

GAHC010103852023



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

Case No. : WP(C)/2685/2023

M/S RAJKAMAL AND COMPANY
A PARTNERSHIP FIRM HAVING ITS PRINCIPAL PLACE OF BUSINESS AT
HOTEL RAJMAHAL, A.T. ROAD, GUWAHATI-781001, DIST. KAMRUP(M),
ASSAM, REPRESENTED BY ONE OF ITS PARTNERS, SRI MANOJ KUMAR
SETHIA, AGED ABOUT 53 YEARS.

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE, GOT. OF INDIA, NEW DELHI.

2:THE PRINCIPAL COMMISSIONER
GST AND CENTRAL EXCISE PRINCIPAL COMMISSIONERATE
GST BHAWAN
KEDAR ROAD
FANCY BAZAR
GUWAHATI-781001
ASSAM

3:THE COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
DIST. KAMRUP(M)
GUWAHATI-781001.

4:THE COMMISSIONER (APPEALS)
CENTRAL GOODS AND SERVICES TAX
CENTRAL EXCISE AND CUSTOMS
3RD FLOOR
GST BHAWAN
KEDAR ROAD
MACHKHOWA
GUWAHATI-781001
DIST. KAMRUP(M)

ASSAM

5:JOINT COMMISSIONER
OFFICE OF THE PRINCIPAL COMMISSIONER
GST AND CENTRAL EXCISE PRINCIPAL COMMISSIONERATE
GST BHAWAN
ROOM NO. 103
KEDAR ROAD
FANCY BAZAR
DIST. KAMRUP(M)
GUWAHATI-781001.

6:THE SUPERINTENDENT OF CGST
OFFICE OF THE COMMISSIONER OF (APPEALS) CENTRAL EXCISE AND
CUSTOMS
3RD FLOOR
GST BHAWAN
KEDAR ROAD
MACHKHOWA
GUWAHATI-781001
DIST. KAMRUP(M)
ASSAM

Advocate for the Petitioner : MR. O P BHATI

Advocate for the Respondent : DY.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 31.05.2023

Heard Mr. O.P. Bhati, learned counsel for the petitioner and Mr. S.C. Keyal, learned Standing Counsel, GST for all the respondents.

2. The petitioner has assailed an order dated 16.11.2020 [Annexure-C] passed by the Assistant Commissioner, CGST under Section 66 of the CGST Act, 2017 whereby the said authority has ordered to conduct Special Audit for GST accounts of the petitioner for the period from July, 2017 to September, 2020. The petitioner has also assailed an order dated 02.01.2023 [signed on 01.02.2023] [Annexure-J] whereby the petitioner has been informed that the petitioners appeals filed under Section 107 of the CGST Act, 2017 have been found

to be not qualified by the Commissioner [Appeals], Guwahati. The grounds of assailment of the order dated 16.11.2020 are inter alia that the conditions precedent for an order to conduct Special Audit were absent. The contention as regards the decision about terming the appeals of the petitioners as non-qualified are no in conformity with the provisions of Section 107, more particularly, sub-section [8] and sub-section [12] thereof, of the CGST Act, 2017.

3. Mr. Keyal, learned Standing Counsel, GST has submitted that he has only received the relevant note-sheet leading to the passing of the order dated 16.11.2020 whereby the Assistant Commissioner had sought prior approval of the Commissioner for conducting Special Audit under Section 66 of the CGST Act, 2017. He has submitted that he has not yet received the copy of the order passed by the appellate authority under Section 107 whereby the petitioner's appeals were termed as non-qualified. He has, therefore, sought for listing of the case on 05.06.2023. It is submitted by him that the chartered accountant appointed for conducting the Special Audit has not yet proceeded with the Special Audit so conducted and he will not proceed till the next date of listing.

4. Having regard to the submission advanced by Mr. Keyal, learned Standing Counsel, GST, let the case be listed again on 05.06.2023.

JUDGE

Comparing Assistant