

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 6684 of 2023

And

I.A. No. 2975 of 2023

*M/s Pravat Kumar Choudhury,  
Cuttack*

.....

*Petitioner*

*Mr. B. Panda, Adv.*

Vs.

*The Addl. State Tax Officer, CT &  
GST, Cuttack-II Circle and Ors.*

.....

*Opposite Parties*

*Mr. Sunil Mishra, ASC [CT & GST]*

**CORAM:**

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

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

**ORDER**

**21.03.2023**

**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 24.02.2023 passed by the Joint Commissioner of State Tax (Appeal), Territorial Range, Cuttack-II, Cuttack, 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. Panda, 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 is willing to deposit 40% of the remaining amount of tax before the authority and as

there is no second appellate forum, this Court should entertain this writ petition.

5. Mr. Sunil Mishra, learned Addl. 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% of balance disputed tax for consideration of its appeal by the 2<sup>nd</sup> appellate tribunal.

6. Issue notice to the opposite parties.

7. Since Mr. Sunil Mishra, learned Addl. 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 and, as such, learned counsel for the petitioner informs the Court that at the stage of first appeal, 10% of the tax has already been deposited, as an interim measure, it is directed that the penalty and interest amount demanded by the authority shall remain stayed during the pendency of the writ petition, subject to the petitioner depositing the demanded tax amount by the authority within two weeks. In order to facilitate the petitioner making the aforesaid deposit, the attachment of the

petitioner's bank account shall stand lifted forthwith.

9. I.A. stands disposed of.

10. List this matter after two weeks along with W.P.(C) Nos. 6854, 7728 and 8133 of 2023.

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

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

Ashok/MRS

