GAHC030001372026

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

Case No. : WP(C)/23/2026

Zorun Fund R/b Smt Lalhmachhuani
GSTIN- 15AIFPL2405H1ZO B 58 1, Rev. Zairema Building, Mc Donald Hill,
Zarkawt, Aizawl, Mizoram 796007

VERSUS

The Union of India r/b the Secy., Ministry of Finance and Revenue Dept, CGST and 5 Ors.
New Delhi

Advocate for the Petitioner : Mr Ashok Kumar Rokhum

Advocate for the Respondent : Ms Zairemsangpuii, CGC for R1

:::BEFORE:::

HON'BLE MRS. JUSTICE HELEN DAWNGLIANI

Date on which judgment is reserved : **29.09.2026**
Date of pronouncement of judgment : **05.10.2026**
Whether the pronouncement is of the operative part of the judgment ? : N/A
Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

1. Heard Mr. A.K Rokhum, learned counsel for the petitioner. Also heard Mr. Johny L. Tochhawng, learned counsel appearing for the CGST, Ms. Zairemsangpuii, learned CGC for respondent No. 1 and Ms. Vanneihsiami, learned Govt. Advocate for respondent Nos. 4-6.

2. The instant petition is filed under Article 226 of the Constitution of India for quashing and setting aside for payment of Rs. 11,79,000/- (Rupees Eleven Lakhs Seventy Nine Thousand) only issued by the respondent No. 3 i.e., Superintendent (Adjudication CGST, Aizawl Division, Aizawl) issued under Section 74 of the CGST, 2017, the Order dated 27.02.2025, passed by the respondent No. 2 (Commissioner CGST, Aizawl) for provisional attachment of the property under Section 83 of CGST Act. On 12.06.2025, the petitioner submitted an application for release of her Savings Bank Account booked under the HDFC Bank, but the same was rejected by the respondent No. 6 i.e., (Superintendent TAR SGST, Aizawl Commissionerate, Aizawl).

3. On 09.05.2025, the petitioner also submitted 2 (two) appeals to wave the penalty of Rs. 11,79,000/- (Rupees Eleven Lakhs Seventy Nine Thousand) only and to avail GST Amnesty Scheme 2024, which was introduced via CGST

21/2024 notification under Section 128A for conditional waver of interest and penalties. The petitioner also submitted representation for setting aside the impugned Order on 19.08.2024 and 23.08.2024. Both the appeals which were filed on 09.05.2025 were rejected by the respondent No. 3 i.e., Superintendent (Adjudication CGST, Aizawl Division).

Thereafter, the petitioner submitted representation on 09.07.2025, challenging the penalty imposed under Section 74 of CGST Act, 2017, however, the same was rejected by respondent No. 3 on 14.08.2025. Thereafter, the petitioner is before this Court invoking the writ jurisdiction.

4. I have heard the learned counsels for the parties.

5. Mr. A.K Rokhum, learned counsel for the petitioner has submitted that there was no willful evasion of tax by the petitioner and that the respondents have without proof of such violation as mandated u/s 74 of CGST Act,2017 proceeded to impose punishment on the petitioner and that even though there are provisions for statutory appeal the instant petition which is filed under Article 226 of the Constitution cannot be thrown out only because the statutory forum as per the CGST Act 2017 have not been exhausted before filing the instant petition. In support of his submission the learned counsel has placed reliance in the decision of the Supreme Court in the case of ***Commissioner Central Excise and Customs and Anr Vs. M/S Reliance Industries Order dated 04.07.2023 in Civil Appeal No.6033 of 2009*** and the decision of the Madras High Court (Coordinate Bench) in its ***Order dated 11.11.2025 in WMP Nos. 30453 to 30458 of 2024 (Neeyamo Enterprise Solutions Private Limited Vs. The Commercial Tax Officer).***

6. Mr. Johnny L. Tochhawng, learned counsel for respondent No. 2 has made

a preliminary objection to the petition on its maintainability by submitting that the impugned Order dated 06.07.2021, was passed by the Superintendent (Adjudication) CGST, Aizawl, in exercise of its power u/s 74 of the CGST Act, 2017. Upon appeal, the Appellate Authority i.e., the Commissioner of CGST vide its Order dated 29.07.2025 have issued the impugned Order wherein the appeal of the petitioner was rejected. As per the CGST Act, 2017 if the petitioner is aggrieved by the Order of the Appellate Authority which was issued in exercise of the power u/s 107 of the CGST Act, 2017 the remedy available to the petitioner as per the statute was to file an appeal to the Appellate Tribunal u/s 112 of the CGST Act and that it is only thereafter that the petitioner could have invoked the writ jurisdiction of this Court. The learned counsel argued that the petitioner has not exhausted the statutory alternative remedy available to him and that this petition is not maintainable on the aforesaid ground. The learned counsel has also submitted an affidavit-in-opposition with regard to the merit of the case. In support of the preliminary objection the learned counsel has placed reliance in the following cases:-

(i) Assistant Commissioner of State Tax & Ors Vs. Commercial Steel Ltd. reported in (2022)16 SCC 447.

