IN THE HIGH COURT OF ORISSA AT CUTTACK
<u>WP(C) No.7264 of 2026</u>

M/s. Ghanshyam Misra and Sons (P) Ltd. … ***Petitioner***

Mr. Jagabandhu Sahoo, Senior Advocate assisted by Ms. Kajal Sahoo, Advocate

-Versus-

Commissioner of Commercial Taxes, Odisha and another … ***Opposite Parties***

Mr. Sunil Mishra, Standing Counsel for CT & GST Department

CORAM:
THE HON'BLE THE CHIEF JUSTICE
AND
THE HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

<u>ORDER</u>
16.03.2026

<u>Order No.</u>

02. ***1.*** Assailing the order dated 16th February, 2026 passed by the Commissioner of Sales Tax, Odisha, rejecting the petition for stay of recovery of demand as confirmed in the first appeal during the pendency of the second appeal before the Odisha Sales Tax Tribunal, the petitioner has approached this Court by way of filing this writ petition beseeching indulgence invoking provision under Articles 226 and 227 of the Constitution of India.

2. The petitioner, stated to have effected *inter alia* inter-State sales during the tax periods from 1st July, 2012 to 31st March, 2014. In the audit assessment undertaken under Section 42 of the Odisha Value Added Tax Act, 2004 (for short, "the OVAT Act"), Rule 12 of the Central Sales Tax (Odisha) Rules, 1957 and the Odisha Entry Tax Act, 1999 (for short, "the OET Act") though certain declarations in Form-C and export documents were furnished, in absence of production of grade-wise, dealer-wise purchase and sales statement along with evidence/documents and mining permit, the transactions were construed to be intra-State transactions; as a result of which, the transactions were subjected to levy of tax under the OET Act.

2.1. The order of assessment was challenged in the first appeal, which came to be disposed of *vide* order dated 28th March, 2025 by the Additional Commissioner of Sales Tax (Appeal), Balasore, wherein the following order was passed:-

> *"On the above scenario, it is a very clear that the dealer appellant did not produce any supporting documents neither before the audit team nor the ld. Assessing Authority to defend their case.* ***Further after availing sufficient opportunities, the dealer appellant also failed to appear before this forum to defend their case.*** *As such purchase suppressions and sale suppression as reported by the audit team are established by the ld. Assessing Officer basing on the allegation raised by the audit team is correct and no interference.*
>
> *In the result, I do not find any good ground to interfere in the assessment order passed on dt.05.12.2015 by the ld. Deputy Commissioner of Sales Tax, Mayurbhanj Circle, Baripada (now CT & GST Circle, Mayurbhanj, Baripada) which is confirmed."*

3. Learned Senior Advocate appearing for the petitioner submitted that the petitioner filed the second appeal under Section 17 of the OET Act and moved a petition for stay of realization of outstanding demand before the Commissioner of Sales Tax as provided under sub-section (7) of the Section 17 of the OET Act.

3.1. It is further submitted that the Commissioner *vide* order dated 16th February, 2026 without appreciating the fact of submission of statutory declarations in Form-C covering inter-State sales to the extent of Rs.240,32,35,787/- before the assessing authority in proper perspective and she did not show inclination to grant stay of realization of balance demand amount during pendency of the second appeal before the Odisha Sales Tax Tribunal, notwithstanding that the dealer had deposited 20% of the demanded tax during the pendency of the first appeal in terms of sub-section (4) of Section 16 of the OET Act.

4. Learned Standing Counsel appearing for the CT & GST Organisation vehemently opposing the contention made by the learned Senior Advocate for grant of stay of recovery of demand, submitted that the finding recorded by the Assessing Authority as well as the First Appellate Authority cannot be faulted with as the dealer failed to substantiate the claim of inter-State sale by placing demonstrable documents as sought for by the authorities concerned for verification; as such the demand raised by the Assessing Authority is reflective of non-discharge of liability towards payment of entry tax. Hence, he urged to dismiss the writ petition as there is legal justification in rejection of the application for stay of realization by the Commissioner of Sales Tax.

