

GAHC010114222025



2025:GAU-AS:6977

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2873/2025

DULAL CHANDRA MECH
S/O LT LOKESWAR MECH R/O B ITAVATA ROAD PO DIGBOI DIST TINSUKIA
ASSAM 786171

VERSUS

THE UNION OF INDIA AND ORS
REP BY THE SECRETARY OF GOVT OF INDIA MINISTRY OF FINANCE NEW
DELHI 110001

2:THE PRINCIPAL COMMISSIONER
CENTRAL GOODS AND SERVICES TAX HAVING OFFICE AT MILAN NAGAR
LANE F PO CR BUILDING DIBRUGARH 786003

3:THE DEPUTY COMMISSIONER OF CENTRAL TAX
CENTRAL GST DIVISION TINSUKIA HAVING OFFICE AT DURGABARI
ROAD TINSUKIA 786123

4:THE ASSISTANT COMMISSIONER OF CENTRAL TAX
CENTRAL TAX GST DIVISION TINSUKIA HAVING OFFICE AT DURGABARI
ROAD TINSUKIA 78612

Advocate for the Petitioner : MR. R S MISHRA, MS M NIROLA

Advocate for the Respondent : DY.S.G.I., SC, GST

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

30.05.2025

1. Heard Mr. R. S. Mishra, learned counsel for the petitioner. Also heard Mr. S. C. Keyal, learned Standing Counsel for the GST representing the respondent Nos. 1, 2, 3 and 4.
2. The petitioner is an assessee having Service Tax Registration No. ADBPM1713EST001. The petitioner was issued a Demand Cum-Show Cause Notice bearing No. F.No.IV(16)35/ Misc.Eng/ AE/ DIG/ 2016-17/2583 dated 24.08.2019 under Section 73(1) of the Finance Act, 1994 for the financial year 2014-15, 2015-16, and 2016-17 asking the petitioner to show cause why an amount of Rs. 32,18,849/- shall not be recovered from the petitioner along with the interest and penalty.
3. The petitioner approached this Court challenging the aforesaid notice by filing a writ petition being WP(C) 7506/2019, however, the said writ petition was dismissed under its order dated 12.04.2023 for want of prosecution. Be that as it may, the petitioner was served with a notice of personal hearing on 20.02.2024 fixing date of personal hearing on 27.02.2024 in connection with the said show cause notice dated 24.08.2019. The petitioner filed reply to the said show notice dated 24.08.2019. Thereafter, the impugned Order in Original dated 28.06.2024 was passed confirming a demand of Rs. 19,60,023/- including cess under Section 73 (1) of the Act, 1994.
4. The aforesaid order is challenged firstly on the ground that the mandate of Section 73(4B) of the Finance Act, 1994 has been violated inasmuch as the Order

in Original ought to have been passed within a period of one year. The second ground of challenge to the impugned order is violation of Clause 14.10 of the Master Circular bearing No. 1053/02/2017-CX F.No.96/1/2017-CX.I dated 10.03.201, more particularly, for the reason that the decision was communicated beyond the time prescribed, after the hearing was concluded. The further ground of challenge is that there is absence of determination as required under Section 73(2) of the Finance Act, 1994, inasmuch as it is the case of the petitioner that no service tax can be recovered in terms of the aforesaid provision, the show cause notice being issued in terms of Section 73(1) of the Finance Act.

5. This Court has perused the material. Also taken note of the objection of Mr. Keyal, learned Standing Counsel for the GST that the present order is an appealable order. It is not in dispute that the Order in Original is an appealable order. It is the further opinion of this Court that in the present case, it cannot be said that there is any violations of principles of natural justice or that the authority who passed the impugned Order in Original has acted without jurisdiction or that any fundamental right of the petitioner has been violated.
6. That being the position, in the given facts of the present case, this Court is not inclined to exercise its power under Article 226 of the Constitution of India, more particularly, when an efficacious and alternative remedy of appeal is available to the petitioner.
7. At this stage, Mr. Mishra, learned counsel for the petitioner submits that the petitioner may be relegated to the appellate authority to prefer an appeal to which Mr. Keyal, learned Standing Counsel for the respondent/GST, has not raised any objection.
8. In view of the aforesaid, the present writ petition stands closed by relegating the petitioner to approach before the appellate authority as per law.

9. The periods spent before this Court in the present procedure may be excluded from the prescribed period of limitation.
10. This writ petition stands disposed of as indicated hereinabove. The parties to bear their own cost.

JUDGE

Comparing Assistant