

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No.2695 of 2024

M/s. OSL Securities Limited **Petitioner**
Mr. Jagabandhu Sahoo, Sr. Adv.
along with Ms. K. Sahoo, Advocate

Union of India & others **Opposite parties**
Mr. P.K. Parhi, DSGI (for O.P.1)
Mr. Sunil Mishra, Standing Counsel
for the Revenue (for O.Ps.3-5)

Vs.

CORAM:

ACTING CHIEF JUSTICE DR. B.R. SARANGI
MR. JUSTICE MURAHARI SRI RAMAN

ORDER

06.02.2024

W.P.(C) No.2695 of 2024

And

I.A. No.765 of 2024

Order No.

01.

This matter is taken up through hybrid mode.

2. The petitioner by way of filing the writ petition has challenged the vires of Clause (c) of Sub-section (2) of Section 16 of the Odisha Goods and Services Tax Act, 2017 (in short, “the OGST Act”)/ Central Goods and Services Tax Act, 2017 (in short, “the CGST Act”) which provides for a registered person is entitled to credit of input tax, if the tax charged in respect of supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply. The petitioner, therefore, challenged the order dated 27.12.2023 passed by Assistant Commissioner of State Tax, Cuttack-1, Central Circle under Section 73 of the CGST/OGST Act raising a demand to the tune of Rs.11,56,818.00, comprising tax of Rs.5,45,204/-, interest of Rs.5,57,094.00 and penalty of

Rs.54,520.00 with respect to tax periods July, 2017 to March, 2018.

3. It is contended by Mr. Jagabandhu Sahoo, learned senior counsel appearing for the petitioner that by invoking provisions of Section 73 of the OGST/CGST Act, the petitioner has been assessed to tax for the tax period from July, 2017 to March, 2018 on the ground that the supplier has not shown the said transaction in its Form-GSTR-3B. It is further submitted that it is inconceivable that for the default on account of supplier, the Petitioner-recipient, who has already suffered tax can be saddled with further levy of tax, interest and penalty.

4. Mr. Sunil Mishra, learned Standing Counsel appearing for the Revenue though made an attempt to convince the Court that there is availability of remedy of appeal under Section 107 of the OGST/CGST Act, since vires of the statutory provision has been challenged on the anvil of Articles 14 and 19(1)(c) read with Article 265 of the Constitution of India, he prayed to grant opportunity to file counter affidavit.

5. Issue notice to the opposite parties. One extra copy of the writ petition be served on Mr. P.K. Parhi, learned DSGI and three extra copies of the brief be served on Mr. Sunil Mishra, learned Standing Counsel appearing for the Revenue by tomorrow (07.02.2024) enabling them to obtain instruction in the matter and file counter affidavit.

6. As an interim measure, it is directed that the petitioner shall deposit 20% of the tax as determined vide assessment order dated 17.12.2023 passed under Section 73 of the OGST/CGST Act within a period of four weeks from today. In the event of such deposit, no coercive action shall be taken against the petitioner till

disposal of the writ petition.

7. List this matter along with W.P.(C) No.13302 of 2022 on the date fixed therein.

Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
ACTING CHIEF JUSTICE

(M.S. RAMAN)
JUDGE

MRS

