

GAHC010129382024



2024:GAU-AS:8071

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

Case No. : WP(C)/3423/2024

BHUPEN DAIMARY
S/O- HAREN DAIMARY, WARD NO. 8, SEUJPUR, BARPETA ROAD, DIST.
BARPETA, ASSAM, PIN- 781315.
VERSUS

THE UNION OF INDIA AND 3 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NEW DELHI-110001.

2:THE PRINCIPAL COMMISSIONER

GST AND CENTRAL EXCISE
GST BHAWAN
KEDAR ROAD
MACHKHOWA
GUWAHATI-781001.

3:THE DEPUTY DIRECTOR

DIRECTORATE GENERAL OF GOODS AND SERVICE TAX
GUWAHATI ZONAL UNIT
H/NO. 4
RAJGARH BYE LANE NO. 2
CHANDMARI
P.O. SILPUKHURI
GUWAHATI
ASSAM-781003.

4:THE ASSISTANT COMMISSIONER

GST AND CENTRAL EXCISE
GUWAHATI-1 DIVISION
GST BHAWAN
KEDAR ROAD
MACHKHOWA

GHY-781001

Advocate for the Petitioner(s) : Mr. A. K. Purkasthya

Advocate for the Respondent(s) : Mr. S. C. Keyal, SC, GST Department

Date of Hearing and Judgment : 16.08.2024

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGEMENT AND ORDER (ORAL)

Heard Mr. A. K. Purkasthya, the learned counsel appearing on behalf of the petitioner. Mr. S.C. keyal, the learned Standing Counsel appears on behalf of the respondent Nos. 1,2,3 & 4.

2. The instant writ petition has been filed challenging the Order-In-Original No.215/AC/DIV-1/CGST/2023-2024 dated 26.03.2024 whereby the Assistant Commissioner, GST & Central Exercise, Headquarters Anti-Evasion Unit, CGST, Guwahati had passed an order thereby confirming the demand of service tax amounting to Rs. 16,04,738/- on the services rendered during FY 2016-17 in terms with the proviso to sub section (1) of Section 73 of the Finance Act, 1994. In addition to that the petitioner was also saddled with the liability of interest and penalty as mentioned in the impugned order.

3. This Court further takes note of that the said order is appealable in terms with Section 107 of the CGST Act, 2017 to the Commissioner (Appeals), Customs, CGST and Central Excise (NER), GST Bhawan that to within 60 days from the date of the said communication.

4. The case of the petitioner as set out to challenge the said impugned order before this Court is that the petitioner on account of personal difficulties arising

out of health issues which was beyond the control of the petitioner the show cause reply could not be submitted and as such had invoked the extra ordinary jurisdiction of this Court under Article 226 of the Constitution inspite of the statutory remedy available.

5. At this stage, this Court finds it very pertinent to take note of a recent Judgment of the Supreme Court in the case of ***PHR Invent Educational Society vs UCO Bank and others*** reported ***in (2024) 6 SCC 579*** wherein the Supreme Court dealt with the aspect as regards exercise of jurisdiction under Article 226 of the Constitution vis a vis availability of alternative remedy. Though a perusal of the said Judgment reveals that the said Judgment was delivered in the case of a proceeding under the Securitization And Reconstruction of Financial Assets And Enforcement of Security Interest Act, 2002, but this Court finds it relevant to take note of the observations of the Supreme Court at paragraph No. 23 of the said Judgment which is reproduced herein under:-

“23. It could thus be seen that, this Court has clearly held that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person. It has been held that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. The Court clearly observed that, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. It has been held that, though the powers of the High Court under Article 226 of the Constitution are of widest amplitude, still the courts cannot be oblivious of the rules of self-imposed restraint evolved by this Court.

The Court further held that though the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, still it is difficult to fathom any reason why the High court should entertain a petition filed under Article 226 of the Constitution.”

From the above quoted paragraph of the said Judgment, it is seen that the Supreme Court had observed that the High Court ought not to ordinarily entertain a writ petition under Article 226 of the Constitution, if an effective remedy is available to the aggrieved person and such a principle should be applied with great rigour in matters involving recovery of taxes, cess, fees and other types of public money .

6. This Court also finds it relevant at this stage to take note of another judgment of the Supreme Court in the case of ***M/S Godrej Sara Lee Ltd. Vs Excise and Taxation Officer cum Assessing Authority and ors***, reported ***in (2023) 109 GSTR 402*** wherein the Supreme Court observed that a writ petition can be entertained inspite of availability of alternative remedy when (i) the writ petition seeks enforcement of any of the fundamental rights (ii) where there is a violation of the principles of natural justice (iii) where an order or the proceedings is wholly without jurisdiction (iv) where the vires of an Act is challenged. In addition to that, it was also observed that when an issue is raised purely on a question of law, the High Court can entertain a writ petition.

7. In the backdrop of the above let this Court consider as to whether this Court should entertain the writ petition at all. In the instant case it is seen that neither of the grounds set out in the Judgment of the Supreme Court in the case of ***M/S Godrej Sara Lee Ltd (supra)*** is present. Merely because of the fact that the petitioner could not submit the reply to the show cause notice on

the ground that he was incapacitated on account of his health problems cannot be a ground to involve the writ remedy more so, when the documents enclosed to the writ petition do not show the petitioner was infact incapacitated from filing the reply to the show cause notice at that relevant part of time. Therefore the question of violation of the principles of natural justice as claimed by the petitioner do not arise. Under such circumstances, this Court finds no ground to entertain the instant writ petition, taking into account that there is an alternative and an efficacious remedy available to the petitioner for which the instant writ petition stands dismissed.

8. Before parting with the record, this Court however takes note of that the petitioner herein approached this Court by filing the instant writ petition and this Court vide an order dated 28.06.2024 had issued notice and there was also an interim protection granted not to take any coercive action on the basis of the impugned order dated 26.03.2024. Thereupon the matter has been pending before this Court.

9. Under such circumstances, this Court is of the opinion that the interest of justice would be met, if further 30 (thirty) days time is granted from today to the petitioner to file an Appeal before the Appellate Authority as mentioned in the impugned order dated 26.03.2024 itself. Accordingly, this Court observes and directs that if the petitioner herein files an appeal within 30 (thirty) days from the date of the instant order, the Commissioner (Appeals) shall decide the appeal on merits without going into the question of limitation.

10. With the above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant