



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.14904 of 2025

M/s. D.R. Patnaik

....

Petitioner

Mr. Rudra Prasad Kar, Senior Advocate
assisted by Mr. Asit Kumar Dash, Advocate

-versus-

***Commissioner, GST and Central
Excise, Rourkela Commissionerate
and others***

....

Opposite Parties

Mr. Radheshyam Chimanka, Senior
Standing Counsel for CGST

CORAM:

**THE HON'BLE MR. JUSTICE BIRAJA PRASANNA SATAPATHY
AND
THE HON'BLE MR. JUSTICE MURAHARI SRI RAMAN**

ORDER

04.06.2025

Order No.

01. This matter is taken up through Hybrid mode.
2. Invoking provisions of Articles 226 and 227 of the Constitution of India, assailed in this writ petition are the Order-in-Original dated 20.02.2025 (Annexure-7) and Summary Order dated 24.02.2025 (Annexure-8) passed by the Additional Commissioner, GST & Central Excise Commissionerate, Rourkela-Opposite Party No.1 under Section 73 of the Central Goods and Services Tax Act, 2017/the Odisha Goods and Services Tax Act, 2017 (collectively, "GST Act"), whereby the demand to the tune of Rs.10,16,95,448/- for the financial year 2020-21 has been raised besides penalty of Rs.1,01,69,545/-.
- 2.1. The averments and contents of the writ petition reveal that though returns in GSTR-3B and GSTR-2A are furnished, on the allegation that during financial year 2020-21 excess input tax credit of



Rs.10,16,95,448/- has been availed by the petitioner. The Petitioner claims to have provided a reconciliation statement along with the supporting documents in connection with reply to show-cause notice explaining the differences of input tax credit availed in Form GSTR-3B against ITC available in Form GSTR-2A *vis-à-vis* the value of transactions in Form GSTR-8A. Despite such reply contained detailed explanation with necessary documents for verification as to correctness of availment of input tax credit being made available to the adjudicating authority, a demand as afore-noted has been raised, challenging which the present writ petition has been filed.

3. Mr. Rudra Prasad Kar, learned Senior Advocate assisted by Mr. Asit Kumar Dash, learned Advocate taking this Court to Form GST DRC-06, *i.e.*, reply to the show-cause notice dated 21.11.2024, which contained apart from detailed reply/explanation, copies of necessary documents to verify with reference to allegations of excess input tax credit, advanced argument that the adjudicating authority has conspicuously omitted to consider the same, but sustained the allegation of excess input tax credit availed during April, 2022 to March, 2021 in order to set up huge demand.

3.1. He submitted that said reply along with objection as to jurisdictional fact being not considered by the adjudicating authority, the Order-in-Original (Annexure-7) along with Summary Order (Annexure-8) is not tenable in the eye of law. He drew attention of this Court to paragraph-4 of the Order-in-Original dated 20.02.2025 to buttress his contention that the adjudicating authority was under misconceived perception that no response was filed in connection with the show-cause notice dated 21.11.2024. He vehemently affirmed that



in fact the detailed explanation was furnished to the authority concerned via web-portal on 20.12.2024 in Form GST DRC-06.

3.2. He further submitted that at serial no.6 of the said Form, it has been spelt out that necessary and relevant documents required for the purpose of showing that there was no mistake in the quantum of input tax credit as availed in the returns were uploaded. The Petitioner also exercised option for personal hearing as is apparent from entry made in serial no.7 of the said Form. Though paragraph-5 of the Order-in-Original discloses that the Petitioner had availed the opportunity to defend its case by way of “personal hearing”, the reply as stated to have been uploaded on 20.12.2024 vide Annexure-6 series was not taken care of while passing final order, i.e., Order-in-Original dated 20.02.2025 (Annexure-7). He submitted that non-consideration of reply to the show-cause notice does tantamount to flagrant violation of principles of natural justice and smacks arbitrary exercise of power which warrants interference.

