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>

<u>Order No.</u> **26.03.2026**

03. ***<u>I.A. No.5598 of 2026</u>***

1. This Interlocutory Application has been filed after disposal of the writ petition bearing W.P.(C) No.7264 of 2026 *vide* order dated 16th March, 2026 with the following prayer(s):

> ***"****Under the aforesaid circumstances, it is prayed therefore that this Hon'ble Court may be graciously pleased to pass appropriate order suitably modifying/clarifying/rectifying the order dated 16.03.2026 passed by this Hon'ble Court in the end of justice;*
>
> *And for this act of kindness, the petitioner shall as in duty bound ever pray."*

2. The writ petition was filed challenging the order dated 16th February, 2026 passed by the Commissioner of Sales Tax, Odisha, rejecting the petition for stay the recovery of demand raised in the assessment framed under Section 9C of the Odisha Entry Tax Act, 1999 as confirmed by the Additional

Commissioner of Sales Tax (Appeal), Balasore *vide* order dated 28th March, 2025 during the pendency of the second appeal against the said appellate order before the Odisha Sales Tax Tribunal.

3. This Court *vide* order dated 16th March, 2026 disposed of the said writ petition with the following observation (s):

> *"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."

4. Learned Senior Advocate appearing for the petitioner would submit that perverse finding of the fact recorded by the appellate authority having been relied by this Court while disposing of said writ petition, order dated 16th March, 2026 requires modification.

4.1. He referred to paragraph-6 of the Interlocutory Application, which reads as under:

"6. It is further submitted that there was no laches on the part of the petitioner in complying with every notice during the process of adjudication. ***Furthermore, it is humbly***

submitted that the findings of the learned Additional Commissioner (Appeal), Balasore, contain inherent contradictions where the final observation stand in direct conflict with the facts recorded by the same authority. *It is submitted that such a patent inconsistency in the underlying record strikes at the root of the matter and the erroneous and contradicting observation made by the Additional Commissioner (Appeal) ought not to have been considered by this Hon'ble Court while passing the order dated 16.03.2026."*

4.2. As if the order passed in the writ petition, which was filed challenging the interlocutory order passed by the Commissioner of Sales Tax rejecting the prayer to grant stay of realization of demand during the pendency of the second appeal before the learned Sales Tax Tribunal, may have influence on merit of the second appeal pending before the Odisha Sales Tax Tribunal, this Interlocutory Application has been taken out seeking modification/clarification.

5. Sri Sunil Mishra, learned Standing Counsel opposing maintainability of such interlocutory application after disposal of writ petition, urged that granting full stay or conditional order is the discretion of the authority or the Court. This Court having considered the facts as settled by the Appellate Authority directed to deposit certain percentage of demanded tax as a condition for restraining the authority from realizing full demanded tax during pendency of second appeal. Since the fact returned by the Appellate Authority has not yet been varied by the learned Sales Tax Tribunal it could not be said that any observation made by this Court in the interim can have any repercussion on the merit of the second appeal.

6. Heard learned Senior Advocate appearing for the petitioner and learned Standing Counsel appearing for the CT & GST Department.

7. This Court finds the apprehension of the learned Senior Advocate appearing for the petitioner is without comprehension. At paragraph-7 of the order dated 16th March, 2026 this Court unequivocally made observation that *"this Court is conscious of the fact that the interim orders passed during pendency of second appeal are not binding."*

7.1. It is trite that any observation made in order to consider whether the petitioner is entitled to grant of stay of realization of demanded tax during the pendency of second appeal is interlocutory in nature. Such observation was necessary for weighing the balance of convenience and such tentative observation is made in order to appreciate *prima facie* case.

7.2. The learned Senior Advocate appearing for the petitioner confronted this Court with an observation made in the appellate order that in fact the Advocate for the petitioner appeared before the Appellate Authority on 20th February, 2025 but the Appellate Authority under a mistaken notion while passing the final order dated 16th February, 2026 observed as if *"the dealer-appellant also fail to appear before this forum to defend their case."*

7.3. Be that as it may, the finding of fact/observation made, if any, by the Appellate Authority is subject matter of dispute for adjudication before the learned Odisha Sales Tax Tribunal in second appeal. The observations made by this Court in the order dated 16th March, 2026 was based on such findings returned by the appellate authority, which has not yet been varied/interfered with by any competent Court or authority established under the law.