4.1. He further submitted that the demand so raised is on account of non-production of relevant documents and non-appearance of the dealer during the course of the audit assessment as well as at the stage of hearing of the first appeal. Therefore, no flaw can be attributed to the authorities in determining the liability.

5. Heard Mr. Jagabandhu Sahoo, learned Senior Advocate appearing for the petitioner and Mr. Sunil Mishra, learned Standing Counsel appearing for the Commercial Tax and Goods and Services Tax Organisation.

6. Perused the record. Having gone through the order dated 16th February, 2026 of the Commissioner of Sales Tax, Odisha, it is revealed that:-

> *"***On careful examination of the stay petition, submissions made by the dealer, and the records available, it is observed that the demand confirmed by the First Appellate Authority is primarily based on* ***non-submission of mandatory statutory documents, including "C" Forms and mining permits****.* ***The dealer has failed to produce these documents either before the Assessing Officer or before the First Appellate Authority****.*

It is further noticed that the matter is presently pending before the Hon'ble Odisha Sales Tax Tribunal, Cuttack, for necessary adjudication.

Considering the magnitude of suppression determined and the absence of prima facie merit the dealer's submissions at this stage, the undersigned does not find any cogent grounds to grant any stay on the realization of the assessed demand.

Accordingly, the revision petition is disposed of, and the Assessing Officer is at liberty to proceed with collection of the balance demand amount in accordance with the provisions of law.

The petition is disposed of accordingly."

7. The assessment order and also the first appeal order reveals that though sufficient adjournments were granted by the authorities concerned in order to extend opportunities to furnish documents/evidence in support of the claim of the petitioner, he failed to produce such requisite documents for the purpose of verification or examination of veracity of such claims made. The Appellate Authority lucidly stated that the dealer did not produce any supporting document neither before the audit team nor before the Appellate Authority. Such being the position, this Court does not find any plausible explanation offered by the petitioner nor before the Commissioner nor this Court. Except saying that the Commissioner of Sales Tax on appreciating pre-deposit made by different dealers as per sub-section (4) of Section 16 during the pendency of the first appeal granted stay of realization of balance demanded tax, nothing is argued as to why the petitioner-dealer defaulted in producing relevant material before the audit team, the assessing authority and the appellate authority. This Court is conscious of the fact that the interim orders passed during pendency of second appeal are not binding. Sub-section (7) of Section 17 of the OET Act vests discretion in the Commissioner of Sales Tax to stay the realization of outstanding demanded tax as a result of disposal of appeal under Section 16(7) before the learned Odisha Sales Tax Tribunal. Having noticed that the dealer failed produce material evidence before the audit team, the assessing authority as also the appellate authority, the Commissioner of Sales Tax declined to grant stay realization of the balance demanded tax.

8. Be that as it may, taking into consideration the submission of the learned Senior Advocate that the petitioner has deposited 20% of the tax demanded by virtue of the assessment order framed under Section 9C of the OET Act during the pendency of the first appeal in terms of sub-section (4) of Section 16 of the OET Act, in order to maintain the balance of convenience this Court directs the petitioner to deposit 30% of the balance tax as demanded in the assessment on or before 31st March, 2026. In the event of such deposit being made within the period stipulated, no coercive measure shall be taken against the petitioner for recovery of rest of the demand raised in the assessment order dated 21st November, 2015 with respect to the tax periods from 01.07.2012 to 31.03.2014 during the pendency of the second appeal before the learned Odisha Sales Tax Tribunal. It is made clear that if the petitioner fails to comply with the aforesaid direction, the authority concerned is at liberty to carry out the direction of the Commissioner of Sales Tax *vide* order dated 13th February, 2026. Needless to observe that the hearing of second appeal shall be expedited.

9. With the aforesaid observation and direction, the writ petition stands disposed of. As a result of disposal of the writ petition, all pending Interlocutory Application (s), if any, shall stand disposed of.

(Harish Tandon)
Chief Justice

(M.S. Raman)
Judge

MRS/Laxmikant