IN THE HIGH COURT OF ORISSA AT CUTTACK W.P.(C). No. 2748 of 2024

M/s S.R. Engineers & Petitioner
Construction

Ms. Itishree Tripathy, Advocate

Vs.

The Chief Commissioner, CT & GST, Odisha & Anr.

Opposite parties Mr. S. Mishra, SC, CT & GST Organization

CORAM:

ACTING CHIEF JUSTICE DR. B.R. SARANGI MR. JUSTICE MURAHARI SRI RAMAN

<u>ORDER</u> 06.02.2024

Order No.

This matter is taken up through hybrid mode.

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- 2. Heard Ms. Itishree Tripathy, learned counsel appearing for the petitioner and Mr. S. Mishra, learned Standing Counsel appearing for the CT & GST Department.
- 31.01.2024 passed in Appeal No.AD210923001387D under Section 107 of the Goods and Service Tax Act, 2017 read with Rule 108 of the Goods and Service Tax Rules, 2017 directed against the Order dated 04.08.2023 passed under Section 73 of the CGST/OGST Act (Odisha Goods and Service Tax Act 2017) by raising total demand of Rs.20,53,608.00 which includes the tax of Rs.10,07,916.00, interest Rs.9,44,900.00 and Penalty Rs.1,00,792.00 both under the CGST & SGST Act for the period 2017-18 by the Learned Proper Officer, i.e. CT & GST Officer, Mayurbhan, Circle, Balasore should be quashed.
- 4. Ms. Itishree Tripathy, learned counsel appearing for the

petitioner contended that the appellate authority has not given opportunity of hearing to the petitioner and, as such, the petitioner has not produced any record to substantiate his case. Thereby, the order dated 31.01.2024 passed in Appeal No. AD210923001387D by the appellate authority cannot be sustained in the eye of law.

- 5. Mr. S. Mishra, learned Standing Counsel appearing for the CT & GST Department vehemently contended that though opportunity of hearing was given to the petitioner, he asked for time and, as such, he did not file any reply. It is contended that as per Section 107(9) of the OGST/CGST Act, 2017, no adjournment shall be granted for more than three times to the party during hearing of appeal. Since the petitioner did not produce any materials before the appellate authority, the order impugned has been passed. Thereby, no illegality or irregularity has been committed by the appellate authority in passing the impugned order.
- 6. Considering the contentions raised by learned counsel for the parties and after going through the records, this Court finds that though the petitioner had sought time for compliance of the notice, he was not given opportunity of hearing. But, the appellate authority, i.e., Joint Commissioner of State Tax (Appeal), Balasore, Odisha, has mentioned in the order that in spite of sufficient opportunity being given, the petitioner did not appear, for which he has been constrained to pass the ex parte order on 31.01.2024 on the basis of the materials available on appeal record. But fact remains, whether the State is interested to earn revenue for the State or adhering to technicalities the authority is keen to harass? Considering the interest of the State for augmentation of revenue, this Court is of the opinion that the order dated 31.01.2024 passed by the appellate authority in Appeal No. AD210923001387D is

liable to be quashed and is, accordingly, hereby quashed. Accordingly, the matter is remitted to the appellate authority to reconsider afresh by giving opportunity of hearing to the petitioner. As such, to short cut the time, this Court fixes 15.03.2024 on which date the petitioner shall appear along with all the records and also reply before the appellate authority, i.e., Joint Commissioner of State Tax (Appeal), Balasore, Odisha so that the very same authority shall consider and pass appropriate order. The petitioner is also directed to co-operate with the appellate authority for disposal of the case as early as possible.

7. With the above observation and direction, the writ petition stands disposed of.



Ashok