(II) Order dated 07.05.2026 passed by the coordinate bench of this Court in WP(C) No. 2342 of 2026 (Jericho Chemicals LLP versus Union of India & Ors).

(iii)Order dated 18.04.2022 passed by the coordinate bench of this Court in WP(C) No. 153 of 2022 (M/S Sailaja Commercial Construction Pvt.Ltd versus Union of India & Ors).

(iv) Order dated 16.10.2024 passed by the division bench of this

Court in MA(S) /1/2024(Asst.Commissioner, Central Goods and Services Tax, Aizawl versus M/s National Building Construction Corporation, Aizawl).

7. As the maintainability of the writ petition is questioned by the respondent, before entering into the merit of the case, this Court is required to examine the maintainability of the instant writ petition. Under section 117 of the CGST Act 2017, an appeal lies to the High Court against any Order passed by the Appellate Tribunal and that such an appeal may be admitted by the High Court, subject to there being satisfaction to the effect that the case involve substantial question of law. Section 117(6) of the said Act further provides that such a matter has to be dealt with by a division bench of not less than 2 (two) Judges on there being substantial question of law.

8. There is no dispute regarding the broad sequence of proceedings in the present case. The original adjudication order was passed on 06.07.2021 under Section 74(1) of the CGST Act. The petitioner thereafter availed the statutory appellate remedy under Section 107 of the Act. The appeal was decided by the Appellate Authority by order dated 29.07.2025. The petitioner, instead of pursuing the further statutory remedy provided by Section 112, has approached this Court under Article 226 of the Constitution.

9. The statutory scheme under the CGST Act assumes significance in determining the present objection. Section 107 provides an appeal against a decision or order passed by an adjudicating authority. The appellate authority is empowered, after making such further inquiry as may be necessary, to pass an order confirming, modifying or annulling the decision or order appealed against. The Act thus provides a substantive appellate mechanism against the original adjudication order.

10. After the order of the Appellate Authority, Section 112(1) provides that a person aggrieved by an order passed under Section 107 or Section 108 may appeal to the Appellate Tribunal. The statute therefore creates a further appellate stage after the decision of the first appellate authority. Section 112 also prescribes the conditions governing such appeal, including the statutory pre-deposit contemplated by sub-section (8). Upon compliance with the statutory requirement, recovery proceedings in respect of the balance amount are, by virtue of Section 112(9), deemed to be stayed till disposal of the appeal.

11. The significance of Section 112 becomes particularly clear when Section 117 is considered. Section 117(1) does not confer a direct appeal to the High Court against an order of the Appellate Authority under Section 107. It provides for an appeal to the High Court against an order passed by the State Bench or Area Bench of the Appellate Tribunal, and even such appeal can be admitted only if the High Court is satisfied that the case involves a substantial question of law. Thus, the statutory appellate structure is sequential in nature.

12. At the present stage, the petitioner has not reached the stage contemplated by Section 117. The remedy presently available under the statutory scheme, subject to the applicable requirements and limitation provisions, is the remedy under Section 112 before the Appellate Tribunal.

13. If a litigant were permitted to bypass the statutory appellate Tribunal and invoke Article 226 routinely against every order of the Appellate Authority, the statutory hierarchy would be substantially undermined.

14. It is a settled position that the power of the High Court under Article 226 is plenary and is not ousted merely because an alternative remedy exists. At the same time, the existence of an efficacious statutory remedy is a well-recognised

ground for the High Court to exercise judicial restraint in entertaining a writ petition.

15. The Apex Court in the case of ***Assistant Commissioner of State Tax (Supra)*** has observed that the existence of an alternative remedy is not an absolute bar to the maintainability of the writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances of; breach of fundamental rights; violation of principles of natural justice; excess of jurisdiction; challenge to the vires of the statute or delegated legislation. In the aforesaid case, the Apex Court has found that none of the exceptions were established and the appeal filed by the Assistant Commissioner of State Tax was allowed.

16. Therefore, the existence of an alternative remedy is not an absolute jurisdictional bar. It is a rule of judicial discretion and self-restraint. However, where the statute provides a complete appellate mechanism and the petitioner has not shown circumstances bringing the case within a recognised exception, the normal course is to require the petitioner to pursue the statutory remedy. The Court is conscious that Article 226 of the Constitution is not rendered unavailable merely because an alternative remedy exists. However, the discretionary jurisdiction under Article 226 is ordinarily not exercised where an efficacious statutory remedy is available, unless the case falls within one of the recognised exceptions. The materials present before this Court, none of the recognised exceptional circumstances has been established so as to warrant bypassing the statutory remedy under Section 112.

17. It has been the consistent view of the Supreme Court that where a statute itself creates a right and prescribes the remedy or procedure for enforcement of that right or liability, ordinarily the statutory remedy should be resorted to

before invoking the discretionary jurisdiction under Article 226.

18. In the case at hand, the principal submission of the petitioner is that the ingredients of Section 74(1) were not established and that there was no wilful evasion, fraud, wilful misstatement or suppression of facts. And by invoking the writ jurisdiction of this Court the petitioner has called upon the Court to examine the legality and correctness of the adjudications and the orders passed by the statutory authorities under the CGST Act 2017.

19. The petitioner has already placed the challenge before the statutory Appellate Authority under Section 107. That Authority has passed an order dated 29.07.2025. The Act thereafter provides an appellate forum under Section 112, which is specifically empowered to examine an order passed under Section 107 and to confirm, modify or annul the decision under challenge.

20. In such circumstances, the question whether the ingredients of Section 74(1) were established, whether the material relied upon by the department was sufficient, whether the findings of the adjudicating authority and Appellate Authority are legally sustainable, and whether the penalty imposed is justified are matters which can appropriately be placed before the statutory appellate forum. In the present case, the petitioner has already invoked Section 107 and obtained an appellate decision. The statute then specifically provides a further remedy under Section 112. The petitioner has not shown any exceptional circumstance which would justify bypassing that remedy.

21. The petitioner's reliance upon the judgment of the Hon'ble Supreme Court in ***Commissioner, Central Excise and Customs & Anr Vs. M/s Reliance Industries Ltd.***, ***Civil Appeal No.6033 of 2009***, decided on 04.07.2023, does not advance the petitioner's case on the question presently under

consideration. The said decision arose from proceedings before the CESTAT and concerned the issue of limitation in the context of the extended period for recovery under the Central Excise Act. The Supreme Court ultimately dismissed the appeals on limitation and expressly stated that it was not expressing an opinion on the merits, including revenue neutrality.

22. The said decision, therefore, cannot be read as laying down a general proposition that the existence of an appellate remedy is irrelevant whenever a petitioner alleges that the statutory authority has erred in applying the law.

23. The decision relied upon by the petitioner in ***Neeyamo Enterprise Solutions Private Limited Vs. The Commercial Tax Officer, W.P.(MD) Nos.30453 to 30458 of 2024***, decided on 11.11.2025, also does not alter the position in the present case. In that case, the Madras High Court considered the legality of proceedings under Section 74 and allowed the writ petitions on the particular facts and statutory issue arising before it. The said decision cannot be treated as laying down a proposition that every challenge to an order under Section 74 must necessarily be entertained under Article 226 notwithstanding the existence of the statutory appellate hierarchy.

24. Having considered the rival submissions and the statutory scheme, this Court is of the view that the present writ petition, insofar as it seeks to challenge the order of the Appellate Authority dated 29.07.2025 and the underlying adjudication order, has been instituted without the petitioner first exhausting the further statutory appellate remedy available under Section 112 of the CGST Act.

25. The availability of such remedy assumes greater significance in the present case because the petitioner's challenge substantially concerns the

correctness of the findings recorded by the statutory authorities on the applicability of Section 74(1), the sufficiency of the material relied upon, and the imposition of penalty. Those matters fall within the statutory appellate framework.

ORDER

26. Consequently, this Court declines to entertain the writ petition at this stage on the ground of availability of an efficacious alternative statutory remedy.

27. Accordingly, this writ petition is dismissed as not maintainable at this stage on account of the availability of alternative, efficacious statutory remedy under Section 112 of the Central Goods and Services Tax Act, 2017. Taking into account that the petitioner has approached this Court and the same has been pending, this Court is of the opinion that if the petitioner files the statutory appeal u/s 112 CGST Act 2017 within 30.12.2026, the said appeal shall be entertained without insisting on the question of limitation.

28. There shall be no order as to costs.

JUDGE

Comparing Assistant