



ORISSA HIGH COURT : CUTTACK

W.P.(C) No.34660 of 2025

In the matter of an Application under
Articles 226 and 227 of the Constitution of India, 1950

* * *

M/s. Magnum Estates Private Limited
(A company registered under
the Companies Act)

represented by its

Executive Director

Sri C.V. Padmarajan

Aged about 80 years

Son of Late C.V. Kelappan

At: Sector-A, Zone-A, Plot No.132-A

Mancheswar Industrial Estate

Mancheswar, Bhubaneswar

Odisha – 751 010.

...

Petitioner

-VERSUS-

- 1.** Additional Commissioner, GST (Appeals)
At: Central Excise & Customs
Central Revenue Building, Rajaswa Vihar
Bhubaneswar-7, Odisha.
- 2.** Superintendent
CGST & Central Excise Balasore-1 Range
At: White House Lane
Balasore – 756 001.
- 3.** Superintendent
Jajpur Audit Circle, GST &
Central Excise Audit Commissionerate
At: The Principal Commissioner (Audit)



Central GST & Cx, Central Revenue Building
Rajaswa Vihar
Bhubaneswar – 751 007
Odisha.

... Opposite parties.

Counsel appeared for the parties:

For the Petitioner : Ms. Kajal Sahoo,
M/s. Ronit Ghosh, Subhajeet Sahu,
Urmila Sahoo, Romeet Panigtrahi,
Deepshikha Mallik, Advocates.

For the Opposite parties : Avinash Kedia,
Junior Standing Counsel
(CGST, CEx & Customs)

P R E S E N T:

**HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON**

AND

**HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN**

Date of Hearing : 30.06.2026 :: Date of Order : 15.07.2026

ORDER

Questioning the legality, rationality and propriety of Order dated 29.09.2025 passed by the Additional Commissioner, GST (Appeal) under Section 107 of the Central Goods and Services Tax Act, 2017/the Odisha Goods and Services Tax Act, 2017 (collectively be referred to as “GST Act”, for convenience) refusing to interfere in the challenge as to authority and rationality



in levying interest and imposition of penalty thereon while undertaking adjudication process under Section 73 of the GST Act pertaining Financial Year 2017-18 by the Superintendent, CGST & Central Excise, Balasore-I Range, Balasore *vide* Order dated 15.12.2023, the petitioner has come up before this Court invoking extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India for grant of following relief(s):

“Under the aforesaid circumstances it is prayed that this Hon’ble Court may be graciously pleased to:

- (a) Admit the writ application;*
- (b) Issue rule nisi calling upon the Opp. Party No. 1 as to why order dated 29.09.2025 purportedly passed under Section 107 of the OGST/CGST Act vide Annexure-4 contrary to provisions of the OGST/CGST Act shall not be quashed being illegal, arbitrary, without jurisdiction and in violation of natural justice and unsustainable in law;*
- (c) To refund the pre-deposit of Rs.18,710/- paid during the filing of Appeal which is in contravention to the provisions of Section 107(6)(b) of the CGST/OGST Act, 2017 in the end of justice:*
- (d) If the opposite party do not show cause or shows insufficient cause make the rule absolute;*
- (e) To issue writ in the nature of mandamus or any other appropriate writ directing the opposite parties to quash Order dated 29.09.2025 passed by the opposite party No.1 vide Annexure-4 in the end of justice;*



(f) *To pass such order/orders, direction/directions, writ/writs as may be deemed fit and proper in the circumstances of the case;*

(g) *To allow the writ petition;*

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

2. The petitioner, a company carrying on its business being assigned with registration under the GST Act, in an audit under Section 65 read with Rule 101 of the Central Goods and Services Tax Rules, 2017/the Odisha Goods and Services Tax Rules, 2017 (collectively, ‘GST Rules’) found to have availed input tax credit to the tune of Rs.6,08,455/- with respect to supply of exempted goods during the Financial Year 2017-18. The petitioner reversed an amount of Rs.1,77,136/- on 15.01.2020 through DRC-03 and rest amount out of total sum of Rs.6,08,455/- was reversed in the return *vide* GSTR-3B filed in respect of tax period October, 2019.