7.4. Without delving deep into any controversial factual aspect, this Court feels it apposite to observe that the Hon'ble Supreme Court of India on many occasions deprecated the practice of filing petition for clarification/modification after final disposal of the main petition in the garb of review. Suffice it to refer *State of Haryana Vrs. M.P. Mohla, (2006) Supp.8 SCR 926,* wherein it has been expounded that *"an application for clarification cannot be taken recourse to, to achieve the result of a review application. What cannot be done directly, cannot be done indirectly [Ram Chandra Singh Vrs. Savitri Devi and others, (2004) 12 SCC 713]."*

7.5. It may not be out of place to quote here from *Ajay Kumar Jain vs. State of Uttar Pradesh and another, (2024) 12 SCR 478:*

> *"11. This Miscellaneous Application on the face of it is not maintainable in law.*
>
> *12. It is high time that this Court says something on the practice of the litigants filing miscellaneous applications in disposed of proceedings and that too after a period of 5 years, 7 years, 10 years.*
>
> *13. These miscellaneous applications which are being filed on daily basis have something to do with fresh cause of action that might have arisen with a very remote connection with the main proceedings.*

14. *No miscellaneous application is maintainable in a writ petition to revive proceedings in respect of subsequent events.*

15. ***In fact, the Court has no jurisdiction to entertain such application as no proceedings could be said to be pending before it. When proceedings stand terminated by final disposal of the writ petition be it under Article 32 of the Constitution or Article 226 of the Constitution before the High Court, it is not open to the Court to re-open the proceedings by means of a miscellaneous application in respect of a matter which provided a fresh cause of action. If this principle is not followed, there would be confusion and chaos and the finality of the proceedings would cease to have any meaning.***

16. *In the recent past, a co-ordinate bench of this Court observed the following in "Jaipur Vidyut Vitran Nigam Ltd. and Others Vrs. Adani Power Rajasthan Ltd. and Another reported in 2024 SCC OnLine SC 313":*

"We felt it necessary to examine the question about maintainability of the present application as we are of the view that it was necessary to spell out the position of law as to when such post-disposal miscellaneous applications can be entertained after a matter is disposed of. ***This Court has become functus officio and does not retain jurisdiction to entertain an application after the appeal was disposed of by the judgment of a three-Judge Bench of this Court on 31.08.2020 through a course beyond that specified in the statute. This is not an application for correcting any clerical or arithmetical error. Neither it is an application for extension of time.*** *A post disposal application for modification and clarification of the order of disposal shall lie only in rare cases, where the order passed by this Court is executory in nature and the directions of the Court may become impossible to be implemented because of subsequent events or*

developments. The factual background of this Application does not fit into that description."

17. Thus, this Court made it abundantly clear that a miscellaneous application filed in a disposed of proceedings would be maintainable only for the purpose of correcting any clerical or arithmetical error. The Court further clarified that a post disposal application for modification Thus, this Court made it abundantly clear that a miscellaneous application filed in a disposed of proceedings would be maintainable only for the purpose of correcting any clerical or arithmetical error. The Court further clarified that a post disposal application for modification or clarification of the order would lie only in rare cases where the order passed by this Court is executory in nature and the directions of the Court may have become impossible to be implemented because of subsequent events or developments..

18. The Registry shall not circulate any miscellaneous application filed in a disposed of proceedings unless and until there is a specific averment on oath that the filing of the miscellaneous application has been necessitated as the order passed in the main proceedings being executory in nature and have become impossible to be implemented because of subsequent events or developments.

19. The Registry shall insist from every applicant who intends to file any miscellaneous application in a disposed of proceedings for such a declaration as above on solemn affirmation."

7.6. The interlocutory application which is pressed by the learned Senior Advocate for the petitioner apparently beseeches revisit of the final order passed in the writ petition. This Court is *functus officio* to deal with such interlocutory application seeking modification in the garb of review. Doing so by allowing the application would be to change the final result of the order dated 16.03.2026 passed in the writ petition. Such a recourse is impermissible in law and such practice is deprecated by the Hon'ble Supreme Court of India on very many occasions.

8. In view of the aforesaid clear enunciation of legal position by the Hon'ble Supreme Court of India, there is no ambiguity in mind that the nature of averments and prayer(s) made in the Interlocutory Application after disposal of writ petition is not maintainable. It appears that in order to seek review of order dated 16th March, 2026 passed in WP(C) No.7264 of 2026, this Interlocutory Application has been filed with the title *"an application for modification/rectification on of order dated 16.03.2026 passed by this Hon'ble Court in WP(C) No.7264 of 2026".* This Court does not find any error apparent on the face of the record. Hence the Interlocutory Application, being not maintainable, is hereby dismissed.

9. With the aforesaid observation and direction, the Interlocutory Application stands disposed of.

(Harish Tandon)
Chief Justice

(M.S. Raman)
Judge

MRS/Laxmikant