

GAHC010178152023



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

Case No. : WP(C)/4626/2023

M/S NORTH EASTERN INFORMATION TECHNOLOGY CONSULTANCY
SERVICES PRIVATE LIMITED
A PRIVATE LIMITED COMPANY REGISTERED UNDER THE COMPANIES
ACT, 1956, HAVING ITS REGISTERED OFFICE AT L.P. BUILDING MAIN
ROAD LAITUMKHRAH, SHILLONG, MEGHALAYA- 793003, REPRESENTED
BY ITS DIRECTOR SHRI LARSING LALHMINGSANGA DEY SAWYAN.

VERSUS

UNION OF INDIA AND 5 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
DEPARTMENT OF FINANCE.

2:THE COMMISSIONER CENTRAL GOODS AND SERVICE TAX
SHILLONG
3RD FLOOR CRESCENS BUILDING

M.G. ROAD SHILLONG
PIN-793001
MEGHALAYA.

3:THE COMMISSIONER APPEAL CENTRAL GOODS AND SERVICES TAX
CENTRAL EXCISE AND CUSTOMS

GUWAHATI
GST BHAWAN
3RD FLOOR

GUWAHATI.

4:THE ASSISTANT COMMISSIONER CENTRAL GOODS AND SERVICE TAX
SHILLONG DIVISION-I

2ND FLOOR
MEGHALAYA STATE HOUSING FINANCE CO-OPERATIVE SOCIETY LTD.

NONGRIM HILLS
SHILLONG- 793003

MEGHALAYA.

5:THE DEPUTY COMMISSIONER CENTRAL GOODS AND SERVICE TAX
SHILLONG DIVISION-I 2ND FLOOR

MEGHALAYA STATE HOUSING FINANCE CO-OPERATIVE SOCIETY LTD.

NONGRIM HILLS
SHILLONG- 793003

MEGHALAYA.

6:THE SUPERINTENDENT CENTRAL GOODS AND SERVICE TAX
SHILLONG DIVISION-I 2ND FLOOR

MEGHALAYA STATE HOUSING FINANCE CO-OPERATIVE SOCIETY LTD.

NONGRIM HILLS
SHILLONG- 793003

MEGHALAYA

Advocate for the Petitioner : MR. R S MISHRA

Advocate for the Respondent : DY.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

11.08.2023

Heard Mr. R. S. Mishra, learned counsel for the petitioner. Also heard Mr. S. C.

Keyal, learned Standing Counsel, CGST authorities appearing on behalf of the respondents.

The writ petitioner herein is engaged in running a computer institute offering

various courses to the aspiring students. According to the writ petitioner, it has been discharging its duties by depositing service tax as and when the same has fallen due. Notwithstanding the same, the petitioner was served with a demand notice dated 31.10.2019 issued by the respondent No.4 vide order dated 03.09.2020, making demand for a sum of Rs.11,16,914/- along with interest and penalty allegedly being the unpaid service tax. Thereafter, the respondent No.5, vide letter dated 27.09.2022, had initiated a recovery proceeding and had also attached the bank account of the petitioner. Assailing the order dated 03.09.2020 the petitioner had preferred an appeal before the Commissioner (Appeals), Central Goods and Services Tax i.e. the respondent No.3 by making a pre-deposit of Rs.83,770/- being 7.5% of the amount provided by the statute. Notwithstanding the same, the respondent No.3 has refused to grant any interim order of stay of recovery. Aggrieved thereby, the instant writ petition has been filed.

By referring to Clause 4.3 of the Circular dated 16.09.2014 issued by the Government of India, Ministry of Finance, Department of Revenue, Mr. Mishra submits that any recovery action is required to be stayed pending disposal of appeal preferred before the Commissioner (Appeals)/Tribunal. Notwithstanding the same, the respondent No.3 has declined to grant interim relief to the petitioner.

Mr. Keyal, learned Standing Counsel, CGST, has submitted in his usual fairness that once an appeal is preferred against a demand of GST by making pre-deposit, coercive action would have to be stayed till disposal of the appeal, as per the mandate of the notification dated 16.09.2014.

Since it is not in dispute that the appeal preferred by the petitioner was

accompanied by pre-deposit and the appeal is pending disposal and also considering the language of Clause 4.3 of the Notification dated 16.09.2014, this Court is also of the opinion that the recovery proceeding, if any, initiated against the petitioner, ought to be stayed until such time, the appeal is finally disposed of by the respondent No.3.

As such, taking note of the submissions made by the learned counsel for both the sides and as agreed to by them, this writ petition is hereby disposed of by providing that no coercive action shall be taken against the petitioner for recovery of the amount so demanded, until disposal of the appeal pending before the respondent No.3.

JUDGE

Comparing Assistant