IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.17093 of 2025

M/s. Paradeep Phosphates Limited, Bhubaneswar .... ***Petitioner***

Mr. Rajesh Ostwal, Advocate
along with
Mr. Mukesh Panda, Advocate

-versus-

Union of India and others .... ***Opposite Parties***

Mr. Bismay Anand Prusty,
Senior Standing Counsel
(for O.P.Nos.3 and 4)
Mr. Satyanarayan Pattanaik,
CGC

CORAM:
HON'BLE THE CHIEF JUSTICE
AND
HON'BLE MR.JUSTICE MURAHARI SRI RAMAN

ORDER
02.07.2026

Order No.
02.

1. The petitioner-company, incorporated under provisions of Companies Act is engaged in the business of manufacturing of fertilizers and it discharges liability of GST @ 5% on the outward supply of fertilizers in terms of Notification No.1/2017-CT (Rate) dated 28.06.2017. Since the rate of GST on outward supply was less than the rate of GST on input and input services, in terms of Section 54(3) of the Central Goods and Services Tax Act/the Odisha Goods and Services Tax Act, 2017 (Collectively, "GST Act") read with Rule 89(5) of the Central Goods and Services Tax Rules/the Odisha Goods and Services

Tax Rules, 2017 (Collectively, "GST Rules") it claimed refund of accumulated input tax credit for 07 months ranging from July, 2017 to June, 2018. The Assistant Commissioner, GST and Central Excise, Cuttack-II Division, Cuttack sanctioned the refund to the petitioner.

2. Rule 89(5) of the GST Rules suffered an amendment with retrospective effect from 01.07.2017 *vide* Notification No.21/2018-CT dated 18.04.2018 read with Notification No.26/2018-CT dated 13.06.2018. The validity of such amendment being questioned, the Hon'ble Supreme Court in the case of *Union of India* and others *Vs. VKC Footsteps India Pvt. Ltd.* reported in *(2022) 2 SCC 603 = AIR 2021 SC 4407* sustained the validity. The Assistant Commissioner, GST and Central Excise, Cuttack-II Division, Cuttack having issued notice in Form GST-DRC-01 dated 03.07.2019 passed adjudication Order-in-Original in Form GST-DRC-07 dated 08.11.2019 confirming recovery of the refunded amount invoking Section 73 of the GST Act.

3. By Order dated 13.03.2023 the Hon'ble Supreme Court dismissed SLP (C) Diary No.4954 of 2023 challenging the order dated 31.10.2022 of this Court in the writ petition being W.P.(C) No.21829 of 2018 challenging *vires* of Rule 89(5). Said order being carried out by Hon'ble Supreme Court in, came to be dismissed *vide* order dated 13.03.2023. Thereafter, Review Petition, being RVWPET No.132 of 2023, was filed before this Court, which came to be disposed of *vide* order dated 14.07.2023 with the following:

"1. Mr. V. Sridharan, learned counsel appearing for the Petitioner states that since the Petitioner has already paid the tax involved without prejudice to the rights and contentions of the parties, at the present moment, if it is satisfied, the Petitioner may be permitted to file appeal within the time to be stipulated by this Court.

2. In that view of the matter, the present petition is disposed of with a clarification to the order dated 31 October, 2022 of this Court by permitting the Petitioner to file an appeal against adjudication order dated 8th November, 2019 before the appellate authority not later than 14th August, 2023 accompanied by an application for condonation of delay under Section 14 of the Limitation Act citing the pendency of the present petition as the reason for delay. In such event such application will be considered in accordance with law by the appellate authority. The Court clarifies that it has not expressed any view in the matter."

4. In pursuance of such direction, appeal against the Order-in-Original dated 08.11.2019 being preferred, the Additional Commissioner, GST (Appeals), Bhubaneswar disposed of the said appeal by order dated 27.11.2024 (Annexure-1) granting partial relief. The petitioner challenging the said Order-in-Appeal dated 27.11.2024, came up before this Court by way of the instant writ petition *inter alia* on the following grounds (quoted from the Synopsys enclosed to the writ petition):

"(a) The portion of the impugned Circular No.181/13/2022-GST dated 10.11.2022 (Annexure-2) issued by the Opposite Party No.2-Central Board of Indirect Tax and Customs, to the extent it clarifies that the amendment to Rule 89(5) vide Notification No. 14/2022-CT dated 05-07-2022 is not clarificatory and is applicable

prospectively, is incorrect and contrary to the legislature's intention. therefore, portion of the impugned Order is liable to be struck down.

