



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.30871 of 2025

M/s. Ayushi Galvano

....

Petitioner

Mr. Rudra Prasad Kar, Senior Advocate
assisted by Mr. Asit Kumar Dash, Advocate

-versus-

***Commissioner (Audit), GST and
Central Excise, Bhubaneswar
Audit Commissionerate and others***

....

Opposite Parties

Mr. Sujan Kumar Roy Choudhury, Senior Standing
Counsel for GST, Central Excise and Customs

CORAM:

THE HON'BLE THE CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

ORDER

24.12.2025

Order No.

02. **W.P.(C) No.30871 of 2025 and I.A. No.19211 of 2025**

1. Assailing the Demand-cum-Show Cause Notice dated 25th August, 2025 (Annexure-5) issued by the Superintendent (Audit) GST& Central Excise, Audit Commissionerate, Bhubaneswar-opposite party no.3 under Section 73 of the Central Goods and Services Tax Act, 2017/the Odisha Goods and Services Tax Act, 2017 (collectively, "GST Act") consequent upon submission of an audit report in Form GST ADT-02 dated 11th August, 2025 issued by the Assistant Commissioner, Angul Audit Circle, GST and Central Excise, Audit Commissionerate, Bhubaneswar-opposite party no.2 and challenging audit notice in Form GST ADT-01, dated 28th May, 2025 issued by the opposite party no.2 under Annexure-1, the petitioner has filed this writ petition under Articles 226 & 227 of the Constitution of India.



2. Learned Senior Advocate appearing for the petitioner submitted that jurisdictional error has been perpetrated which touches very root of the invocation of power to proceed with adjudication under Section 73 of the GST Act.

2.1. It is submitted that the audit report dated 25th July, 2025 is prepared by the opposite party no.3-Superintendent, GST and Central Excise, Large Tax Payer Group-2.

2.2. Drawing attention of this Court to a notification being F.No.349/75/2017-GST [Circular No.3/3/2017-GST], dated 5th July, 2017, he proceeded to urge that power to inform the petitioner, registered person, of the discrepancies noticed in the course of audit as required under Rule 101(4) of the Central Goods and Services Tax Rules, 2017/the Odisha Goods and Services Tax Rules, 2017 (collectively, “GST Rules”) has been vested on the Deputy or Assistant Commissioner of Central Act, but not the Superintendent. In the present case, the audit report is prepared and communicated to the petitioner by opposite party no.3-Superintendent, GST & Central Excise, Large Tax Payer Group-2. Since the Superintendent is not declared as “proper officer” as defined under Section 2(91) of the GST Act for the purpose of Rule 101(4) of the Central Goods and Services Tax Rules, 2017/the Odisha Goods and Services Tax Rules, 2017 (collectively, “GST Rules”), the proceeding sought to be initiated by the opposite party no.2 by issue of Demand-cum-Show Cause Notice under Section 73 of the GST Act is vitiated.

3. On 18th December, 2025, when the matter was on board, learned Senior Standing Counsel appeared and sought accommodation for obtain instruction.



4. Today, when the matter is taken up, the learned Senior Standing Counsel submitted that the argument as advanced by the learned Senior Advocate appearing for the petitioner is correct. Nevertheless, he submitted that the competent authorities (proper officers) have issued notice under Section 65 of the GST Act was issued by the opposite party no.2 in Form GST ADT-01 prescribed under Rule 101(2) of the GST Rules (Annexure-1) and the Demand-*cum*-Show Cause Notice (Annexure-5) were issued; therefore, no prejudice would have caused to the petitioner in the event the audit report has been communicated in violation of Rule 101(5).

4.1. He submitted that though opposite party no.3 has issued Form GST ADT-02 in the prescribed form under Rule 101(5), the Demand-*cum*-Show Cause Notice contemplating initiation of proceeding under Section 73 of the GST Act has been issued by the opposite party no.2, who is authorized to function as “proper officer” for the purpose of adjudication under said provision. The petitioner has scope to raise such issue before the said authority as at the stage of notice, writ Court may not entertain the petition. However, he seeks four weeks’ accommodation to file counter affidavit in the matter.

5. After careful reading of Sections 65 and 73 of the GST Act read with Rule 101 of the GST Rules, it is transparent that after conclusion of the audit, the “proper officer” defined under Section 2(91) and authorised in terms of the Circular dated 05.07.2017, shall inform the findings of the audit to the registered person. Glance at Circular dated 5th July, 2017 reveals that opposite party no.3 is not declared as one of the “proper officer” defined under



Section 2(91) of the GST Act for the purpose of informing the findings of the audit in terms of Rule 101(5) of the GST Rules.

6. The matter requires consideration after filing of counter affidavit by the opposite parties.

7. It is perceived that the petitioner has made out a *prima facie* case, we find force in the submission of the learned Senior Advocate that since the invalidity is attached to the communication made by an authority not competent. If the opposite party no.3 proceeds with adjudication under Section 73 of the GST Act, serious prejudice would ensue to the petitioner. Therefore, it seems balance of convenience leans in favour of the petitioner.

8. It is directed that the opposite parties shall not proceed further in the matter of Demand-*cum*-Show Cause Notice dated 25th August, 2025 (Annexure-5) issued under Section 73 of the GST Act till the next date.

9. List this matter on 15th January, 2026.

(Harish Tandon)
Chief Justice

(M.S. Raman)
Judge

MRS/Laxmikant