IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (T) No. 5009 of 2025

M/s. Maa Kalyani Electrical-through its proprietor Pravesh Chandra Mandal, aged about 46 years, S/o. Tarni Mandal, office at Bikanipur, Gamharia, Kandra, P.O. & P.S.- Kandra, District- Saraikela-Kharsawan, Jharkhand.

... Petitioner

Versus

1. Union of India
2. The Secretary, Department of Revenue, Ministry of Finance, Government of India, Room No. 128, North Block, PO- New Delhi G.P.O., P.S.- North Avenue, New Delhi.
3. The Chief Commissioner, central Goods and Services Tax &C Ex. Ranchi Zone, Central Revenue Building (Annexe), Bir Chand Patel Path P.O. & P.S. Patna -800001
4. The Commissioner, Central Goods and services Tax &C Ex. Outer Circle Road, P.O. & P.S.- Bistupur Road Jamshedpur, Jharkhand.
5. The Commissioner (Appeal) Central Goods and services Tax &Central Excise 2nd floor Grand Emrald Ashok Nagar, P.O. & P.S. -Argora, Ranchi Jharkhand

... Respondents

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioner: Mr. Ram Kumar, Advocate
For the Respondents: Mr. P.A.S. Pati, Sr. S.C. (CGST)
Mr. Anurag Vijay Jr. S.C. (CGST)
Mr. Shivam Singh, Jr. S.C. (CGST)

03/Dated: 22.09.2025

Tarlok Singh Chauhan, C.J.(Oral)

1. The instant writ petition has been filed for the following substantial reliefs:-

> *"... ... issuance of a writ in the nature of certiorari for quashing the order passed by Commissioner (Appeals), CGST & Central Excise, Ranchi dated 17.01.2024 (Annexure 6),*

whereby the Presiding Officer has rejected the appeal of the petitioner and has observed that, "I find that this office has already issued order in appeal No. 06/JSR/2023 dated 10.01.2023 against OIO52/ST/DC/JSR-III/21-22 dated 03.03.2022 in respect of the Appellant and a copy of the same has already been provided to the concerned under the prevailing law. Therefore I find the appeal filed again on the dated 13.02.2023 against the same OIO cannot be entertained or admitted for order in appellant at this forum due to legality constrained as once a judgment has been given, the judge is "functus officio", he has no power to make changes in his decision or order, which can only be questioned by aggrieved person presiding in the further court of appeal. This order was passed arbitrarily prejudice to the interest of the petitioner and with the passage of this order there is apparent wrong on the face record as well as abuse of process of law."

2. The facts are not in dispute.

The petitioner being aggrieved by the order passed by the Deputy Commissioner, CGST & Central Excise, Jamshedpur, filed an appeal before the Appellate Authority on the following grounds:-

(a) The petitioner had discharged service tax liability with interest before issuance of show-cause notice.

(b) The petitioner was not contesting the service tax liability.

(c) The impugned order is liable to be set aside.

3. It is not in dispute that initially the appeal preferred by the petitioner was dismissed by the Appellate Authority solely on the ground of having failed to make the pre-deposit of 7.5% of the duty amount and this is so recorded in the impugned order dated 10.01.2023. It shall be apt to reproduce paragraphs 12 and 13 of the said order which read as under:-

> *"**12.** In view of the foregoing discussion, I am of the considered view that as per in Section 35F of Central Excise Act, 1944 read with Section 83 of the Act ibid the appellant is required to deposit 7.5% of duty amount before filing of appeal and to furnish the proof of such payment along with appeal filed before the Commissioner (Appeals). The appellant failed to deposit the amount as required under Section 35/Section 83 of the Act ibid and therefore, I am constrained to dismiss the appeal without going into the merits of the case.*
>
> ***13.** The appeal in diseased for non compliance of mandatory pre-deposit."*

4. The writ petitioner thereafter again approached the Appellate Authority by claiming that it had now paid the requisite 7.5% of the duty amount and requested to reconcile the total tax payable and further claimed that there was no short levy in the case and therefore its appeal be allowed.

5. However, strangely enough, the Appellate Authority instead of entertaining the appeal dismissed the same by observing that it had become "*functus officio*" and had no power to make changes in his earlier decision/order, which could only be questioned by the aggrieved person in further court of appeal.

6. To say the least, the reasoning given by the Appellate Authority in its order dated 17.01.2024 is absolutely fallacious and is based on a complete misunderstanding of the law.

7. As observed above, the appeal at the earlier occasion was dismissed solely on the ground that the writ petitioner had failed to make the pre-requisite mandatory deposit of 7.5% of the duty amount before filing of the appeal and not on merits and this has been specifically noted in the order dated 10.01.2023. Therefore, once the appeal had not been decided on merits but had, in fact, not been entertained, there was no question of the Authority of having become "*functus officio"* after the deposit of 7.5% of the duty amount as alleged by the writ petitioner.

8. Accordingly, the impugned order dated 17.01.2024 passed by the Commissioner (Appeals), CGST & Central Excise, Ranchi, is ordered to be set aside. The appeal is restored to its original number. The Appellate Authority shall proceed to decide the appeal in accordance with law after verifying the pre-deposit of 7.5% of the duty amount alleged to have been deposited by the writ petitioner.

9. The writ petition is allowed and disposed of accordingly.

(Tarlok Singh Chauhan, C.J.)

(Rajesh Shankar, J.)

September 22, 2025

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