

GAHC010170462023



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

Case No. : WP(C)/4513/2023

M/S SARVESHWARI INDUSTRIES AND ANR
A PROPRIETORSHIP CONCERN HAVING ITS REGISTERED OFFICE AT 2ND
FLOOR, H.NO. 11431770,
KEJRIWAL COMPLEX, S.J. ROAD,
ATHGAON, GUWAHATI, KAMRUP(M),
ASSAM, 781001, REPRESENTED BY ITS SOLE PROPRIETOR,
I.E. THE PETITIONER NO. 1.

2: KAMAL AGARWAL
SON OF SRI MAHESH PRASAD AGARWAL

RESIDENT OF 2ND FLOOR

H. NO.- 1143170
KEJRIWAL COMPLEX

S.J. ROAD
ATHGAON
GUWAHATI

KAMRUP(M)
ASSAM
PIN- 781001

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP BY COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
FINANCE (TAXATION) DEPARTMENT,
DISPUR, GUWAHATI-06,
KAMRUP(M), ASSAM.

2:THE COMMISSIONER OF TAXES ASSAM
KAR BHAWAN

G.S. ROAD
DISPUR

GUWAHATI-6

KAMRUP(M)
ASSAM.

3:THE ASSISTANT COMMISSIONER OF STATE TAX
KAR BHAWAN
GUWAHATI UNIT-B

GUWAHATI-6

Advocate for the Petitioner : MR. P J SAIKIA, SR. ADV

Advocate for the Respondent : SC, FINANCE AND TAXATION

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 08/08/2023

Heard Mr. P.J. Saikia, learned senior counsel assisted by Mr.R.S. Mishra, learned counsel for the writ petitioners. Also heard Mr. B. Gogoi, learned Standing Counsel, GST authorities, appearing for the respondent nos. 1, 2 and 3.

Assailing the notice dated 03/07/2023 issued by the Assistant Commissioner of State Tax, Guwahati, Unit-B i.e. the respondent no. 3 directing the petitioners to show cause within 30(thirty) days from the date of receipt of the notice as to why, an amount of Rs. 1,73,22,888/- should not be levied upon the petitioners as unpaid GST dues along with penalty, the instant writ petition has been filed.

Mr. Saikia, submits that the impugned notice has been issued by invoking the provisions of Section 61 of the GST Act, 2017. However, the basis of the notice is not re-assessment of the returns submitted by the petitioners but inputs received from external sources and, therefore, the impugned notice is not maintainable in the eyes of law. It is also the submission of Mr. Saikia that the impugned notice does not reflect the basis on which allegation with regard to deficiency in the returns filed by the petitioners has been made, as a result of which, the petitioners have been denied a proper

opportunity of making an effective reply.

Mr. Gogoi, learned departmental counsel submits that since these issues can be raised before the GST authorities, the writ petition be disposed of by directing the respondents to consider the grievance of the petitioners after examining the show cause reply submitted by them.

After hearing the submissions made by learned counsel for the parties and also upon going through the impugned notice dated 03/07/2023, this Court finds that no decision has yet been taken by the authorities in the matter. However, since some serious allegations have been brought against the petitioners, they would be entitled to receive complete particulars as regards the deficiency, if any, in filing the return before an effective reply can be made. Therefore, this writ petition is being disposed of by providing that within two weeks from the date of receipt of a certified copy of this order, the respondent no. 3 to furnish full and better particulars to the petitioners as regards the nature of deficiency, if any, in the matter of filing of GST returns, by giving them at-least three weeks time to submit reply.

Facilitating the above, the petitioners to produce a certified copy of this order before the respondent no. 3 by tomorrow i.e. 09/08/2023. Mr. Gogoi may also communicate the order of this Court to the departmental authorities.

Until such time, the aforesaid exercise is completed and a reasoned order is passed after taking note of the show cause reply submitted by the petitioners, no coercive action be initiated against them.

With the above observations, the writ petition stands disposed of.

JUDGE

sukhamay

Comparing Assistant