3.3. Learned Senior Advocate placing strong reliance on the judgment rendered by the Delhi High Court in the case of *Samsung India Electronics PVT LTD vs. Union of India and others*, W.P.(C) No.7351 of 2024 disposed of vide judgment dated 21.05.2024 urged that under a similar circumstance with respect to allegation of excess input tax credit availed by the petitioner therein, the said Court having set aside the order and remitted the matter with writ of *mandamus* to the adjudicating authority for adjudication coupled with further direction to file further reply and/or documents. He, therefore, prayed that the Additional Commissioner may be directed in the light of the aforesaid decision of the Delhi High Court.



4. At this stage, Mr. Radheshyam Chimanka, learned Senior Standing Counsel appearing for the Central Goods and Services Tax, Central Excise and Customs Department-Opposite Parties vehemently opposing the maintainability of the writ petition challenging the Order-in-Original and Summary Order invoking Article 226/227 of the Constitution of India, arduously contended that availability of alternative remedy provided under the GST Act excludes jurisdiction of this Court to intermeddle with the adjudication order. The appellate authority being competent to deal with questions of law as also facts, he insisted for not to entertain this writ petition.

5. This Court heard Sri Rudra Prasad Kar, learned Senior Advocate for the petitioner and Sri Radheshyam Chimanka, learned Senior Standing Counsel for the opposite parties.

6. Perusal of record transpires that paragraph-4 of the Order-in-Original reflects as follows:

“4.0. Defence Reply:

In response to the allegations contained in the Show Cause Notice bearing No.GEXCOM/ADJN/GST/ADC/550/2024/11909-A Date:21.11.2024 the Noticee did not submit their defense reply till date.”

6.1. From the above it is no ambiguous that the Order-in-Original was passed on 20.02.2025 and the reply to show-cause notice was filed online on 20.12.2024. Thus, it is obvious that on the date of passing the adjudication order the reply/explanation to show-cause notice along with other documents attached to the same as stated to have been uploaded on 20.12.2024 was before the adjudicating authority for



examination of veracity of claim of input tax credit. It is, therefore, manifest that the adjudicating authority has ignored to consider the objections and explanation proffered in response to show-cause.

6.2. Learned Senior Standing Counsel appearing for the CGST did not and could not dispute furnishing of documents enclosed to the reply to show-cause notice as affirmed by the learned Senior Advocate appearing for the Petitioner.

6.3. In such view of the matter, this Court is of *ex facie* view that there was glaring non-adherence of principles of natural justice as the Order-in-Original dated 20.02.2025 under Annexure-7 reveals error apparent on the face of the record, which fact could be discerned from narration of the adjudicating authority *vide* Paragraph-4 of the said Order-in-Original.

6.4. This Court is persuaded to believe that the proper authority has failed to consider the reply to show-cause notice in Form GST DRC-06 (Annexure-6 Series) along with other documents uploaded. This Court, therefore, has no hesitation to set aside the Order-in-Original dated 20.02.2025 *vide* Annexure-7 as also Summary Order dated 24.02.2025 passed under Section 73 of the GST Act by the Additional Commissioner, GST & Central Excise, Commissionerate, Rourkela-Opposite Party No.1 *vide* Annexure-8 on the ground of violation of principles of natural justice and remit the matter to the said authority concerned for fresh adjudication.

6.5. This Court would hasten to direct that the Petitioner shall appear before the aforesaid authority (adjudicating authority) on 26.06.2025 along with certified copy of this order. On such appearance



of the Petitioner, the said authority shall be at liberty to take up the adjudication of the matter forthwith or on such date(s) he may fix as per convenience. After affording personal hearing and examining the reply along with the documents enclosed thereto, the Additional Commissioner, GST & Central Excise, Commissionerate, Rourkela- Opposite Party No.1 may pass fresh adjudication order.

7. Needless to say that this Court has not expressed any opinion on the merit of the case. The facts necessary to decide the point of natural justice as alleged by the petitioner has been discussed on the undisputed position. It is made clear that the adjudicating authority may proceed with the proceeding under Section 73 in accordance with law.

8. In the result, with the aforesaid observation and direction, the writ petition stands disposed of along with all the pending interlocutory applications, if any.

(BIRAJA PRASANNA SATAPATHY)
Vacation Judge

(M.S. Raman)
Vacation Judge

Laxmikant