



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.17470 of 2026

M/s. Rashmi Agency

...

Petitioner

**M/s. Pranaya Kishore Harichandan and
Pragyant Harichandan, Advocates**

-versus-

***Deputy Commissioner CT & GST
Circle, Cuttack-I City and others***

...

Opposite Parties

**Mr. Sunil Mishra,
Standing Counsel
(CT & GST Organization)**

CORAM:

THE HON'BLE THE CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

ORDER

25.06.2026

Order No.

01.

- 1.** The petitioner questions the legality of Order dated 02.05.2026 passed by the Deputy Commissioner CT & GST, CT & GST Circle, Cuttack-I City, Cuttack refusing to consider the application for grant of refund of Rs.33,00,000/- under Section 54 of the Central Goods and Services Tax Act, 2017/Odisha Goods and Services Tax Act, 2017 (Collectively, "the GST Act").
- 2.** The brief facts leading to filing of this writ petition, as adumbrated by the petitioner, reveal that in a search operation conducted by the personnel of Directorate General of Goods



and Services Tax Intelligence (DGGI) under Section 67 of the GST Act in respect of Hotel Rashmi Plaza (Proprietor: Sri Rashmi Ranjan Routray), a sum of Rs.33,00,000/- was recovered from the petitioner-Rashmi Agency on 10.08.2023, by issue of Show Cause Notice in GST DRC-03 to Hotel Rashmi Plaza directing it to pay the amount towards State GST and Central GST. Such amount is stated to have been paid under protest.

- 2.1. Appreciating the fact that due to inadvertence said amount was deposited in the account of Rashmi Agency, assigned with GSTIN: 21ABTPR8681C1ZA instead of Hotel Rashmi Plaza assigned with GSTIN: 21ABTPR8681C2Z9, which was under investigation, the appeal preferred under Section 107 of the GST Act assailing refusal to grant the refund claimed by the petitioner *vide* Order dated 19.10.2023 in Form GST RFD-06, stood allowed *vide* Order dated 27.02.2026 by the Additional Commissioner of State Tax with the following observation:

“The appellant was able to establish that the collection was made during the course of inspection, in contravention of CBIC Instruction No.01/2022-23 and the judicial principle set by the courts. So the tax payer is not liable to pay any tax and interest. In the grounds of appeal, the taxpayer appellant urged several grounds to defend his case supporting documents has been produced before this forum to substantiate his claim.

Accordingly, the appeal is allowed in full and the refund order passed the LPO is reduced to nil. Excess payment made if any may be refunded to the dealer appellant as per provisions of law.”



2.2. Accordingly, refund application in Form GST RFD-01 claiming Rs.33,00,000/- was filed on 05.03.2026. Upon Show Cause Notice dated 24.04.2026 being issued by the Deputy Commissioner of State Tax, a reply was filed by the petitioner on 29.04.2026. Declining to consider the application for refund an Order dated 02.05.2026 in Form GST RFD-06 has been passed with the following observation:

*“That, **Section 112(3) of the GST Act mandates that the State may apply to be Appellate Tribunal within six months from the date on which the said order has been passed. Therefore, the claim of the taxpayer regarding operative finality of the order as because there exists no stay contradicts the wisdom of section 112(3) of the GST Act. In the instant case the FAA has disposed the case on 27.02.2026 vide Reference No. ZD210226023779F thereby the limitation falls on 26.08.2026.***

That, the submission of withholding refund as claimed by the taxpayer in its submission is not accepted as refund sanction order is yet to be passed.

That, the order on the basis of which refund is being claimed has not reached its finality. Grant of refund at this stage would be premature and may adversely affect the interest of revenue.

That, the taxpayer has cited some case laws in its defence submission which are not applicable to the facts and circumstances of the present case.

Therefore, the refund application filed by M/s. Rashmi Agency, Proprietor Rasmi Ranjan Routray bearing GSTIN: 21ABTPR8681C1ZA is not considered at this stage.”

2.3. Questioning the legality and propriety of such action of the Deputy Commissioner of CT & GST, CT & GST Circle,



Cuttack-I City, Cuttack (“DC”, for convenience) the petitioner has invoked provisions of Articles 226 and 227 of the Constitution of India.

3. Sri Pranaya Kishore Harichandan, learned Advocate assisted by Sri Pragyant Harichandan, learned Advocate opposing the arbitrary and whimsical exercise of power by the authority in refusing to consider refund application filed in view of refund flowing from the appellate order, submitted that the power invoked by DC-opposite party No.1 under sub-sections (10) read with sub-section (11) of Section 54 of the GST Act¹ which is unwarranted and without authority in law.

- 3.1. It is vehemently contended that the Commissioner of CT & GST is the empowered authority under the statute to consider whether to withhold the refund and in absence of opinion being formed by the Commissioner of CT & GST, the DC has transgressed his jurisdiction by not considering the refund application and, thereby the authority has disobeyed the

¹ Sub-section (10) and sub-section (11) of Section 54 of the GST Act stand thus:

“(10) Where any refund is due to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—

(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law .

Explanation.—

For the purposes of this sub-section, the expression “specified date” shall mean the last date for filing an appeal under this Act.

(11) Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.”



appellate order passed by his superior authority, namely the Additional Commissioner of State Tax (Appeal), Cuttack.

3.2. Strenuous argument is advanced to the effect that merely because an appellate remedy is provided in the statute or existence of remedy to challenge the legality of an appellate order, the DC could not withhold the refund on the basis of future contingency. The DC does not possess the inherent power to arrogate to himself the role of the deciding authority whether to file appeal before the Appellate Tribunal. He cannot routinely direct the State to file an appeal before the Appellate Tribunal under the assumption that an appeal must be preferred in every instance where a taxpayer is granted relief. For a contemplated action in future, whether such event may happen or not, legitimate amount due towards refund cannot be mechanically denied particularly when the Commissioner has not yet formed any opinion invoking power under Section 54(11) of the GST Act to withhold the refund.

3.3. It is submitted that on the date of consideration of the refund application, no further proceeding nor appeal, or any other proceeding was pending at the behest of the opposite parties-GST Organisation. Therefore, the DC committed gross error of law in refusing to consider the application for refund on specious and flimsy ground that granting such refund at the stage when six months period envisaged under Section 112 for the State to prefer appeal had not elapsed, and consideration of such refund application would be premature.



- 3.4. It is submitted that the authorities in the Organisation are duty bound to respect the appellate order² till the same is reversed, varied or modified by the appropriate competent authority/court. The effect of the order impugned, as argued by Sri Pranaya Kishore Harichandan, learned Advocate, being not yet stayed by any competent authority or court, the order of the DC suffers serious infirmity and illegality which cannot be cured and, therefore, it is liable to be quashed.
4. Sri Sunil Mishra, leaned Standing Counsel for the CT & GST Organisation submitted that if the refund is granted before lapse of the period specified under Section 112 of the GST Act to file appeal before the Appellate Tribunal, it may result in difficulty in proceeding to recover such amount in the event the appeal would be decided in favour of the State.
- 4.1. Drawing attention to sub-section (8) of Section 112 of the GST Act it is submitted that in case of a taxpayer who approaches the Appellate Tribunal with pre-deposit, the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal in terms of sub-section (9) of Section 112. However, to strike a balance, the legislature in its wisdom has provided sub-section (11) of Section 54 of the GST Act to withhold refund where the order giving rise to such refund is the subject matter of an appeal or further proceeding or any other proceeding under the GST Act is pending.

² See, *Union of India Vrs. Kamalakshi Finance Corporation Ltd.*, AIR 1992 SC 711; *Tirupati Balaji Developers Private Ltd. Vrs. State of Bihar*, (2004) 5 SCC 1; *Orissa Forest Corporation Ltd. Vrs. Assistant Collector*, 1982 SCC OnLine Ori 209.



