IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.17606 of 2025

Samita Panda .... ***Petitioner***

Ms. Kananbala Roy Choudhury, Advocate

-versus-

The Commissioner of CT & GST and another .... ***Opposite Parties***

Mr. Seshadeb Das, Additional Standing Counsel for CT & GST Department

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

ORDER

Order No. **16.07.2025**

01. This matter is taken up through Hybrid mode.

2. Assailing orders dated 09.06.2025 and 10.06.2025 *vide* Annexures-4 and 5 respectively passed by the State Tax Officer, Jajpur Circle, Jajpur-Opposite Party No.2, whereby and whereunder an application under Section 128A and a petition under Section 161 of the Odisha Goods and Services Tax Act, 2017/the Central Goods and Services Tax Act, 2017 are rejected, the Petitioner has approached this Court way of filing this writ petition invoking provisions under Articles 226 & 227 of the Constitution of India with the following prayer(s):

> *"In the facts and under the circumstances stated above, the Hon'ble Court would graciously be pleased to allow this WRIT Application and issue;*

1) *Rule NISI calling upon the opp. Parties to show cause as to why the impugned order under Annexure-4 & 5 shall not be set aside/quashed;*
2) *And if the O.P. fail to show cause or show insufficient cause make the said Rule absolute by issuing a WRIT in the nature of Certiorari quashing the impugned Annexure-4 & 5;*
3) *A writ in the nature of Mandamus directing the Opposite Parties to allow the petitioner to avail the benefit u/s 128A for the tax period 2017-18.*
4) *Issue any appropriate Writ(s)/Direction(s)/Order(s) deemed fit in the facts and circumstances of the case.*

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

3. The Petitioner having faced assessment under Section 73 of the Central Goods and Services Tax Act, 2017 and the Odisha Goods and Services Tax Act, 2017 (collectively be called "the GST Act") with respect to transactions effected during the tax periods from July, 2017 to March, 2018, an order dated 16.02.2022 was passed by the State Tax Officer-Additional CT & GST Officer, CT & GST Circle, Jajpur, Jajpur Road raising a demand to the tune of Rs.3,97,356/- comprising tax, interest and penalty. However, the figure relating to tax has been shown to be "0" (zero) in the Electronic Liability Ledger.

4. In order to avail the benefit of waiver of interest and penalty so levied and imposed in said assessment order under Section 73 of the GST Act, the Petitioner has filed an application in Form GST SPL-01 as prescribed under Rule 164(1) of the Central Goods and Services Tax Rules, 2017 and the Odisha Goods and Services Tax Rules, 2017 (collectively be called "the GST Rules") invoking provisions of Section 128A.

5. The State Tax Officer, CT & GST, Jajpur Circle-Assessing Authority upon issuing notice in Form GST SPL-03 on 01.05.2025 clarifying error being crept in during entry in the system the amount of tax has been reflected as "0". Since the petitioner has not deposited the amount of tax, which is basic requirement for availing benefit of waiver of interest and penalty as envisaged under Section 128A, order in Form GST SPL-07, dated 09.06.2025 has been issued rejecting the application in Form GST SPL-01.

6. The Petitioner filed a petition under Section 161 of the GST Act for rectification of said order claiming that since no liability to pay "tax" is reflected in the webportal, the Assessing Authority was required to consider the application for waiver of interest and penalty as empowered under Section 128A of the CGST Act. Such petition got rejected *vide* order dated 10.06.2025.

7. Ms. Kananbala Roy Choudhury, learned counsel appearing for the Petitioner, having taken this Court to Electronic Liability Ledger *vide* Annexure-3, submitted that the tax column is reflected as "0" and said ledger shows interest and penalty. Therefore, there being no mistake on the part of the Petitioner, the application under Section 128A could not have been rejected, and the authority concerned ought to have considered waiver of interest and penalty.

