IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.33058 of 2025

M/s. Simon India Ltd. .... ***Petitioner***

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

-versus-

Assistant Commissioner of CT & GST, Jagatsinghpur and others .... ***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
16.12.2025

Order No.

04. 1. Heard Mr. Jagabandhu Sahoo, learned Senior appearing along with Ms. Kajal Sahoo, learned counsel for the petitioner and Mr. Sunil Mishra, learned Standing Counsel appearing for the CT & GST Department.

2. The Petitioner, a company registered under the Companies Act, 1956, on introduction of the Central Goods and Services Tax Act, 2017/the Odisha Goods and Services Tax Act, 2017 (collectively, "GST Act"), is allotted with GSTIN/ID:21AAECS5013J1ZQ. It undertook execution of works contracts being entrusted by M/s. OCL India Limited and M/s. Paradeep Phosphate Limited. The transactions were reflected in the returns filed under Section 39 of the GST Act.

2.1. The company was subjected to audit under Section 65 of the GST Act and was issued with a show-cause notice in Form GST DRC-01, dated 4th February, 2023, contemplating adjudication under Section 73 of the GST Act, responding to which reply in Form GST DRC-06 was filed by the petitioner. However, a demand was raised under said section *vide* order dated 27th December, 2023, which included taxes, interest and penalty pertaining to the tax periods from July, 2017 to March, 2018 under the GST Act as well as the Integrated Goods and Services Tax Act, 2017 (for short, "the IGST Act").

2.2. The petitioner availed the remedy of appeal as provided under Section 107 of the GST Act by making deposits as required under sub-section (6) thereof. As the appeal was pending, the GST Council in its 53rd meeting held on 22nd June, 2024 recommended for granting scope for waving interest and penalties with respect to the demand raised under Section 73 of the GST Act pertaining to the financial years 2017-18, 2018-19 and 2019-20 on the condition that the assessee is required to deposit entire tax demanded by 31st March, 2025. To give effect to such recommendation, Section 128A of the GST Act has been inserted by virtue of Act 15 of 2024 and the procedures for such purpose have been laid under Rule 164 of the GST Rules, 2017.

2.3. With a hope to get waiver of interest and penalty, the petitioner having sought for withdrawal of appeal, paid the tax as demanded *vide* order of adjudication dated 27th December, 2023 by debiting the amount standing in the electronic cash ledger and the electronic credit ledger on 31st January, 2025 and 12th February, 2025 respectively, excluding 10% of the demanded tax as the company had already paid in order to comply with the condition laid under sub-section (4) of Section 107 of the GST Act on 20th March, 2024.

2.4. The petitioner on 12th February, 2025 filed an application in Form GST SPL-02 for seeking to waive interest and penalty in terms of Section 128A of the GST Act read with 164 of the GST Rules. However, the Assistant Commissioner of State Tax, CT & GST Circle, Jagatsinghpur-opposite party no.1 issued Form GST SPL-03, dated 9th May, 2025 proposing to reject said application, in response to which the petitioner furnished reply in Form GST SPL-04, dated 5th June, 2025, wherein it was explained that the petitioner has made payment as required. However, an order has come to be passed on 2nd September, 2025 in Form GST SPL-07 by the opposite party no.1 rejecting the application with the following observation(s):

> *"The taxpayer has replied in SPL-04- Reply to Notice issued under Rule 164(9) (Reference Number:ZD210625003468M, Date :05/06/2025) an has stated the following – "We had complied all the provision as per the waiver of interest and penalty scheme under section 128A of Odisha GST Act and Central GST Act and Rule 164 of Odisha GST Rules and Central GST Rules as notified as per Notification No.20/2024 dated 8th October, 2024 of CBIC. We had already paid GST Tax through cash ledger of Rs.7,85,735.00 dated 31/01/2025 vide CPIN:25012100135747 (copy enclosed) which was adjusted with the outstanding GST liability of DRC 07, Reference No: ZD211223031351A dated:27/12/2023. Company had already paid full GST tax amount of Rs.32,67,532.00 before 31st March, 2025. We do not have any tax outstanding against to be paid for DRC 07 Reference No:ZD211223031351A dated : 27/12/2023. All details given in SPL 02 filed in GST portal online. So kindly issue SPL 05 order for conclusion of proceeding as per the section 128A of Odisha GST Act and Central GST*

Act and Rule 164 of Odisha GST Rules and Central GST Rules"

But the reply of the taxpayer does not comply with the query raised and has diverted from the query where, the tax under RCM was to be paid in cash and NOT ITC. Therefore, this application for waiver of interest and penalty is hereby rejected."

