

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.35107 of 2023

And

I.A. No.16994 of 2023

Sanjay Kumar Nayak

.....

Petitioner

Mr. A.K. Biswal, Advocate

Vs.

*Commissioner of CT & GST,
Cuttack & Others*

.....

Opposite Parties

*Mr. Sunil Mishra, Standing Counsel
for CT & GST Organization*

CORAM:

**ACTING CHIEF JUSTICE DR. B.R. SARANGI
MR. JUSTICE MURAHARI SRI RAMAN**

**ORDER
02.11.2023**

**Order No.
01.**

- This matter is taken up through hybrid mode.
2. The present writ petition is being entertained only because the Second Appellate Tribunal has not yet been constituted.
 3. The petitioner has filed this writ petition challenging the 1st appellate order dated 02.06.2023 passed by the Joint Commissioner of State Tax, CT & GST (Appeal), Balasore by which said authority has not admitted the appeal preferred by the petitioner, as the same is in contravention to sub-sections (1) & (4) of Section 107 of the GST Act and has rejected the appeal filed under sub-Section (1) of Section 107 of the Odisha Goods and Services Tax Act, 2017.
 4. Mr. A.K. Biswal, learned counsel for the petitioner contended that the petitioner is not liable to pay the tax and penalty and, as such, against the order passed by the 1st appellate authority though second appeal lies, the 2nd appellate tribunal has

not yet been constituted. It is contended that the petitioner has already deposited 10% of the demanded tax amount before the first appellate authority and as there is no second appellate forum, this Court should entertain this writ petition.

5. Mr. Sunil Mishra, learned Standing Counsel vehemently contended that since there is delay in preferring the appeal, this Court may not be in a position to condone the delay beyond four months, particularly when appellate authority has not been vested with discretion to condone the delay beyond one month after lapse of three months from the date of communication of order impugned therewith. It is further contended that this case stands in different footing and, as such, the petitioner is liable to pay the tax. In the event the petitioner wants to avail the remedy by preferring appeal before the 2nd appellate tribunal then the petitioner is liable to pay 20% balance disputed tax for consideration of its appeal by the 2nd appellate tribunal.

6. Issue notice to the opposite parties.

7. Mr. Sunil Mishra, learned Standing Counsel for the Department accepts notice for Opposite Parties, let required number of copies of the writ petition be served on him within three working days. Reply be filed within two weeks and rejoinder thereto, if any, be filed before the next date.

8. Since the petitioner wants to avail the remedy under the provisions of law by approaching 2nd appellate tribunal, which has not yet been constituted, as an interim measure subject to the Petitioner depositing entire tax demand within a period of fifteen days from today, the rest of the demand shall remain stayed during the pendency of the writ petition.

9. I.A. stands disposed of.

10. List this matter along with W.P.(C) No.6684 of 2023 on the date fixed therein.

(DR. B.R. SARANGI)
ACTING CHIEF JUSTICE

(M.S. RAMAN)
JUDGE

Laxmikant

