IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.14754 of 2025

M/s. Creation and Creations LLP .... ***Petitioner***

Mr. Jagabandhu Sahoo, Senior Advocate
along with Ms. Kajal Sahoo, Advocate

-versus-

Joint Commissioner of State Tax (Appeal), Territorial Range, Balasore 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

Order No.

ORDER
09.09.2025

01. ***WP(C) No.14754 of 2025 & I.A. No.8599 of 2025***

1. The grievance of the petitioner in the present writ petition is, though Goods and Services Tax Appellate Tribunal (GSTAT) has not been constituted, thereby it is prevented from challenging the order dated 29th November, 2023 passed under Section 107 of the Central Goods and Services Tax Act, 2017/the Odisha Goods and Services Tax Act, 2017 (collectively, "GST Act") pertaining to tax periods from July, 2017 to March, 2018 by the Joint Commissioner of State Tax (Appeal), Territorial Range, Balasore-opposite party no.1, the opposite parties should not have recovered an amount of Rs. Rs.8,72,869/- out of total tax demand of Rs.10,02,608/- raised *vide* order dated 22nd October, 2021 passed by the State Tax Officer, CT & GST Circle, Mayurbhanj, Baripada by debiting the cash ledger twice.

2. Mr. Jagabandhu Sahoo, learned Senior Advocate appearing for the petitioner referring to circular bearing No.132/2/2020-GST *vide* CBEC-20/16/15/2018-GST, dated 18th March, 2020 issued by the Government of India, Ministry of Finance Department of Revenue in Central Board of Indirect Taxes and Customs GST Policy Wing, submitted that the action of the opposite parties in recovering the disputed amount by debiting the cash ledger is contrary to what is spelt out under Section 112 of the GST Act read with paragraph-4.3. of said clarificatory circular.

2.1. He submitted that had the GSTAT been constituted the petitioner would have filed second appeal by furnishing 10% of the disputed tax in terms of Section 112(8) of the GST Act. Therefore, what is essentially argued by learned Senior Advocate is that by recovering around 87% of tax demand by debiting the cash ledger the authority concerned has exceeded jurisdiction conferred under the statute. He submitted that the opposite parties are required to restore the excess amount collected beyond what is required under Section 112(8) of the GST Act.

3. Mr. Sunil Mishra, learned Standing Counsel appearing for the CT & GST Department furnishing a copy of Circular No.224/18/2024-GST *vide* CBIC-20001/4/2024-GST, dated 11th July, 2024 issued by the Government of India, Ministry of Finance Department of Revenue in Central Board of Indirect Taxes and Customs GST Policy Wing, submitted that a modality has been specified pending constitution of GSTAT. Since the petitioner has not complied with such conditions, there cannot be any infirmity imputed against the authority in recovering the disputed amount.

3.1. Since the Department has already recovered the amount, and the petitioner contemplates to file second appeal after constitution of the GSTAT, the present writ petition may be kept pending to be disposed of along with other similar writ petitions.

4. Considered the plea raised by the petitioner. Heard the arguments on interim protection of counsel appearing for both the sides. It is conceded that many taxpayers have approached this Court by way of writ petitions since GSTAT has not been constituted, but contemplate to exhaust remedy of appeal available under Section 112 of the GST Act. While issuing notice, this Court passed interim orders to the effect that in the event of deposit of 10% of disputed tax demand, the recovery of balance amount would remain stayed. Therefore, the Department is restrained to take coercive measure for recovery of the balance amount of disputed demand. Having regard to the averments made in the writ petition, this Court has the occasion to peruse sub-section (8) of Section 112, which reads as follows:-

> "*(8) No appeal shall be filed under sub-section (1), unless the appellant has paid-*
>
> *(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and*
>
> *(b) a sum equal to ten per cent of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, subject to a maximum of twenty crore rupees, in relation to which the appeal has been filed."*

4.1. Paragraph-4.3. of Circular dated 18th March, 2020 unambiguously stated that "*the prescribed time limit to make application to appellate tribunal will be counted from the date on which President or the State President enters office.*" Sri Sunil

Mishra, learned Standing Counsel did not dispute that the GSTAT has not been constituted as of date.

4.2. Be that as it may, the statutory authority was conscious about non-constitution of the GSTAT and should not have adhered to coercive measure to recover beyond what is required sub-section (8) of Section 112.

4.3. Taking into consideration the fact that the petitioner had deposited requisite amount for the purpose of filing appeal under Section 107 and the officer concerned should have proceeded to recover the amount in terms of Section 112(8) of the GST Act inasmuch as the circular dated 11.07.2024 was not in vogue on the date of passing appellate order under Section 107.

5. This Court, hence, felt it prudent to issue notice in the present writ petition and direct this matter to be listed along with WP(C) No.9822 of 2025. It is further directed that the authority concerned shall restore the amount that has been recovered beyond what is required under Section 112(8) of the GST Act within a period of two weeks from date in the cash ledger of the petitioner.

6. Needless to say that till disposal of the writ petition, no coercive measure shall be taken against the petitioner by the opposite parties to recover balance amount of demand.

7. List this matter along with WP(C) No.9822 of 2025 on the date fixed therein.

(Harish Tandon)
Chief Justice

(M.S. Raman)
Judge

MRS/Laxmikant