- 4.2. He would thus make an attempt to suggest that the order of the DC holding that consideration of the refund application before lapse of six months period stipulated under sub-section (3) of Section 112 would be premature. Doing so in favour of the petitioner would multiply difficulty for the CT & GST Organisation to recover the refunded amount at a later point of time in case the appeal of the State is decided in its favour by the Appellate Tribunal.
5. Heard Sri Pranaya Kishore Harichandan and Sri Pragyant Harichandan, learned Advocates representing the petitioner and Sri Sunil Mishra, learned Standing Counsel being assisted by Sri Seshadev Das, learned Additional Standing Counsel.
6. Perusal of Section 112 of the GST Act makes it abundantly clear that there is scope for the State to approach the Appellate Tribunal against the appellate order within six months from the date on which the said order has been passed. In the present case as the record reveals the appellate order being passed on 27.02.2026, it cannot be comprehended that the State would not approach the Appellate Tribunal on or before 26.08.2026. Be that as it may, from the tenor of order of the DC it seems that as if he has the power under Section 54(11) to withhold the refund even before filing of appeal before the Appellate Tribunal, he referred to said provision. However, in the ultimate he refused to consider the refund application, notwithstanding the Additional Commissioner of CT & GST had allowed the appeal of the petitioner in full, as if he is sitting over the order of the appellate authority.



6.1. Section 54(11) of the Act empowers the Commissioner to withhold the refund till such time as he may determine. However, sub-rule (2) of Rule 92 of the Central Goods and Services Tax Rules, 2017/the Odisha Goods and Services Tax Rules, 2017 (collectively, “GST Rules”) envisages that:

*“(2) Where **the proper officer or the Commissioner** is of the **opinion** that the amount of refund is **liable to be withheld** under the provisions of sub-section (10) or, as the case may be, **sub-section (11) of Section 54**, he shall pass an **order in Part A of Form GST RFD-07** informing him the reasons for withholding of such refund.*

*Provided that where the **proper officer or the Commissioner** is **satisfied that** the refund is no longer liable to be withheld, he may pass an order for release of withheld refund in Part B of Form GST RFD-07.”*

6.2. Minute reading of Section 54(11) read with Rule 92(2) would indicate that there are certain safeguards which have been provided to be ensured before passing such an order withholding the refund. It is manifest from perusal of Form GST RFD-07 that the authority is required to assign reasons for withholding the refund. Passing of an order in Part A of Form GST RFD-07 is a statutory mandate and cannot be in the vacuum and is to be made with conscious application of mind.

6.3. It is trite that the Rules are part of the statute and, therefore, the forms appended to Rules are also part of the statute. In *Indure Ltd. Vrs. Commissioner of Sales Tax*, (2006) 148 STC 61 (Ori) it has been stated thus:



“13. It is important to note the said Rules being framed under Section 29 of the said Act are to be laid before the State Legislature in view of the provisions of Section 29-A of the said Act. So the Rules are part of the Act.

14. That is the clear statutory dispensation.

15. While the court is scrutinising the exercise of power by the authorities under Section 12(8) of the OST Act, the entire gamut of statutory provisions contained in the Rules and the forms are to be kept in its mind. It cannot be said and in fact it has not been said by the Revenue that any part of statutory rules and forms is redundant or that the power under Section 12(8) of the OST Act can be exercised ignoring the Rules and the statutory forms. In fact, it was not so exercised and the impugned notice was issued under the statutory form, the relevant part of which has been set out previously.”

6.4. It can, therefore, be said that the authority specified in Section 54(11) of the GST Act has the power to invoke said provision provided the circumstances mentioned therein existed and complied with. Though there cannot be cavil in this regard, this Court is of the opinion that to exercise the power under Section 54(11) the refund must be the subject-matter of an appeal or further proceedings or where any other proceedings under this Act is pending.

6.5. This apart, the authority concerned is to form opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed. Thus, recording of reasons while passing the order for withholding the refund is mandatory requirement having regard to the language employed in Rule 92(2) of the



GST Rules read with Form GST RFD-07 and Section 54(11) of the GST Act. Form GST RFD-07 is not merely a form for the purposes of communicating the decision; rather it is a form in which an order is to be passed also. In the said form a column is reserved requiring the authority to record reasons for withholding the refund and those reasons are to be in consonance with the requirement of Section 54(11) of the GST Act and Rule 92(2) of the GST Rules. The order withholding the refund can be passed only if the prerequisite of recording of the opinion in terms of the said provisions is found present in a particular case.

- 6.6. Mere quoting provision of Section 54(11) of the GST Act in the order would not empower the authority to exercise such power to withhold refund, which flowed from the appellate order. As is held in *B.P. Enterprises Vrs. State of Odisha*, (2008) 18 VST 405 = 2008 SCC OnLine Ori 532 it becomes the duty of the authority himself to keep the jurisdictional issue in mind. In *Sarda Mines Private Limited Vrs. State of Odisha*, 2026 SCC OnLine Ori 2303 the following dicta as enunciated and followed since long has been reiterated:

“In The Barons of the Exchequer Vrs. Heydon, [1584] EWHC Exch J36, it has been held that a Statute cannot be used for a purpose alien to which it has been made, and where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden, vide Taylor Vrs. Taylor, [L.R.] 1 Ch. 426. Even assuming that OP No. 3 has jurisdiction, the same could not have been exercised in the absence of jurisdictional facts, which the subject Rules would



take cognizance of. Existence of power is one thing and its exercise is another. Mere existence least justifies the exercise.”

- 6.7. In the light of said proposition of law, examining the Order dated 02.05.2026 passed by the DC it is obvious that the same is exceptionable inasmuch as reason assigned therein is not in consonance with the requirement of the statute. On a cursory glance at the impugned order, this Court finds no reference of such safeguards and conditions/eventualities reserved for the petitioner has been made and the authority apparently has not taken care of such aspects.
7. Perusal of impugned Order dated 02.05.2026 transpires that the refund application of the petitioner has not been considered on the ground that it would be premature before lapse of six months period envisaged under Section 112(3) of the GST Act for the State to prefer appeal before the Appellate Tribunal and the order of appellate authority having not attained finality the refund application is not to be considered.
- 7.1. The analysis of provision contained in Section 54(11) of the GST Act empowering the authority to exercise power to withhold refund is strictly circumscribed and the reasons assigned in the impugned order fail to satisfy the specific eventualities mandated by the said provision. Unless there has already been proceeding pending, invocation of said provision smacks arbitrariness and tainted with irrational application of mind.



7.2. In course of hearing, Sri Sunil Mishra, learned Standing Counsel supplied a copy of “Provisional Acknowledgement” in Form GST APL-02A (Part A) evidencing that appeal has been filed before the GST Appellate Tribunal by the State and it discloses that the appeal has been filed on 24.06.2026 (*i.e.*, obviously after receipt of copy of this writ petition) against the Order dated 27.02.2026 of the Appellate Authority from which the subject-refund flows. It is, thus, manifest that the necessary factors for exercise of power under sub-section (10) read with sub-section (11) of Section 54 was not satisfied on the date when the DC refused to entertain refund application.

7.3. It is noteworthy to have regard to what is spelt out in *Unit Construction Company P. Ltd. Vrs. CCT, 2014 SCC OnLine Ori 361 = 2015 (II) ILR-CUT 479* which was rendered in connection with power of withholding *qua* Section 60 of the Odisha Value Added Tax Act, 2004. In the said reported case it has been laid down as follows:

“10. *Perusal of the impugned order reveals that the first condition is satisfied, i.e., the order from which the refund flows is the subject-matter of second appeal. The impugned order does not speak anything about the satisfaction of other two conditions. The said order also does not contain the basis for forming the opinion by the Commissioner that grant of refund would adversely affect the Revenue.*

11. *The use of expression ‘may’ as in Section 60 of the OVAT Act in the context, confers discretion upon the Commissioner to withhold refund but it does not confer an absolute power on the Commissioner to withhold*



refund in each and every case where an order gives rise to refund is the subject-matter of an appeal or further proceeding. Therefore, the Commissioner must exercise the discretion on relevant grounds and for germane reasons. Language of section 60 (1) of the OVAT Act does not reveal that the legislative intent is to withhold refund wherever an order giving rise to refund is the subject-matter of an appeal or further proceeding or other proceedings pending under the OVAT Act. Had it been so, the provisions would have been clearly enjoined that no refund shall be granted till the conclusion of the appeal or further proceeding.

