GAHC010077772025

2026:GAU-AS:16164

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

Case No. : WP(C)/2033/2025

MS R ESS IRON AND STEEL PVT LTD
A PRIVATE LIMITED COMPANY HAVING ITS OFFICE AT INDUSTRIAL GROWTH CENTRE, GOALPARA, ASSAM REPRESENTED THROUGH ITS DIRECTOR MR SHIVAM ARORA, RESIDENT OF HNO 428, MOTA SINGH NAGAR, COOL ROAD, JALANDHAR, PUNJAB 144001

VERSUS

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

2:STATE OF ASSAM
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF ASSAM
NEW CM BLOCK 3RD FLOOR
JANATA BHAWAN
DISPUR
GUWAHATI 781006

3:ASSISTANT COMMISSIONER
STATE TAX GOALPARA 1
GOALPARA DHUBRI ZONE
ASSA

Advocate for the Petitioner : MR P CHOUDHURY, MS P SAIKIA

Advocate for the Respondent : GA, ASSAM, SC, FINANCE AND TAXATION,DY.S.G.I.

- B E F O R E -

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

For the petitioner : Mr. N. Arora, counsel

For the respondents : Mr. B. Choudhury, counsel

Date on which judgment was reserved :

Date of pronouncement of judgment : 04.11.2026

Whether the pronouncement is of the
operative part of the judgment? : No

Whether the judgment has been pronounced? : Yes

JUDGMENT & ORDER (ORAL)

BEFORE

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

04-11-2026

1. Heard Mr. N. Arora, learned counsel for the petitioner, and Mr. B. Choudhury, learned Standing Counsel, Finance and Taxation Department for the respondents.

2. The petitioner is a registered dealer under the provisions of the Assam Goods and Services Tax Act, 2017 (for short, AGST Act) and has approached this Court challenging the Notice in the FORM GST DRC-01 dated 09-01-2024 and the consequential order dated 30-04-2024, whereby the tax liability, interest and penalty in respect of the financial year 2018-19 came to be determined against the petitioner.

3. The challenge to the impugned proceeding is primarily founded on the ground that the revenue authorities, having proceeded on the basis of scrutiny and examination of the returns furnished by the petitioner, were required to follow the procedure prescribed under Section 61 of the AGST Act read with Rule 99 of Assam Goods and Services Tax Rules, 2017 (for short, Rules, 2017) and issue notice in Form GST ASMT-10 before proceeding to initiate action under Section 73 of the Act.

   It is contended that, admittedly, no such notice was issued to the petitioner; therefore, the proceedings initiated against the petitioner are contrary to the statutory scheme.

4. The petitioner further contends that, although a request for personal hearing was made in the reply submitted on 09-02-2024, no such opportunity was afforded before passing the impugned order. Accordingly, it is argued that, for the aforesaid reason, the adjudication order violates Section 75 of the Act and the

principles of natural justice.

5. The Finance and Taxation Department has not filed an affidavit, though this Court granted several opportunities. However, Mr. B. Choudhury, learned Standing Counsel, Finance and Taxation Department, argues that the petitioner participated in the proceedings pursuant to the issuance of FORM GST DRC-01 and also submitted its explanation; therefore, the petitioner cannot turn around and question the very proceedings on the ground of non-issuance of Form GST ASMT-10; even otherwise, the petitioner has an alternative remedy of appeal under Section 107 of the Act. It is also contended that issuing Form ASMT-10 is not always necessary.

6. The first question for consideration is whether, in the facts of the present case, the non-issuance of Form GST ASMT-10 before initiating proceedings under Section 73 of the Act would vitiate the impugned proceedings.

7. Section 61 of the AGST Act provides for "scrutiny of returns" furnished by a registered person to verify their correctness.

Sub-Section (i) of Section 61 empowers the proper officer to scrutinize the returns and related particulars and, upon noticing any discrepancy, inform the registered person of such discrepancy in the prescribed manner and seek an explanation thereto.

Sub-Section (ii) provides that where the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

Sub-Section (iii) contemplates initiation of appropriate action including proceeding under Sections 73 or 74 where no satisfactory explanation is found within the stipulated period or where the registered person having accepted the discrepancy

fails to take corrective measures.

8. Rule 99 of the Rules, 2017 prescribes the procedure of "scrutiny of returns."

Under Sub-Rule (i), where a return furnished by a registered person is selected for scrutiny, the proper officer is required to scrutinize the same with reference to the information available with him and, upon noticing any discrepancy, issue notice in Form GST-ASMT-10, informing the registered person of such discrepancy and seeking an explanation thereto; the registered person may furnish an explanation in Form GST-ASMT-11, whereupon the proper officer is required to consider the same in accordance with prescribed procedure.

9. A conjoint reading of Section 61 and Rule 99 makes it evident that the statutory scheme contemplates an opportunity for the registered person to explain the discrepancies noticed during scrutiny of returns before the proper officer takes further action in accordance with law.

10. Therefore, in the opinion of this Court, the requirement of communicating discrepancies through Form GST-ASMT-10 is not an empty formality. It is intended to afford the registered person an opportunity to explain or rectify the discrepancies noticed by the proper officer, thereby avoiding unnecessary proceedings for determination and recovery of tax.

