

GAHC010128642024



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

Case No. : WP(C)/3289/2024

Prashant Borah
S/O- LATE TARUN CH. BORAH,
R/O- C/O- UNICORN GAS AGENCY, A.T ROAD, NALIAPOL,
P.O, P.S AND DIST-DIBRUGARH, ASSAM

VERSUS

THE UNION OF INDIA
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA ,
MINISTRY OF FINANCE NEW DELHI

2:THE COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX
DIBRUGARH
MILAN NAGAR LANE-F
P.O. C.R. BUILDING
DIBRUGARH-786001.

3:THE ASSISTANT COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
DIBRUGARH
MILAN NAGAR LANE-F
P.O. C.R. BUILDING
DIBRUGARH-786001.

4:THE COMMISSIONER (APPEALS)
4)
CENTRAL GOODS AND SERVICE TAX
CENTRAL EXCISE AND CUSTOMS

3RD FLOOR
GST BHAWAN
KEDAR ROAD

MACHKHOWA
GUWAHATI-0

For the Petitioner(s) : Mr. R. S. Mishra, Advocate
For the Respondent(s) : Mr. S. C. Keyal, Standing counsel
: Ms. K. Phukan, CGC
: Mr. B. Gogoi, Standing Counsel

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 11.09.2024

The instant writ petition has been filed challenging the order dated 31.07.2023 passed by the Commissioner (Appeals), CGST Central Excise & Customs in Order-in-Appeal No.407/GHY(A)/COM/ST/DIB/2023. The sole ground on which the instant writ petition has been filed is that the Petitioner was not granted the benefit of the order dated 10.01.2022 passed by the Supreme Court in *Suo Motu Writ Petition (C) No.3/2020*.

2. Mr. R. S. Mishra, the learned counsel for the Petitioner submits that the Order-in-Original was passed on 02.02.2022. The learned counsel further submitted that taking into account paragraph No.5(III) of the order dated 10.01.2022 passed in *Suo Motu Writ Petition (C) No.3/2020*, the Petitioner could have filed the said appeal on or before 29.05.2022. He further submitted that in the instant case, the Petitioner had filed the appeal on 27.05.2022. However, the Commissioner (Appeals) in passing the impugned order dated 31.07.2023 had failed to take into consideration the above aspect of the matter and as such the impugned order is required to be interfered with.

3. Mr. S. C. Keyal, the learned Standing counsel appearing on behalf of the CGST submits that he would not contest on this aspect of the matter taking into account the order dated 10.01.2022 passed in Suo Motu Writ Petition (C) No.3/2020.
4. This Court having given anxious consideration to the above submissions is of the opinion that the Petitioner had time to file the appeal on or before 29.05.2022. The appeal was filed on 27.05.2022. The said appeal ought to have been taken into consideration as an appeal filed within the period of limitation in view of the order dated 10.01.2022 passed in Suo Motu Writ Petition (C) No.3/2020.
5. Accordingly, the impugned order dated 31.07.2023 passed in Order-in-Appeal No.407/GHY(A)/COM/ST/DIB/2023 by the Commissioner (Appeals), CGST, Central Excise and Customs is set aside and quashed. The Appeal so filed by the Petitioner before the Commissioner (Appeals) is restored to the file of the said Authority.
6. This Court therefore directs the Commissioner (Appeals), CGST Central Excise and Customs to decide the appeal filed against the Order-in-Original No.34/ST/ADJ/ACD/2021-22 dated 02.02.2022 on merits.
7. With above observations and directions, the instant petition stands disposed of.

JUDGE