- 12. *It is needless to say that the discretion vested with the Commissioner to withhold refund due to the dealer arising out of an order passed by the quasi judicial authority must be exercised judicially as Article 265 of the Constitution enjoins that no tax shall be levied or collected except by authority of law.***

- 16. *It is needless to say that if a subordinate authority will not obey the instruction/order/circular issued by the higher authority in the hierarchy of administration, it would cause chaos in the field of administration and certainly not help in smooth functioning of administration.***

- 26. *It may be relevant to note here that if an order has civil consequence and adversely affects the party; the affected party must be given an opportunity of hearing before such order is passed. The order passed in exercise of power vested under section 60(1) of the OVAT Act withholding refund due to the dealer is certainly detrimental to the interest of the dealer. Therefore, even***



though section 60(1) of the OVAT Act does not say for providing an opportunity of hearing to the dealer before passing the order withholding refund, such opportunity of hearing should be afforded to the dealer in the interest of natural justice.”

7.4. Prior to filing of appeal before the Appellate Tribunal the authority does not have the authority to assume jurisdiction to withhold refund under Section 54(11) of the GST Act read with Rule 92(2) of the GST Rules. Such proposition can be found from certain decisions referred to *infra*.

7.5. The Hon’ble Delhi High Court in *Truth Fashion Vrs. Commissioner of DGST Delhi*, W.P.(C) NO.486 of 2025, decided on 10.02.2025 [2025 SCC OnLine Del 10200] observed as follows:

“6. We find ourselves unable to countenance that submission bearing in mind **the plain language in which Section 54(11) stands couched and which refers to a contingency where an order giving rise to a refund “is the subject matter of an appeal”**. In our considered opinion, the mere decision to prefer or institute an appeal would not qualify Section 54(11).

7. **This we hold since a decision taken by the Commissioner to assail an order cannot ipso facto or automatically result in the principle order being placed in abeyance.** We, in this regard, also bear in mind the following pertinent observations which had been rendered by the Division Bench of the Court in *Alex Tour & Travel (P) Ltd. Vrs. Commissioner (CGST)*, 2023 SCC OnLine Del 2709:



- ‘17. *Undisputedly, the Revenue is entitled to file an appeal under Section 112 of the Central Goods and Services tax Act, 2017, within a period of three months from the date of the order. We are informed that the said period has been extended as the Appellate Tribunal has not been constituted as yet. However, the respondent cannot refuse to comply with the appellate orders on this ground.*
18. *We are unable to accept that the Revenue can ignore an order passed by the appellate authority on the ground that it proposes to appeal the said order.*
19. ***Suffice it to note that there is no order passed by any competent court, staying the implementation of the orders-in-appeal passed by the appellate authority. The Revenue has also taken no steps for securing orders to that effect.***
20. *We are also unable to appreciate the insistence on the part of the Revenue for the appellant to file fresh applications for the refund.*
21. *Mr. Singla fairly states that fresh applications for refund or response to show-cause notices are not necessary, considering that the proceedings emanated from the petitioner filing applications for refund, which culminated in orders-in-appeals passed by the appellate authority.*
- ***
25. *The present petition is allowed. The respondent is directed to forthwith disburse the petitioner’s clam for refund along with interest as payable in accordance with law.*



26. *It is, however, clarified that this order would not preclude the respondent from availing statutory remedy against the orders-in-appeal in accordance with law.'*

8. *Accordingly, and for all the aforesaid reasons, we allow the instant writ petition and hereby command the respondents to affect the refund to the writ petitioner forthwith together with statutory interest, as payable."*