7.1. She further submitted that the authority committed the mistake and admitted the error being committed by the Department in the Show Cause Notice in Form GST SPL-03 dated 01.05.2025. The rectification petition under Section 161 of the said Act should have been allowed; having not done so, the writ petition is liable to be

allowed by directing the authority to exercise power vested upon him under Section 128A of the GST Act in proper perspective.

8. Mr. Seshadeb Das, learned Additional Standing Counsel appearing for the Commercial Tax and Goods Services Tax Department-Opposite Parties vehemently opposing the arguments advanced by the learned counsel appearing for the Petitioner, insisted for dismissal of the instant writ petition inasmuch as, there was no error in reflecting the demand correctly in the liability ledger. Nonetheless, the Petitioner was well aware of the demand of tax, interest and penalty as raised by way of reasoned order dated 16.02.2022 pertaining to the Financial Year 2017-18. Therefore, instead of finding fault with the system updates, the petitioner should have complied with the statutory requirement in order to avail benefit under Section 128A as per the demand raised in the assessment order.

8.1. Having taken to assessment order passed under Section 73 *vide* Annexure-1, he submitted that the Assessing Authority very lucidly depicted the component of tax (Rs.2,30,358/-), interest (Rs.1,43,962/-) and penalty (Rs.23,036/-) in total Rs.3,97,356/-. Therefore, precondition of discharge of liability towards tax in order to avail the benefit of the waiver of interest and penalty raised under Section 73 of the GST Act being not satisfied, the rejection of application in Form GST SPL-02 by order in Form GST SPL-07, dated 09.06.2025 pursuant to notice in Form GST SPL-04, dated 13.05.2025 is in consonance with the statutory framework. Since the Petitioner has not yet been deposited such amount of tax reflected in the assessment

order under Section 73 of the GST Act, refusal to waive interest and penalty by the authority is appropriate, which needs no intervention.

9. Heard Ms. Kananbala Roy Choudhury, learned counsel appearing for the Petitioner and Mr. Seshadeb Das, learned Additional Standing Counsel appearing for the CT & GST Department-Opposite Parties.

10. Considered the submissions made by the learned counsel for the parties and after going through the records, it is revealed that by virtue of assessment order under Section 73 pertaining to Financial Year 2017-18 (July, 2017 to March, 2018) demand towards tax, interest and penalty has been raised.

10.1. It is conceded by the learned counsel for the Petitioner that tax (CGST & OGST) has been reflected in the summary sheet of the assessment order and does not dispute that the Petitioner is not unaware of such a fact. It is also not disputed that the Petitioner has also approached the authority concerned within the period stipulated under the statute.

10.2. At the stage of hearing, learned counsel appearing for the Petitioner conceded that the Petitioner is now willing to discharge its liability towards tax in order to avail the benefit under Section 128A.

11. Learned Additional Standing Counsel appearing for the Opposite Parties would submit that in the event the Petitioner deposits such amount of tax within a period stipulated, the authority concerned may consider the application under Section 128A of the GST Act for waiver of interest and penalty.

12. Faced with aforesaid situation, this Court sets aside the order in Form GST SPL-07, dated 09.06.2025 and the order dated 10.06.2025 passed under Section 161 of the GST Act rejecting petition for rectification and directs the Petitioner to deposit the amount of tax as raised *vide* assessment order dated 16.02.2022 within a week hence. In the event of such deposit being made within the stipulated time, the Additional CT & GST Officer, CT & GST Circle, Jajpur, Jajpur Road shall consider the application for waiver of interest and penalty submitted under Section 128A of the GST Act afresh on in its own merit.

13. Needless to observe that in the event of failure on the part of the Petitioner to carry out the direction as aforesaid, the order dated 09.06.2025 passed under Section 128A and the order dated 10.06.2025 passed under Section 161 of the GST Act shall remain unaltered and the Opposite Parties shall be at liberty to proceed in accordance with law.

14. With the aforesaid observation and direction, the writ petition and pending Interlocutory Application(s), if any, are disposed of. There shall be no order as to costs.

(Harish Tandon)
Chief Justice

(M.S. Raman)
Judge

MRS/Laxmikant