

GAHC010025222026



undefined

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

Case No. : WP(C)/747/2026

MS NIHAR ENTERPRISE
SON OF LATE NITAI NAHA RESIDENT OF BASBARI NEAR PUJA MANDIR,
JORHAT, ASSAM, PIN - 785014

VERSUS

THE UNION OF INDIA AND OTHERS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NEW DELHI - 110
001.

2:PRINCIPAL COMMISSIONER
OFFICE OF THE PRINCIPAL COMMISSIONER
CGST
GUWAAHTI GST BHAWAN
1ST FLOOR
KADER ROAD
MACHKHOWA
GUWAHATI 781001.

3:THE COMMISSIONER
CGST CENTRAL EXCISE ASSAM
3RD FLOOR
GST BHAVAN
KEDAR ROAD
MACHKHOWA
GUWAHATI-781001.

4:THE ASSISTANT COMMISSIONER
OFFICE OF THE ASSISTANT COMMISSIONER
CGST JORHAT DIVISION
STATION GODOWN ROAD

JORHAT-785001

Advocate for the Petitioner : MR P K BORA, MR. A. KAUSHIK, B SARMA, MR S J SAIKIA, MR. N N DUTTA, MR P BARUAH, DR. ASHOK SARAF

Advocate for the Respondent : DY.S.G.I., SC, CGST

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 11.02.2026

- 1.** Heard Dr. A Saraf, learned Senior counsel for the petitioner. Also heard Mr. B Deka, learned C.G.C appearing for the respondent No. 1 and Mr. S Chetia, learned Standing counsel, C.G.S.T appearing for respondent No. 2, 3 & 4.
- 2.** The petitioner, by way of instituting the present proceeding, has assailed an order dated 01.05.2024 passed by the Assistant Commissioner, Central Goods & Services Tax, Jorhat Division demanding service tax of Rs. 26,42,488/- (Rs. Twenty Six Lakh Forty-Two Thousand Four Hundred Eighty-Eight Only) along with penalty of a like amount from the petitioner. The petitioner has also assailed an order dated 07.01.2025 passed by the Commissioner Appeals, C.G.S.T, Central Excise & Customs, Guwahati, whereby, the appeal filed by the petitioner against the said order dated 01.05.2024 came to be rejected on the ground that the same was barred by limitation, in terms of the provisions of Section 85(3) of the Finance Act, 1994.
- 3.** At the outset, Dr. A Saraf, learned Senior counsel for the petitioner has submitted that the petitioner, being aggrieved by the order of Commissioner Appeals, C.G.S.T, Central Excise & Customs, Guwahati dated 07.01.2025, has instituted proceedings before the Customs, Excise & Service Tax Appellate

Tribunal. He submits that in terms of the liberty granted by the Hon'ble Supreme Court in its decision in the case of ***S.J.S Business and Enterprises (P)(Ltd.) Vs. State of Bihar & Ors.*** reported in ***(2004) 7 SCC 166***, the petitioner elects to withdraw the proceedings instituted by him before the said Tax Appellate Tribunal. Accordingly, he prays that the present Writ Petition be taken up for consideration on its merits.

4. Dr. A Saraf, learned Senior counsel for the petitioner has further submitted that although the appeal, preferred by the petitioner against the order dated 01.05.2024, was rejected by the Commissioner Appeals, C.G.S.T, Central Excise & Customs, Guwahati, the ground assigned for such rejection is clearly perverse in as much as the appeal concerned was filed by the petitioner on 09.08.2024 and the same was within the period of limitation permissible under the provisions of Section 82(3) read with the proviso, thereto.

5. Mr. S Chetia, learned Standing counsel, C.G.S.T, however, disputes the said position and submits that as the petitioner has already availed the alternative remedy, the present Writ Petition would not be maintainable and would call to be dismissed, *in limine*.

6. The above issue would require further consideration.

7. Accordingly, issue notice returnable by 4(four) weeks.

8. The petitioner is to take steps for withdrawal of the appeal, preferred by it, before the Customs, Excise & Service Tax Appellate Tribunal before the next date of listing.

9. Considering the contentions raised in the matter by the learned counsel for the petitioner, it is provided that till the returnable date, no further action shall be taken against the petitioner in pursuance to the orders dated 01.05.2024 and

07.01.2025, impugned in the present proceedings.

JUDGE

Comparing Assistant