GAHC010088582025

2026:GAU-AS:16210

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

Case No. : WP(C)/2443/2025

SAMPAT RAJ JAIN
S/O-LATE CHHAGANLAL JAIN, SOLE PROPRIETOR OF M/S ARIHANT HAVING HIS PLACE OF BUSINESS AT NEAR HARI SABHA, PANBAZAR, GUWAHATI-781001, DIST- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM, FINANCE (TAXATION) DEPARTMENT, DISPUR, GUWAHATI-781006

2:THE COMMISSIONER OF TAXES
GOVT. OF ASSAM
KAR BHAWAN
DISPUR
DIST- KAMRUP (M)
GUWAHATI-781006

3:THE ASSISTANT COMMISSIONER OF TAXES
GUWAHATI A-5-GUWAHATI-A
GUWAHATI
ZONE-A
ASSAM

4:THE GOODS AND SERVICES TAX COUNCIL
5TH FLOOR
TOWER-II
JEEVAN BHARATI BUILDING
JANPATH ROAD
CONNOUGHT PALACE
NEW DELHI-110001

REPRESENTED BY ITS CHAIRPERSO

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH

Advocate for the petitioner(s) : Mr. P Sarma

Advocate for the respondent(s) : Mr. B Choudhury
Standing Counsel, Tax Deptt.
Mr. SC Keyal Senior Counsel
Mr. R Dutta for respondent No.4

Date on which Judgment is reserved: NA

Date of Pronouncement of Judgment : **04.11.2026**

Whether the Pronouncement is of the : Yes
Operative Part of the Judgment

Whether the Full Judgment has been : No
Pronounced

JUDGMENT & ORDER(ORAL)

Heard Mr. P Sarma, the learned counsel appearing on behalf of the petitioner. Also heard Mr. B Choudhury, the learned counsel, who

appears on behalf of respondent Nos.1, 2 and 3 and Mr. SC Keyal, the learned Senior Counsel as well as the Standing Counsel, GST, assisted by Ms. R Dutta, who appears on behalf of respondent No.4.

2. The present writ petition has been filed challenging the Order-in-Original dated 24.04.2024 for the financial year 2018-19 under Section 73 of the Assam Goods and Services Tax Act, 2017.

3. It is the specific case of the petitioner that vide the Notification dated 06.09.2024 in exercise of the powers under Section 168A of the *Assam Goods and Services Tax Act, 2017* (for short, 'the Act of 2017') the period for passing an order under Section 73(9) of the Act of 2017 for the financial year 2018-19 was extended up to 31.03.2024. However, in the instant case, the impugned Order-in-Original was passed on 24.04.2024, which is beyond the period permissible under Section 73(9) of the Act of 2017.

4. It is also the case of the petitioner that not only the impugned order dated 24.04.2024, but even the show-cause notice dated 09.01.2024 is not in consonance with Section 75 read with Rule 142 of the *Assam Goods and Services Tax Rules, 2017* (for short, 'the Rules of 2017'), *inasmuch as,* the show-cause notice as well as the impugned order were issued only in DRC-01 and DRC-07, but there was no show-cause notice containing the details have been provided to the petitioner. Even the impugned order does not contain any

statement of facts as well as the reasons, which is a mandatory requirement under Section 75(6) of the Act of 2017.

5. This Court has given an anxious consideration to the respective submissions on behalf of the parties.

6. It is relevant to take note of that in spite of notice having been issued on 09.05.2025 and an interim order having been passed, but till date, the respondents have not taken any steps for filing the affidavit-in-opposition.

7. From a perusal of the materials on record, it is seen that the impugned Order-in-Original was passed on 24.04.2024.

8. A perusal of Section 44 of the Act of 2017 read with Rule 80 of the Rules of 2017 stipulates that the annual return has to be filed before the 31st day of December following the end of such financial year through the common portal, either directly or through a facilitation center notified by the Commissioner.

9. Under such circumstances, the period for filing the return for the financial year 2018-19 was upto 31.12.2019.

10. Section 73(10) of the Act of 2017 clearly mandates that an order to be passed under Section 73(9) of the Act of 2017 has to be within 3 years from the due date for furnishing of the annual return for the financial year to which the tax not paid, or short paid, or input tax credit wrongly availed or utilized relates to, or within 3 years from the

date of the erroneous refund.

11. Under such circumstances, the Order-in-Original under Section 73(9) had to be passed in so far as the financial year 2018-19 is concerned by 31st of December 2022.

12. However, in view of the insertion of Section 168A to the Act of 2017, the period of limitation for the financial year 2018-19 was extended up to 31st of March 2024 for passing an order under Section 73(9) vide the Notification dated 06.09.2024.

13. In the instant case, it is relevant to take note of that the Order-in-Original was passed on 24.04.2024, and as such, it was beyond the period stipulated in Section 73(9) read with Section 168A and the Notification dated 06.09.2024.

14. Accordingly, the impugned order dated 24.04.2024 assailed in the present proceedings cannot be sustained in law, for which, the same is set aside and quashed.

15. Writ petition, accordingly, stands disposed of.

JUDGE

Comparing Assistant