

GAHC010094152022



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

Case No. : WA/188/2022

M/S SAILAJA COMMERCIAL CONSTRUCTION PRIVATE LTD.,
A PRIVATE LIMITED COMPANY INCORPORATED UNDER THE INDIAN
COMPANIES ACT, 1956 AS AMENDED UP TO AND HAVING THEIR
PRINCIPAL PLACE OF BUSINESS AT HOUSE NO.9, ADITYA RESIDENCY,
BELTOLA NAMGHAR PATH, JAYNAGAR CHARIALI, BELTOLA, IN THE
DISTRICT OF KAMRUP (M), GUWAHATI-781028, ASSAM AND
REPRESENTED THROUGH THEIR DIRECTOR, MR UDAYADITYA GOSWAMI,
AGED ABOUT 53 YEARS, SON OF UTSHABA NANDA GOSWAMI.

.....**Appellant**

-Versus-

1. THE UNION OF INDIA,
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF
FINANCE, DEPARTMENT OF REVENUE,
NORTH BLOCK, NEW DELHI-110001.

2:THE PRINCIPAL COMMISSIONER,
CENTRAL GOODS AND SERVICE TAX AND CENTRAL EXCISE
COMMISSIONERATE, GUWAHATI, GST BHAWAN, KEDAR ROAD,
MACHKHOWA, GUWAHATI-781001, ASSAM

3:SUPERINTENDENT (HQRS. ADJ.),
GST AND CENTRAL EXCISE COMMISSIONERATE, GUWAHATI,
GST BHAWAN, KEDAR ROAD, MACHKHOWA, GUWAHATI-781001
ASSAM.

4:THE SUPERINTENDENT, (RANGE -II E,
CENTRAL GST),GST BHAWAN, 2ND FLOOR,
ROOM NO. 206, KEDAR ROAD, MACHKHOWA
GUWAHATI-781001.

.....**Respondents.**

For the Appellant

: Mr. D. Saraf, Adv.

For the Respondent(s)

: Mr. S.C. Keyal, Sr. SC, GST.

BEFORE
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUMAN SHYAM

20.02.2023

The instant intra-court appeal is directed against the judgment/final order dated 18.04.2022 rendered by the learned Single Bench in WP(C) No.153/2022 disposing of the writ petition preferred by the petitioner/appellant against the order dated 09.09.2021 issued by the Principal Commissioner of Central Goods and Service Tax and Central Excise, Guwahati in Order in Original No.05/Pr.Commr./ST/GHY2021-2022 whereby a demand of Rs.3,48,03981 of service tax along with equivalent amount of penalty in terms with Section 78 of the Finance Act 1994 and penalty in terms of Section 77(1) & Section 77(2) of the Finance Act of 1994 has been imposed upon the petitioner.

The learned Single Bench held that the Statutory remedy of filing an appeal is available to the writ petitioner and thus, the writ petition was not fit to be entertained.

We are of the firm view that the expression of opinion by the learned Single Bench as indicated in the impugned order is absolutely justified.

The contention of the learned counsel for the appellant/writ petitioner that a statutory pre-deposit is required to be made for filing an appeal and thus, the remedy is not efficacious, is clearly unworthy of credence because mere requirement of furnishing or making the pre-deposit with the appeal under

Section 107 of the GST Act would not made the remedy ineffectual.

The Hon'ble Supreme Court in the case of ***Assistant Commissioner of State Tax & Ors. Vs. Commercial Steel Limited***, reported in ***2021 SCC online SC 884*** has laid down beyond the pale of doubt that the remedy of appeal under the provisions of GST Act is an efficacious statutory remedy and ordinarily, the writ jurisdiction should not be invoked to examine the validity of a demand notice. None of the exceptions carved out by Hon'ble the Supreme Court are made out so as to entertain the challenge laid to an appealable order in exercise of the extraordinary writ jurisdiction.

As a consequence of above discussion, we find no reason to interfere with the impugned order dated 18.04.2022 passed by the learned Single Bench in WP(C) No.153/2022.

Consequently, the appeal is dismissed as the same lacks merit.

JUDGE

CHIEF JUSTICE

Comparing Assistant