In this regard, a reference may be made to the decision of a Co-ordinate Bench in **PepsiCo India Holdings Pvt. Ltd. Vs. Union of India and Ors**. (WPC No. 6960/2023) reported in **2025 SCC OnLine Gau 5406**.

11. The Co-ordinate Bench, upon an examination of the statutory scheme under Section 61 of the CGST Act read with Rule 99 of CGST Rules, held that where the proceedings under Section 73 are founded upon discrepancies, notice upon scrutiny of returns, the procedure prescribed under Section 61 read with

Rule 99 is required to be followed.

The Co-ordinate Bench further held that the proper officer cannot bypass the statutory procedure and straightaway initiate proceedings under Section 73 on discrepancies noticed upon scrutiny of returns without first communicating those discrepancies to the registered person in Form GST-ASMT-10. The Court held that failure to follow the prescribed procedure renders the assumption of jurisdiction under Section 73 of the Act unauthorized and, consequently, unsustainable in law.

12. The aforesaid decision, therefore, makes it necessary to examine the nature and foundation of the proceeding initiated against the petitioner in the present case.

13. A perusal of the Form GST-DRC-01 available on record issued on 09-01-2024 reveals that the proper officer recorded that the petitioner had furnished its annual return in Form GST-ASMT-09 for the financial year 2018-19. It was further recorded that, upon examination of the information furnished in the said return under various heads, as well as the information furnished in GSTR-09, GSTR-2A, GSTR-3B, E-Way bills, and other records available with the Department, it was found that the petitioner had not declared its current tax liability while filing the annual return. On the basis of such examination, the alleged under-declaration of tax liability was quantified at Rs. 1,12,11,503/-.

14. The contents of the aforesaid Form GST-DRC-01 leave no doubt that the proposed demand was arrived at by examining the annual return furnished by the petitioner and comparing it with the information contained in other returns and records available with the Department. The alleged discrepancy, namely non-declaration of correct tax liability, was thus noticed during such examination and comparison of returns and related particulars.

15. It is not the case of the respondents that notice in FORM GST-ASMT-10 was issued to the petitioner communicating the discrepancies noticed by the proper officer. Admittedly, such notice was not issued. The respondents have also not demonstrated that the proceedings were initiated on the basis of any independent investigation or material unconnected with the examination and comparison of the returns and related particulars furnished by the petitioner.

16. Mr. Choudhury, learned Standing Counsel, Finance and Taxation Department, is correct, and it is also true that Section 73 and Section 74 provide for cases of non-payment or short payment, erroneous refund, or input tax wrongly availed or utilized. However, where the very foundation of initiating such proceedings is a discrepancy noticed upon scrutiny of the returns furnished by the registered person, the statutory procedure prescribed under Section 61 read with Rule 99 cannot be bypassed.

17. The mere fact that the proceedings were subsequently initiated under Section 73 does not dispense with the requirement to follow the procedure contemplated under Section 61 and Rule 99 when the discrepancy is noticed during scrutiny of returns. Under Section 73, a proper officer may proceed on the basis of independently available information or material subject to fulfillment of the requirements of Section 73. However, where the demand is founded on discrepancies noticed during scrutiny of returns, the procedure under Section 61, read with Rule 99, must be followed. The source and foundation of the proposed demand shall determine the applicability of the procedure prescribed under Section 61 read with Rule 99.

18. In the present case, as noted above, Form GST-DRC-01 itself discloses that the alleged under-declaration of tax liability was arrived at upon examination of the annual return and comparison thereof with particulars furnished in other GST returns, e-way bills, and records available with the Department.

Therefore, the proceeding is substantially founded upon discrepancies noticed upon examination of returns and related particulars. In such circumstances, the respondents could not have initiated proceedings under Section 73 without first following the procedure prescribed under Section 61 read with Rule 99 of the Act.

19. The contention of Mr. Choudhury, learned Standing Counsel, Finance and Taxation Department, regarding the alternative remedy and the petitioner's participation in the proceedings under Section 73 does not alter the legal position discussed hereinabove.

The petitioner's reply subsequent to the Show Cause Notice under Section 73 cannot be regarded as a substitute for compliance with the procedure under Section 61 read with Rule 99. Such participation cannot also be construed as a waiver of a statutory safeguard which the proper officer was required to follow.

The availability of alternative remedy under Section 107 of the Act would also not preclude interference in the exercise of the power of judicial review under Article 226 of the Constitution of India when the procedure is found to have been initiated in disregard of statutory procedure governing the exercise of jurisdiction and the consequential order is vitiated by violation of statutory mandate of natural justice.

20. For the reasons stated above, this writ petition deserves to be allowed. Accordingly, the notice dated 09-01-2024 issued in Form GST DRC-01 together with the consequential adjudication order dated 30-04-2024 is hereby set aside.

21. The respondents shall be at liberty to proceed in accordance with law, if otherwise permissible, subject to applicable statutory limitation and other

requirements of the Act.

22. It is made clear that this Court has not examined the correctness of the alleged tax liability or merits of the petitioner's explanation regarding the alleged under-declaration of tax.

23. With the aforesaid observation and direction, the instant writ petition stands allowed. No order as to costs.

JUDGE

Comparing Assistant