7.6. In a case where the benefit of Order-in-Appeal was denied and refund amount was withheld solely on the ground that the State contemplated to file an appeal assailing the said order, the Hon'ble Delhi High Court in *Shalender Kumar Vrs. Commissioner Delhi West CGST Commissionerate, W.P.(C) No.3824 of 2025, decided on 03.04.2025 [2025 SCC OnLine Del 2276]* held as follows:

"13. A perusal of Section 54(11) of the Act would show that the refund can be held back on the satisfaction of the following two conditions:

- (i) when an order directing a refund is subject matter of a proceeding which is pending either in appeal or any other proceeding under the Act; and*
- (ii) thereafter the Commissioner gives an opinion that the grant of refund is likely to adversely affect the revenue.*

14. *In the opinion of this Court the Department's opinion under Section 54(11) cannot be relied upon on a standalone basis. In the absence of an appeal or any other proceeding pending, challenging the order of the Appellate Authority, the opinion under Section 54(11) cannot result in holding back the refund. The refund*



having been permitted by the Appellate Authority and no order in review having been passed, the Department cannot hold back the refund. In G S Industries Vrs. CCGST, (2023) 117 GSTR 282 = 2023 SCC OnLine Del 1984 the Coordinate Bench has observed as under:

*“****

- 7. The petitioner responded to the said Show Cause Notices. Petitioner’s explanation was not accepted and by a separate order dated 14.12.2020, the applications for refund were rejected.*
- 8. The petitioner filed separate appeals impugning the Orders-in-Original dated 14.12.2020, which were disposed of by a common order dated 03.01.2022 (Order-in-Appeal No. 209-210/2021-2022). The Appellate Authority allowed the petitioner’s appeal. It accepted that the petitioner was in existence at the material time, and the findings contrary to the same were erroneous. The Appellate Authority relied upon certain documents, including electricity bills, income tax returns etc. filed by the petitioner. The Appellate Authority also found that the Adjudicating Authority had not provided any basis for observing that the product manufactured by the petitioner required very less or no brass at all.*
- 9. Since the petitioner succeeded in its appeal, the petitioner is entitled to the refund as claimed. However, notwithstanding the same, the refund has not been disbursed.*
- 10. Ms. Narain, learned counsel appearing for the respondent, submits that the respondent has decided to challenge the Order-in-appeal dated 03.01.2022, and the Commissioner has passed an*



order dated 19.05.2022, setting out the grounds on which the appeal is required to be preferred against the Order-in-Appeal.

11. *The principal question that falls for consideration by this Court is whether the benefit of Order-in-appeal dated 03.01.2022 can be denied to the petitioner and the refund amount be withheld solely on the ground that the respondent has decided to file an appeal against the said order.*
12. ***Concededly, the respondent has not filed any appeal against the Order-in-Appeal dated 03.01.2022, and there is no order of any Court or Tribunal staying the said order. Indisputably, the Order-in-Appeal dated 03.01.2022 cannot be ignored by the respondents solely because according to the revenue, the said order is erroneous and is required to be set aside.***
13. *Learned counsel for the parties also pointed out that the said issue is covered by the earlier decision of this Court in Brij Mohan Mangala Vrs. Union of India, (2023) 115 GSTR 259 = 2023 SCC OnLine Del 8202.*
14. *In view of the above, the present petition is allowed. The respondents are directed to forthwith process the petitioner's claim for refund including interest.*
15. *It is, however, clarified that this would not preclude the respondents from availing any remedy against the Order-in-Appeal dated 03.01.2022 passed by the Appellate Authority. Further, in the event, the respondents prevail in their challenge to Order-in-Appeal dated 03.01.2022, the respondents would also be entitled*



to take consequential action for recovery of any amount that has been disbursed, albeit in accordance with the law.'

