



IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)
PRINCIPAL SEAT
W.P(C) No. 3260/2022

1. Shree Gautam Construction Company Ltd

4th Floor, Amaze Shopping Mall, A.T. Road, Opposite
Pan Bazar Over Bridge, Paltan Bazar, Guwahati-1

2. Shri Chain Roop Baid

Son of Late Jawari Lal Baid

Resident of Prakriti Palm, Shaktigarh Path, G.S Road,
Guwahati-781 005 District: Kamrup (M), Assam

.....Petitioners

-Versus-

1. Union of India

Represented by its Secretary to the Government of
India, Department of General Service Taxes, New
Delhi-110001

**2. The Principal Commissioner of GST & Central
Excise,** GST and Central Excise Commissionerate,
having his office at GST Bhawan, Kedar Road,
Guwahati-781 001

**3. The Additional Director General of Directorate
General of Goods and Service Tax
Intelligence, Guwahati,** H.No. 04, Bye-Lane-2,
Rajgarh Main Road, P.O. Silpukhuri, Chandmari,
Guwahati, Assam-781 003

- B E F O R E -

HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Advocate for the petitioner :Mr. K.N. Choudhury, Sr. Advocate
Assisted by Mr. K.L Gupta, Advocate

Advocate for the respondents :Mr.S.C Keyal, Standing Counsel, GST

Dates of hearing :**10.12.2024; 12.12.2024; 19.03.2025;**
24.04.2025; 27.05.2025; 06.08.2025;
16.09.2025; 28.10.2025

Date of Judgment & Order: : **09.01.2026**

JUDGMENT AND ORDER

The petitioner No. 1 is a public limited company registered under the Companies Act, 1956 having its registered office at Bilasipara in the district of Dhubri (Assam) and is engaged in construction works under the Government and various agencies. The petitioner No. 1/company is represented by Shri Chain Roop Baid who is also the petitioner No. 2. The petitioner No. 1 is a Class-I(A) Contractor under the Government of Assam and has undertaken several major works under the various Department of Government of Assam and Government of India. The petitioner is registered under the Service Tax Registration bearing Service Tax Registration No. AAGCS4032FST001 for rendering taxable service under the category of 'construction services in respect of commercial or industrial buildings and Civil Structure', 'site preparation and clearance services' and works contract services'. The petitioner has been undertaken

various constructions projects pertaining to construction of roads, bridges and various civil structures for various Govenmental authorities during the period 2014-2017. Majority of these works are exempted under Clause 12A and 13 of Mega Notification No. 25/12-Service Tax dated 20.06.2012 which was issued under Section 93(1) of the Finance Act, 1994.

2. The Respondent No. 3 had initiated an enquiry vide its letter dated 31.10.2017 under the provision of the Finance Act, 1994 calling upon the petitioner company to submit the documents in relation to verification of service tax compliance and for documents relating to business for the period FY 2014-15 to June 2017. Thereafter, the respondent No. 3 vide its letter dated 08.02.2018 was also asked to submit the documents in relation to taxable services provided by the petitioner. Accordingly, the petitioner vide letters dated 24.04.2018, 03.09.2018 and 02.07.2019 submitted all the documents as called for.

3. Thereafter, the respondent No. 2 i.e Principal Commissioner of Central Goods and Service Tax and Central Excise Commissionerate, Guwahati issued an impugned Demand cum Show Cause Notice dated 21.10.2019 bearing No. CNV (15) 16/ADJ/CGST-HQRS/GHY/GHY/ST/2019/2147 to the petitioner alleging that the

petitioner company has suppressed the actual taxable value of services provided in financial year 2014-15. The allegation was made solely on the basis of income tax returns and 26AS of petitioner company. It was also alleged that the petitioner company has received amounts to the tune of Rs. 258,05,96,111/- and the petitioner declared only the amounts to the tune of Rs. 12,37,49,697/- as gross value of services in ST 3 returns. It was also alleged that the petitioner has suppressed taxable value amounting to Rs. 245,68,46,414/-. The respondent No. 2 demanded short paid service tax dues amounting to Rs. 30,36,66,217/- on the gross amount of Rs. 245,68,46,414/- for the financial year 2014-15.

4. The respondent No. 3 i.e Additional Director General of Directorate General of Goods and Services Tax Intelligence, Guwahati subsequently, issued another impugned show cause notice bearing No. DGGSTI/GuZU/INV/ST/28/2017 dated 09.01.2020 to the petitioner company alleging that the petitioner company has suppressed the actual taxable value in ST-3 returns and evaded payment of service tax. Thus, demanded service tax amounting to Rs. 3,54,13,425/- along with KKC/Education Cess of Rs. 11,96,942.50 and SBC/SHEC of Rs. 11,56,955.50 totaling to Rs. 3,77,67,323/- for the financial year 2015-2017 (Upto June, 2017).

5. Pursuant to the show cause notices issued, the petitioner was afforded personal hearing. The petitioner submitted its replies to the show-cause notices issued. In the replies to the Show cause notices, the petitioner categorically denied allegations of short payment or non-payment of service tax. The replies to the show cause notices are as follows:

<i>SL No</i>	<i>Impugned SCN Particulars</i>	<i>Summary of Contentions</i>
1.	<i>The contentions in Demand cum Show cause Notice bearing SCN No. CNV(15)16/ADJ/CGST-HQRS/GHY/ST/2019/2147 dated 21.10.2019</i>	<i>• The impugned SCN barred by limitation in as much as the department has erroneously invoked extended period of limitation. The petitioner company has filed their ST-3 returns. The department is well aware of activities carried out by the petitioner. Hence, there is no willful suppression of facts by the petitioner to evade payment of tax.</i> <i>• The impugned SCN is legally untenable in as much as the petitioner company is providing 'Works Contract Services' to the projects of Union Government, State Governments and Public Sector Units. The said services is exempted under Mega Exemption Notification No. 25/2012-ST dated 20.06.2012.</i> <i>• The impugned SCN is legally untenable and erroneous in as much as the impugned SCN is solely issued on basis of Form — 26AS which is impermissible in law.</i>
2.	<i>SNC No. F No.DGGSTI/GuZU/INV/ST/28/2017 dated 09.01.2020</i>	<i>• The impugned SCN is barred by limitation in as much as the department has erroneously invoked extended period of limitation. The petitioner is participating in tender process for public works, the petitioner being a lowest bidder is awarded the tender. The said information is available in the tender. Hence, there is no suppression of facts by the petitioner with an intention to evade tax.</i> <i>• The impugned SCN is legally untenable in as much as the petitioner is providing 'Works Contract Services' to the government and local authorities by way of construction services. The said services is exempted under Mega Exemption Notification No. 25/2012-ST dated 20.06.2012.</i> <i>• The petitioner has also accepted service tax liability to the extent of Rs.1,40,13,147/- Accordingly, the petitioner deposited service tax amounting to Rs.1,40,13,147/- with department.</i>

6. The learned Senior counsel for the petitioner submits that the impugned actions are wholly without jurisdiction inasmuch as the show cause notice dated 21.10.2019 was issued beyond the

limitation prescribed by Section 73(i) of the Finance Act, 1994. Although, the limitation of 30 months is extended to 60 months in case where there is suppression of material facts, mis-statement etc but in the instant proceeding, no such suppression is involved.

