

GAHC010212252024



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

Case No. : WP(C)/5361/2024

BIKASH GOSWAMI
S/O LATE HIRANYA GOSWAMI, R/O BUILDING NO-2, FLAT NO-4, KRISNA
NAGAR, CHANDMARI, LIG HOUSING COLONY, CHANDMARI, P.O.-
SILPUKHURI, KAMRUP (M), ASSAM-781003

VERSUS

UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF FINANCE, NEW DELHI-110001

2:THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
1ST FLOOR TOWER NBCC
PLAZA-1
SECTOR 5
PUSHP VIHAR
NEW DELHI-11017
REPRESENTED BY ITS CHAIRMAN

3:THE GOODS AND SERVICES TAX COUNCIL
5TH FLOOR
TOWER-II
JEEVAN BHARATI BUILDING
JANPATH ROAD
CONNAUGHT PALACE
NEW DELHI-110001. REPRESENTED BY ITS CHAIRPERSON

4:THE PRINCIPAL COMMISSIONER
STATE TAX
KAR BHAWAN
G.S. ROAD
KAMRUP (M)

GUWAHATI
ASSAM

5:THE ASSISTANT COMMISSIONER
STATE TAX
GUWAHATI-C-6
KAR BHAWAN
GUWAHATI
ASSA

Advocate for the Petitioner : MR N RAY, N N HUSSAIN,MR. K R SARMA,MR S DIFUSA

Advocate for the Respondent : DY.S.G.I., SC, FINANCE AND TAXATION,SC, GST,MR. B GOGOI,MR. S C KEYAL

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 11-11-2024

Heard Ms. N.N. Hussain, learned counsel for the petitioner; Mr. R.K. Debchoudhury, learned Central Government Counsel for the respondent no. 1; Mr. S.C. Keyal, learned Standing Counsel, CGST for the respondent nos. 2 & 3; and Mr. B. Gogoi, learned Standing Counsel, Finance and Taxation Department for the respondent nos. 4 & 5.

2. The petitioner is a registered assessee under the provisions of Central Goods and Services Tax [CGST] Act, 2017/Assam Goods & Services Tax [AGST] Act, 2017, with GST Registration no. is 18AJRPG4695H1ZL. The petitioner has been served with two Show Cause Notices under Section 73 of the CGST/AGST, 2017 as follows :- [i] Show Cause Notice bearing Reference no. ZD180923010495B dated 27.09.2023 for the Financial Year : 2017-2018 in Form GST DRC-01; and [ii] Show Cause Notice bearing Reference no. ZD181223015614P dated 13.12.2023 for the Finance Year : 2018-2019 in Form

GST DRC-01. The two Show Cause Notices were served upon the petitioner on the alleged grounds, 'Net tax under declared, Excess claim of ITC' and 'Excess claim of ITC' respectively.

3. In view of the provisions contained in sub-section [9] and sub-section [10] of Section 73 read with Section 44 of the CGST/AGST Act, 2017 read with Rule 80 of the corresponding Rules, the time limit to submit annual returns for the Financial Year : 2017-2018 and Financial Year : 2018-2019 were 31.12.2018 and 31.12.2019 respectively.

4. In exercise of the powers conferred on it under Section 168A of the CGST Act, 2017, the Central Government on the recommendation of the GST Council had extended the time limits to file annual returns for different years by issuing a nos. of notifications. By Notification no. 09/2023 – Central Tax dated 31.03.2023, the time limits specified under sub-section [10] of Section 73 for issuance of an order under sub-section [9] of Section 73 for recovery of tax not paid or short paid or of input tax credit wrongly available or utilized, relating to the periods – [i] Financial Year : 2017-18; and [ii] Financial Year : 2018-19 – were extended up to 31.12.2023 and 31.03.2024 respectively. By another Notification no. 56/2023-Central Tax dated 28.12.2023, such time period for the Financial Year : 2018-2019 was extended up to 30.04.2024.

5. The extension of the time limit by the Notification no. 56-2023-Central Tax dated 28.12.2023, inter alia, for the Financial Year : 2018-2019 has been made subject-matter of challenge in a number of writ petitions. The extension of time limits as specified by sub-section [9] and sub-section [10] of Section 73 for the Financial Year : 2018-2019 up to 30.04.2024 was also challenged. The main ground to lay such challenge was that there was absence of GST Council recommendation prior to issuance of the Notification no. 56/2023-Central Tax

under Section 168A of the CGST Act, 2017.

6. After submission of replies to the afore-mentioned two Show Cause Notices by the petitioner, the proceedings initiated by the Show Cause Notices, dated 27.09.2023 & dated 13.12.2023, had culminated into two Orders-in-Original under Section 73[9] of the CGST/AGST Act, 2017 bearing Reference no. ZD181223060972C dated 30.12.2023 and Reference no. ZD180424038120U dated 26.04.2024 respectively, whereby, the petitioner has been foisted with the liability to pay the amounts, mentioned therein.

7. It has been submitted at the Bar that the Notification no. 09/2023-Central Tax dated 31.03.2023 has not been interfered with in any manner, meaning thereby, the Notification no. 09/2023-Central Tax dated 31.03.2023 is still holding the field. In so far as extension of time limits by the Notification no. 56/2023-Central Tax dated 28.12.2023 for the Financial Year : 2018-2019 and for the Financial Year : 2019-2020 is concerned, the same have been interfered with to an extent by a judgment of a coordinate bench and against the said judgment, the respondent GST authorities have preferred a review application, which is pending as on date.

8. As the time limit for passing an Order under Section 73[9] of the CGST/AGST Act, 2017 for the Financial Year : 2017-2018, extended by the Notification no. 09/2023-Central Tax dated 31.03.2024, has been holding the field, this Court does not find any ground to interfere with the Order-in-Original dated 30.12.2023 passed by the Adjudicating Authority as the petitioner has an adequate, efficacious and statutory remedy of appeal under Section 107 of the CGST/AGST Act, 2017. It has been settled by a long line of decisions including the decision in **PHR Invent Educational Society vs. UCO Bank and others**, reported in **[2024] 4 SCR 541**, to the effect that when an efficacious,

alternative, adequate and statutory remedy of appeal is available, then a writ petition under Article 226 of the Constitution of India is not to be entertained, unless the petitioner has been able to make out any of the grounds :- [a] the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; [b] there has been a violation of the principles of natural justice; [c] the order or proceedings are wholly without jurisdiction; or [d] the vires of a legislation is challenged. The petitioner is at liberty to prefer an appeal against the Order-in-Original dated 30.12.2023 passed by the Adjudicating Authority for the Financial Year : 2017-2018 under Section 107 of the CGST/AGST Act, 2017.

9. It is further noticed that in this writ petition, the petitioner has clubbed multiple causes of action which are in the forms of two Orders-in-Original, dated 30.12.2023 & dated 26.04.2024 for the Financial Year : 2017-2018 and the Financial Year : 2018-2019 respectively. Thus, in so far as the Order-in-Original dated 26.04.2024 passed by the Adjudicating Authority for the Financial Year : 2018-2019 is concerned, the petitioner is granted the liberty to prefer a separate writ petition, if so advised, without observing anything on merits. It is clarified that this Court has not observed anything as regards making out an exceptional case of any of the grounds, mentioned above.

10. With the observations made above, this writ petition stands disposed of. No cost.

JUDGE

Comparing Assistant