(b) Anomaly corrected in Rule 89(5) vide Notification dated 05.07.2022, is clarificatory in nature and therefore, applies retrospectively. Therefore, portion of the impugned Order, to the extent it is against the Petitioner, is liable to be set aside.

(c) The impugned Order passed by the Opposite Party No.4 is self-contradictory and in violation of the statutory provisions. Therefore, portion of the impugned Order, to the extent it is against the Petitioner, is liable to be set-aside.

(d) Further, the Opposite Party No.5 exceeded Monetary Jurisdiction in the present case. Therefore, portion of the impugned Order, to the extent it is against the Petitioner, is liable to be set-aside."

5. Mr. Rajesh Ostwal, Advocate along with Mr. Mukesh Panda, learned Advocate appearing for the petitioner-Company submitted that the refund already granted is sought to be recovered inasmuch as Rule 89(5) as amended by Notification dated 18.04.2018 allowed refund of unutilized input tax credit on account of inverted duty structure restricted to inputs only and by Notification dated 13.08.2018 said amendment has been given retrospective effect from 01.07.2017. Therefore, he submitted that praying to clarify circular dated 10.11.2022 issued by the Central Board of Indirect Taxes and Customs the writ petition has been filed. Therefore, he submitted that alternative remedy of appeal before the GST Appellate Tribunal under Section 112 of the GST Act as available to it to challenge the Order-in-Appeal would be futile.

6. Mr. Bismay Anand Prusty, learned Senior Standing Counsel appearing for the opposite party Nos.3 and 4 submitted that after the Rule 89 (5) of the GST Rules has been declared valid and *intra vires*, the action of the authority in seeking to recover the refunded amount cannot be held to be illegal and it cannot be said that the tax sought to be collected by the opposite parties to fall within the scope of Article 265 of the Constitution of India. He further submitted that the Order-in-Original affirmed by the Appellate Authority got merged with Order-in-Appeal. Hence he vociferously submitted that the petitioner cannot be allowed to circumvent the statutory remedy available to it under the statute to ventilate its grievance.

7. Heard Mr. Rajesh Ostwal, learned Advocate along with Mr. Mukesh Panda, learned Advocate appearing for the petitioner-company and Mr. Bismay Anand Prusty, learned Senior Standing Counsel appearing for the GST, Central Tax and Customs for opposite party Nos.3 and 4.

8. The writ petitioner has come up before this Court craving for grant of following reliefs:

"It is, therefore, most humbly prayed that in the facts and circumstances aforesaid, this Honourable Court may graciously be pleased to:

(a) issue a Writ of Mandamus or a Writ in nature of Certiorari or any other Writ/s, Order/s and/or Direction/s under Article-226 of the Constitution of India to quash

and set aside portion of the impugned Order-in-Appeal No.601/IGST/BBSR/ADC/2024-25 dated 27-11-2024 (Annexure-1), passed by the Opposite Party No.4-Additional Commissioner, GST (Appeals), Bhubaneswar to the extent it upheld recovery of the refund to the extent of Rs.11, 77,05,976/-;

(b) issue a Writ of Mandamus or any other Writ/s, Order/s and/or Direction/s under Article-226 of the Constitution of India, directing the Opposite Parties herein to refund the Petitioner a sum of Rs.11,77,05,976/- along with the applicable interest, which the Petitioner reversed in excess;

(c) issue a Writ of Mandamus or a Writ in nature of Certiorari or any other Writ/s, Order/s and/or Direction/s under Article 226 of the Constitution of India to quash and set aside portion of the impugned Circular No.181/13/2022-GST dated 10-11-2022 (Annexure-2) issued by the Opposite Party No.2-Central Board of Indirect Tax and Customs to the extent it clarifies that amendment to Rule 89(5) of the CGST Rules vide Notification No.14/2022-CT dated 05.07.2022 is not clarificatory in nature and is applicable prospectively;

