AFR

ORISSA HIGH COURT : CUTTACK

W.P.(C) No.12755 of 2025

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

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M/s. Bikash Panigrahi
Represented through
Proprietor Bikash Panigrahi
Aged about 42 years
Son of Suresh Panigrahi
At: College Road, Bargarh
P.O./P.S.: Bargarh,
Dist: Bargarh ... Petitioner

-*VERSUS*-

1. The Commissioner Commercial Tax
CT and Goods and Services Tax
At: Banijyakara Bhawan
Cantonment Road, Cuttack, Odisha

2. Additional Commissioner, State Tax
Bargarh Circle, Sambalpur
At/P.O./District: Sambalpur.

3. Deputy Commissioner, State Tax
Bargarh Jurisdiction
At/P.O./Dist: Bargarh. ... Opposite Parties

Counsel appeared for the parties:

For the Petitioner : Mr. Abhilash Mishra, Advocate

For the Opposite Parties : Mr. Sunil Mishra,
Standing Counsel,
Commercial Taxes and Goods
and Services Tax Organisation

P R E S E N T:

HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON

AND

HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN

Date of Hearing : 15.07.2025 :: Date of Judgment : 15.07.2025

JUDGMENT

MURAHARI SRI RAMAN, J.—

Propriety and legality of order dated 7th February, 2022 passed by the Deputy Commissioner of Commercial Tax and Goods and Services Tax, Bargarh Circle, Sambalpur, Odisha pertaining to the financial year, 2018-19 under Section 74 of the Central Goods and Services Tax Act, 2017 and the Odisha Goods and Services Tax Act, 2017 (collectively referred to as 'GST Act'), the petitioner has knocked the doors of this Court by invoking of provisions of Articles 226 and 227 of the Constitution of India beseeching to exercise the extraordinary jurisdiction of this Court with the following prayer(s):

"It is therefore prayed that your Lordship would graciously be pleased to admit this petition, issue notice to the Opp.Parties asking them why the assessment order dated 7.2.2022 and demanding Rs.7.13,705/- Annexure-2 passed by the Opp.party No. 2 shall not be set aside and if they failed to explain the same with sufficient reason issue Rule Nisi and be pleased to set aside the order dated 7.2.2022 passed by the Opp.Party No.2 vide Annexure-2 illegal, arbitrary the interest of justice.

And in alternative be pleased to allow the petitioner to file statutory appeal before the appellate authority against the impugned order under Annexure-2 and be pleased to direct the appellate authority to condone the delay in preferring appeal and also be pleased to direct the Appellate authority to disposed of the appeal in accordance with law within a stipulated time period;

And pleased to pass any other order(s) as this Hon'ble Court deem fit and proper.

And, for this act of kindness the petitioner shall as on duty bound ever pray."

Facts:

2. The petitioner, proprietorship concern carrying on its business in the name and style "M/s. Bikash Panigrahi", located in the district of Bargarh, assigned with GSTIN: 21AOQPP6123H1ZX, against

which a proceeding under Section 74 of the GST Act was initiated by issue of show cause notice dated 27th November, 2020 and having failed to file reply within the period stipulated therein, the assessment order has been passed whereby a demand in Form GST DRC-07 was issued. Challenge is laid against the said order in this writ petition.

Arguments:

3. Mr. Abhilash Mishra, learned Advocate appearing on behalf of the petitioner submitted that the order of assessment dated 7th February, 2022 is not only arbitrary and illegal but also it is not in consonance with tenet of law, inasmuch as there could not have been suppression or mis-statement though return showing *'NIL'* being furnished to the Department. The notice issued depicting non-filing of return is misnomer. Had an opportunity been afforded to the petitioner, the documents/evidence could have been produced before the Assessing Officer for appraisal. He would submit that in absence of reply to the show cause notice, the Assessing Officer jumped to the conclusion that there was wilful suppression pertaining to financial year 2018-19. Since there is no fraud element involved in the transactions that are subject matter of assessment, the proceeding

under Section 74 of the GST Act is illegal, arbitrary and irrational.

4. In reply to such contention advanced by the counsel for the petitioner, vehemently opposing the maintainability of the writ petition assailing the assessment order instead of availing alternative remedy provided under the GST Act, Mr. Sunil Mishra, learned Standing Counsel for Commercial Tax and Goods and Services Tax Organization urged that in view of the decision in *Godrej Sara Lee Ltd. v. Excise & Taxation Officer-cum-Assessing Authority*, *(2023) 3 SCR 871*, the writ petition is not at all "maintainable", much less "entertainable". It is submitted that had the petitioner availed the remedy available under the statute, recourse to the provisions under Section 107 of the GST Act could have been availed. Under sub-section (4) *ibid.* the appellate authority is vested with discretion to condone the delay in filing the appeal within a further period of thirty days in the event the appeal is not filed within a period of three months as contemplated under sub-section (1) thereof. Therefore, outer limit for exercise of discretion to condone the delay being provided for, in view of *Orissa Mineral Development Company Ltd. Vrs. Commissioner of Sales Tax, Orissa, (1960) 11 STC 12*

(Ori) = AIR 1960 Ori 79 the writ petition is liable to be dismissed. He sought to lighlight that it has been unequivocally laid down in the said judgment as:

"In this application under Article 226 of the Constitution the validity of the assessment of the petitioner to sales tax was challenged. On behalf of the sales tax department, however, Mr. G.K. Misra raised a preliminary objection on the ground that on the facts as stated by the applicant himself he had an alternative remedy by way of a regular appeal before the Sales Tax Tribunal and that consequently this Court should not exercise its extraordinary jurisdiction under Article 226.

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The law of limitation for filing revision petition before the Collector and the Revenue Commissioner was laid down in Rules 52 and 53 of the Orissa Sales Tax Rules, and a period of thirty days from the date of receipt by the assessee of the order of the appellate authority was fixed for filing revision petitions before the Collector and a period of sixty days from the date of receipt of the order of the Collector was fixed for filing revision petitions before the Revenue Commissioner.

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I am inclined to agree with Mr. Misra. It is true that the existence of an alternative remedy may not always be a sufficient ground for this Court to refuse to exercise its jurisdiction under Article 226 and cases may arise where the unconstitutionality or the illegality of the order under challenge is so apparent

that notwithstanding the existence of the alternative remedy this Court may interfere under that Article. This principle has been emphasised in a recent decision of the Supreme Court reported in U.P. State Vrs. Mohd. Noor, AIR 1958 SC 86. But at the same time a party should not be permitted to escape the rigorous effects of the law of limitation by applying to this Court under Article 226, after the expiry of the period prescribed by law to get relief from the appropriate revisional or appellate authorities. If, as a fact, the petitioner received the copy of the Collector's order prior to the 1st October, 1957, as alleged by the sales tax department, he should have filed a revision petition before the Board of Revenue within sixty days from that date and thus kept the revision petition alive so as to make it pending on the date of coming into force of Sections 9, 10 and 11 of Orissa Act XX of 1957. Such a revision would then have been disposed of by the Board of Revenue and the petitioner would undoubtedly have had a right to ask for a statement of case to this Court, as provided in section 24 of the Act. If, on the other hand, the petitioner's statement to the effect that he received a copy of the Collector's order only on the 4th October, 1957, be taken as correct, then as soon as the Orissa Legislature passed Act XXVI of 1958 and conferred on him the right to appeal to the Sales Tax Tribunal against the order of the Collector, he should have filed a regular appeal to the Tribunal. When the Legislature stepped in, at a time when this application was pending in this Court and conferred on the aggrieved party a regular right of appeal before an independent judicial Tribunal, the party should be directed to seek his redress before that Tribunal and should not be permitted to invoke the

extraordinary jurisdiction of this Court under Article 226. The powers of this Court under that Article are limited whereas the powers of the Tribunal as an appellate authority are co-extensive with those of the lower authorities. It can investigate facts and come to its own independent findings.

