

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.8586 of 2024

*M/s. Samarth Commodities
Merchants Pvt. Ltd., Sundargarh*

.....

Petitioner

Mr. C.R. Das, Advocate

Vs.

.....

Opposite Parties

*Commissioner, GST & Central
Excise, Rourkela & Ors.*

*Mr. A. Kedia, Jr. Standing Counsel,
Central GST & Central Excise*

CORAM:

**DR. JUSTICE B.R. SARANGI
MR. JUSTICE G. SATAPATHY**

**ORDER
15.04.2024**

Order No.

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This matter is taken up by hybrid mode.

2. Heard Mr. C.R. Das, learned counsel for the petitioner and Mr. A. Kedia, learned Junior Standing Counsel appearing for the opposite party-Central GST & Central Excise.
3. The petitioner has filed this writ petition seeking to quash the demand arising out of GST DRC-07 and Order-in-Original dated 18.12.2023 under Annexure-10.
4. Mr. C.R. Das, learned counsel for the petitioner vehemently contended that income from shares is not taxable and it is beyond the purview of GST. But, the authority without considering the same, has issued a fresh demand which cannot be sustained in the eye of law. To substantiate his contentions, he has relied upon Circular No.196/08/2023-GST dated 17.07.2023 issued by the Government of India, Ministry of Finance (Department of Revenue), Central Board

of Indirect Taxes and Customs, GST Policy Wing and the judgment passed by the High Court of Karnataka at Bengaluru in *M/s. Yonex India Private Limited v. Union of India & Ors.*

5. Mr. A. Kedia, learned Junior Standing Counsel appearing for the opposite party-Central GST & Central Excise contended that the petitioner did not produce any materials before the authority at the time of assessment indicating that the income has come from shares and, as such, the same has been determined when audit was conducted. Thereafter, the proceeding was initiated against the petitioner. It is further contended that the impugned order is appealable one. Instead of approaching the appellate authority, the petitioner has approached this Court by filing this writ petition directly.

6. Considering the contentions raised by learned counsel for the parties and after going through the records, if the income from shares has been excluded by virtue of Circular No.196/08/2023-GST dated 17.07.2023 issued by the Government of India, Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes and Customs, GST Policy Wing, assessment made thereof by the authority on the basis of the audit report cannot be sustained in the eye of law. More particularly, the judgment of the High Court of Karnataka in *M/s. Yonex India Private Limited* (supra) is very clear that income from shares is not taxable.

7. Therefore, the demand arising out of GST DRC-07 and Order-in-Original dated 18.12.2023 under Annexure-10 cannot be sustained in the eye of law. Accordingly, the same is liable to be quashed and is hereby quashed. This Court remits the matter to the very same authority to hear the same afresh and pass appropriate order by giving opportunity of hearing to the petitioner.

7 With the above observation and direction, the writ petition stands disposed of.

(DR. B.R. SARANGI)
JUDGE

(G. SATAPATHY)
JUDGE

Atok