7. Thereafter, the respondent No. 2 did not consider any of the submissions made by the petitioner and passed an impugned Order-in-Original No. 14/Pt. Commr./ST/GHY/2021-22 dated 07.02.2022 and assessed an amount of Rs. 34,14,33,540/- against the two Demand-cum-Show Cause Notice and passed the following orders:

***(A)** In respect of Show cause Notice issued by Additional Director General of Directorate General of Goods and Service Tax Intelligence, Guwahati dated 09.01.2020.*

i. Confirm the demand of service tax, education cess, SHE Cess, SBC and KKC totaling to Rs. 3,77,67,323/- and order for recovery of the same from the said Noticee under Section 73(2) of the Finance — Act, 1994

ii. Order that interest on the above confirmed amount at the rates applicable in terms of Section 75 of the Finance Act, 1994.

iii. Order that interest of Rs.4,68,870/- paid by them under Section 75 of Finance Act, 1994 should be appropriated.

iv. Order for appropriation of the amount of Rs.1,06,91,290/- already deposited by the Noticee towards the confirmed demand.

v. Impose a penalty of Rs. 3,77,67,323/- on the Noticee in terms of Section 78 of Finance Act, 1994 as amended.

(B) *In respect of Show cause Notice Issued by Principal Commissioner CGST and Central Excise Commissionerate, Guwahati dated 21.10.2019.*

vi. Confirmed the demand of short payment of service tax in tune of Rs. 30,36,66,217/- for the period F.Y. 2014-2015 as raised in the impugned Show Cause Notice bearing SCN No. CNV(15) 16/ADJ/CGST-HQRS/GHY/ST/2019/2147 dated 21.10.2019 and order recovery of the same from the said Noticee under Section 73(2) of Finance Act, 1994.

vii. Order that interest on the above confirmed amount paid by them at the rates applicable in terms of Section 75.

viii. Imposed Penalty to the tune of Rs. 30,36,66,217/- in terms of Section 78 of Finance Act, 1994.

ix. Imposed Penalty of Rs. 10,000/- in terms of Section 77 of the Finance Act, 1994.

Being aggrieved, the present writ petition has been filed putting a challenge to impugned Demand cum show cause notices dated 21.10.2019 and 09.01.2020 and the impugned Order-in-Original No. 14/Pt. Commr./ST/GHY/2021-22 dated 07.02.2022.

8. The learned Senior counsel for the petitioner strenuously submits the impugned show cause notices fail to disclose the taxable services rendered by the petitioner inasmuch as the whole service tax

demand is solely based on income disclosed in the income tax returns and 26AS which is impermissible in law. The approach of the respondents in raising service tax demand solely based on income tax returns (for the purpose of assessment of income tax liability of the petitioner) and 26AS would not hold good in cases relating to service tax inasmuch as the levy of service tax is on the provision of taxable service.

9. The learned senior counsel for the petitioner petitioner submits that that while income tax is levied on 'income' under the Income tax Act, 1961 irrespective of the sources from which such an income had been derived, service tax is levied only on the quantum of services provided and, therefore, element of transaction of service is pre-requisite for levy of service tax. Without establishing that the income disclosed by the assessee had been derived from business transactions liable to service tax, the department cannot presume it based on income tax returns especially given the fact that the income tax department has accepted the receipts declared by the assessee.

10. The learned senior counsel for the petitioner further submits that the income tax returns is based on the Financial Statements of the entity, including its profit and loss accounts. These Financial

Statements are prepared based on Accounting Standards (AS') which prescribe various guidelines for revenue recognition in the books of accounts of an entity. This is entirely different and distinct from the scope, object and application of the service tax law that seeks to set out its own methodology for determination of when the service was rendered and consequently when the receipt of income from such rendition of service be taxed. Mr. Choudhury submits that the Accounting Standards (AS') emanate from Companies (Accounting Standards) Rules, 2006 prescribed under the Companies Act, 1956. More particularly, AS-7 prescribes accounting and revenue recognition methodology in case of construction contracts. The objective of AS-7 is that since the date at which the contracted construction activity is entered into and the date when the activity is completed usually fall into different accounting periods, this accounting standard provides for allocation of contract revenue and contract costs to those to the accounting periods in which construction work is performed. The amount of revenue recognized under this method is determined by reference to the state of completion of the contract. AS-7 is in contradistinction to another method of accounting (AS-9) wherein, instead of recognizing revenue upon completion of each stage of construction, revenue is recognized only once the entire construction contract is complete.

11. The learned senior counsel strenuously submits that Rule 3 of Point of Taxation Rules, 2011 provide for the point of taxation to be either the point of raising of invoice [Rule 3(a)] or in a case where the service provider has received the payment even prior to the time stipulated in the invoice, upon receipt of such payment [Rule 3(b)]. Instead of determination of service tax liability by application of the provisions of Rule 3, the department has relied on income tax returns and 26 AS which is in turn based on profit and loss accounts and financials drawn in accordance with AS-7, to conclude that the amounts reflected therein have not been offered for service tax. The methodology for the computation of income from projects as provided in AS-7 is at variance with the method set out under Rule 3 of the Point of Taxation Rules. The reporting of income based on profit and loss accounts being irrelevant for the purposes of determination of service tax payable, the very basis of the show cause notice must be said to be erroneous. It is a well settled position that when a statutory provision or Rule addresses a specific scenario, such such/provision is liable to be interpreted on its own strength and context and one need look no further to alternate sources to seek clarity in regard to the issue that has been addressed by the aforesaid rule/provision.

12. The learned Senior counsel for the petitioner strenuously submits that the very basis of issuance of the demand cum show cause notice was on a mistaken belief of the department that any service tax is due from the writ petitioner whereas the contracts undertaken by the Petitioner and the same was exempted from payment of service tax under Entry No. 14 (a) of the Mega Exemption Notification No. 25/2012 S.T. dated 20.06.2012 w.e.f. 01.07.2012 as amended. The service tax could not be levied on consideration amounts received by petitioner inasmuch as the services rendered by the petitioner is covered under exemption notification vide Mega Exemption Notification No. 25/2012-ST dated 20.06.2012.

13. The learned senior counsel for the petitioner submits that with effect from 01.07.2012, negative list of taxation' scheme was introduced in Chapter V of the Finance Act, 1994 (Service Tax Law) providing for levy for service tax on all services other than an express set of services on which service tax was exempt.

