

GAHC010133002024



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

Case No. : WP(C)/3418/2024

SHRI HEMANTA KUMAR SARMA
S/O- LATE BIRENDRA NATH SARMA ,
FLAT NO D 4 SITALA ENCLAVE KHARGHULI GUWAHATI-04

VERSUS

THE UNION OF INDIA AND ORS
REPRESENTED BY SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF FINANCE , DEPARTMENT OF REVENUE , NORTH BLOCK
NEW DELHI-01

2:THE COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX
HEAD QUARTERS ANTI EVASION UNIT II
ROOM NO-103
CGST COMMISSIONERATE
GUWAHATI
GST BHAWAN
1ST FLOOR
KEDAR ROAD
MACHKHOWA
GUWAHATI-01

3:THE ASSISTANT COMMISSIONER OF CENTRAL GOODS AND SERVICE
TAX
HEAD QUARTERS ANTI EVASION UNIT II
ROOM NO-103
CGST COMMISSIONERATE
GUWAHATI
GST BHAWAN
5TH FLOOR
KEDAR ROAD
MACHKHOWA

GUWAHATI-01

4:SUPERINTENDENT (TECH II)
OFFICE OF THE ASSISTANT COMMISSIONER
GUWAHATI DIVISION
GST BHAWAN
KEDAR ROAD
MACHKHOWA
GUWAHATI-0

Advocate for the Petitioner : DEBARSHI KALITA, MR J LOTHAN,MR. H R DAS,MR. D THAOSEN,MR B D DAS

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

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 31.07.2024

Heard Mr. B.D. Das learned senior counsel assisted by J Lotha learned counsel for the petitioner. Also heard Mr. S.C. Keyal learned standing counsel, CGST

The petitioner is a legal practitioner of Gauhati High Court since 1991. The respondent authorities issued a notice dated 30.03.2022 asking the petitioner to pay a service tax/GST amounting to Rs.1,34,293 under section 78 of the Finance Act, 1994 for the financial year 2014-15 along with penalty of Rs.10,000 under section 77(1) of the Finance Act, 1994.

After receipt of the notice, the petitioner submitted a representation on 19.04.2022 raising an objection that petitioner being an advocate is exempted from payment of service tax/GST in terms of the notification No.30/2012-Service Tax dated 20.06.2012

issued by the Finance Department, Govt. of India. Accordingly prayer was made to exempt the petitioner from payment of Service Tax/GST inasmuch as, jurisdiction of the authority to issue such notice was also raised.

The petitioner also relied on an order dated 27.11.2021 passed by the Commissioner, CGST, Commissionerate Guwahati, whereby, in similar circumstances, similar notice issued against the practicing advocates were set aside and it was observed that the advocates in terms of the notification dated 20.06.2012, are not liable to pay Service Tax/GST. However, without considering the said representation dated 19.04.2022, recovery notice dated 06.06.2024 was issued.

Being aggrieved, the present petition is filed.

Mr. S.C. Keyal learned standing counsel, GST in his usual fairness submits that the case of the petitioner shall be covered by the notification dated 20.06.2012, whereby, the practicing advocates were exempted from payment of GST/Service Tax. However, at the same time, he submits that against the order of commissioner, there is a provision of appeal.

Considered the arguments advanced by the learned counsel for the parties.

From perusal of the materials, it is absolutely clear that the petitioner's case is covered under the notification dated 20.06.2012 and therefore, he is not entitled for payment of tax. Such fact was also brought to the notice of the authority by way of a representation by the petitioner and the fact also remains the same

that in similar circumstances the appellate authority i.e., the Commissioner of Taxes interfered with such decision.

That being the position, this court is of the view that while issuing the notice and doing the recovery, the authority had acted without jurisdiction and therefore, there shall be no bar to exercise the power of Article 226 in the given facts of the present case.

Accordingly the notice dated 30.03.2022 as well as the recovery notice dated 06.06.2024 are set aside and quashed.

JUDGE

Comparing Assistant