3. Learned Senior Advocate appearing for the petitioner submitted that the statutory authority has proceeded to reject the application on the premise that the tax liability to the tune of Rs.1,36,352/- under the IGST Act was to be discharged by way of "cash" deposit only. It is submitted that given an opportunity, the petitioner could have deposited the said amount in "cash" as it was under notion that the amount could be paid through electronic cash/ credit ledger.

3.1. Therefore, he craved indulgence of this Court by allowing the petitioner to discharge the liability as sought to be deposited by the Assistant Commissioner of State Tax, CT & GST Jagatsinghpur Circle, Paradeep.

4. Learned Standing Counsel appearing for the CT & GST Department vehemently opposing the stance taken by the learned Senior Advocate appearing for the petitioner submitted that since the petitioner failed to comply with the requirements under the provisions of Section 128A of the GST Act read with Rule 164 of the GST Rules within the time frame, the authority concerned cannot be faulted with. The order dated 2nd September, 2025 rejecting the application of the petitioner is perfectly correct in law requiring no intervention.

5. Considered the submissions made by the learned counsel for the parties carefully and the documents forming part of the writ petitions are examined meticulously.

5.1. Having thus perused the material on record, this Court on 11th December, 2025 recorded the plight of the petitioner by observing that the petitioner may furnish evidence of deposit of the amount equivalent to the liability under IGST in respect of reverse charge mechanism.

5.2. Learned Senior Advocate appearing for the petitioner handed over a memo enclosing therewith receipt showing deposit of Rs.1,36,352/- under the IGST Act. The following fact emanates from said memo:

> *"1. That pursuant to order dated 11.12.2025 passed by this Hon'ble Court in the aforementioned Writ Petition, the petitioner in order to show bona fide has deposited an amount of Rs.1,36,352/- vide challan dated 11.12.2025 in its cash ledger to discharge the demand raised under the head IGST (RCM) vide DRC-07 dated 27.12.2023 for the period 2017-18 u/s. 73 of the OGST Act.*
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> *2. That the petitioner vide DRC-03 dated 12.12.2025 made a debit entry amount to Rs.1,36,352/- from its cash ledger towards discharging the demand raised under the head IGST (RCM) vide DRC-07 dated 27.12.2023 for the period 2017-18 u/s. 73 of the OGST Act.*
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> *3. That the Challan dated 11.12.2025 and DRC-03 dated 12.12.2025 are enclosed herewith which may kindly be considered and taken on record in the ends of justice."*

5.3. As it appears from the documents that the petitioner has complied with the statutory requirement as envisaged under Section 128A of the GST Act read with Rule 164 of the GST Rules.

6. Having perceived peculiarity of circumstances on factual matrix as discussed above, this Court deems it apposite to set aside

the order dated 2nd September, 2025 rejecting the application submitted by the petitioner in order to facilitate it to avail benefit under Section 128A of the GST Act. The opposite party no.1-Assistant Commissioner of CT & GST Jagatsinghpur, Paradeep is directed to consider the application SPL-02 by taking into consideration all the payments as stated to have been made and decide the matter afresh within four weeks from the date of receipt of copy of this order. Needless to say that any decision taken in this regard be communicated to the petitioner. The said authority is also directed to consider refund of amount, if any amount deposited found to be in excess of what is required under Section 128A of the GST Act within the aforesaid period.

7. With the aforesaid observations and directions, the writ petition stands disposed of. As a result of disposal of the writ petition, pending Interlocutory Application(s), if any, is disposed of accordingly.

(Harish Tandon)
Chief Justice

(M.S. Raman)
Judge

Laxmikant