

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 15244 of 2023

And

I.A. No. 7014 of 2023

*Nalinikanta Barik*

.....

*Petitioner*

*Mr. B.P. Mohanty, Adv.*

Vs.

*Commissioner of CT & GST,  
Banijyakar Bhawan, Cuttack and  
Ors.*

.....

*Opposite Parties*

*Mr. Diganta Dash, ASC for CT & GST  
Organization*

**CORAM:**

**DR. JUSTICE B.R. SARANGI**

**MR. JUSTICE M.S.RAMAN**

**ORDER**

**15.05.2023**

**Order No.**

01.

This matter is taken up through hybrid mode.

2. The present writ petition is being entertained only because the Second Appellate Tribunal has not yet been constituted.

3. The petitioner has filed this writ petition challenging the 1<sup>st</sup> appellate order dated 29.04.2023 passed by the Additional Commissioner of State Tax, Territorial Range, Balasore by which said authority has not admitted the appeal preferred by the petitioner, as the same is in contravention to sub-sections (1) & (4) of Section 107 of the GST Act and has rejected the appeal filed under sub-Section (1) of Section 107 of the Odisha Goods and Services Tax Act, 2017.

4. Mr. B.P. Mohanty, learned counsel for the petitioner contended that the petitioner is not liable to pay the tax and penalty and, as such, against the order passed by the 1<sup>st</sup> appellate authority though second appeal lies, the 2<sup>nd</sup> appellate tribunal has not yet been constituted. It is contended that the petitioner has

already deposited 10% of the demanded tax amount before the first appellate authority and in the meantime entire tax demand stands deposited. As there is no second appellate forum, this Court should entertain this writ petition.

5. Mr. Diganta Dash, learned Additional Standing Counsel vehemently contended that since there is delay in preferring the appeal, this Court may not be in a position to condone the delay beyond four months, particularly when appellate authority has not been vested with discretion to condone the delay beyond one month after lapse of three months from the date of communication of order impugned therewith. It is further contended that this case stands in different footing and, as such, the petitioner is liable to pay the tax. In the event the petitioner wants to avail the remedy by preferring appeal before the 2<sup>nd</sup> appellate tribunal then the petitioner is liable to pay 20% balance disputed tax for consideration of its appeal by the 2<sup>nd</sup> appellate tribunal.

6. Issue notice to the opposite parties.

7. Mr. Diganta Dash, learned Additional Standing Counsel for the Department accepts notice for the Opposite parties, let required number of copies of the writ petition be served on him within three working days. Reply be filed within two weeks and rejoinder thereto, if any, be filed before the next date.

8. Since the petitioner wants to avail the remedy under the provisions of law by approaching 2<sup>nd</sup> appellate tribunal, which has not yet been constituted, as an interim measure subject to verification of deposit being made as stated by the learned counsel for the Petitioner, the rest of the demand shall remain stayed during the pendency of the writ petition.

9. I.A. stands disposed of.
10. List this matter along with W.P.(C) No.6684 of 2023 on the date fixed therein.

**(DR. B.R. SARANGI)**  
**JUDGE**

**(M.S. RAMAN)**  
**JUDGE**

*Laxmikant*

