IN THE HIGH COURT OF ORISSA AT CUTTACK
WP(C) No.8349 of 2026

M/s. AWL Agri Business, Jagatsinghpur ... ***Petitioner***

Mr. Rudra Prasad Kar, Senior Advocate and Mr. Chitta Ranjan Das, Advocate

-Versus-

State of Odisha and others ... ***Opposite Parties***

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

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

ORDER

Order No. **16.04.2026**

02. ***1.*** Assailing Order-*in*-Original dated 11.12.2025 passed under Section 73 of the Odisha Goods and Services Tax Act, 2017/the Central Goods and Services Tax Act, 2017 (Collectively, "the GST Act") by the Deputy Commissioner of State Tax, Cuttack-I City Circle, the petitioner has filed this writ petition craving to invoke provisions under Article 226 of the Constitution of India.

2. The petitioner, engaged in manufacture of edible oils from crude oils, utilizing the inputs such as packing materials, chemicals and consumables subject to levy of goods and services tax @12% or 18%, as the case may be for supply of output which attracts goods and services tax @5%; as a result of such, the input tax credit remains accumulated. Under the perspective of inverted tax structure refund flows in terms of Section 54(3)(ii) of the GST Act. The authority concerned having considered refund applications with respect to relevant period(s) by speaking orders under Section 54(5) read with Rule 92 of the GST Rules sanctioned refunds.

3. It is contended by Sri Rudra Prasad Kar, learned Senior Advocate being assisted by Sri Chitta Ranjan Das, learned Advocate that without taking recourse to remedy of appeal available for the Department under Section 107 of the GST Act to question the sanctity of such refund orders, the authority concerned could not have issued notice in exercise of powers conferred under Section 73 of the said Act proposing to recover the refund already sanctioned by the competent authority in order to obviate said speaking orders.

3.1. He placed reliance on instruction No.03/2022-GST dated 14.06.2022 issued by the Government of India, Ministry of Finance Department of Revenue, Central Board of Indirect Taxes & Customs, GST Policy Wing to submit that the action of the authority is impeachable in determining the tax liability under Section 73 of the GST Act by nullifying the effect of orders sanctioning the refunds under Section 54 of the said Act. Such transgression of power is exceptionable and vulnerable. It is urged that the manner and method being prescribed under the Act for ventilation of grievance, erroneous device has been adopted by the Deputy Commissioner of State Tax, Cuttack-I City Circle. The order dated 11.12.2025 passed under Section 73 of the GST Act suffers serious infirmity in law. The matter requires consideration.

4. Heard. Issue notice.

5. Mr. Sunil Mishra, learned Standing Counsel accepts and waives issue of notice on behalf of the opposite parties. A copy of the writ petition has already been served on him, He seeks short accommodation to obtain instruction in this case and to file counter affidavit within two weeks from date after serving copy thereof on the learned counsel for the petitioner; rejoinder thereto, if any, be filed within a week thereafter.

6. List this matter on 7th May, 2026.

I.A. No.5076 of 2026

7. Learned Senior Advocate has taken this Court to instruction dated 14.06.2022 issued by the Central Board Indirect Taxes & Customs, wherein it has been clearly stipulated that all refund orders are required to be reviewed for examination of legality and propriety of the refund orders and for taking a view whether an appeal before the appellate authority under provisions of Section 107 of the GST Act is required to be filed against the said refund orders.

8. On perusal of record, it is discernible that the Deputy Commissioner of State Tax, Cuttack-I City Circle has framed adjudication order under Section 73 of the GST Act seeking to nullify the effect of refund orders passed under Section 54 of the GST Act instead of adhering to the manner spelt out in the instruction by questioning the sanctity of the orders of refund. It appears the petitioner has made out a *prima facie* case in its favour and it is entitled for interim protection. Therefore, the authorities are restrained from taking coercive action against the petitioner pursuant to demand raised in the order dated 11.12.2025 under Section 73 of the GST Act for the tax periods from April, 2021 to March 2022 *vide* Annexure-6 till the next date of listing.

(Harish Tandon)
Chief Justice

(M.S. Raman)
Judge

Aswini