2.1. The audit pointed out that the petitioner is liable to pay an amount of Rs.1,87,093/- towards interest for delayed reversal of amount of input tax credit with penal consequences to be adjudicated upon under Section 73 of the GST Act. Accordingly a show cause notice being issued on 28.04.2023, the petitioner participating before the authority concerned explained that the objection raised in the audit is untenable and is liable to be dropped. Notwithstanding such explanation of the



petitioner, the Adjudicating Authority proceeded to raise demand towards penalty of Rs.60,845/- besides interest for an amount of Rs.1,87,093/-.

2.2. The petitioner filed appeal under Section 107 of the GST Act which came to be dismissed by Order dated 29.09.2025.

2.3. Said Order of the Appellate Authority affirming the Order of the Adjudicating Authority is subject-matter of challenge in the present writ application.

3. Ms. Kajal Sahoo, learned Advocate representing the petitioner, submitted that the erroneous perception of the authorities concerned has compelled the petitioner to circumvent the alternative remedial forum and approach this Court invoking Article 226 of the Constitution of India inasmuch as it is only when the registered person avails and utilises the input tax credit which is found to have been erroneously claimed interest under Section 50(3) of the GST Act would attract. It is further submitted that in view of subsequent amendment carried in the GST Act by way of insertion of Section 128A, the interest and the penalty demanded in the adjudication process under Section 73 relating to Financial Year 2017-18 has been waived.

3.1. Referring to certain decisions Ms. Kajal Sahoo, learned Advocate strenuously argued that the Appellate



Authority failed to address the issue raised by the petitioner before him and upon erroneous reading of provisions of the statute ignored to appreciate that if a taxable person has allegedly delayed in filing his return, but discharges the liability of only tax on his own ascertainment and does not discharge the liability of interest, the only recourse available for the Proper Officer would be to initiate proceedings under Section 73(1) of the GST Act for recovery of the amount of “short paid” or “not paid” interest on the tax amount. Contrary to mandate of statute and interpretation on the point set forth by various Courts, the Appellate Authority having dismissed the appeal the order impugned would be amenable to judicial review under Article 226 of the Constitution of India in view of parameters for entertainment of writ petition laid down in *Larsen and Toubro Ltd. Vrs. State of Odisha*, (1998) 111 STC 75 (Ori); and *Sonik Electrochem (P) Ltd. Vrs. State of Orissa*, (1994) 92 STC 117 (Ori).

- 3.2. Laying stress upon the discussion made in *Hindustan Steel Ltd. Vrs. State of Odisha*, (1970) 25 STC 211 (SC) and *Commissioner of Sales Tax Vrs. Sanjiv Fabrics*, (2010) 35 VST 1 (SC) Ms. Kajal Sahoo, learned Advocate would submit that since the petitioner, upon being pointed out during the course of audit, voluntarily took steps to restore the input tax credit, the imposition of penalty is liable to be struck off.



4. Sri Avinash Kedia, learned Junior Standing Counsel appearing for the opposite parties raising strong objection against entertainment of writ petition in view of *Commissioner of Income Tax Vrs. Chhabil Dass Agarwal*, (2014) 1 SCC 603, *Southern Electricity Supply Co. of Orissa Ltd. Vrs. Sri Seetaram Rice Mill*, (2012) 2 SCC 108; *Maharashtra Chess Association Vrs. Union of India*, (2020) 13 SCC 285 would submit that if the exercise of jurisdiction by the Appellate Authority *ex facie* appears to be in futility, then this Court would be justified to interfere with the order of the statutory authority under Article 226, but whereas in the present case the petitioner has efficacious alternative remedy available and unless it exhausts such remedy, this Court may not entertain this writ petition to consider the factual dispute set out whether there was wrong availment of input tax credit so that provisions of Section 50(3) of the GST Act would attract coupled with imposition of penalty. It is, therefore, submitted that once the petitioner has chosen to approach the Appellate Forum provided under the GST Act, the recourse to alternative remedy provided under the statute to maintain further proceeding therein should be availed of; not otherwise.
5. Heard arguments advanced by the learned counsel appearing for the respective parties and given our anxious consideration to the contentions raised by both the sides. This Court is convinced that disputed



question of fact is to be settled by the fact-finding authorities in terms of provisions of the GST Act. The wrong claim of input tax credit stated to have been restored by way of disclosing in DRC-03 and Form GSTR-3B is required to be verified and examined by the authorities empowered under the said statute. We have no occasion to verify such documents as the same are not made part of writ petition. Such factual position as claimed by the petitioner is also subject to thorough examination with reference to the books of account *vis-a-vis* evidence available on record and/or demonstrated by the petitioner by adducing such evidence as it may think proper.