*The questions involved in this petition are mixed questions of law and fact. The petitioner has been contending that the sales in question were inter-State sales and also that they were sales in the course of export and as such outside the purview of the Orissa Sales Tax Act. On the other hand, the department has been contending that the sales were completed in Orissa and were consequently purely internal sales. This disputed question can be finally disposed of only by a court of appeal. ***"*

4.1. Drawing similitude Sri Sunil Mishra, learned Standing Counsel submitted that the petitioner herein seeks to set up adjudication of factual dispute whether there is suppression of transactions or fraud element involved in such transactions. This apart, the petitioner attempted to circumvent the process of alternative remedy only to by-pass the rigours of conditions hedged for filing appeal and absence of sufficient reason demonstrating delay in approaching this Court. Thus, in sum and substance the learned Standing Counsel impressed upon to say that the statutory prescription with respect to timeline to approach the appellate authority provided under Section 107 of

the GST Act could not save limitation to run from the date of assessment order.

4.2. Mr. Sunil Mishra, learned Standing Counsel expanded his argument by advancing argument that since no reason has been cited by the petitioner, which prevented him from approaching the forum available under the statute, this writ petition does not deserve to be entertained after more than three years from the date of passing of an order of assessment, particularly when at paragraph-4 of the writ petition, it is admitted that show cause notice dated 27th November, 2020 was served on the petitioner to which he did not choose to file any reply or explanation. Therefore, he submitted that the present writ petition is not maintainable and/or entertainable at this distance of time, as the petitioner remained indolent in challenging the assessment order for such a long period.

Hearing:

5. As short point is involved whether the writ petition is maintainable for there occurred inexplainable delay of more than three years from the date of passing the assessment order, this writ petition is taken up for final hearing at the stage of admission.

5.1. Accordingly, heard Mr. Abhilash Mishra, learned counsel for the petitioner and Mr. Sunil Mishra, learned Standing Counsel for Commercial Tax and Goods and Services Tax Organization.

Analysis and discussions:

6. Upon scrutiny of material available on record, it is *ex facie* manifest that the petitioner has admitted to have been served with show cause notice issued on 27th November, 2020 *via* common portal. There is, therefore, no question of any doubt that the petitioner had the knowledge about initiation of proceedings being initiated under Section 74 of the GST Act.

6.1. As it appears from the document enclosed to the writ petition as Annexure-2, the Assessing Officer has passed the assessment order on 7th February, 2022 in connection with said show cause notice dated 27th November, 2020 with respect to transactions pertaining to financial year 2018-19.

6.2. A bare reading of provisions under Section 107 of the GST Act makes it abundantly clear that the appellate authority is empowered to exercise his discretion to condone the delay beyond the period specified under sub-section (1) for filing appeal for further period of thirty days in terms of sub-section

(4). Since this writ petition is filed even much after the condonable period envisaged under the said provision, the writ petition is not maintainable.

6.3. This Court is taken to take note of *Tata Steel Ltd. Vrs. Raj Kumar Banerjee, 2025 INSC 639.* After review of a pertinent decisions, the Hon'ble Supreme Court of India having regard to period of limitation stipulated in Section 61 of the Insolvency and Bankruptcy Code, 2016, observed as follows:

> *"10.4.In the present case, Respondent No.1 was neither a party to the proceedings before the NCLT nor privy to the CoC deliberations, and became aware of the order only upon its subsequent disclosure. However, it is evident that the Company Secretary of the Corporate Debtor duly informed the listing departments of both NSE and BSE about the NCLT order dated 07.04.2022 within 30 minutes of its pronouncement. Hence, the limitation period for filing the appeal commenced on 07.04.2022 and expired on 07.05.2022. Notably, 07.05.2022 fell on the first Saturday of the month, which is a working day for the Registry of the NCLAT. Even otherwise, the benefit of Section 4 of the Limitation Act, 1963 cannot be granted, as Respondent No.1 filed the appeal beyond not only the prescribed period of 30 days but also the condonable period of 15 days, i.e., on 24.05.2022. In view of the same reason, Rule 3 of the NCLAT Rules, 2016 has also no application to the facts of the present case.*

Thus, applying the principles laid down in the decisions referred to above, we arrive at the irresistible conclusion that Respondent No.1 filed the appeal beyond the statutory maximum period of 45 days prescribed under section 61(2) IBC. Accordingly, the first issue is answered by us.

