

GAHC010044702024



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

Case No. : WP(C)/1704/2024

M/S NORTH EAST GLASS INDUSTRIES
A PARTNERSHIP FIRM REGISTERED UNDER THE PROVISIONS OF THE
PARTNERSHIP ACT, 1932 AND HAVING ITS OFFICE AT KATONIPARA,
BALAPATHAR, MODARTOLA, DEUDUAR, KAMRUP (R), ASSAM-781101,
REPRESENTED BY SRI RAJESH KUMAR BAJAJ ONE OF THE PARTNERS OF
THE FIRM.

VERSUS

THE UNION OF INDIA
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NORTH BLOCK,
NEW DELHI.

2:THE PRINCIPAL COMMISSIONER
CGST
GST BHAWAN
KEDAR ROAD
GUWAHATI-01
ASSAM.

3:THE ASSISTANT COMMISSIONER
CGST

GUWAHATI
DIVISION-1
GST BHAWAN
KEDAR ROAD
GUWAHATI- 01
ASSAM

Advocate for the Petitioner : MR. D GOSWAMI

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

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

ORDER

Date : 22-03-2024

Heard Ms. N Hawelia learned counsel for the petitioners.

In the present proceeding the demand show cause notice dated 20.11.2023 is under challenge. The notice reflects that according to the department after review of records they came to learn that the petitioner has availed Input Tax Credit (ITC) amounting to Rs.1, 47,68,383 for the financial year 2018-2019.

It is also found in the paragraph 4 of the notice that the department is of the view that the noticee had inadvertently availed ITC during financial year 2018-2019 and such fact ought to have been highlighted in GSTR-9 form in the GST backend system for scrutiny and therefore, it negates any presumption of fraud or willful statement or suppression of fact by the petitioner.

Accordingly, the petitioner was asked to clarify the following points:

“5.1 : The reason behind the incorrect availment of Input Tax Credit amounting to Rs.1,47,68,383/- (Rupees One Crore Forty Seven Lakh Sixty Eight Thousand and Three Hundred and Eighty Three only) was intimated to the notice but no reply received from their end.

5.2 Why the aforementioned amount of Input Tax Credit should not be demanded and recovered from the Noticee under section 73(1) of the Central Goods and Services tax, 2017.

5.3 : Why applicable interest on the amount of Central Taxes should not

be demanded and recovered from the Noticee under section 73(1) read with Section 50 of the Central Goods and Services Tax, 2017.

5.4: Why penalty should not be imposed on the Noticee under section 73(9) of the Central Goods and Services Tax, 2017.

Ms. Hawelia learned counsel for the petitioner challenging such notice urges that there is no dispute that the petitioner has filed return, paid the tax, however, such return was manual inasmuch as at that time the GST system was not properly operating. Therefore, the authority could not have demanded such amount.

At this stage Dr. D.N Gogoi, learned standing counsel GST submits that as petitioner has been given an opportunity to explain her case this matter may be relegated to the Assistant Commissioner who has issued notice, by giving an opportunity to the petitioner to reply to the points as envisaged at paragraph 5.1 to paragraph 5.4.

Ms. Hawelia learned counsel submits that for the present she may accept such course of action.

Accordingly in view of the aforesaid consensus, this writ petition stands disposed of with a direction that the petitioner shall file a reply within a period of one month from today and thereafter the Assistant Commissioner shall decide the matter as per law taking note of the reply filed by the petitioner.

JUDGE

Comparing Assistant