(2023) 04 OHC CK 0206

In the Orissa High Court

Case No : Writ Petition (C) No. 11876 Of 2023 And I.A. No.5489 Of 2023

Rajesh Kumar Ghadai — APPELLANT

Vs

Commissioner Of CT & GST & Others — RESPONDENT

Date of Decision : 20-04-2023

Acts Referred:
Odisha Goods and Services Tax Act, 2017 — Section 107(1), 107(4)

Citation : (2023) 04 OHC CK 0206

Hon'ble Judges : Dr. B.R. Sarangi, J;M.S.Raman, J

Bench : Division Bench

Advocate : A.Ku. Biswal, S.S. Padhy

Final Decision : Disposed Of

Judgement

1. This matter is taken up through hybrid mode.

2. The present writ petition is being entertained only because the Second Appellate Tribunal has not yet been constituted.

3. The petitioner has filed this writ petition challenging the 1st appellate order dated 21.03.2023 passed by the Joint Commissioner of State Tax, CT & GST in Appeal Case No. AD210323002057U, by which said authority has not admitted the appeal preferred by the petitioner, as the same is in contravention to sub-sections (1) & (4) of Section 107 of the GST Act and has rejected the appeal filed under sub-Section (1) of Section 107 of the Odisha Goods and Services Tax Act, 2017.

4. Learned counsel for the petitioner contended that the petitioner is not liable to pay the tax and penalty and, as such, against the order passed by the 1st appellate authority though second appeal lies, the 2nd appellate tribunal has not yet been constituted.

5. Mr. S.S. Padhy, learned Addl. Standing Counsel vehemently contended that since there is delay in preferring the appeal, this Court may not be in a position

to condone the delay beyond four months, particularly when appellate authority has not been vested with discretion to condone the delay beyond one month after lapse of three months from the date of communication of order impugned therewith. It is further contended that this case stands in different footing and, as such, the petitioner is liable to pay the tax. In the event the petitioner wants to avail the remedy by preferring appeal before the 2nd appellate tribunal then the petitioner is liable to pay 20% of balance disputed tax for consideration of its appeal by the 2nd appellate tribunal.

6. Issue notice to the opposite parties.

7. Since Mr. S.S. Padhy, learned Addl. Standing counsel for the Department accepts notice for the Opposite parties, let required number of copies of the writ petition be served on him within three working days. Reply be filed within two weeks and rejoinder thereto, if any, be filed before the next date.

8. Since the petitioner wants to avail the remedy under the provisions of law by approaching 2nd appellate tribunal, which has not yet been constituted and, as such, learned counsel for the petitioner informs the Court that at the stage of first appeal, 10% of the tax has already been deposited, as an interim measure, it is directed that the penalty and interest amount demanded by the authority shall remain stayed during the pendency of the writ petition, subject to the petitioner depositing the demanded tax amount by the authority within two weeks.

9. I.A. stands disposed of.

10. List this matter along with W.P.(C) No.6684 of 2023 on the date fixed therein.

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