11. *As indicated above, the IBC prescribes strict timelines for filing appeals and taking legal action so as to ensure that insolvency proceedings are not misused to recover time-barred debts. The proviso to Section 61(2) clearly limits the NCLAT's jurisdiction to condone delay only up to 15 days beyond the initial 30-day period. Where a statute expressly limits the period within which delay may be condoned, an Appellate Tribunal cannot exceed that limit. In other words, the NCLAT being a creature of statute, operates strictly within the powers conferred upon it. Unlike a civil suit, it lacks inherent jurisdiction to extend time on equitable grounds.*

11.1. *Once the prescribed and condonable periods (i.e., 30 + 15 days) expire, the NCLAT has no jurisdiction to entertain appeals, regardless of the reason for the delay. In Mobilox Innovations Private Limited Vrs. Kirusa Software Private Limited, (2018) 1 SCC 353 while interpreting Section 9 IBC, this Court underscores the IBC's strict procedural discipline i.e., only applications strictly conforming to statutory requirements can be entertained. This principle is also applicable to limitation issues under section*

61(2), as it supports the idea that tribunals must operate within the bounds of the Code, without adding equitable or discretionary powers not conferred by statute. This Court in Kalpraj Dharamshi Vrs. Kotak Investment Advisors Limited, (2021) 10 SCC 401 has categorically held that the NCLAT cannot condone any delay beyond 15 days even on equitable grounds; and that the appellate mechanism under IBC is strictly time-bound by design to preserve the speed and certainty of the insolvency resolution process.

11.2. Thus, the NCLAT has no power to condone delay beyond the period stipulated under the statute. Accordingly, the second issue is answered by us.

12. In view of the foregoing, the order passed by the NCLAT condoning the delay in filing the appeal, is ultra vires and liable to be set aside.

13. Before parting, we may observe that time is of the essence in statutory appeals, and the prescribed limitation period must be strictly adhered to. Even a delay of a single day is fatal if the statute does not provide for its condonation. As held by us, the NCLAT has no power to condone delay beyond the period stipulated under the statute. Allowing condonation in such cases would defeat the legislative intent and open the floodgates to belated and potentially frivolous petitions, thereby undermining the efficacy and finality of the appellate mechanism."

6.4. It is brought to the notice that Division Bench taking cognizance of the provisions under Section 169 of the GST Act with respect to service of notice *via* Common Goods and Services Tax Electronic Portal in the case of *M/s. Rahul Spares Pvt. Ltd. Vrs. Chief Commissioner of C.T. & GST and others* in *W.P.(C) No.9373 of 2025, disposed of vide Order dated 08.04.2025* held as follows:

> *"5. It leads to another point pertaining to delay and latches attributable to the conduct of the Petitioner in approaching this Court. We are not unmindful of the proposition that there is no period of limitation provided under the Limitation Act in relation to an application under Article 226 and 227 of the Constitution of India. The Apex Court as well as several High Courts have imposed self-restraint upon themselves in exercising the discretion under Article 226 of the Constitution, if the approach is made belatedly and bereft of any reasonable explanation. The delay and laches attributable to the conduct of the litigant may disentitle him to get the relief and the Court may at times refuse to exercise such discretion vested upon them.*
>
> *6. The moment the order is uploaded in the common portal and the returns are statutorily required to be uploaded on such portal on periodical intervals, it is inconceivable that there was lack of knowledge of said order to the Petitioner. The order was passed as far back as in the year 2023 and the challenges made to*

the same in the instant writ petition, filed in the year 2025, is without any explanation except that said order was not within the knowledge of the Petitioner.

7. In view of the discussions made hereinabove, we are unable to accept the contention of the petitioner that the order was not communicated to him. There is apparent delay in approaching this Court and, therefore, we refuse to exercise the discretion vested upon us under Article 226 of the Constitution. Accordingly, the writ application is rejected. No order as to costs."

6.5. Heavy reliance is placed by Mr. Sunil Mishra, learned Standing Counsel in the case of *M/s. Laxmi Construction Vrs. State Tax Officer, CT & GST Circle, Barbil, W.P. (C) No.9545 of 2024 vide Judgment dated 09th May, 2024,* wherein this Court has referred to the case of *Assistant Commissioner (CT) LTU, Kakinada Vrs. Glaxo Smith Kline Consumer Health Care Ltd., (2020) 4 SCR 602* and the decision of Rajasthan High Court in *Malik Khan Vrs. Chief Commissioner, GST and Central Excise, (2023) 120 GSTR 66 (Raj)* held as follows:

"7. In Assistant Commissioner (CT) LTU, Kakinada Vrs. Glaxo Smith Kline Consumer Health Care Ltd., (2020) 4 SCR 602, the apex Court at paragraphs 14 and 15 held as follows:-

'14. A priori, we have no hesitation in taking the view that what this Court cannot do in

exercise of its plenary powers under Article 142 of the Constitution, it is unfathomable as to how the High Court can take a different approach in the matter in reference to Article 226 of the Constitution. The principle underlying the rejection of such argument by this Court would apply on all fours to the exercise of power by the High Court under Article 226 of the Constitution.

15. *We may now revert to the Full Bench* decision *of the Andhra Pradesh High* Court *in Electronics Corporation of India Ltd. Vrs. Union of India, 2018 (361) ELT 22(AP) which had adopted the view taken by the Full Bench of the Gujarat High Court in Panoli Intermediate (India) Pvt. Ltd. Vrs. Union of India and Ors., AIR 2015 Guj 97 and also of the Karnataka High Court in Phoenix Plasts Co. Vrs. Commissioner of Central Excise (Appeal-I), Bangalore, 2013 (298) ELT 481 (Kar). The logic applied in these decisions proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as Section 31 of the 1995 Act, cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the Assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of*

writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction-by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and Rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three-Judge Bench of this Court in Oil and Natural Gas Corporation Limited Vrs. Gujarat Energy Transmission Corporation Limited & Ors. (2017) 5 SCC 42. In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose.'

8. *Relying on the aforesaid decision of the apex Court, the High Court of Judicature for Rajasthan in Malik Khan (supra) dismissed the writ petition which* was *filed after eight months of expiry of limitation.*

9. *So far as communication of the order is concerned, Section 169(1)(d) provides as follows:*

> *'169. Service of notice in certain circumstances.—*
>
> *(1) Any decision, order, summons, notice or other communication under this Act or the rules made there under shall be served by any one of the following methods, namely:-*
>
> ***
>
> *(d) by making it available on the common portal; or'*

In view of the aforesaid provision, it is made clear that even though the petitioner has not been communicated with the order physically, but since the same was made available on the common portal, it is deemed to have been served on him. Therefore, such plea is of no use for the petitioner.

10. *In view of the foregoing discussions and by applying the aforesaid principles to the present case, this Court is of the considered view that since the petitioner has not filed any statutory appeal before the appellate authority within the limitation period and has directly filed this writ*

petition before this Court after two years and five months of passing of the impugned order, the writ petition filed by the petitioner cannot be entertained as being not maintainable."

6.6. Such being perception, which assists this Court to arrive at a conclusion that if notice/order is uploaded on common GST portal, the same shall be considered as service on the assessee (petitioner) in view of unambiguous provisions contained in Section 169 of the GST Act and the writ petition is not maintainable being filed beyond the condonable period provided under Section 107 of the GST Act.

Conclusion:

7. Under the aforesaid premises, the assessment order dated 07.02.2022 passed under Section 74 of the GST Act by the Deputy Commissioner of Commercial Tax and Goods and Service Tax, Bargarh Circle, Sambalpur being challenged by way of filing the writ petition on 08.04.2025 is exceptionable as the petitioner has not ascribed reason for the unusual delay in approaching this Court.

8. For the reasons assigned in the foregoing paragraphs and discussions made *supra*, the writ petition, sans merit, stands dismissed; and pending

Interlocutory Applications, if any, are also dismissed accordingly.

I agree.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE

High Court of Orissa, Cuttack
The 15th July, 2025/Bichi