IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.36371 of 2025

M/s. Shree Bharat Motors Limited .... ***Petitioner***

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

-versus-

The Chief Commissioner of CT & GST, Odisha and others .... ***Opposite Parties***

Mr. Sunil Mishra, Standing Counsel for CT & GST Department

CORAM:
THE HON'BLE THE CHIEF JUSTICE
AND
THE HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

ORDER
02.02.2026

Order No.

01. ***1.*** Assailing the order dated 1st September, 2025 passed under Section 161 of the Central Goods and Services Tax Act, 2017/Odisha Goods and Services Tax Act, 2017 (collectively, "the GST Act") by the Assistant Commissioner of CT & GST, Bhubaneswar-1 Circle, Bhubaneswar-opposite party no.3 for the tax periods pertaining the Financial Year 2020-21 rejecting the application for rectification ignoring to consider reconciliation summary (statement) and also order dated 27th February, 2025 passed under Section 73 of the said Act, the petitioner beseeches to set aside said orders and prays for a writ of *mandamus* to the authority concerned to pass fresh orders by considering the application for rectification on its merits by affording opportunity of hearing.

2. Pursuant to an audit undertaken under Section 65 of the GST Act for the tax periods with respect to Financial Year 2020-21,

a proceeding under Section 73 of the GST Act was initiated on the allegation that the petitioner has not reversed the corresponding the Input Tax Credit ("ITC", abbreviated) and its returns arising out of credit notes. The sum and substance of the allegation was excess ITC had been claimed by the petitioner in the GSTR-3B *vis-à-vis* ITC available in GSTR-2A.

2.1. The proceeding under Section 73 culminated in passing of an order dated 27th February, 2025 raising a demand comprising tax, interest and penalty with the observation that the taxpayer was required to reverse the ITC on Non-Reversal of ITC on account of credit notes from the suppliers. The petitioner on 29th March, 2025 filed an application for rectification of adjudication order under Section 161 of the GST Act on the following grounds:

> *"a. in response to the SCN dated 02.11.2024, the petitioner in its reply submitted that the Petitioner while furnishing its return in GSTR-3B claimed ITC as available in the GSTR-2A during the period 2020-21. GST suppliers have issued Credit Notes against which ITC to the tune of Rs.2,94,44,152.93 (Rs.2,86,38,277/- under IGST, Rs.90,787.28 each under CGST & SGST, and Cess of Rs.6,24,301.70) have been reversed being net off based on Table No.8A of GSTR-9. The Purchaser Register, reconciliation statement along with detail statement of Credit Notes ledger has also submitted during Assessment proceeding which is part of the Assessment Records.*
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> *b. On perusal of the impugned Order dated 27.02.2025, which has been passed on the ground that the taxpayer has not produced any supporting documents/evidences for verification of the claim of the taxpayer is contrary to the facts apparent on record that when the details are available*

in the GST portal and also found placed in the Assessment Record, allegation of non-submission of the same with pre-set mind to confirm the demand of tax is error apparent on the face of the record needs to be revised on verification of the detail record. The allegation as raised non submission of Original Credit Notes has never confronted to the Noticee during Assessment proceeding and also it is not relevant in the present case as because the Credit Notes already reflected in GSTR-2A of the Portal and its duly deducted in the purchase Register and the Noticee not availed such ITC.

c. ***Since the taxpayer has already produced supporting documents like Purchase Register and Credit Notes Ledger regarding reversal of the aforesaid ITC much prior to issuance of the present Order in Form-DRC-07 as passed in the case of the Taxpayer on the self-same facts without verification of the GST BO is an error apparent on the face of records.*** *Hence it is requested to take considered the documents as available on the records and rectify the DRC-07 under Section 161 of the OGST/CGST Act, 2017."*

3. Sri Rudra Prasad Kar, Learned Senior Advocate submits that the petitioner was instructed to appear on 7th August, 2025, on which date a reply was furnished stating therein that no excess ITC was claimed in GSTR-3B in comparison to the ITC available in GSTR-2A/2B. Therefore, it is emphatically submitted that there was no requirement to reverse the ITC. Referring to Circular No.105/24/2019-GST, dated 28th June, 2019, it is submitted that when credit notes are issued as part of commercial understanding for example, post-sale discount, incentive *etc*., there being no separate supply of service, corresponding ITC could be adjusted in the return from the eligible credit. Such adjustment does not require

a separate entry under GSTR-3B or DRC-3. Attention is drawn to paragraph-5 of said Circular, which reads as follows:

> *"5. There may be cases where post-sales discount granted by the supplier of goods is not permitted to be excluded from the value of supply in the hands of the said supplier not being in accordance with the provisions contained in sub-section (3) of Section 15 of the CGST Act. It has already been clarified vide Circular No.92/11/2019-GST dated 7th March, 2019 that the supplier of goods can issue financial/commercial credit notes in such cases but he will not be eligible to reduce his original tax liability. Doubts have been raised as to whether the dealer will be eligible to take ITC of the original amount of tax paid by the supplier of goods or only to the extent of tax payable on value net of amount for which such financial/commercial credit notes have been received by him. It is clarified that the dealer will not be required to reverse ITC attributable to the tax already paid on such post-sale discount received by him through issuance of financial/commercial credit notes by the supplier of goods in view of the provisions contained in second proviso to sub-rule (1) of rule 37 of the CGST Rules read with second proviso to sub-section (2) of Section 16 of the CGST Act as long as the dealer pays the value of the supply as reduced after adjusting the amount of post-sale discount in terms of financial/commercial credit notes received by him from the supplier of goods plus the amount of original tax charged by the supplier."*

3.1. It is submitted that since no excess ITC was claimed by the petitioner, for convenience sake the petitioner furnished reconciliation summary by which it is demonstrated that no reversal of ITC was necessitated under the GST Act or the Rules framed thereunder.

3.2. It is submitted that the orders impugned are liable to be set aside and the application for rectification under Section 161 deserves to be considered as there has been flagrant violation of principles of natural justice. The authority could not have rejected such application by without taking into consideration the reconciliation summary and without verifying the figures available in the portal in its proper perspective. The rejection of application for rectification, therefore, suffers from error apparent on the face of record which warrants indulgence of this Court in the present writ petition.

4. Opposing vehemently, Mr. Sunil Mishra, learned Standing Counsel for the CT & GST Department urged that the authority concerned was justified in rejecting the claim of the petitioner inasmuch as the petitioner failed to reverse the ineligible ITC and the finding of fact is recorded by the authority to the effect that there was excess ITC claimed in GSTR-3B in comparison to GSTR-2A. He would submit that the writ petition is liable to be dismissed *in limine* as the petitioner cannot be given scope to circumvent remedy provided under the GST Act.

5. Heard learned Senior counsel for the petitioner and learned Standing Counsel for the CT and GST Department.

6. Perused the record.

7. On perusal of record, it is manifest that to the notice seeking additional information by the concerned authority, a reply dated 7th August, 2025 was filed enumerating exhaustively with respect to the requirement of reversal of ITC as suggested by the

authority concerned. The petitioner during the course of hearing drew attention to such reply where it is categorically stated that "ITC reconciliation statement along with input tax credit and corresponding credit note reversal statement incorporated in consolidated GSTR-3B". Such reply also depicts that point-wise enumeration with respect to each alleged transaction was submitted. *Vide* Annexure-8 series, it seems the petitioner furnished the ITC reconciliation summary. It is revealed from Assessment Order that such reply was discarded as there was absence of original credit notes along with purchase invoices and issuance of credit notes by the suppliers. It is stated by the counsel that the petitioner had uploaded in the portal along with returns and the details was available for the Assessing Officer to verify. It is emphatically submitted that the application filed under Section 161 of the GST Act could not have been rejected without affording opportunity of hearing. This aspect remained uncontroverted by the opposite parties. The order dated 1st September, 2025 rejecting application for rectification could not have been passed merely quoting the provisions under Section 161 of the OGST Act. Without assigning reasons for not accepting the documents stated to have been submitted and declining to verify the evidence available on the portal the rejection of application suffers from infirmity in law. It does not emanate from said order dated 01.09.2025 rejecting the application for rectification that the aforesaid documents as produced by the petitioner have been given due consideration by the Assistant Commissioner of CT & GST, Bhubaneswar-1 Circle, Bhubaneswar nor does it reveal before rejection any opportunity of personal hearing was given.

8. In view of the aforesaid discussion, this Court perceives that the Order dated 1st September, 2025 (Annexure-9) passed by the Assistant Commissioner of CT & GST, Bhubaneswar-1 Circle, Bhubaneswar rejecting the application for rectification dated 29th March, 2025 is bereft of reason and hence, the same is liable to be set aside.

8.1. Having set aside the Order dated 1st September, 2025, the case is remanded to the aforesaid authority with the direction that the application for rectification dated 29th March, 2025 be disposed of having regard to the ground taken therein along with supporting documents/records available on the portal as stated to have been uploaded and/or to be produced, as it had not been afforded adequate opportunity to present its case during the course of the proceeding under Section 73 of the GST Act. To avail such opportunity of hearing and proffering explanation before the said Authority by producing records and documents to support fact and figures which have already been uploaded, the petitioner is directed to appear before the Assistant Commissioner of CT & GST, Bhuabneswar-1 Circle, Bhubaneswar within fifteen working days from date. On receipt of copy of this order, the said Authority concerned shall proceed to hear the petitioner on such dates(s) as he may deem fit and proper. Needless to say that the petitioner shall cooperate with the Authority concerned and it shall not be granted unnecessary adjournments.

8.2. The Assistant Commissioner of CT & GST, Bhuabneswar-1 Circle, Bhubaneswar shall consider the explanation of the petitioner along with records/documents sought to be

produced to support the fact and figures as discussed above and pass an appropriate reasoned order rectifying the Order dated 1st September, 2025, if need be, in terms of provisions of Section 161 of the GST Act and communicate the same to the petitioner forthwith.

9. With the above observations and directions, the writ petition stands disposed of. As a result of disposal of the writ petition, pending Interlocutory Application(s), if any, shall stand disposed of.

(Harish Tandon)
Chief Justice

(M.S. Raman)
Judge

MRS/Laxmikant