



ORISSA HIGH COURT : CUTTACK

W.P.(C) No.17292 of 2025

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

* * *

M/s. Savitri Industries,
Holding No.233, Allamchand Bazar,
Cuttack-753001, represented through its
Proprietress Smt. Rita Devi Agarwal,
Aged about 64 years,
Daughter of Late
Pramod Kumar Agarwal. ...

Petitioner

-VERSUS-

- 1.** Chief Commissioner of CT & GST,
Baniyyakar Bhawan,
Cantonment Road,
Cuttack – 753 001.
 - 2.** Deputy Commissioner of State Tax,
Cuttack I West Circle, Cuttack,
At: OSFC Building, OMP Square,
Cuttack.
 - 3.** Central Board of Indirect Taxes and Customs,
Department of Revenue,
Ministry of Finance,
At: R.No.406, 4th Floor,
C Wing
Hudco Vishala Building,
Bhikaji Cama Place,
R.K. Puram,
New Delhi-110066. ...
- Opposite Parties



Counsel appeared for the parties:

For the Petitioner : M/s. Madhab Lal Agarwal,
S. Tiberewal, P. Khendewal and
Z.M. Wallace, Advocates

For the Opposite Party
Nos.1 & 2 : Sri Sunil Mishra,
Standing Counsel
(CT & GST Organisation)

For the Opposite
Party No.3 : Sri Avinash Kedia,
Junior 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 : 28.07.2025 :: Date of Order : 28.07.2025

ORDER

1. Assailing order dated 25.02.2025 passed in GST DRC-07 vide Annexure-5 by the Deputy Commissioner of State Tax, Cuttack-I West Circle, Cuttack-Opposite Party No.2, whereby and whereunder a demand to the tune of Rs.13,63,646/- comprising tax (Rs.4,82,531/-), interest (Rs.3,98,584/-) and penalty (Rs.4,82,531/-) for the tax periods from April, 2019 to March, 2020 has been raised invoking power under Section 74 of the Odisha Goods and Services Tax Act, 2017/the Central Goods and



Services Tax Act, 2017 (collectively be called “the GST Act”), the Petitioner has approached this Court way of filing this writ petition under Articles 226 & 227 of the Constitution of India with the following prayer(s):

“Under the aforesaid circumstances it is prayed therefore that this Hon’ble Court may be graciously pleased to:-

- a. Admit the Writ Petition;*
- b. Issue Rule nisi calling upon the impugned order dated 25.02.2025 issued by the Opp. Party No.2 vide Annexure-5 shall not be quashed being illegal, arbitrary, unsustainable in law, contrary to scheme & intent of the Act and Rules;*
- c. Issue Rule nisi calling upon the Opp. Parties as to why initiation of proceeding u/s. 74 shall not be quashed being contrary to the provisions of the Act and Rules, illegal, arbitrary and not in accordance with law;*
- d. Issue Rule nisi calling upon the Opp. Parties as to why the impugned order dated 25.02.2025 issued by the Opp. Party No.2 vide Annexure-5 disallowing the claim of ITC on account of non filing of GST 3B by the suppliers, shall not be quashed being illegal, arbitrary, unsustainable in law, contrary to scheme & intent of the Act and Rules;*
- e. Issue Rule nisi calling upon the Opp. Parties as to why disallowance of Input Tax Credit (ITC) under clause (c) of sub-section (2) of Section 16 of CGST/OGST Act, 2017 shall not be quashed*



being contrary to the provisions of the Act and Rules, illegal, arbitrary and not in accordance with law and unconstitutional.

- f. If the Opp. Parties fails to show cause or show insufficient cause, make the rule absolute;*
- g. To pass such further order/orders, direction/directions, writ/writs as may be deemed fit and proper in the circumstances of the case, in favour of the petitioner.*

And for the act of kindness the petitioner shall as in duty bound and ever pray.”

- 2.** The facts as adumbrated by the petitioner in the writ petition reveals that upon scrutiny of self-assessment returns furnished under Section 39 of the GST Act, the petitioner was requested by a notice in GST ASMT-10, dated 08.09.2022 to reverse Input Tax Credit (“ITC”, for short) of Rs.4,82,531/- availed for the periods August, September, October and November of 2019 under Integrated Goods and Service Tax Act, 2017 (for short, “IGST Act”) with respect to transactions effect with M/s. KVR Industries Limited, Sarasanapalli assigned with GSTIN37AACCK7954J1Z1. Consequent thereto finding there was a discrepancy in Form GSTR-3B *vis-à-vis* claim of ITC, a proceeding under Section 73 of the GST Act was undertaken, but said proceeding was dropped on the ground that a proceeding under Section 74 of the GST Act had already been initiated.



3. Proceeding under Section 74 of the said Act, on participation by the petitioner and production of books of accounts and documents, culminated in demand, which is reflected in the order in DRC-07, dated 25.02.2025. The present writ petition is directed against said order framed under Section 74 of the GST Act.
4. Mr. Madhab Lal Agarwal, learned counsel appearing for the petitioner submitted that entire demand under Section 74 of the GST Act has been raised on account of disallowance of ITC on the transactions effected with M/s. KVR Industries Limited as the said supplier had not discharged its tax liability as a consequence of which the Assessing Officer invoked Section 16(2)(c) of the GST Act.
 - 4.1. He strenuously contended that the ITC availed by the petitioner was on account of tax paid to the supplier and the same was reflected in self-assessment returns in Form GSTR-2A. Such availment could not have been disallowed on technical approach. He urged that merely because the supplier did not file its returns in GSTR-3B for the months of August, 2019, September, 2019, October, 2019 and November, 2019, the petitioner could not have been saddled with the liability of the supplier by disallowing equal amount of ITC claimed in its returns. Such a manner adopted by the assessing authority would tantamount to directing the recipient to



discharge the liability of supplier, who was in default. Such a course, he would submit, is double taxation, which is prohibited under law.

5. Strongly opposing such submission, Mr. Sunil Mishra, learned Standing Counsel appearing for CT & GST Department-opposite party nos.1 & 2 contended that there is no flaw in the reasoned order passed by the assessing officer inasmuch as no legal infirmity was shown by the petitioner. The assessing officer having acted in consonance with the provisions contained in Section 16(2) exercised power under Section 74 after affording opportunity of hearing and examining the evidence adduced before him. Therefore, essentially he submitted that the writ petition against the order raising demand with reasons is not entertainable. He further vociferously submitted that *vires* being not in question in the writ petition, on factual matrix the petitioner had remedy available under the GST Act which it attempted to circumvent. Efficacious alternative remedy being available the writ petition is liable to be dismissed with cost.

- 5.1. He has taken this Court to Order dated 25.02.2025 framed under Section 74 *vide* Annexure-5 to indicate that determination of the assessing officer cannot be found fault with as it reveals that the demand was raised after examination/verification of purchase register,



waybill details, payment details, goods transport details and ITC register with reference to proof of payment of deposit by the supplier to the Government exchequer. Since the petitioner could not satisfy by demonstrating that it has correctly availed the ITC in tune with the statutory requirement, which can further be subject-matter for consideration by the appellate authority under Section 107 of the GST Act, the writ petition is premature and not to be entertained at this stage.

5.2. Sri Sunil Mishra, learned Standing Counsel and Sri Avinash Kedia, learned Junior Standing Counsel in unison advanced argument that the writ petition being filed beyond the period specified under Section 107(1), had it filed appeal it would have rendered scope to the appellate authority to exercise discretion whether to condone the delay in terms of provisions of sub-section (4) thereof. It is submitted that as no pleading is made in this regard, the writ petition is not maintainable and is liable to be dismissed. Reliance is placed on *Orissa Mineral Development Company Ltd. Vrs. Commissioner of Sales Tax, Orissa, (1960) 11 STC 12 (Ori) = AIR 1960 Ori 79*.

5.3. It is not a fact borne on record whether the supplier has by now discharged its liability. The petitioner having made attempt to avoid the statutory requirement of pre-



deposit for filing the appeal, the writ petition may have to be dismissed *in limine*.

6. Heard Mr. Madhab Lal Agarwal, learned counsel appearing for the petitioner and Mr. Sunil Mishra, learned Standing Counsel appearing for opposite party nos.1 & 2 and Mr. Avinash Kedia, learned Junior Standing Counsel appearing for opposite party no.3.
7. It is manifest from perusal of order dated 25.02.2025 under Section 74 of the GST Act that on account of non-discharge of tax liability by the supplier for the supplies made to the petitioner-recipient during the months of August, September, October and November of 2019 by furnishing returns in GSTR-3B, the Assessing Authority has examined the documents produced before him and disallowed the claim of ITC and raised the impugned demand.
- 7.1. Perusal of record, it transpires that while the impugned order was passed on 25.02.2025, the writ petition has been filed on 13.06.2025. It is noteworthy to have regard to the provisions of sub-section (1) and sub-section (4) of Section 107 of the GST Act, which stand as follows:

*“(1) Any person aggrieved by **any decision or order** passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority*



*as may be prescribed **within three months** from the date on which the said decision or order is communicated to such person.*

- (4) *The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented **within a further period of one month.***

7.2. On bare perusal of aforesaid provisions it transpires that any order or any decision of the authority concerned is subject matter of appeal. It is laid down that the aggrieved person can approach the appellate authority within three months from the date of communication of such order or decision. The appellate authority is also conferred with power to condone the delay, if sufficient cause shown, provided the delay was within “further period of one month”.

7.3. Bearing in mind the outer limit so fixed under sub-section (4) of the GST Act, 2017, it is surfaced from record that the writ petition has not been filed within the period stipulated under sub-section (1). However, there is no pleading in the writ petition as to why the same could not be filed within the normal specified period. Though this Court is conscious that the law of limitation does not apply to writ jurisdiction, yet, no reason is forthcoming as to why there was delay in filing writ



petition within the condonable period as specified under sub-section (4).

- 7.4. In the case of *Bikash Panigrahi Vrs. The Commissioner Commercial Tax CT and Goods and Service Tax and others*, W.P.(C) No.12755 of 2025, disposed of on 15.07.2025, this Court declined to entertain the writ petition, which was filed beyond the outer-limit specified under sub-section (4) of Section 107 of the GST Act.
- 7.5. In the present matter, it is perceived that the petitioner has not approached this Court within the period specified under sub-section (1) of Section 107 of the GST Act; as a consequence of which, exercise of discretion to entertain the writ petition is not deemed warranted.
- 8.** So far as disallowance of ITC on the premise that the supplier having not discharged its liability by furnishing statutory returns, the availment of ITC by the recipient whether is in conformity with statutory requirement could be subject-matter of examination and determination by the appellate authority on merits. To have clear-cut finding on this aspect the appellate authority is vested with the power to reappreciate evidence already adduced during the course of proceeding under Section 74 and/or to be adduced before him.



- 8.1. In a case *viz. Transtech Solution Vrs. The Commissioner of CT & GST and others*, W.P.(C) No.13821 of 2025, disposed of on 24.07.2025, this Court on being apprised of the fact with respect to the transactions being examined with reference to returns as well as evidence of actual movements of goods from one State to the other, desisted from making any observation on factual merit of the matter and left the same for adjudication by the authorities vested with such power to reappraise evidence under the statute and accordingly declined to entertain the writ petition, even though the petitioner demonstrated that the registration certificates of the alleged non-existent suppliers were valid at the time of transactions.
- 8.2. In the instant case since the supplier is alleged not to have discharged its tax liability by furnishing returns with respect to transactions effected with the petitioner during August, September, October and November of 2019, the Assessing Authority having perused the books of accounts *vis-à-vis* documents furnished before him raised the demand on appreciation of evidence. Thus, to question the legality and propriety of such demand, proper course to challenge the order of demand is before the appellate forum subject to compliance, of course, *inter alia* provisions of sub-section (6).



8.3. In the case of *Transtech Solution (supra)*, this Court in the presence of disputed questions of fact restrained itself by not entertaining the writ petition. It may be worthwhile to quote the following paragraph of said judgment:-

“6.11. Delving into such dispute at this stage when the reply of the petitioner is pending adjudication would be to resolving factual anomaly by the writ Court. This Court desists from doing such exercise. This Court feels it pertinent to have reference to a Judgment rendered by the Delhi High Court in Banson Enterprises Vrs. Assistant Commissioner, W.P.(C) No.6503 of 2025, decided on 15.05.2025 [reported at 2025 SCC OnLine Del 3952] declining to entertain writ petition challenging Show Cause Notice, which also has application to the challenging any order or decision which is available for challenge before the appellate authority under the statutory framework. The observation of said Court runs as follows:

‘10. The Court has considered the matter. As held in Assistant Commissioner of State Tax Vrs. Commercial Steel Limited (2021) 7 SCR 660, a writ petition can be entertained under exceptional circumstances only which are set out in the said judgment as under:

‘11. The respondent had a statutory remedy under Section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute



bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:

- (i) a breach of fundamental rights;*
- (ii) a violation of the principles of natural justice;*
- (iii) an excess of jurisdiction; or*
- (iv) a challenge to the vires of the statute or delegated legislation.*

12. In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.

13. For the above reasons, we allow the appeal and set aside the impugned order



of the High Court. The writ petition filed by the respondent shall stand dismissed. However, this shall not preclude the respondent from taking recourse to appropriate remedies which are available in terms of Section 107 of the CGST Act to pursue the grievance in regard to the action which has been adopted by the state in the present case.'

11. *The above legal position has also been reiterated in Elesh Aggarwal Vrs. Union of India, (Neutral Citation: 2023:AHC:121765-DB) wherein the Allahabad High Court has held that no ground is made for interference on merits in exercise of extraordinary jurisdiction.*
12. *The nature of the allegation against the Petitioner in the present case, as is clear from the SCN as also the impugned order is that the Petitioner, in collusion with other entities has taken substantial benefit of ITC without sale of any goods or services. This strikes at the root of the Input Tax Credit facility which is recognised in the GST regime.*
13. *The statement of Petitioner No. 2-Mr. Bansal, itself having been recorded by the Respondent-Department and the principles of natural justice having been fully complied with during the adjudication proceedings, this Court does not find any infirmity in the impugned order so as to exercise its extraordinary writ jurisdiction. There is no justification for not challenging the same by way of an appeal.*



14. *An appeal before the appellate authority is a full-fledged remedy provided under Section 107 of the Central Goods and Service Tax Act, 2017.*
15. *The contentions that the Petitioner wishes to raise can always be raised in appeal, inasmuch as this Court has already taken a view in W.P.(C) 5737 of 2025 titled Mukesh Kumar Garg Vrs. Union of India & Ors. [decided on 09.05.2025 reported at 2025 SCC OnLine Del 3324] In the said case, the Court, has already taken a view in this regard that where cases involving fraudulent availment of ITC are concerned, considering the burden on the exchequer and the nature of impact on the GST regime, writ jurisdiction ought not to be usually exercised in such cases. The relevant portions of the said judgment are set out below:*
 - ‘11. *The Court has considered the matter under Article 226 of the Constitution of India, which is an exercise of extraordinary writ jurisdiction. The allegations against the Petitioner in the impugned order are extremely serious in nature. They reveal the complex maze of transactions, which are alleged to have been carried out between various non-existent firms for the sake of enabling fraudulent availment of the ITC.*
 12. *The entire concept of Input Tax Credit, as recognized under Section 16 of the CGST Act is for enabling businesses to get input tax on the goods and services which are*



manufactured/ supplied by them in the chain of business transactions. The same is meant as an incentive for businesses who need not pay taxes on the inputs, which have already been taxed at the source itself. The said facility, which was introduced under Section 16 of the CGST Act is a major feature of the GST regime, which is business friendly and is meant to enable ease of doing business.

13. *It is observed by this Court in a large number of writ petitions that this facility under Section 16 of the CGST Act has been misused by various individuals, firms, entities and companies to avail of ITC even when the output tax is not deposited or when the entities or individuals who had to deposit the output tax are themselves found to be not existent. Such misuse, if permitted to continue, would create an enormous dent in the GST regime itself.*
14. *As is seen in the present case, the Petitioner and his other family members are alleged to have incorporated or floated various firms and businesses only for the purposes of availing ITC without there being any supply of goods or services. The impugned order in question dated 30th January, 2025, which is under challenge, is a detailed order which consists of various facts as per the Department, which resulted in the*



imposition of demands and penalties. The demands and penalties have been imposed on a large number of firms and individuals, who were connected in the entire maze and not just the Petitioner.

15. *The impugned order is an appealable order under Section 107 of the CGST Act. One of the co-noticees, who is also the son of the Petitioner i.e. Mr. Anuj Garg, has already appealed before the Appellate Authority.*
16. *Insofar as exercise of writ jurisdiction itself is concerned, it is the settled position that this jurisdiction ought not be exercised by the Court to support the unscrupulous litigants.*
17. *Moreover, when such transactions are entered into, a factual analysis would be required to be undertaken and the same cannot be decided in writ jurisdiction. The Court, in exercise of its writ jurisdiction, cannot adjudicate upon or ascertain the factual aspects pertaining to what was the role played by the Petitioner, whether the penalty imposed is justified or not, whether the same requires to be reduced proportionately in terms of the invoices raised by the Petitioner under his firm or whether penalty is liable to be imposed under Section 122(1) and Section 122(3) of the CGST Act.*



18. *The persons, who are involved in such transactions, cannot be allowed to try different remedies before different forums, inasmuch as the same would also result in multiplicity of litigation and could also lead to contradictory findings of different Forums, Tribunals and Courts.'*

16. *Under these circumstances, this Court is not inclined to entertain the present writ petition."*

8.4. On the principle for entertainment of writ petition against order for which alternative remedy is available under the statute, as enumerated hereinabove, when the present writ petition is tested, the averments and fact-situation narrated by the petitioner do not seem to have fallen within such parameters.

8.5. In the present case, since the disputed questions of fact are involved, this Court is of the considered view that the appellate authority is the competent authority to deal with the facts as well as the law. The issues raised in the present case can very well be addressed to in appeal under Section 107 of the GST Act. If need be other alternative fora are also put in place to question the appellate order after disposal of appeal¹. This Court is,

¹ Observation in *Santoshi Tel Utpadak Kendra Vrs. Deputy Commissioner of Sales Tax*, (1982) 1 SCR 97 = (1981) 48 STC 248 (SC) is as follows:

"An appellate authority disposing of a first appeal has power to enhance the assessment. So has appellate authority in a second appeal. We may also point out that when an appellate authority is considering a second appeal a 'first appellate' order, it is examining an order which can be broadly described as an order of assessment. It is a final order disposing of an appeal which, in a



therefore, not inclined to exercise its discretionary extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India. Accordingly, the writ petition stands dismissed. However, the petitioner is at liberty to avail the alternative remedy as available under the GST Act. It is made clear that for the purpose of writ petition, the facts are discussed and such facts as narrated above may not be treated as expression of opinion touching the merit of the matter.

9. As a consequence of above observations made, the writ petition stands disposed of along with pending interlocutory applications, if any, 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 28th July, 2025/MRS/Laxmikant

sense, is a continuation of the assessment. A second appeal against such an order is an appeal against an order of assessment.”