(d) issue a Writ of Mandamus or a Writ in nature of Certiorari or any other Writ/s, Order/s and/or Direction/s under Article-226 of the Constitution of India, declaring that amendment to Rule-89(5) vide Notification No.14/2022-CT dated 05-07-2022 is clarificatory in nature and therefore applies retrospectively;

(e) grant Ad-interim order in terms of prayers above;

(f) direct the Opposite Parties for Costs of and incidental to this Writ Petition; and

(g) pass such further or other Writ/s, Order/s and/or Direction/s be passed and/or Direction/s be given as to which this Honourable Court may deem fit and proper.

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

9. Cursory glance at the pleadings of the writ petition and the prayers made therein indicates that the petitioner seeks a declaration that Circular dated 10.11.2022 issued by the Central Board of Indirect Taxes would be applicable prospectively. In this connection the apprehension of the petitioner that the appeal before the GST Appellate Tribunal would not yield fruitful result can be repelled by the following observation made in *Commissioner of Central Excise, Bolpur Vrs. Ratan Melting and Wire Industries, (2008) 13 SCC 1:*

"7. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. ***So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive.*** *Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law."*

10. Such being the legal perspective the apprehension of the petitioner that the GST Appellate Tribunal would not be in a position to clarify the position with respect to statutory provisions and would be bound by the Circular is without comprehension. In the considered opinion of this Court, the GST Appellate Tribunal is competent to adjudicate not only the disputed fact emanating from the Order-in-Appeal but also question of law *vis-à-vis* applicability of Rule 89(5) of the GST Rules as amended with specific reference to the Circulars/Notifications issued in this regard.

11. This Court, therefore, does not feel it apposite to exercise its discretionary powers under Article 226 of Constitution of India to entertain the writ petition against the appellate order. Since efficacious remedy is available to question the tenability of the Order-in-Appeal under Section 112 of the GST Act, the writ petition is not entertained in view of the parameters laid down by the Hon'ble Supreme Court in the case of *Commissioner of Income Tax Vrs. Chhabil Dass Agarwal* reported in *(2014) 1 SCC 603* and *Southern Electricity Supply Co. of Orissa Ltd. Vrs. Sri Seetaram Rice Mill*, *(2012) 2 SCC 108.*

12. In view of the aforesaid, this Court does not find any merit in the instant writ petition. However liberty is reserved for the petitioner to avail the remedy available under Section 112 of the GST Act, if it is so advised, within the time-line specified in the Ministry of Finance (Department of Revenue) Notification bearing F.No.A-50/7/2025-GSTAT-DoR (S.O.3502(E)), dated

30th June, 2026 published in the Gazette of India, Extraordinary No.3367, dated 30th June, 2026, which reads as follows:

"In exercise of the powers conferred by sub-section (1) read with sub-section (3) of section 112 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue number S.O. 4220(E), dated the 17 September, 2025, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), except as respects things done or omitted to be done before such supersession, the Government, on the recommendations of the Council, hereby notifies the 31st day of July, 2026, as the date upto which appeal or application, as the case may be, may be filed before the Appellate Tribunal under this Act in respect of all cases where the order sought to be appealed against, —

(i) is communicated to the person preferring the appeal before the 1st day of May, 2026, and all appeals in respect of order communicated on or after 1st May, 2026, may be filed before the Appellate Tribunal as provided in sub-section (1) of section 112 within three months from the date on which such order is communicated;

(ii) is passed before the 1st day of February, 2026, and all applications in respect of orders passed on or after 1st February, 2026 may be filed before the Appellate Tribunal as provided in sub-section (3) of section 112 within six months from the date on which the said order has been passed."

13. It needs to be clarified that this Court has not expressed its opinion touching upon the merit of the Order-in-Appeal. The petitioner shall adhere to the statutory provisions contained in Section 112 read with terms stipulated in Notification dated 30th

June, 2026 issued by the Ministry of Finance (Department of Revenue) as referred to above.

14. Accordingly, the writ petition along pending Interlocutory Application(s), if any, stands dismissed.

(Harish Tandon)
Chief Justice

(M.S. Raman)
Judge

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