AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 26808 of 2023

M/s. Geolane Infrastructures (P) Ltd. .... ***Petitioner***

-Versus-

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

Advocates appeared in this case :

For Petitioner : Mr. Jagabandhu Sahoo, Sr. Advocate
Mrs. Kajal Sahoo, Advocate

For Opposite Parties: Mr. T.K. Satapathy,
Sr. Standing Counsel

CORAM:

THE HON'BLE MR. JUSTICE ARINDAM SINHA

AND

THE HON'BLE MR. JUSTICE M.S. SAHOO

J U D G M E N T

Dates of hearing: 16th August, 2024 and 26th September, 2024
Date of judgment: 26th September, 2024

ARINDAM SINHA, J.

1. The writ petition was heard earlier on 16th August, 2024. We reproduce below paragraphs 1 to 5 from order made that day.

1. Mr. Sahoo, learned senior advocate appears on behalf of petitioner and submits, there be interference because demand of requirement mandate of deposit 7.5% of adjudicated amount makes the remedy of appeal illusory for his client. He hands up audited balance sheets of his client for years ended 2020-21, 2021-22 and 2022-23. It will appear therefrom, his client does not have means to deposit 7.5% of the demand.

2. He submits, notice to show cause dated 25th June, 2020 alleged short payment of tax on taxable services rendered by his client for period 1st April, 2015 onwards. His client made voluntary disclosure under the scheme for the relevant period and obtained discharge certificates. The show cause notice does not contain any material outside those disclosed by his client in obtaining the discharge certificates. The discharge certificates stand. In the circumstances, the adjudicating authority could not go behind them purportedly on basis of investigation report, to adjudicate demand of tax for period under the discharge certificates.

3. He relies on judgment of the Supreme Court in ***State of Tripura v. Manoranjan Chakraborty****,*

reported in ***(2001) 10 SCC 740*** *to submit, there can be departure made from the requirement for pre-deposit. He also relies on view taken by a learned single Judge in the High Court of Judicature at Madras by* ***judgment dated 23rd February, 2024*** *in* ***W.P. no.11797 of 2021 (Padmavathi Srinivasa v. Joint Commissioner of GST & Central Excise)*** *reported in* ***(2024) 17 Centax 356 (Mad.)****. Paragraph-9 from the judgment is reproduced below.*

> *"9. From the above discussion I am of the view that the impugned order is liable to be set aside for the following reasons:*
> *a) Once the Discharge Certificate is issued by the Designated Committee it is not open to proceed with adjudication.*
>
> *b) The authority / power to revoke or cancel the Discharge Certificate on the premise that the material particulars furnished in the Discharge Certificate is false, lies with the exclusive jurisdiction of the Designated Committee.*
>
> *c) To assume Adjudicating Authority/Central Excise Officers to have the power to revoke or cancel Discharge Certificate issued by the Designated Committee which may comprise of officers superior in rank to that of the Central Excise Officers carrying out adjudication would result in distortion of Administrative / Institutional Hierarchy.*

d) In the absence of the Discharge certificate being revoked/cancelled by the Designated Committee, adjudication by the Central Excise officers could result in plurality of orders on the same subject conflicting with each other, which ought to be avoided."

4. Mr. Satapathy, learned advocate, Senior Standing Counsel appears on behalf of the department. He submits, scope of the writ petition is challenge to order made by the appellate authority giving time to petitioner to put in mandated pre-deposit at 7.5% of the demand. Adjudication has been made resulting in order impugned in the appeal preferred by petitioner. The pre-deposit is to be made. ***Manoranjan Chakraborty*** *(supra) does not apply because petitioner has challenged the order giving time to make the deposit. He relies on judgment of the Supreme Court in* ***Vijay Prakash D. Mehta v. Collector of Customs (Preventive)*** *reported in* ***(1988) 4 SCC 402*** *and view taken by coordinate Bench on* ***order dated 19th April, 2022*** *in* ***Jindal Steel & Power Limited v. Commissioner Central Tax, GST (W.P.(C) no.15878 of 2018****) to submit, mandate of pre-deposit cannot be interfered with in writ jurisdiction."*

2. Today Mr. Sahoo relies on view taken by a Division Bench of the High Court of Jharkhand in **Bharat Ingots and Steel Co. (P.) Ltd. v. Union of India**, reported in **(2023) 4 Centax 334 (Jhar.)**. He relies on paragraphs 10 and 11 of the report. He points out, the Division Bench, relying on **Manoranjan Chakraborty** (supra) interfered in judicial review to waive the requisite pre-deposit.

3. In **Manoranjan Chakraborty** (supra) facts were that the High Court had by the judgment, under appeal before the Supreme Court, struck down the provisos to section 20(1) and section 21(2) of Tripura Sales Tax Act, 1976. The provisos require fulfilling precondition for entertaining any appeal, as satisfaction obtained that amount of tax assessed or penalty levied has been paid. Further proviso is that the appellate authority may direct appellant to pay any lesser amount, not less than 50%. In those facts the Supreme Court said in paragraphs 3, 4 and 5 as would appear from them reproduced below.

"3. As we see it, the point in issue is no longer res integra. This Court in Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad dealing with an analogous provision, ***where discretion to waive pre-deposit was limited only to the extent of 25 per cent of the tax, was upheld by this Court****. To the same effect is the decision of this Court in Shyam Kishore v. Municipal Corpn. of Delhi.*

*4. For the reasons contained in the said decisions, we hold that the impugned provisions are valid****. It is, of course, clear that if gross injustice is done and it can be shown that for good reason the court should interfere, then notwithstanding the alternative remedy which may be available by way of an appeal under Section 20 or revision under Section 21, a writ court can in an appropriate case exercise its jurisdiction to do substantive justice****. Normally of course the provisions of the Act would have to be complied with, but the availability of the writ jurisdiction should dispel any doubt which a citizen has against a high-handed or palpable illegal order which may be passed by the assessing authority.*

*5. For the aforesaid reasons, these appeals are allowed and **the judgment of the High Court is set aside**. No costs."*

(emphasis supplied)

4. It is clear from **Manoranjan Chakraborty** (supra) that the provisions were upheld by the Supreme Court. So much so, there was no exercise of power under article 142 in the Constitution to do complete justice, to permit the respondent to pay any lesser amount than 50%. Nevertheless, the Court said, it was clear that if gross injustice is done and it can be shown for good reason Court should interfere then notwithstanding alternative remedy, a writ Court can in an appropriate case exercise its jurisdiction to do substantive justice. This was earlier said by the Supreme Court in **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai**, reported in **AIR 1999 SC 22**. As such we respectfully disagree with view taken by the Jharkhand High Court in **Bharat Ingots and Steel Co. (P.) Ltd.** (supra).

5. At this stage Mr. Sahoo submits, his client is in involved circumstances inasmuch as it would appear from the

audited balance sheets, it will be unable to put in the pre-deposit. However, taking inspiration from **Manoranjan Chakraborty** (supra) his client will be advised that it is not remediless.

6. For reasons aforesaid we will not interfere with impugned order.

7. The writ petition is disposed of as above.

(Arindam Sinha)
Judge

(M.S. Sahoo)
Judge

Jyoti