14. The learned senior counsel for the petitioners submits that by conjoint reading of Sl No. 12 read with Sl. No. 12A of Notification No. 25/2012 dated 20.06.2012, it is clear that Works Contract Services provided to Government, a local authority or a governmental

authority is covered under exemption from the service tax for the period 01.04.2014 to 30.6.2017. As regards the construction of roads and bridges undertaken by the petitioner company, the same is exempt from service tax vide Si. No. 13 (a) of Notification No. 25/2012-ST. The learned senior counsel for the Petitioners submits that except the services provided to BCPL , PGCIL, HPL-IIIT, HSCL-Residential Quarters, BRCL-Const. of Institution, HSCC-hospital building, MES Rayang and Construction of IAS Colony, Cachar Club and Renting etc. and for which the petitioner company has also paid the service tax along with filing of his Return in 'Form ST-3' for the relevant year 2014-15 to FY-2017 (June,2017) and the rests are the services provided to the Government Authorities in respect of construction of road, bridge, Medical Institutions, Educational Institute etc. for use by general public which are expressly exempted under the Notification No. 25/ 2012 (Service Tax) dated 20.06.2012 issued by the Central Board of Indirect Taxes & Customs. The various documents submitted by the Petitioners in response to the direction issued by the Respondent authorities, clearly established that all the services provided by the Petitioner company was exempted under Clause 12 and 13 of the Notification No. 25/2012 (Service Tax) dated 20.06.2012 and therefore no tax is leviable thereon.

15. The learned senior counsel for the petitioners submit that the impugned order of the respondent is erroneous, unreasonable and patently illegal in as much as the fact that the difference in the value of turnover reported in Income Tax Return and Service Tax Return is due to the fact that the petitioner is engaged in providing construction of roads, bridges which is exempt vide SI. No. 12, 12(a) & 13(a) of Notification No. 25/2012-ST and construction of various other civil structures such as buildings for Educational Institutions, Universities, Medical Colleges, Engineering Colleges, Hostels for students and various other buildings and structures meant for use other than commercial purpose and the same is exempt from service vide SI. No. 12/12A of Notification No. 25/2012-ST. Mr. Choudhury submits that the interpretation of an exemption notification are divided in two stages: (a) to ascertain whether subject falls within the exemption notification that being in nature of exception is to be construed strictly; (b) Once the doubt of applicability of exemption notification is ascertained, then the entry of notification warrants for a wider of liberal construction.

16. The learned senior counsel for the petitioners further submits that the order passed by the respondent no. 2 is illegal and not sustainable in as much as it is in contradiction with the order issued by the sub-ordinate officer of the same Commissionerate i.e.,

Assistant Commissioner of GST, Guwahati on the same subject matter. He submits that the Assistant Commissioner of GST vide order-in-original no. 604/AC/DIVI/CGST/2021-22 Dated 24.03.2022 adjudicated the very same issue of exemption under Sl. No. 13 (a) of Notification No. 25/2012-ST as regards the Construction of Roads and Bridges and dropped the demand proceedings by holding that the noticee is not liable to pay service tax as they are eligible for exemption under Sl. No. 13(a) of Notification No. 25/2012-ST. The said adjudication order dated 24.3.2022 pertains to Joint Venture wherein the Petitioner no.1 is a Co-venturer. Most Pertinently, in the aforesaid proceedings, the similar works contracts were involved and taking into note of the Exemption Notification No. 25/2012 dated 20.06.2012, relief as prayed for in the present writ petition, was granted to Joint Venture. As per the CBIC Circular dated 26.10.2021, it is the duty of the adjudicating authority while analyzing ITR-TDS Data to find out whether service income, earned by the Assessee is attributable to any Negative list services specified in Section 66(D) of the Finance Act, 1994 or exempt from payment of service Tax due to any reason. Admittedly, no such due diligence has been exercised in the present case.

17. The petitioner company is clearly eligible for the exemption inasmuch as the petitioner company has entered into contract with

government authorities for providing works contract services for the relevant period covered by the impugned show cause notices dated 09.01.2020 & 21.10.2019. The learned Senior counsel for the petitioners submits that as per CBIC law, while the Commissioner while issuing Show cause notice acts as an executive officer, while adjudicating the same he acts as an quasi Judicial authority. He is expected to act in a judicious manner and pass reasonable and a speaking order detailing and weighting every allegation leveled against an Company which is not expected to know every nitty gritty of law. He is expected to act as an impartial authority. Wild allegations may be leveled against any business concern. Considering such a situation in respect of Show cause Notices issued by the CBIC officers demanding Service tax, CBIC Board has issued.

18. The learned Senior counsel for the petitioners therefore submits that impugned order in original dated 07.02.2022 has been passed by the adjudicating authority without following the principles of natural justice. He therefore submits that the writ petition be allowed. The impugned show cause notices and order-in-original be interfered with and set aside interfering with the demand of service tax as well as the imposition of penalty imposed on the writ petitioner. In support of his contention, the learned senior counsel for the petitioners has relied upon the following Judgments:

- (i) *Easland Combines, Coimbatore, Vs. Collector of Central Excise, Coimbatore, reported in (2003) 3 SCC 410;*
- (ii) *Pushpam Pharmaceuticals Company Vs. Collector of Central Excise, Bombay, reported in 1995 (78) ELT 401 (SC);*
- (iii) *Anand Nishikawa Co. Ltd. Vs. Commissioner of Central Excise, Meerut, reported in (2005) 7 SCC 749;*
- (iv) *Commissioner of C. Ex. & Customs Vs. Reliance Industries Ltd., reported in 2023 (385) ELT 481 (SC)*
- (v) *South Eastern Coalfields Ltd. & Ors. Vs. S Kumar's Associates AKM (JV), reported in (2021) 9 SCC 166;*
- (vi) *Pijush Sharma Vs. Commissioner of CGST & Excise, Patna I, vide Final Order No. 77332/2023 dated 17.10.2023;*
- (v) *M/S Lord Krishna Real Infra Private Limited Vs. Commissioner of Customs, Central Excise & Service Tax, Noida, vide Final Order No. 70126/2019 dated 27.12.2018;*
- (vi) *Adiran Manpower Services Pvt. Ltd. Vs. Commissioner of Central Excise Pune II, reported in 2022 LiveLaw (SC) 190;*
- (vii) *Krishi Upaj Mandi Samiti, New Mandi Yard, Alwar Vs. Commissioner of Central Excise and Service Tax, Alwar, reported in 2022 LiveLaw (SC) 203;*
- (viii) *Commissioner, Customs Central Excise and Service Tax, Patna Vs. M/S Shapoorji Pallonji and Company Pvt. Ltd. & Ors [Civil Appeal No. 3991/2023];*
- (ix) *M/S T.S Motors India Pvt. Ltd Vs. Commissioner of CGST & Central Excise, Lucknow passed by Customs, Excise & Service Tax Appellate Tribunal Allahabad [Service Tax Appeal No. 70377/2018]*
- (x) *Madhu Sudan Mittal Vs. Union of India & Ors, passed by High Court of Jharkhand in W.P(T) No. 4448/2021;*
- (xi) *M/S P.S Construction Vs. Commissioner of Central Excise, Panchkula passed by Customs, Excise and Service Tax Appellate Tribunal, Chandigarh [Service Tax Appeal No. 60388/2013];*
- (xii) *M/S Rishu Enterprise Vs. Commissioner of CGST & Excise, Dibrugarh passed by Customs, Excise and Service Tax Appellate Tribunal, Kolkata [Service Tax Appeal No. 75509/2022] and*
- (xiii) *M/S Wellworth Project Developers Pvt. Ltd Vs. Commissioner of CGST, Delhi South Commissionerate passed by Customs, Excise and Service Tax Appellate Tribunal, New Delhi [Service Tax Appeal No. 50259/2024]*

19. Mr. S.C Keyal, learned counsel appearing for the Respondents has strongly disputed the contentions made on behalf of the writ petitioner. On the question of maintainability of the writ petition, it is submitted that where there is elaborately prescribed statutory provisions providing for alternative remedy, the petitioner assessee should not be permitted to invoke the writ jurisdiction without first availing of the statutory prescribed remedies. The GST is a complete code in itself and elaborate provisions are prescribed for ventilating grievances of the assesses who are aggrieved by any orders passed by the GST authorities. Therefore the writ petition should be dismissed and the petitioner should be relegated to avail of the statutory alternative remedies prescribed. Unless the petitioner had availed of these remedies, there is no scope for entertaining the instant writ petition. Therefore, since the petitioners did not avail statutory remedy, the petition should be dismissed on this limited ground and the parties be relegated to the avail of the statutory remedy prescribed. In support of his contentions, the learned counsel for the respondent relies upon the following Judgments:

- 1. GNRC Limited Vs. Union of India*, reported in *2024 0 Supreme (Gau) 973*;
- 2. PHR Invent Educational Society Vs. UCO Bank and Ors*, reported in *2024 0 Supreme SC 333*;
- 3. Brahmaputra Television Network Vs. Union of India*, reported in *2024 0 Supreme (Gau) 855*

- 4. M/S Sailaja Commercial Construction Pvt. Ltd. Vs Union of India & Ors, (W.A. No. 188/2022)*
- 5. Bekem Infra Projects Ltd Vs. Deputy Commissioner of State Tax, [SLP(C) No. 27712/2024];*
- 6. Sanjib Das Vs. Union of India, reported in 2022 0 Supreme (Gau) 284;*
- 7. Sunil Gulati Vs. Additional Commissioner, CGST, Delhi South Commissioner & Anr. [W.P(C) No. 4383/2025];*
- 8. M/S Vishwanath Traders Vs. Union of India and Ors [SLP(C) No. 15594/2023];*
- 9. Union of India and Ors. Vs. Coastal Container Transpiration Association and ors, reported in 2019 0 Supreme (SC) 215.*

20. The respondents refers to the judgment of rendered in GNRC Limited vs Union of India reported in (2024) 0 Supreme (Gau) 973. The learned counsel for the respondents also pressed into service the judgment rendered in PHR Invent Educational Society Vs. UCO Bank and Ors, reported in 2024 0 Supreme SC 333. Pressing these judgments into service, the learned counsel for the respondents submit that in the face of well anointed procedures prescribed under the GST providing for appeals, the petitioner should be relegated for filing appeal before the appropriate authority.

21. Heard learned counsel for the parties. Pleadings available on records have been carefully perused as also the demand made by the show cause notice which ultimately came to be confirmed by the impugned order in original which is the issue in the present proceedings has been assailed primarily on two grounds.

22. Upon a perusal of the pleadings available before the Court, it is seen that the service tax liability of services by the petitioner was stated that the contracts undertaken by the Petitioner were pertaining construction and the same was exempted from payment of service tax under Entry No. 14 (a) of the Mega Exemption Notification No. 25/2012 S.T. dated 20.06.2012.

23. In this context a reference to the Notification No. 25/2012-Service Tax dated 20.06.2012 as amended, in exercise of powers conferred on it by Sub-section (1) of Section 93 of the Finance Act, 1994 notified certain exemptions of the taxable services from the whole of the service tax leviable thereon under Section 66B of the said Act.

24. The arguments made by the learned Senior counsel for the petitioner before this Court is imposition of tax on solely on the basis of data available in Form 26AS which is obtained from the Income Tax Department. In *Chatturam Holiram Ltd (Supra)* , the Apex Court held that there are three stages in the imposition of tax. There has to be a declaration of liability, which is the part of the statute which determines what persons in respect of what property are liable to pay the tax. Then there has to the assessment. The liability to pay taxes does not depend on the assessment which has already been

fixed by the statute. But the assessment specifies the exact sum which a person is found to be liable to pay and finally the modes of recovery of taxes which are assessed in the event the assessee refuses to pay voluntarily. The relevant paragraphs of this Judgments are extracted below:

"As has been pointed out by the Federal Court in Chatturam Vs. Commissioner of Income-tax, Bihar [(1947) F.C.R. 116 at 126; 15 ITR 302, at 302] (quoting from the judgment of Lord Dunedin in Whitney Vs. Commissioners of Inland Revenue [(1926) A.C. 37] 'there are three stages in the imposition of a tax. There is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, ex-hypothesi, has already been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay'"

25. Again in A.V Fernandez Vs. State of Kerala, reported in (1957) 8 STC 561, the Apex Court held that the three stages in the imposition of tax which are laid down predicate, in the first instance, a declaration of liability as the starting point. If there is a liability to pay tax which is imposed in terms of the taxing statute, then the provisions with regard to the assessment of such liability is to be followed. If there is no liability to tax there cannot be any assessment either. Sales or purchases in respect of which there is no liability to tax imposed by the statute cannot at all be included in the calculation of turnover for the purpose of assessment and the exact

sum which the dealer is liable to pay must be ascertained without any reference whatever to the same.

It was further held that if under the statute, it is found that the assessee is not liable to tax, no tax can be levied or imposed on them and they do not come under the purview of such a statute. The Apex Court went on to hold that no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter. It was held that regard must be had to the actual provision of the Act and the Rules made thereunder before any conclusion can be arrived at that the assessee is liable to assessment as contended by the revenue authorities. The relevant provisions this Act are extracted below:

"The three stages in the imposition of a tax which are laid down here predicate, in the first instance, a declaration of liability as the starting point. If there is a liability to tax, imposed under the terms of the taxing statute, then follow the provisions in regard to the assessment of such liability. If there is no liability to tax there cannot be any assessment either. Sales or purchases in respect of which there is no liability to tax imposed by the statute cannot at all be included in the calculation of turnover for the purpose of assessment and the exact sum which the dealer is liable to pay must be ascertained without any reference whatever to the same.