6. Though this Court is persuaded to consider that the GST Appellate Tribunal can adjudicate the correctness of demand raised by levying interest and legal justification to impose penalty by instituting proceeding under Section 73 of the GST Act, another significant fact which brought to the notice by the learned counsel for the petitioner is that relegating it to prefer appeal under Section 112 of the GST Act would tantamount to discharge the obligation which is contrary to statutory requirement.

- 6.1. Elaborating her argument, Ms. Kajal Sahoo, learned Advocate submitted that the Appellate Authority having not rectified the defective recording of figures in the



Order-in-Original the petitioner is obligated to make further deposit in terms of Section 112(8)¹ of the GST Act for filing of appeal before the GST Appellate Tribunal.

6.2. The Show Cause Notice dated 28.04.2023 (Annexure-1) reveals that:

“However, the noticee the reversed ITC of Rs.1,77,136 (IGST) out of total ineligible ITC of Rs.6,08,455/- vide Form DRC-03 Debit entry No. DC2101200032828 dated 15.01.2020 and the remaining ITC of Rs.4,31,319/- is stated to have been reversed in Form GSTR-3B for the tax period October, 2019. In this regard, a copy of Letter No.MEL/GST/21-22/07, dated 26th April, 2021 is enclosed as Annexure-I. The notice thus, is required to pay interest for late reversal of such credit under Section 50(1) of the CGST Act, 2017 read with Section 20(xxv) of the GST Act, 2017.”

6.3. The Order-in-Original, dated 15.12.2023 was passed by the Superintendent, CGST & Central Excise, Balasore-I Range, Balasore with the following order:

“9.0. In view of the above discussion and findings, I pass the following order:

Order

¹ Sub-section (8) of Section 112 of the GST Act reads thus:
“(8) No appeal shall be filed under sub-section (1), unless the appellant has paid—
(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
(b) a sum equal to ten per cent. of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of Section 107, arising from the said order, subject to a maximum of twenty crore rupees, in relation to which the appeal has been filed.”



- (i) I charge and order for **recovery of interest** of Rs.1,87,093/- (Rupees One Lakh Eighty-Seven Thousand Ninety-three Only) (IGST: Rs.1,87,093/-) for the F.Y. 2017-18, in terms of Section 73(9) read with Section 50 of the CGST/OGST Act, 2017 read with Section 20(xxv) of IGST Act, 2017.
- (ii) Since the said noticee **voluntarily paid/reversed** Rs.4,805/- (Rupees thousand eight hundred and five) only through DRC-03 [Debit entry Sl No. DC2106210040487 dt 29 06.2021]. I order for appropriation of the said amount towards payment of interest charged and confirmed at sl. No.(i) above.
- (iii) I hereby impose **penalty** of Rs.60,845/ (Rupees Sixty Thousand Eight Hundred Forty Five) only being equivalent to 10% of wrongly availed ITC (availed ITC of Rs.6,08,455/- (IGST head), but subsequently reversed] whichever is higher, upon the noticee under Section 73(9) of the CGST/OGST Act, 2017 read with Section 20(xxv) of the IGST Act, 2017.”

6.4. It is apparent from the above that the liability of the petitioner under Section 73 has been determined by raising demand in respect of voluntary reversal of input tax credit, interest and penalty. They do not involve component of disputed tax. Nevertheless, the Form GST DRC-07 dated 18.02.2023 reflects as follows:

Sr. No.	Tax rate (%)	Turnover	Place of supply	Act	Tax/cess	Interest	Penalty	Fee	Others	Total
1	18	794,459,539.00	Odisha	IGST	187,093.00	0.00	60,845.00	0.00	0.00	247,938.00



6.5. *Ex facie* it is discernible from the above table that amount of Rs.1,87,093/- demanded towards “Interest” *vide* Form GST DRC-07 has been shown under the heading “Tax”. It was submitted that due to such apparent mistake in the adjudication order, which the Appellate Authority failed to diligently perceive while disposing of appeal under Section 107 of the GST Act, the petitioner is put to prejudice. In order to file appeal before the Goods and Services Tax Appellate Tribunal assailing the Appellate Order, the petitioner is required to make deposits in terms of Section 112(8) of the GST Act. The deposit contemplated under said sub-section does not encompass amount towards interest or penalty, rather the petitioner is required to make pre-deposit towards “remaining amount of tax in dispute”. It is vehemently contended by Ms. Kajal Sahoo, learned Advocate that serious prejudice would be caused if the petitioner is relegated to approach the Goods and Services Tax Appellate Tribunal as Sri Avinash Kedia, learned Junior Standing Counsel expressed that there is no provision for the Appellate Authority to recall the Order-in-Appeal as the appeal has been rejected on merit on 29.09.2025.

