GMR KAMALANGA ENERGY LIMITED

High Court of Orissa at Cuttack

Orders dated 18.11.2026 - Merged Copy

CONTENTS

1. W.P.(C) No. 1748 of 2026 - Pages 2 to 6 (5 pages)
GMR Kamalanga Energy Ltd. vs Commissioner (Appeals),
GST, Central Excise & Customs, Bhubaneswar & Ors.
I.A. No. 3377 of 2026 - Stay of Order-in-Appeal dated 28.07.2025

2. W.P.(C) No. 7656 of 2026 - Pages 7 to 13 (7 pages)
GMR Kamalanga Energy Ltd. vs Joint Commissioner,
GST & Central Excise, Bhubaneswar & Ors.
I.A. No. 4098 of 2026 - Stay of Order-in-Original dated
27.11.2025 and Order dated 22.12.2025

COMMON DIRECTIONS IN BOTH MATTERS:

- Listed next on 9th December, 2026
- Department to file counter affidavit; rejoinder, if any
- Interim stay granted - no coercive action till next date

Coram: Hon'ble Dr. Justice Sanjeeb K. Panigrahi and
Hon'ble Mr. Justice Murahari Sri Raman

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.1748 of 2026

[CNR No.ODHC010942642025]

GMR Kamalanga Energy Limited, Dhenkanal .... ***Petitioner***(s)

Mr. Rajiv Shakdher, Sr. Adv.
Mr. Sparsh Bhargava, Adv.
Mr. Saswat Kumar Acharya, Adv.
Ms. Jigisha Agarwal, Adv.

-versus-

Commissioner (Appeals) GST, Central Excise & Customs, Bhubaneswar & Ors. .... ***Opposite Party***(s)

Mr. Umesh Chandra Sahoo,
Junior Standing Counsel
(for GST & Central Excise)

CORAM:
HON'BLE DR. JUSTICE SANJEEB K PANIGRAHI
HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

ORDER
18.11.2026

Order No.
02.

1. This matter is taken up through Hybrid Arrangement (video conferencing/physical mode).

2. The present Writ Petition has been filed by the Petitioner, GMR Kamalanga Energy Limited, a company incorporated under the Companies Act, 2013, represented through its Director/Authorised Signatory, Sri Manoj Mishra, challenging the Order-in-Appeal dated 28.07.2025 (hereinafter

referred to as the "Impugned Order") passed by the Commissioner of Appeals (GST) (Opposite Party No.1), whereby the departmental appeal was allowed ex parte and the Order-in-Original dated 26.04.2024 was partly reversed.

3. The Petitioner runs a coal-based thermal power plant at Kamalanga in the district of Dhenkanal and draws water from the Brahmani River under yearly agreements in Form K executed with the Government of Odisha under the Odisha Irrigation Act, 1959 and the Odisha Irrigation Rules, 1961. Following an audit enquiry, a show cause notice dated 30.01.2024 was issued for the period April 2018 to March 2021 proposing GST under reverse charge on the water charges paid to the State.

4. By Order dated 26.04.2024, Opposite Party No.2 dropped that demand, holding that the charges were consideration for supply of water exempt under Sl. No.99 of Notification No.2/2017-Central Tax (Rate). On review by Opposite Party No.3, a departmental appeal was filed. By the Order-in-Appeal dated 28.07.2025/Annexure-1, Opposite Party No.1 allowed the appeal, treated the transaction as a grant of licensing right to use a natural resource and confirmed tax of Rs.6,80,94,713/- under Section 73 of the CGST and OGST Acts with interest and a penalty under Section 122(2)(a).

5. Learned Sr. Counsel, Mr. Rajiv Shakdher appearing for the Petitioner contends that the impugned order was passed

ex parte. Notices of the hearings fixed on 21.01.2025, 12.02.2025 and 28.03.2025 were neither sent to the registered e-mail nor was it uploaded on the common portal and the order sent by post was returned with the remark "addressee left/shifted".

6. The Petitioner came to know about it only when it was e-mailed on 27.10.2025. He has submitted that it offends Section 169 of the CGST Act and the principles of natural justice. On merits, he contends that the charges are paid for supply of water, which is exempt from 27.07.2018. It is further contended that the activity is neither a supply of goods nor of services under Notification No.14/2017-Central Tax (Rate) and the corresponding State notification. He also assails the confirmation of a single consolidated demand for three financial years, relying on the order of this Court dated 18.06.2025 in W.P.(C) No.15466 of 2025.

7. The Impugned Order is challenged on the grounds of lack of jurisdiction, violation of principles of natural justice and non-compliance with the mandatory provisions of law. The Order-in-Original had dropped the Show Cause Notice, holding that the water charges paid by the Petitioner to the Government of Odisha under the Agreement were not liable to GST. However, Opposite Party No.1 has held that the transaction involved the right to use natural resources without examining the Agreement, which was admittedly not

available on record. The Respondent Authorities also failed to appreciate the applicability of Section 7(2)(b) of the CGST Act, 2017 and the OGST Act, 2017, read with the relevant notifications.

8. The matter requires consideration. Issue notice. Mr. Umesh Chandra Sahoo, learned Junior Standing Counsel, waives of notice on behalf of opposite party Nos.1 to 3.

9. Heard.

10. Issue notice.

11. Mr. Umesh Chandra Sahoo, learned Junior Standing Counsel for the Department-Opposite Parties accepts notices on behalf of all the Opposite Parties. Since the soft copy of the Writ Petition has already been uploaded in the LMS, no hard copy is required to be served on the learned Junior Standing Counsel.

12. List this matter on 9th December, 2026.

13. In the meantime, learned counsel for the Opposite Parties shall file the counter affidavit serving a copy of the same on the learned counsel for the Petitioner.

14. Rejoinder affidavit, if any, be filed in the meantime.

I.A. No.3377 of 2026

15. Heard.

16. Issue notice as above.

17. Accept one set of process fee.

18. As an interim measure, operation and effect of the order dated 28.07.2025, passed by Opposite Party No.1 under Annexure-1 shall remain stayed till the next date of listing of this matter. It is further directed that no coercive action shall be taken against the Petitioner till the next date.

19. Issue urgent certified copy of this order as per Rules.

(Dr. Sanjeeb K Panigrahi)
Judge

(Murahari Sri Raman)
Judge

Sipun

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.7656 of 2026

[CNR No.ODHC010151112026]

GMR Kamalanga
Energy Limited,
Dhenkanal .... *Petitioner(s)*

Mr. Rajiv Shakdher, Sr. Adv.
Mr. Sparsh Bhargava, Adv.
Mr. Saswat Kumar Acharya, Adv.
Ms. Jigisha Agarwal, Adv.

-versus-

Joint Commissioner,
GST & Central Excise,
Bhubaneswar & Ors. .... ***Opposite Party(s)***

Mr. Umesh Chandra Sahoo,
Junior Standing Counsel
(for GST & Central Excise)

CORAM:
HON'BLE DR. JUSTICE SANJEEB K PANIGRAHI
HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

ORDER
18.11.2026

Order No.
03.

1. This matter is taken up through Hybrid Arrangement (video conferencing/physical mode).

2. By filing the present Writ Petition, the Petitioner, GMR Kamalanga Energy Limited, a company incorporated under the provisions of the Companies Act, 2013, represented through its Director/Authorised Signatory, Sri Manoj Mishra, has assailed the Order-in-Original dated 27.11.2025 passed by the Joint Commissioner, GST & Central Excise, the Show

Cause Notice dated 24.09.2025 issued for the Financial Year 2021-22 and the Show Cause Notice dated 22.12.2025 issued for the Financial Years 2022-23 and 2023-24, along with the Audit Observations dated 09.09.2025 and 24.11.2025 and the Final Audit Reports in Form ADT-02 dated 19.09.2025 and 04.12.2025, primarily on the ground that the Opposite Parties have erroneously assumed jurisdiction to levy GST on the water charges paid by the Petitioner to the Government of Odisha under the Agreement for Supply of Water for Industrial/Commercial Use, despite the exemption available under the applicable GST notifications and the exclusion contemplated under Section 7(2)(b) of the CGST Act, 2017 and the corresponding provisions of the OGST Act, 2017. The Petitioner has further challenged the impugned proceedings as being without jurisdiction, arbitrary, contrary to the statutory provisions and violative of the principles of natural justice.

3. Mr. Rajiv Shakdher, learned Senior Advocate appearing for the Petitioner, submits that the impugned Order-in-Original dated 27.11.2025 and the consequential show cause notices are wholly without jurisdiction, inasmuch as the authorities have proceeded on an erroneous assumption that the agreement executed between the Petitioner and the Government of Odisha is in the nature of grant of a right to use natural resources, named, water and consequently

constitutes a taxable service classifiable under SAC 997338. He submits that, on a proper construction of the agreement executed under the Odisha Irrigation Act, 1959 and the Odisha Irrigation Rules, 1961, the transaction is essentially one of supply of water for industrial purposes against payment of charges determined on the basis of the quantity of water actually drawn. The agreement, its terms and the relevant statutory provisions consistently refer to supply of water and not to the grant or assignment of any right to use natural resources. Therefore, the authorities have erred in treating the water charges as consideration for a licensing service and in demanding GST under the reverse charge mechanism at the rate of 18%.

4. Learned Senior Counsel further submits that the supply of water, other than the categories specifically excluded therein, is exempt from GST under Entry No.99 of Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017, read with the corresponding notification issued by the State of Odisha. He alternatively submits that, even assuming, without admitting, that the transaction involves an activity of licensing or grant of permission for drawing water from a Government water source, the same would nevertheless fall outside the scope of supply under Section 7(2)(b) of the CGST Act, 2017, read with Notification No. 14/2017-Central Tax (Rate) dated 28.06.2017, as amended, and the corresponding State notification. This is

so because water supply for domestic, industrial and commercial purposes is a function entrusted to Municipalities under Entry 5 of the Twelfth Schedule read with Article 243W of the Constitution of India and the expression "in relation to" employed in the notification is of wide amplitude so as to cover activities having a direct nexus with such water supply. Consequently, the activity undertaken by the State Government in its capacity as a public authority is required to be treated neither as a supply of goods nor as a supply of services.

5. Learned Senior Counsel further contends that the finding of the adjudicating authority that water cannot be regarded as goods in the absence of transfer of possessory rights or legal title is legally unsustainable and proceeds on an erroneous understanding of the concept of goods and property under the applicable law. He contends that the nature of the transaction must be determined from the agreement and the governing statutory provisions and not merely from the nomenclature of the charges or the fact that the water is drawn from a natural source.

6. It is further contended that the entire audit proceedings are vitiated by jurisdictional and procedural infirmities. According to learned Senior Counsel, the audit observations were issued by the Superintendent (Audit), who was not the proper officer authorised to communicate discrepancies under

Rule 101(4) of the CGST Rules, 2017, having regard to Section 2(91) of the Act and Circular No.3/3/2017-GST dated 05.07.2017. Moreover, the audit observations were finalised into audit reports in Form GST ADT-02 without affording the Petitioner an effective opportunity to submit its explanation, contrary to the principles of natural justice and the procedure contemplated under the Model All India GST Audit Manual, 2023.

7. Learned Senior Counsel further submits that the consolidated show cause notice dated 22.12.2025, covering two distinct financial years, named, FY 2022-23 and FY 2023-24, is legally impermissible under Section 73 of the CGST Act, which contemplates determination of tax liability for each financial year separately. Reliance is also placed upon the orders passed by this Court in **W.P.(C) Nos.15466 of 2025 and 23286 of 2025**, wherein consolidated demands covering multiple financial years were stayed. Reference is also made to the order dated 24.12.2025 passed by this Court in the case of **M/s. Ayushi Galvano v. Commissioner (Audit), GST and Central Excise, Bhubaneswar (in W.P.(C) No.30871 of 2025)** concerning the competence of the Superintendent (Audit) in the context of Rule 101 of the CGST Rules.

8. Heard.

9. Issue notice.

10. Mr. Umesh Chandra Sahoo, learned Junior Standing Counsel for the Department-Opposite Parties accepts notices on behalf of all the Opposite Parties. Since the soft copy of the Writ Petition has already been uploaded in the LMS, no hard copy is required to be served on the learned Junior Standing Counsel.

11. The soft copy of the Writ Petition which was already uploaded in the LMS be utilized for issuance of notice.

12. List this matter on 9th December, 2026.

13. In the meantime, learned counsel for the Opposite Parties shall file the counter affidavit serving a copy of the same on the learned counsel for the Petitioner.

14. Rejoinder affidavit, if any, be filed in the meantime.

I.A. No.4098 of 2026

15. Heard.

16. Issue notice as above.

17. Accept one set of process fee.

18. As an interim measure, operation and effect of the order dated 27.11.2025, passed by Opposite Party No.1 under Annexure-1 and the order dated 22.12.2025, issued by Opposite Party No.2 under Annexure-3, shall remain stayed till the next date of listing of this matter. It is further directed that no coercive action shall be taken against the Petitioner till the next date.

19. Issue urgent certified copy of this order as per Rules.

(Dr. Sanjeeb K Panigrahi)
Judge

(Murahari Sri Raman)
Judge

Sipun