



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.6650 of 2025

M/s. Harsheel Auto Planet, Petitioner
Sundergarh

Mr. Bibekananda Mohanty, Senior Advocate
along with Mr. Sayed Shahzeb Ali, Advocate

-versus-

Commissioner (Appeals), CGST, Opposite Parties
Central Excise & Customs and
others

Mr. Choudhury Satyajit Misra, Senior Standing
Counsel for CGST, Central Excise and Customs

CORAM:

THE HON'BLE THE CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

ORDER

07.05.2025

Order No.

02. This matter is taken up through Hybrid mode.

2. Challenging the Order-in-Appeal No.619 GST/BBSR/ADC/2024-25, dated 05.12.2024 passed by the Additional Commissioner, Goods and Services Tax (Appeals) directed against the assessment framed under Section 73 of the Central Goods and Services Tax Act, 2017/ Inter-State Goods and Services Tax Act, 2017 (collectively, “the GST Act”) read with Section 20 of the (for short, “the IGST Act”), *vide* Order-in-Original dated 07.12.2023 the Petitioner has approached this Court by way of filing this writ petition invoking extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

3. Mr. Bibekananda Mohanty, learned Senior Advocate assisted by Mr. Sayed Shahzeb Ali, learned counsel for the Petitioner submitted that since the departmental portal did not accept the filing, the appeal was filed manual. The Appellate Authority having issued notice of



hearing on the merits of the appeal, the petitioner appeared and filed written note of submission. The hearing was concluded.

3.1. It is submitted that though the Petitioner has addressed the appeal on merits on each ground, the appeal has been rejected basing on non-compliance of sub-section (6) of Section 107 of the CGST Act, 2017. It is argued by learned Senior Counsel that after conducting the hearing on merit without indicating the Petitioner with regard to removing the defect, if any, the Appellate Authority erred in law by straightaway rejecting the appeal on the ground of technicality, *i.e.*, non-furnishing of pre-deposit. Since the hearing before the Appellate Authority proceeded on the basis of the merit of the matter, there could not have been rejection of the appeal on the basis of non-compliance of requirements under Section 107(6) of CGST Act.

4. Mr. Choudhury Satyajit Misra, learned Senior Standing Counsel appearing for the CGST, Central Excise and Customs Department- Opposite Parties submitted that it is not disputed or denied that the petitioner has not complied with the conditions for filing of appeal. It is the appellant who is required to comply with the statutory requirement at the time of filing of appeal. Since it was within its knowledge about the requirement under sub-section (6) of Section 107 of the CGST Act read with Rule 108 of the CGST Rules, there was no requirement to bring it to its notice regarding defective filing. Therefore, the Appellate Authority was justifying in dismissing the appeal without going into the merits of the matter.

5. Considered the rival contentions advanced by the learned counsel for the respective parties. On perusal of the impugned order dated 05.12.2024 (paragraph-6), it is revealed that the Appellate Authority has taken note of furnishing documents along with appeal and he found that



no evidence was available on record with regard to pre-deposit. It is required to be complied with as per sub-section (6) of Section 107 of the CGST Act. Except the said pre-deposit the appeal was otherwise defect-free. It is undeniable that the Appellate Authority proceeded to hear the matter on merit having ignored such a statutory requirement. However, it is no contested by the learned Senior Standing Counsel that the appeal was heard on merit and no intimation was given to the Petitioner with regard to non-compliance of requirements under sub-section (6) of Section 107. The learned Senior Advocate fairly conceded that had the Appellate Authority pointed out such a defect, the petitioner would have deposited such amount as is required for the purpose of appeal to be heard on merit.

5.1 This Court, therefore, feels it expedient to observe that when the appeal is admitted and the Appellate Authority is proceeded to hear the matter on merit, the Office of the Appellate Authority should have brought to the notice of the Petitioner with regard to defect in filing of appeal much prior to issue of notice of hearing. Having not done so, the Appellate Authority proceeded to hear the matter on merit. Therefore, the Petitioner was not afforded proper opportunity. Having not intimated the Petitioner with regard to defect, even though it is admitted that the appeal was admitted for hearing due to inadvertence, there is violation of principles of natural justice.

6. At this stage, learned Senior Counsel appearing for the Petitioner conceded that five days' time be given to the Petitioner to comply with requirement as per under Section 107(6) of the CGST Act.

7. Having thus the peculiarity in the factual scenario, considering the submissions of the learned Senior Advocate for the Petitioner for grant of five days' period to make requisite deposit, this Court sets aside the



impugned order dated 05.12.2024 passed by the Additional Commissioner, GST (Appeals) and direct the Petitioner to deposit the requirement under Section 107(6) of the CGST Act within five days hence. In the event such deposit is made, the Appellate Authority shall consider the same and proceed to hear the appeal in accordance with law by intimating the date(s) of hearing to the Petitioner.

8. With the aforesaid observation and direction, the writ petition stands disposed of. As a result of the disposal of the writ petition, all pending Interlocutory Applications, if any, shall stand disposed of.

(Harish Tandon)
Chief Justice

(M.S. Raman)
Judge

MRS/Laxmikant