15. *In view of this position, the refund in favour of the Petitioner would be liable to be allowed in terms of the order passed by the Appellate Authority.*
 16. *It is, however, made clear that if in law the Department can still challenge the said Appellate Authority's order, the processing of refund in terms of the today's order of this Court shall be subject to the decision in any appeal. The refund shall be processed along with interest in terms of Section 56 of the CGST Act, 2017, within a period of two months.*
 17. *In the opinion of this Court, considering the fact that refund amounts are payable with interest for the delayed period for paying the refund, it would in fact be contrary to the interest of the Department itself to hold back the refund inasmuch as if any appeal is filed and the order of the Appellate Authority is reversed, then the same would also bind the Petitioner.*
 18. *Petition is disposed of in these terms. All pending applications, if any, are also disposed of."*
- 7.7. A careful scrutiny of the impugned order reveals that the refusal to consider the refund application came to be made prior to filing of appeal before the GST Appellate Tribunal by the State. Further, a reading of the impugned order does not reveal any fact returned by the authority concerned with respect to existence of eventualities/circumstances and safeguards undertaken as enshrined in sub-section (10) read with sub-section (11) of Section 54 of the GST Act for invocation of power to withhold refund. The authority concerned appears to



have ignored to deal with the points mentioned in the reply submitted in connection with Show Cause Notice dated 24.04.2026.

7.8. Merely because there was scope for the CT & GST Organisation to file appeal before the GST Appellate Tribunal, the Deputy Commissioner of CT & GST could not have sit over the appellate order wherefrom the refund had arisen. This Court finds the reason ascribed in the impugned order is not just and proper nor can the reason be countenanced in law. An action may be contemplated, but till such appeal is filed or the proceeding is shown to have been pending, it cannot be said that the authority concerned has the power to exercise invoking sub-section (11) of Section 54 of the GST Act read with Rule 92(2) of the GST Rules. Thus, withholding of refund in present fact-situation, in the considered view of this Court, is untenable, unwarranted and uncalled for.

8. Under the aforesaid premises, the refusal to consider the refund application prior to filing of appeal before the Appellate Tribunal or contemplating to file appeal under Section 112 of the GST Act is not tenable in the eye of law. It needs to be highlighted that the State has filed appeal before the GST Appellate Tribunal on 24.06.2026, after receipt of copy of the writ petition (filed on 30.05.2026). As on 02.05.2026, when the impugned order was passed, it is demonstrably manifest that there was neither appeal pending before the GST Appellate Tribunal nor did any other proceeding. Hence, there was no scope or occasion for the Deputy Commissioner of CT & GST,



CT & GST Circle, Cuttack-I City, Cuttack to refuse to consider the refund application. Thus, he had no jurisdiction to invoke provisions of Section 54(11) of the GST Act in the garb of holding that the consideration of refund application is premature.

9. In the result, the Order dated 02.05.2026 passed by the Deputy Commissioner of CT & GST, CT & GST Circle, Cuttack-I City, Cuttack is set aside and the matter is now remitted to the said authority for fresh consideration of the application filed for grant of refund of Rs.33,00,000/- within a period of two weeks from the date of production of copy of this order before him, taking into consideration the reply dated 29.04.2026 filed in connection with Show Cause Notice dated 24.04.2026 and also keeping in view the tenor and texture of Circular F. No. GST/INV/Instructions/2022-23 *vide* Instruction No.01/20022-23 [GST-Investigation] dated 25.05.2022 issued by the Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs.

9.1. It is directed that the said authority shall afford a reasonable opportunity of hearing and take into account all such documents and materials available on record as well as those to be produced by the petitioner in course of hearing.

9.2. Liberty is reserved for the petitioner to raise all such contentions including the jurisdiction of the Deputy Commissioner of CT & GST, CT & GST Circle, Cuttack-I City, Cuttack to invoke Section 54(11) of the GST Act for withholding refund.



- 9.3. It is also directed that said authority shall pass reasoned order in accordance with law keeping in view the observations made herein above, and such order shall be communicated to the petitioner forthwith through appropriate mode of service.
- 9.4. With the aforesaid observations and directions, the writ petition is disposed of.

(Harish Tandon)
Chief Justice

(M.S. Raman)
Judge

Aswini