The legislature cannot enact a law imposing or authorizing the imposition of a tax thereupon and they are not liable to any such imposition of tax. If they are thus not liable to tax, no tax can be levied or imposed on them and they do not come within the purview of the Act at all. The very fact of their non-liability to tax is sufficient to exclude

them from the calculation of the gross turnover as well as the net turnover on which sales tax can be levied or imposed.

It is no doubt true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter. We must of necessity, therefore, have regard to the actual provisions of the Act and the rules made thereunder before we can come to the conclusion that the appellant was liable to assessment as contended by the Sales Tax Authorities."

26. Therefore, under such circumstances, this Court is of the considered view that the determination made by the respondent authorities by issuing the demand cum show cause notice and the confirmation in the impugned order-in-original is contrary to the provisions of the Act and the law declared by the Apex Court as well as by the High Court. The impugned order-in-original is therefore is bad and the same is liable to set aside.

27. Coming to the question of the invocation of the extended period of limitation, it is necessary to refer to the provisions of Section 73 of the Finance Act, the same is extracted below:

Section 73: - Recovery of Service tax not levied or paid or short-levied or short-paid or erroneously refunded.-

73 (1) where any service tax has not been levied or paid or short -levied or short-paid or erroneously refunded, the Central Excise Officer may, within eighteen months from the relevant date serve notice on the person chargeable with the service tax which has not been levied or paid or which

has been short-levied or short-paid or the persons to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

Provided that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of-

- (a) fraud; or*
- (b) collusion; or*
- (c) willful misstatement ;or*
- (d) suppression of facts; or*
- (e) contravention of any of the provisions of this chapter or of the rules made there under with intent to evade payment of service tax,*

by the person chargeable with the service tax or his agent the provisions of this sub-section shall have effect, as if for the words eighteen months, the words "five years" had been substituted.

Explanation-where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of eighteen months or five years as the case may be.

(1A) Notwithstanding anything contained in sub-section (1), the Central Excise Officer may serve, subsequent to any notice or notices served under that sub-section, a statement, containing the details of service tax not levied or paid or short levied or short paid or erroneously refunded for the subsequent period, on the person chargeable to service tax, then, service of such statement shall be deemed to be service of notice on such person, subject to the condition that the grounds relied upon for the subsequent period are same as are mentioned in the earlier notices

(2) The Central Excise Officer shall after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of service tax due from, or erroneously refunded to, such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(3)

28. A perusal of the Section 73 of the Finance Act reveals that the extended period in respect of recovery of service tax not levied or

paid or short levied or short paid or erroneously refunded can be invoked only when any or more of the conditions prescribed under the proviso to the said section is present. Under the proviso to the said section, there are five situations when the extended period of limitation can be invoked. These are:

(a) Fraud; or

(b) Collusion; or

(c) Willful misstatement; or

(d) Suppression of facts; or

(e) Contravention of any of the provisions of this Chapter or of the rules made there under with intent to evade payment of service tax.

29. It is only in the event that any or more of these conditions are found to be applicable in the facts and circumstances of the case that the provisions for extension of limitation under Section 73 can be invoked. In the event, it is invoked a notice has to be issued within a period of 18 months from the relevant date on the person chargeable with service tax.

30. In this context, it is necessary to refer to the case laws cited before this Court. In *Continental Foundation Joint Venture Holding* (Supra), the extended period of limitation under Section 11A of the

Central Excise and Salt Act, 1944 was under consideration. The Apex Court held that mere omission to give correct information did not constitute suppression unless that omission was made willfully in order to evade duty. The Apex Court held that suppression would mean failure to disclose full and true information with the intent to evade payment of duty. When the facts are known to both the parties, omissions by one party would not constitute suppression. It was held that an incorrect statement cannot be equated with a willful mis-statement. The latter implies making of an incorrect statement with the knowledge that the statement made was not correct. The relevant paragraphs of the Judgment are extracted below:

12. The expression "suppression" has been used in the proviso to Section 11-A of the Act accompanied by very strong words as "fraud" or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop (sic evade) the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11-A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a wilful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct.

31. In CEE Vs Chemphar Drugs & Liniments (Supra), while interpreting provisions of Section 11A of the Act of 1944, the Apex Court held that something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or

deliberate withholding of information when the manufacturer knew otherwise is required, before it is saddled with any liability, before (sic beyond) the period of six months. Whether in a particular set of facts and circumstances there was any fraud or collusion or willful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case.

32. In *Cosmic Dye Chemical (Supra)*, the Apex Court again while examining Section 11 A of the Act of 1944 held that the emphasis is on the requisite intent i.e the intent to evade payment of duty which is built into the very words of section. The Apex Court held that even misstatement or suppression of fact are clearly qualified by the words "willful" preceeding the words "misstatement or suppression of facts" which means with intent to evade duty. The Apex Court therefore held that it will not be correct to say that there can be a suppression or misstatement of fact, which is not willful and yet constitutes a permissible ground for the purpose of the proviso to Section 11-A. Misstatement or suppression of fact must be willful. The relevant paragraph is extracted below:

"6. Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as misstatement or suppression of facts are concerned, they are clearly qualified by the word 'wilful' preceding the words

"misstatement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or rules" are again qualified by the immediately following words "with intent to evade payment of duty". It is, therefore, not correct to say that there can be a suppression or misstatement of fact, which is not wilful and yet constitutes a permissible ground for the purpose of the proviso to Section 11-A. Misstatement or suppression of fact must be wilful.

33. Such conclusions as have been discussed above are contrary to the facts which are evident from the pleadings. In any view of the matter for invocation of the provisions of Section 73 for extension of the period of limitation, it must necessarily be a case which falls under any or all the conditions specified under the proviso to Section 73(1) of the CGST Act. From a plain reading of the impugned Order-in-Original and the relevant portions of which have been extracted above, it is evident that there is no finding by the Adjudicating Authority that the case of the petitioner can be considered to be a case which falls under the conditions specified in proviso to Section 73(1). Under such circumstances, the impugned Order-in-Original appears to the Court to have been assumption of jurisdiction by the revenue authorities which was not otherwise vested on the said authority. For the revenue authorities to invoke powers under Section 73(1), there must be a finding and a conclusion arrived at based on the facts of the case that the petitioner assessee had willfully and deliberately resorted to fraud, collusion, willful misstatement, suppression of facts of contravention of any of the provision

thereunder with the intent to evade payment of service tax. Therefore, for invocation of the powers proviso to Section 73(1), there must be a conclusive finding arrived at by the Revenue authorities that the petitioner assessee had resorted to any or all for these acts or omissions with the sole intention to evade payment of service tax. Such finding is not discernable from the impugned Order-in-Original passed by the Revenue Authorities. Therefore, the assumption of jurisdiction of the Revenue under the proviso to Section 73(1) has to be concluded to be a jurisdiction assumed by the Revenue authorities not vested on it by the statute. Such assumption of jurisdiction therefore, being contrary to the provisions of the statute itself, the same is colourable and therefore it is held to be unauthorized.

34. Where a subordinate Tribunal and an authority is found to have assumed jurisdiction not vested on it a superior Court may invoke its extraordinary jurisdiction to correct such errors which were exercised by the authorities. The powers of a superior Court to examine the authority assumed by a Tribunal was the issue in *Anisminic Ltd (Supra)*. It was held therein that the jurisdiction of the superior Court is to see that the inferior court has not exceeded its own, and for that very reason it is bound not to interfere in what has been done within that jurisdiction, for in so doing it would itself, in turn,

transgress the limits within which its own jurisdiction of supervision, not of review, is confined. That supervision goes to two points: one is the area of the inferior jurisdiction and the qualification and conditions of its exercise; the other is the observance of the law in the course of its exercise. If, therefore, a tribunal while within the area of its jurisdiction committed some error of law and if such error was made apparent in the determination itself (or, as it is often expressed, on the face of the record) then the superior court would certainly be competent correct that error unless it was otherwise forbidden to do so under the statute. It would be so forbidden if the determination was "not to be called in question in any court of law". If so forbidden it could not then even hear argument which suggested that error of law had been made. It could, however, still consider whether the determination was within "the area of the inferior jurisdiction.

By referring to *Reg. Vs. Cotham*, reported in (1898) 1 Q.B. 802, 808, it was noted that the distinction between, on the one hand, disregarding the provisions of a statute and considering matters which ought not to be considered and, on the other hand, what is called "a mere misconstruction of an Act of Parliament". This perhaps illustrates the clear distinction which exists between an error when in the exercise of jurisdiction and an error in deciding whether

jurisdiction can be assumed: in the latter case an error may have the consequence that jurisdiction was lacking and was wrongly assumed and the result would be that any purported decision would have no validity.

The Court held that lack of jurisdiction may arise in various ways. There may be an absence of those formalities or things which are conditions precedent to the tribunal having any jurisdiction to embark on an inquiry. Or the tribunal may at the end make an order that it has no jurisdiction to make. Or in the intervening stage, while engaged on a proper inquiry, the tribunal may depart from the rules of natural justice; or it may ask itself the wrong questions; or it may take into account matters which it was not directed to take into account. Thereby it would step outside its jurisdiction. It would turn its inquiry into something not directed by Parliament and fail to make the inquiry which Parliament did direct. Any of these things would cause its purported decision to be a nullity.

35. Again in *Bunbury Vs. Fuller*, reported in (1853) 9 Exch 111, 140 on the question of excessive jurisdiction of a Court of limited jurisdiction, it was held that no court of limited jurisdiction can give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limit to its jurisdiction depends;

and however its decision may be final on all particulars, making up together the subject matter which, if true, is within its jurisdiction, and however necessary in many cases it may be for it to make a preliminary inquiry, whether some collateral matter be or be not within the limits, yet upon this preliminary question, its decision must always be open to inquiry in the superior court.

36. Again in *Rex Vs. Shoreditch Assessment Committee, Ex parte Morgan*, reported in (1910) 2 K.B. 859, it was held that no tribunal of inferior jurisdiction can by its own decision finally decide on the question of the existence or extent of such Jurisdiction: such question is always subject to review by the High Court, which does not permit the inferior tribunal either to usurp a jurisdiction which it does not possess, whether at all or to the extent claimed, or to refuse to exercise a jurisdiction which it has and ought to exercise. Subjection in this respect to the High Court is a necessary and inseparable incident to all tribunals of limited jurisdiction; for the existence of the limit necessitates an authority to determine and enforce it: it is a contradiction in terms to create a tribunal with limited Jurisdiction and unlimited power to determine such limit at its own will and pleasure — such a tribunal would be autocratic, not limited — and it is immaterial whether the decision of the inferior

tribunal on the question of the existence or nonexistence of its own jurisdiction is founded on law or fact.

37. In *Pilling Vs. Abergele Urban District Council*, reported in (1950) 1KB 636, it was held that where a duty to determine a question is conferred on a authority which state their reason for the decision and the reasons which they state show that they have taken into account matters which they ought not to have taken into account or that they have failed to take matters into account which they ought to have taken into account, the court to which an appeal lies can and ought to adjudicate on the matter.

38. Similar views have been expressed by Courts in India and followed in several cases in the context of examination of jurisdiction vested on Tribunals and Court of limited jurisdiction. In *Dhirajlal Girdharilal Vs. CIT, Bombay*, reported in AIR 1955 SC 271, the Apex Court held that when a Court of fact acts on materials partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the Court was affected by the irrelevant materials used by it in arriving at its finding and such a finding is vitiated because of use of inadmissible material and thereby a question of law arises.

39. In *Ram Avtar Sharma Vs. State of Haryana*, reported in AIR 1985 SC 915, the Apex Court held that discretionary power must be

exercised on relevant and not on irrelevant or extraneous considerations. It means that power must be exercised taking into account the considerations mentioned in the statute. If the statute mentions no such considerations, then the power is to be exercised on considerations relevant to the purpose of which it is conferred. On the other hand, if the authority concerned pays attention to, or takes into account, wholly irrelevant or extraneous circumstances, events or matters or considerations then the action taken by it is invalid and will be quashed.

40. In *Jt. Reg., Co-operative Societies Vs. Rajagopal*, reported in AIR 1970 SC 992, the Apex Court held that even though an authority may act in its subjective satisfaction, there must be cogent materials on which the authority has to form its opinion.

41. In *Indian Railway Construction Co. Ltd. Vs. Ajay Kumar*, reported in AIR 2003 SC 1843, the Apex Court held that in the purported exercise of its discretion, the authority conferred with discretion must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations, must not be influenced by irrelevant considerations, must not seek to promote

purposes alien to the letter and to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously.

42. Again in *Shalini Soni Vs. Union of India*, reported in (1980) 4 SCC 544, it was held by the Apex Court that it is an unwritten rule of law, constitutional and administrative, that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote. Applying this principle in *CIT Vs Mahindra & Mahindra*, reported in (1983) 4 SCC 392, the Supreme Court quashed a decision under Section 72-A of the Income Tax Act, as the government was “clearly influenced by irrelevant and extraneous materials vitiating the impugned conclusion.

43. In *S.R Venkataraman Vs. Union of India*, reported in AIR 1979 SC 49, the Apex Court held that an administrative order which is based on reasons of facts which do not exist is infested with an abuse of power. There will be an error of fact when a public body is promoted by a mistaken belief in the existence of a non-existing fact or circumstance.

44. From a careful analysis of the judicial pronouncements as discussed above, it is clear that if an authority while making the

inquiry rejects a consideration which is relevant and/or takes into consideration materials and other information which are not relevant, the said decision can be said to be a decision in excess or without jurisdiction. In the present case the adjudicating authority took into consideration the information available in form 26AS of the Income Tax Act, the sole basis for the purpose of levy of service tax. The authority did not consider the services rendered by the petitioner were exempted from levy of service tax or the liability to pay the service tax on the said services was on the recipient on the services. Since the adjudicating authority did not take into consideration those relevant materials which it was bound to take into consideration and on the other hand it had taken into consideration factors and materials, which if not irrelevant and not germane for deciding the liability of the service tax, cannot establish the liability of the assessee, then the said actions of the adjudicating authority is certainly without jurisdiction and/or is in excess of jurisdiction and thereby the impugned actions, orders and notices issued by the adjudicating authority are liable to be interfered with by this Court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India.

45. Coming to the question of maintainability of the writ petition in view of the availability of statutory alternative remedy, the

respondents have raised objections that whatever issues have been urged by the petitioner before this Court can very well be looked into by the appellate authority prescribed under the statute. Therefore, the question of exercise of prerogative writs by this court is not called for and the writ petition should be dismissed and the petitioners should be relegated to avail the statutory remedy. That

46. While the respondents are within their rights to raise their objections, time and again the question of issuance of prerogative writs even where statutory alternative remedies are available and/or are not availed of by the assessee, has come up before this Court as well as the Apex Court in a catena judgments. The Assam High Court in *Hardeodas Jagannath Vs. Income Tax Officer*, reported in (1961) 47 ITR 56 had clearly held that there is no inflexible rule that the existence of an alternative remedy is a bar to the issue of writ of certiorari. The issuance of prerogative writs or directions is always to the discretion of the Court and the Court while exercising its discretion may take into consideration the existence of an alternative remedy as a matter of policy, but the existence of an alternative remedy is not per se a bar to the issue of writ of certiorari.

The High Court at Paragraph 42 held as under:

"42 No Tribunal and no Officer can confer jurisdiction or authority or competence upon itself or himself by misconstruing a section. An

authority cannot claim to exercise jurisdiction by construing a section erroneously and thereby contending that the section so wrongly construed gives him the necessary power. In such a case, if the section has been wrongly construed, it would be a clear case of absence of jurisdiction apparent on the face of the record because the Court has got to look at the section and to decide whether the officer construing the section was in the right or in the wrong."

47. The Apex Court in *TELCO Vs. Assistant Commissioner*, reported in *AIR 1967 SC 1 401* held that though ordinarily High Court leaves an aggrieved party to take recourse to the remedies available under the ordinary law, if they are equally efficacious, yet there are certain exceptions and one of such exceptions pointed out is where action is being taken arbitrarily and without the sanction of law.

48. In *State of U.P Vs. Mohd. Nooh*, reported in *1958 SCR 595*, the Apex Court held that the rule requiring the exhaustion of statutory remedies before the writ is granted is a rule of policy, convenience and discretion rather than rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies.

49. In *Bhopal Sugar Industries Vs. D.P Dubey*, reported in *AIR 1967 SC 549*, the Apex Court held that the High Court has undoubted jurisdiction to decide the writ application whether the taxing authority has arrogated to itself, powers which it does not possess or has committed serious errors of procedure which has affected the

validity of the decision or where the taxing authority threatens to recover tax on an interpretation of the statute which is erroneous.

50. In *Altafur Rahman Vs. Union of India*, reported in (1986) 1 GLR 14, this Court held that when the challenges of the petitioner go to the root of the jurisdiction of the Controller and therefore the writ petition cannot be dismissed without disposing the contentions of the petitioner on merits.

51. In *Whirlpool Corporation Vs. Registration of Trade Mark*, reported in (1998) 8 SCC 1, the Apex Court on the question of alternative remedy held that exception on the existence whereof a Writ Court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute were laid down by the Apex Court as under :

(i) where the writ petition seeks enforcement of any of the fundamental rights.

(ii) where there is violation of principles of natural justice;

(iii) Where the order or the proceedings are wholly without jurisdiction; or

(iv) Where the vires of an Act is challenged

52. In *Godrej Sara Lee Ltd (Supra)*, the Apex Court held that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under Article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". The Court made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. The Apex Court in further held that dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper. The Apex Court further held that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the high court instead of dismissing the writ petition on the ground of an alternative remedy being available. The relevant paragraph is extracted below:

"9. Now, reverting to the facts of this appeal, we find that the appellant had claimed before the High Court that the suo motu revisional power could not have been exercised by the Revisional Authority in view of the existing facts and circumstances leading to the only conclusion that the assessment orders were legally correct and that the final orders impugned

in the writ petition were passed upon assuming a jurisdiction which the Revisional Authority did not possess. In fine, the orders impugned were passed wholly without jurisdiction. Since a jurisdictional issue was raised by the appellant in the writ petition questioning the very competence of the Revisional Authority to exercise suo motu power, being a pure question of law, we are of the considered view that the plea raised in the writ petition did deserve a consideration on merits and the appellants writ petition ought not to have been thrown out at the threshold."

53. Again in Union of India Vs. Parashtom Dass, reported in 2023 SCCOnline SC 314, the Apex Court held that the provision of Article 226 of the Constitution forming part of the basic structure of the Constitution and that the self-restraint of the High Court under Article 226 of the Constitution is distinct from putting an embargo on the High Court in exercising this jurisdiction under Article 226 of the Constitution while judicially reviewing a decision arising from an order of the Tribunal. The relevant Paragraphs are extracted below:

"A High Court Judge has immense experience. In any exercise of jurisdiction under Article 226, the High Courts are quite conscious of the scope and nature of jurisdiction, which in turn would depend on the nature of the matter.

We believe that there is no necessity to carve out certain case from the scope of judicial review under Article 226 of the Constitution, as was suggested by the learned Additional Solicitor General. It was enunciated in the Constitution Bench Judgment in S.N. Mukherjee case that even in respect of courts-martial, the High Court could grant appropriate relief in a certain scenario as envisaged therein, i.e., "if the said proceedings have resulted in denial of the fundamental rights guaranteed under Part III of the Constitution or if the said proceedings suffer from a jurisdictional error or any error of law apparent on the face of the record."

