

GAHC010267812023



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

Case No. : WP(C)/6942/2023

SMTI. AJITHA KRISHNAN
W/O- SRI A.D. RADHAKRISHNA, R/O- MUTSA BIMICA BUILDING, LOWER
BAND STAND, EAST KHASI HILLS, MADANRTING, SHILLONG-793021,
MEGHALAYA.

VERSUS

UNION OF INDIA AND 3 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
DEPARTMENT OF FINANCE, NEW DELHI-1.

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

3:THE DEPUTY COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
SHILLONG-DIVISION-I.

4:THE COMMISSIONER (APPEALS)
CGST
CENTRAL EXCISE AND CUSTOMS
3RD FLOOR
GST BHAWAN
KEDAR ROAD
MACHKHOWA
GUWAHATI-781001

Advocate for the Petitioner : MR. A K GUPTA

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

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 04-12-2023

Heard Mr. R.S. Mishra, learned counsel for the petitioner and Mr. S.C. Keyal, learned Standing Counsel, GST for all the respondents.

2. The instant writ petition under Article 226 of the Constitution of India has preferred to assail an Order-in-Appeal no. 08/SH/CE[A]/GHY/2022 dated 19.08.2022 passed by the Commissioner [Appeals], CGST, Central Excise and Customs, Guwahati. The said appeal was preferred by the petitioner against an Order-in-Original no. 20/Assistant Commissioner/GST/2020-2021 dated 04.02.2021 passed by the Deputy Commissioner, CGST, Shillong Division-I, Shillong. The Order-in-Appeal has confirmed the service tax liability of the petitioner to the extent of ₹ 21,85,173/-.

3. It is the contention of the petitioner that the petitioner is entitled to relief under the Service Tax [Determination of Value] Rules, 2006, more particularly, as per Rule 2A thereof. It is the further contention of the petitioner that neither the Order-in-Original nor the Order-in-Appeal has dealt with the contentions raised by the petitioner on the basis of the Service Tax [Determination of Value] Rules, 2006.

4. It is noticed that against an order like the order passed in Order-in-Appeal no. 08/SH/CE[A]/GHY/2022 dated 19.08.2022, an appeal lies under

Section 86 of the Finance Act, 1994 to the Customs, Excise and Central Tax Appellate Tribunal and such appeal is required to be filed within 3 [three] months from the date on which the order sought to be appealed against has been communicated. Sub-section [5] of Section 86 has provided that the Appellate Tribunal may admit an appeal after the expiry of such period of limitation if it is satisfied that there was sufficient cause for not presenting it within that period.

5. In view of the fact that a statutory, adequate and efficacious remedy of appeal has already been provided for to assail an order like the Order-in-Appeal no. 08/SH/CE[A]/GHY/2022 dated 19.08.2022 before the Appellate Tribunal having the power to condone any delay, this Court is of the considered view that the writ petition preferred under Article 226 of the Constitution of India is not be entertained at this stage, reserving the liberty to the petitioner to avail the statutory remedy of appeal provided under Section 86 of the Finance Act, 1994. As the period of 3 [three] months since the Order-in-Appeal has expired in the meantime, the petitioner is also at liberty to prefer an application before the Appellate Tribunal showing cause as to why the appeal could not be presented within the statutory period of limitation. It is observed that in the event such an application for condoning the delay and an appeal are preferred by the petitioner, the Appellate Tribunal shall consider the same in accordance with law and on its own merits.

JUDGE

Comparing Assistant