6.6. This Court perceived that if the petitioner is directed to avail the alternative remedy available under Section 112, justice would not be subserved. A bare perusal of Show



Cause Notice, Order-in-Original and the Order-in-Appeal clearly evince that the demand of reversal of input tax credit, interest and penalty raised in the Order-in-Original has been confirmed in the appeal under Section 107 of the GST Act.

- 6.7. It is brought to the notice of this Court by the learned Junior Standing Counsel appearing for respective parties that during pendency of the writ petition, being filed on 27.11.2026, exercising power under Section 161 of the GST Act, a Rectified Order-in-Original has been passed on 28.01.2026 by the Superintendent of CGST & Central Excise, with the following conclusion:

“In exercise of the powers conferred under Section 161 of the CGST/OGST Act, 2017, I hereby rectify the error in Form GST DRC-07. The demand of Rs.1,87,093/- is hereby reclassified from the head of ‘Tax’ to ‘Interest’. A summary of this rectification is being issued in Form GST DRC-08 accordingly. The total amount remains unchanged. The interest and penalty components shall remain as originally adjudicated. This rectification is issued solely to correct the head of account from ‘Tax’ to ‘Interest’ as per the directions of the Hon’ble High Court of Orissa.²”

²

This Court *vide* Order dated 15.01.2026, while considering the contentions and submissions of learned Advocate for the petitioner, directed as follows:

“It is pointed out by Ms. Kajal Sahoo, learned Advocate that the impugned order under challenge is relating to demand pertaining to interest amounting Rs.1,87,093/-. However, while entering the figure in Form GST DRC-07, it is reflected as IGST.

Apparently, mistake has crept in, which needed rectification by the Department suo motu.

At the request of Mr. Kedia, learned Junior Standing Counsel for the Department, list this matter on 22nd January, 2026, enabling him to obtain instruction(s).”



- 6.8. Opposing entertainment of writ petition, it is submitted by the learned Junior Standing Counsel that now that the Adjudication Order is rectified suitably, the petitioner can approach the Appellate Tribunal. On the query from the Bench that the Appellate Authority is required to modify his Order-in-Appeal by rectifying his order *suo motu* in order to facilitate the petitioner to file appeal under Section 112, he expressed inability as period of limitation for such action by the Appellate Authority under Section 161 has already lapsed.
- 6.9. Ms. Kajal Sahoo, learned Advocate argued that since the Appellate Authority is not in a position to rectify such mistake in tune with Rectified Order-in-Original dated 28.01.2026, attempts to file the appeal before the Goods and Services Appellate Tribunal would be futile inasmuch as the online system of filing of appeal would not allow the petitioner to do so without pre-deposit (percentage of remaining amount of tax) being made under sub-section (8) of Section 112 of the GST Act. If the petitioner is directed to avail remedy of appeal, then it would be mandatory requirement to deposit ten percent of “interest” component which is wrongly affirmed in the Appeal as if it is forming part of “Tax”. Learned Junior Standing Counsel has conceded to such submission.



6.10. Faced with such situation, this Court is, therefore, inclined to interfere with the Order-in-Appeal dated 29.09.2025 passed by the Additional Commissioner of GST (Appeal) in Appeal bearing No.391/BBSR-GST/APPEAL/2024.

7. Under the above premises, the Order-in-Appeal dated 29.09.2025 passed by the Additional Commissioner of GST (Appeal) in Appeal bearing No.391/BBSR-GST/APPEAL/2024 is set aside and the matter is remitted to the Appellate Authority for deciding the appeal on merit afresh without being swayed away by earlier order and pass appropriate order in accordance with law after hearing the petitioner.

8. In the result, the writ petition including pending Interlocutory Application(s), if any, stands disposed of.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE