GAHC030006102026

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

Case No. : WP(C)/124/2026

Sh.H. Lianzama
Proprietor Eastern Electricals, Ground Floor A-46 BCA Building, Lower Zarkawt, Aizawl 796001

VERSUS

The Union of India and 4 Ors.
R/b the Secretary, Ministry of Finance and Revenue Department, CGST, New Delhi - 11001 2:The Commissioner Central Goods Service Tax

3:The Superintendent (ADJ) CGST

4:The State of Mizoram R/b the Secretary
Govt. of Mizoram

5:Deputy Commissioner of Taxes State Goods and Service Tax (SGST

Advocate for the Petitioner : Mr. Ashok Kumar Rokhum

Advocate for the Respondent : Ms. Zairemsangpuii, CGC for R.1

BEFORE
HONOURABLE MRS. JUSTICE HELEN DAWNGLIANI
ORDER

06.10.2026

Heard the learned counsels for the parties.

2. The learned counsel for the parties submitted that the instant case is covered by the Judgment & Order passed by this Court in WP(C) No. 23/2026.

3. I have perused the body of the application and I have also heard the rival submissions made by the learned counsels for the respondents and I am satisfied that the facts involved in the instant case are similar to the facts involved in the aforesaid writ petition.

4. Accordingly, this writ petition is disposed of in line with the Judgment & Order dated 05.10.2026 passed in WP(C) No. 23 of 2026.

5. By the instant writ petition, which is filed under Article 226 of the Constitution, a challenge has been made on the imposition of penalty under Section 73(1) of the CGST Act, 2017 amounting to Rs. 12,42,08/- to the petitioner, the rejection of appeal filed by the petitioner by the Commissioner, Central Goods Tax.

6. Mr. A.K. Rokhum, learned counsel for the petitioner submitted that show cause notice was issued to the petitioner by the Superintendent (Adjudication),

CGST (respondent No. 3) and by the said order, the respondent No. 3 confirmed the penalty under Section 73(1) of the CGST Act, 2017 against the petitioner and imposed a penalty amounting to Rs. 12,42,08/-. The petitioner after receiving the order dated 23.07.2024 preferred an appeal before the appellate authority i.e., Addl. Commissioner, Central Goods & Services Tax, Aizawl Division, the appellate authority vide order dated 29.07.2025 had rejected the appeal submitted by the petitioner and thereafter, the petitioner is before this Court challenging the order dated 23.07.2024 and the appellate order dated 29.07.2025 as well as for the release of the petitioner's bank account, which was freeze by respondent No. 2.

7. Mr. Johny L. Tochhawng, learned Standing Counsel for the CGST raises preliminary objection with regard to the maintainability of the present writ petition in view of the statutory provision for appeal, which is contained in Sections 107, 112 & 117 of the Central Goods & Services Act, 2017.

8. The learned counsels for the parties admitted that under the Central Goods & Services Tax, 2017, there are provisions for appeal under Section 105, 112 & 117.

9. In the case at hand, it is an admitted position that the statutory appeal has not been filed and the petitioner instead of pursuing the statutory remedy under Section 112 has approached this Court under Article 226 of the Constitution.

10. 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.

11. 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.

12. 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.

13. 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.

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-recognized 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 & Ors. Vs. Commercial Steel Ltd.** reported in **(2022) 16 SCC 447** 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 recognized 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 recognized exceptions. The materials present before this Court, none of the recognized 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. 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.

19. 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

20. 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.

JUDGE

Comparing Assistant