



ORISSA HIGH COURT : CUTTACK

W.P.(C) No.15481 of 2025

In the matter of an Application under Articles 226 & 227 of
the Constitution of India, 1950

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Palem Ashok Reddy
Aged about 46 years
Proprietor of M/s. GNR Construction
Address At 5-7-48, Samba Siva Residency
Sangeeth Nagar Colony
Kukatpally, Medchal Malkajgiri
Hyderabad – 500 072,
Telangana State ... Petitioner

-VERSUS-

1. The Commissioner,
GST & CX Commissionerate Rourkela
Office at KK-42, Civil Township
Rourkela – 769 004
District: Sundergarh, Odisha.
2. The Commissioner,
CGST & CX Audit Commissionerate
Office at Kendriya Rajaswa Bhawan
Gadkari Chowk, Nashik – 422 002,
Maharashtra.
3. The Commissioner,
CGST & Central Excise
Aurangabad Commissionerate
Office at N-5, Town Centre, CIDCO
Aurangabad – 431 003,
Maharashtra ... Opposite Parties.



Counsel appeared for the parties:

For the Petitioner : Mr. Bijay Panda, Advocate
For the Opposite Parties : Mr. Sujan Kumar Roy Choudhury,
Senior Standing Counsel

P R E S E N T:

**HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON**

AND

**HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN**

Date of Hearing : 24.06.2025 :: Date of Order : 24.06.2025

ORDER

Assailing the Order-in-Original dated 02.07.2024 under Annexure-1 passed by the Commissioner, GST & CX Commissionerate, Rourkela-Opposite Party No.1 in respect of Financial Years 2015-16 and 2016-17 invoking Section 73 of Chapter-V of the Finance Act, 1994 raising demand of service tax to the tune of Rs.5,76,99,511/-, besides penalties under Sections 77 & 78 and interest under Section 75, the Petitioner has approached this Court by way of filing this writ petition under Articles 226 & 227 of the Constitution of India.

- 2.** Sri Bijay Panda, learned Advocate appearing for the Petitioner submitted that the Petitioner, Proprietor having business in the name and style M/s. GNR



Construction executed works contract as sub-contractor during the periods 2015-16 & 2016-17. Though the Commissioner, CGST & Central Excise, Aurangabad Commissionerate-Opposite Party No.3 issued show-cause-*cum*-demand notice dated 21.04.2021, the proceeding got transferred to the Commissioner, CGST & CX, Audit Commissionerate, Nashik-Opposite Party No.2 by Corrigendum dated 25.10.2023. The transferee-authority concluded the proceeding leading to framing of assessment *vide* order dated 12.07.2024 in respect of Financial Years 2015-16 and 2016-17.

- 2.1. It came to notice of the petitioner subsequent thereto that another assessment order for the said periods 2015-16 and 2016-17 was passed by the Commissioner, GST & CX, Commissionerate, Rourkela, who levied tax and interest coupled with penalty by an *ex parte* order dated 02.07.2024. Such *ex parte* order passed was on account of non-service of notice, which fact emanates from acknowledgement receipt (Annexure-4).
- 2.2. Said order dated 02.07.2024 being supplied by the Superintendent, GST & CX, Rourkela-II Range on 02.04.2025, this writ petition has been filed with a prayer to quash the said *ex parte* order inasmuch as for the self-same periods, *i.e.*, 2015-16 and 2016-17, the Assessing Authority, the Commissioner, CGST & CX, (Audit), Nashik-Opposite Party No.2 had passed



Assessment Order on participation of the Petitioner *vide* order dated 12.07.2024.

- 3.** Mr. Sujan Kumar Roy Choudhury, learned Senior Standing Counsel appearing for the CGST, CX and Customs Department-Opposite Parties would submit that notices were issued to the Petitioner from Rourkela Commissionerate for the purpose of assessment, but the Petitioner did not choose to appear before the authority concerned, as a result of which the Commissioner, GST & CX Commissionerate, Rourkela had to pass *ex parte* Assessment Order dated 02.07.2024. Therefore, no procedural lapses can be imputed against the authority concerned in passing the order dated 02.07.2024 (Annexure-1).
- 4.** Heard Mr. Bijay Panda, learned counsel for the Petitioner and Mr. Sujan Kumar Roy Choudhury, learned Senior Standing Counsel appearing for the CGST, CX and Customs Department-Opposite Parties.
- 5.** Perusal of record and scrutiny of documents available on record reveals no dispute on facts so far as short point raised by the learned counsel for the petitioner.
- 5.1.** The Assessment has been framed on 12.07.2024 under Section 73 of Chapter-V of the Finance Act, 1994 by the Commissioner, CGST & CX (Audit), Commissionerate, Nasik (Annexure-3) with reference to show-cause notice



issued by the Commissioner, CGST & CX, Aurangabad Commissionerate read with Corrigendum dated 25.10.2023 for the Financial Years 2015-16 & 2016-17.

