanaik, learned counsel for the Petitioner repeatedly urged that he was aggrieved by the above letter. When it was pointed out to him that there was nothing in the letter about which he can be aggrieved, his contention was that the Petitioner

had actually made payments under protest and was, on account of the above letter, unable to file any appeal against the demands already raised and which had been paid by the Petitioner.

8. If the Petitioner wanted to contest the demand raised, he ought to have adopted the procedure already outlined under Rule 142 (1A) of the OGST Rules. For reasons best known to him, he did not opt for that procedure. Also, till date, he has actually not registered any protest with the Department which ought to have been made contemporaneous with the making of the payment. Three months after making such payment, he has sent a vague letter contending that the liability is “not acceptable” which is neither here nor there since the Petitioner had already made the full payment of the tax demanded.

9. The Petitioner has by his own conduct disabled himself from availing the remedy available to him in law, if indeed the payment was made under protest. Since, there is no material to support the contention of the Petitioner that he made payment of the demanded tax under protest, the Court is not persuaded to accept such submission at this stage.

10. None of the reliefs prayed for can be granted. The writ petition is accordingly dismissed.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge