

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 37112 of 2023

M/s. Orissa Stevedores Limited, *Petitioner*
Cuttack

Mr. S.C. Sahoo, Advocate

-versus-

The CT & GST Officer, Cuttack-I *Opposite Parties*
Central Circle and others

Mr. A. Kedia, Jr. Standing Counsel for CGST, Central Excise)

Mr. Sunil Mishra, Standing Counsel

Mr. Diganta Dash, Addl. Standing Counsel &

Mr. Sheshadeba Das, Addl. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE S.K. SAHOO

ORDER
22.02.2024

Order No.

03. This matter is taken up through Hybrid mode.

2. Heard Mr. S.C. Sahoo, learned counsel appearing on behalf of the petitioner, Mr. A. Kedia, learned Jr. Standing Counsel for CGST, Central Excise & Customs and Mr. Sunil Mishra, learned Standing Counsel assisted by Mr. Diganta Dash and Mr. Sheshadeba Das, learned Additional Standing Counsel for the opposite parties-CT & GST.

3. It is not at all in dispute that the order impugned in this writ petition, which has been passed by the Authority under the Central Goods and Services Tax Act, 2017 (CGST Act)/Odisha Goods and Services Tax Act, 2017 (OGST Act) is appealable under Section 112 of the CGST/OGST Act, 2017. It is also not in dispute that because of non-constitution of the Appellate Tribunal as required under section 109 of the said Acts, the petitioner is deprived of his

statutory remedy of Appeal and the corresponding benefit of sub-sections-8 & 9 of section 112 of the said Acts.

4. The petitioner is desirous of availing the statutory remedy of Appeal under the said provisions. Apparently, acknowledging the absence of constitution of Appellate Tribunal, in exercise of the power conferred under section 172 of the CGST Act, 2017, the Government of India based on the recommendation made by the G.S.T. Council, has issued Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 on 03.12.2019, Clause-2 of which reads as under:-

“2.For the removal of difficulties, it is hereby clarified that for the purpose of calculating:-

(a) the “three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal” in sub-section (1) of section 112, the start of the three months period shall be considered to be the later of the following dates:-

(i) date of communication of order; or

(ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office;

(b) the “six months from the date on which the said order has been passed” in sub-section (3) of section 112, the start of the six months period shall be considered to be the later of the following dates:-

(i) date of communication of order; or

(ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office.”

5. In tune with the said Removal of Difficulties Order dated 03.12.2019, the Central Board of Indirect Taxes and Customs, GST Policy Wing vide Circular No.132/2/2020-GST Dated 18th March, 2020 has come out with the clarification in respect of appeal having regard to non-constitution of the Appellate Tribunal. Paragraphs-4.2 & 4.3, which are relevant are being reproduced hereinbelow:-

“4.2 The appellate tribunal has not been constituted in view of the order by Madras High Court in case of *Revenue Bar Assn. v. Union of India* and therefore the appeal cannot be filed within three months from the date on which the order sought to be appealed against is communicated. In order to remove difficulty arising in giving effect to the above provision of the Act, the Government, on the recommendations of the Council, has issued the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019. It has been provided through the said Order that the appeal to tribunal can be made within three months (six months in case of appeals by the Government) from that date of communication of order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.

4.3 Hence, as of now, the prescribed time limit to make application to appellate tribunal will be counted from the date on which President or the State President enters office. The appellate authority while passing order may mention in the

preamble that appeal may be made to the appellate tribunal whenever it is constituted within three months from the President or the State President enters office. Accordingly, it is advised that the appellate authorities may dispose all pending appeals expeditiously without waiting for the constitution of the appellate tribunal.”

6. Taking into account the aforesaid Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 issued by the Government of India and subsequent clarification issued by the Central Board of Indirect Taxes and Customs (GST Policy Wing) vide Circular No.132/2/2020 dated 18th March, 2020, we deem it proper in the interest of justice to dispose of this writ petition in the following terms, with the consent of the parties:-

(i) Subject to verification of the fact of deposit of a sum equal to 20 percent of the remaining amount of tax in dispute, or deposit of the same, if not already deposited, in addition to the amount deposited earlier under Sub Section (6) of Section 107 of the CGST/OGST Act, the petitioner must be extended the statutory benefit of stay under Sub-Section (9) of Section 112 of the CGST/OGST Act, for the petitioner cannot be deprived of the benefit, due to non-constitution of the Tribunal by the respondents themselves. The recovery of balance amount, and any steps that may have been taken in this regard will thus be deemed to be stayed.

(ii) The statutory relief of stay on deposit of the statutory amount, in the opinion of this Court, cannot be open ended. For balancing the equities, therefore, the Court is of the opinion that since order is being passed due to non-constitution of the Tribunal by the

respondent-Authorities, the petitioner would be required to present/file his appeal under Section 112 of the CGST/OGST Act, once the Tribunal is constituted and made functional and the President or the State President may enter office. The appeal would be required to be filed observing the statutory requirements after coming into existence of the Tribunal, for facilitating consideration of the appeal.

(iii) In case the petitioner chooses not to avail the remedy of appeal by filing any appeal under section 112 of the CGST/OGST Act before the Tribunal within the period which may be specified upon constitution of the Tribunal, the respondent-Authorities would be at liberty to proceed further in the matter, in accordance with law.

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

8. Let an urgent certified copy of this order be issued as per rules.

(Chakradhari Sharan Singh)
Chief Justice

(S.K. Sahoo)
Judge

S. Behera