

## **Assessee is entitled to stay on recovery proceedings when Appellate Tribunal is not constituted**

The Hon'ble Orissa High Court in the case of *M/s. BPD Steel Syndicate (P.) (Ltd.) v. Union of India [WP (C) 6518 of 2023 dated February 22, 2024]*, allowed the writ petition and stayed the recovery proceedings initiated by the Revenue Department as per the Appellate Order till the time of the constitution of the Appellate Tribunal on the ground that the Appellate Tribunal has not been constituted.

### **Facts:**

M/s. BPD Steel Syndicate (P.) (Ltd.) ("**the Petitioner**") has filed a writ petition against the Impugned Appellate Order passed by the Revenue Department ("**the Respondent**") on the ground that the Petitioner is deprived of right to avail statutory remedy of appeal for order appealable under Section 112 of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**") due to non-constitution of the appellate tribunal.

### **Issue:**

Whether Assessee is entitled to stay on recovery proceedings when Appellate Tribunal is not constituted?

### **Held:**

The Hon'ble Orissa High Court in the case of *WP (C) 6518 of 2023* held as under:

- Noted that, as per clause 2 of the *Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated December 3, 2019*, and as per para 4.2 and 4.3 of *Circular No. 132/02/2020 dated March 18, 2020*, wherein the date from which the period for filing of appeal would start under sub-section (1) of Section 112 of the CGST Act, would be the date from which the Appellate Tribunal is constituted.

- Opined that, the Petitioner cannot be denied the statutory benefit sub-section (9) of Section 112 of the CGST Act due to non-constitution of tribunal.
- Held that, the recovery proceedings would be stayed subject to the condition of payment of the amount of pre-deposit.

**Relevant Provision:**

**Sub-Section (1) and sub-section (9) of Section 112 of the CGST Act:**

*“Section 112: Appeals to Appellate Tribunal*

*(1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.*

*(9) Where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.”*

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