- 5.2. For the self-same Financial Years another *ex parte* assessment order on 02.07.2024 was passed by the Commissioner, GST & CX, Commissionerate, Rourkela, but without service of notices. As is apparent from copy of acknowledgement receipt *vide* Annexure-4 that the notices for assessment could not be served as per Postal Department endorsement that “assessee cannot be located”.
- 5.3. On 17.06.2025, when the matter was taken up, learned Senior Standing Counsel appearing for the Opposite Parties sought for accommodation to obtain instruction with regard to the fact of existence of two assessment orders for same Financial Years, *i.e.*, 2015-16 and 2016-17, one issued by the Commissioner (Audit), Nashik (Annexure-3) and the other issued by the Commissioner, GST & Central Excise Commissionerate, Rourkela (Annexure-1).
- 5.4. During the course of hearing, he has fairly conceded that the Commissioner, GST & Central Excise Commissionerate, Rourkela has passed the Assessment Order in absence of the Petitioner. He further submitted that since none represented the Petitioner in course of



assessment proceeding, *ex parte* order was passed by the Commissioner, GST & CX, Rourkela Commissionerate. However, he did not dispute the fact stated in the acknowledgement receipt (Annexure-4) that the Postal Department could not serve notices issued from the Office of the Commissioner, GST & Central Excise Commissionerate, Rourkela on the petitioner by citing that “addressee cannot be located”.

5.5. Thus, the factual position makes it clear that Assessment Order dated 02.07.2024 was passed without examination of documents or analysing evidence of the petitioner. However, from scrutiny of Assessment Order dated 12.07.2024 (Annexure-3), it transpires that in response to show cause notice issued by the Commissioner (Audit) the petitioner appeared and on consideration of the merit of the matter, the Assessing Authority passed the order.

5.6. Thus, this Court finds force in submission of learned counsel for the Petitioner that because of non-service of notices issued from Commissionerate at Rourkela, confusion arose. As is seemly submitted it is trite that at one and the same time only one operative assessment order can subsist. In other words, no two assessment orders for the same tax periods/financial years can be operative at the same time. It is axiomatic that there may exist one assessment order for an assessee for one



assessment period. The proceedings without serving notice culminated in assessment order dated 02.07.2024 is wholly without jurisdiction and a nullity.

5.7. Since the assessment order dated 12.07.2024 was passed by taking into consideration material produced and affording opportunity of personal hearing, this Court is inclined to hold that decision taken on compliance of principles of natural justice and on merits is tenable particularly when the same is not questioned before any other forum and attained finality. Such finding is made on the conceded position by counsel for both sides that the order dated 12.07.2024 has not been assailed before any other higher forum.

5.8. It may be apposite to have regard to the following observation contained in the case of *CCE Vrs. Prince Gutkha Ltd.*, (2015) 15 SCC 775:

“Insofar as the issue of clandestine removal of goods by Respondent 1 is concerned, we find that on the statement of Respondent 5 given earlier, the adjudicating authority had dropped the proceedings accepting the explanation furnished. In view thereof, CESTAT has held that there could not have been second show-cause notice on the same cause of action. In this behalf we do not find any error in the order passed by CESTAT.”

5.9. This Court observes that when multiple assessment orders exist for the same assessment year in respect of same assessee with respect to identical subject-matter,



the order that addresses the merits of the case generally takes precedence over an *ex parte* order (an order issued in the absence of the taxpayer). This is because an *ex parte* order is typically made without considering the taxpayer's arguments, evidence, or objections/explanation, if any. The order based on merit reflects application of mind in decision making and thorough examination of the facts and law being made, such order is preferred to be sustained rather than the order which is passed in absence of the assessee for want of service of notice.

5.10. The rationale behind this principle is rooted in the principles of natural justice and fairness. A taxpayer should have the opportunity to present his case. If an *ex parte* order is issued, and subsequently, an order on merits is passed, the latter, which considers the taxpayer's submissions, should prevail.

5.11. There cannot be any cavil that justice dictates that a person who had no opportunity to defend themselves against the making of an order should not be placed in a worse position than they would have been in had they been able to fully participate in the proceedings leading to the order. A decision, therefore, made after hearing is more authoritative than a default decision.



6. With the above delineated perspective, for the reasons ascribed to above and discussions made on facts, this Court is, therefore, inclined to entertain this writ petition by quashing the *ex parte* Assessment Order dated 02.07.2024 (Annexure-1).
- 6.1. It is made clear that the parties are to act according to Assessment Order dated 12.07.2024 passed by the Commissioner, CGST & CX Commissionerate (Audit), Nashik (Annexure-3).
7. With the aforesaid observation(s), the writ petition and the pending interlocutory application(s), if any, stand disposed of, but in the circumstances, there shall be no order as to costs.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE

High Court of Orissa, Cuttack
The 24th June, 2025//MRS/Laxmikant