There appears to be a misconception that the High Court would re-appreciate the evidence, thereby making it into a second appeal, etc. WE believe that the High Courts are quite conscious of the parameters within

which the jurisdiction is to be exercised, and those principles, in turn, are also already enunciated by this Court."

54. From a careful analysis of the judgments discussed above, it is clear that the writ Court can interfere any arbitrary action notwithstanding the availability of alternative remedy when the authorities acts within jurisdiction or in exercise of jurisdiction or there is a procedural irregularity or were the order is high handed and is palpably illegal order in as much the same would amount to violation of Article 14 of the Constitution of India.

55. Although ordinarily it is the law enunciated by this court as well as by the Apex Court that an aggrieved assessee ought to avail of statutory remedies ascribed or prescribed under the statute, there is no quarrel on this principle of law. The GST is a complete code in itself providing for filing of returns, assessments, recovery as well as for appeals before the appropriate appellate authority. The facts involved in the present proceedings are however peculiar in essence that this show cause notice and the consequential confirmation of demand by the impugned order in original was a proceeding initiated by the respondent authority after invoking the extended period of limitation under Section 73(1). Therefore, in an ordinary course of proceedings seeking recovery of tax demanded, the normal course

would be to avail of the statutory remedies. However, before the authorities invoke their jurisdiction under section 73(1), it is the mandate of the statute that the authorities must come to a specific conclusion that the jurisdiction conferred on the revenue authorities under Section 73 (1) can be invoked in the facts and circumstances of the present case. As have been elaborately discussed in the preceeding paragraphs that for invocation of jurisdiction under section 73(1), the respondent authorities must come to a conclusion that the invocation of the powers under section 73 (1) is necessary as the petitioner's case falls under any of the conditions mentioned in the proviso to section 73(1) of the CGST Act. However, from the recital of the order impugned, it is seen that the primary reason for invoking the jurisdiction under section 73(1) is non furnishing of the required documents by the petitioner assessee to be full satisfaction of the respondent authorities. This mere non furnishing of documents or information in itself cannot be construed to have given rise to a situation under any or all of these five conditions under proviso to section 73(1) in order to levy service tax by extending limitation by the revenue authorities who have invoked this powers under section 73(1). Under such circumstances, ordinarily the revenue authorities could not have issued the impugned notice in demand followed by the order in original as it would have been hit by

limitation. It is only by invocation of Section 73(1) under the GST Act that the revenue authorities have assumed powers for issuance of the show cause and the consequential confirmation by the impugned order in original by extension of the limitation. Therefore, the parameters prescribed under the proviso to section 73 (1) are to be scrupulously and diligently followed by the revenue authorities. It does not depend on the *ipse dixit* of the revenue authorities. They must certainly arrive at a specific conclusion that the non-furnishing of documents leading to non-payment of GST is a deliberate and willful attempt by the petitioner assessee to evade from payment of the taxes due. The revenue authorities were within their rights to issue appropriate notices and carry out proceedings within the ordinary period of limitation prescribed, if it was their conclusion on due examination of the materials before them that there was any shortfall in the payment of GST and the same was required to be recovered. However, this process for demand and recovery was not initiated within the period of limitation ordinarily prescribed under the provisions of the Act. Therefore, the revenue authorities invoked the provisions under Section 73(1) to issue the demand cum show cause notice and the consequential impugned order in original confirming the demand and imposition of penalty and interest. It is the view of this Court that while demand and recovery of taxes as ordinarily

prescribed under the provisions of the Act requires careful consideration of the facts and circumstances and satisfaction of all the parameters prescribed upon, the demand and recovery under the extended period of limitation under section 73(1) being an exception to the General Rule, requires a higher degree of responsibility and diligence on the part of the revenue authorities before they can proceed to invoke the powers conferred under section 73(1).

56. It is a trite law that greater the power prescribed under the statute greater will be the responsibility on the authorities on whom it has been bestowed to ensure that no infraction of the provisions of the Act and the Rules are made and no injustice is caused to the assessee during the process of demand and recovery. This Court while examining the facts and circumstances in minute detail and the exposition of the law laid down by various Courts including this Court as well as the Apex court of the country has held that for the Revenue authorities to invoke the powers under section 73(1), there must be a conclusive finding by the Revenue authorities that the petitioner assessee under the facts and circumstances, had wilfully and deliberately evaded or neglected to pay the GST. This conclusion by the Revenue authorities is not apparent and discernible from a plain reading of the impugned order in original. It is not a case that the petitioner assessee never responded to the notices. It is not a

case that the documents which were called for required to be submitted were not furnished. The ST-3 Returns filed by the petitioner assessee were available in the records of the revenue authorities and which would have given a complete picture of the services rendered by petitioner assessee and/or whether such services come within the ambit of service taxes or are excluded by any circular or notification issue. However, there is no finding by the revenue authorities as to why this aspect was not examined. There is no conclusion of the revenue authorities in this aspect of the matter as is evident from the impugned order in original.

57. Therefore, under such circumstances the invocation of extended period of limitation under section 73(1) has been held by this Court to be invalid and contrary to the prescriptions mandated by law. This being a position, it is a clear case of assumption of jurisdiction by the Revenue authorities where the statutes did not confer them such jurisdiction by default. A Writ Court while exercising its powers under Article 226 can certainly examine whether the Tribunal or the quasi-judicial authority by exercising its jurisdiction mandated under the statute has fulfilled the necessary pre-conditions prescribed by the statute itself.

58. In the facts and circumstances of the case, it is the conclusion arrived at by this Court that such preconditions mandated by law under section 73(1) having not been fulfilled by the Revenue authorities, their assumption of jurisdiction under section 73(1) of the GST Act was completely unwarranted and revenue authorities could not have assumed the jurisdiction under section 73(1) unless these pre-conditions mandated and a conclusion thereto has been arrived at by the Revenue authorities before assumption of such jurisdiction. It is under these circumstances that notwithstanding the availability of statutory alternative remedy, this Court considers it an appropriate case to invoke its jurisdiction under Article 226 to interfere with the impugned order in original and to set aside and quash the order-in-original. Under these circumstances, the case laws referred to by the respondents will have no bearing in the facts and circumstances of the present proceedings. There is also no quarrel with the general proposition of law that in the face of statutory alternative remedy being available, a Writ Court would ordinarily not invoke its power of issuance of prerogative Writs. Since this Court has held that the levy of service tax on the petitioner by extending the limitation is contrary to the provisions of law, the natural corollary that would follow is that the levy of all penalty, surcharge and interest are also not leviable on the petitioner, this

Court therefore issues a writ of certiorari setting aside the impugned demand cum show cause notices and impugned order in original and it is ordered accordingly.

59. Therefore the writ petition stands accordingly allowed. However no order as to cost. Pending I.A.s are also dismissed and the interim order if any stands merged.

JUDGE

Comparing Assistant