

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 : 09.06.2023

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

2. By instituting the instant writ petition, the petitioner has assailed an order dated 16.11.2020 [Annexure-C] and an order dated 'Nil' [Part of Annexure-C at Page no. 40]. By order dated 16.11.2020, the respondent no. 5 has ordered to conduct Special Audit for GST Accounts of the petitioner firm for the period mentioned therein, by appointing a Chartered Accountant for Special Audit under Section 72[a] of the Finance Act, 1994 read with Section 174[2][e] and Section 66 of the CGST Act, 2017.

3. Mr. Bhati, learned counsel for the petitioner has referred to Section 66 as well as Section 107 of the CGST Act, 2017 to advance his submissions. It is submitted by him that the competent authority before passing an order for Special Audit with prior approval of the Commissioner, has to form an opinion that the value has not been correctly declared or the credit availed is not within the normal limits. In order to reach such an opinion, there are two aspects which are to be considered as condition precedent, *firstly*, the nature and complexity of the acts; and *secondly*, the interest of revenue. It is his submission that the two condition precedents are found apparently absent in the impugned order dated 16.11.2020. It is his further submission that the authority who has directed Special Audit, has not considered the two aspects not even in the contemporaneous records maintained for the purpose. Thus, it is clear non-application of mind on the part of the said authority and thus, arbitrary. It is further submitted by him that the appeals preferred by the petitioner against the impugned order dated 16.11.2020 were disallowed, merely citing a reason to the effect that the appeals did not qualify, without passing any reasoned order. The fact that the appeals of the petitioner did not qualify had been communicated to the petitioner by a letter dated 01.01.2023, signed on 01.02.2023 [Annexure-J], signed by a Superintendent, by the O/o the respondent no. 4.

4. It is submitted by Mr. Keyal, learned Standing Counsel, GST, on instruction, that the Chartered Accountant firm who has been entrusted to conduct the Special Audit, has not yet proceeded with the Special Audit.

5. Issue notice, returnable in 3 [three] weeks.

6. As Mr. Keyal has appeared and accepted notices on behalf of all the respondents, no formal notices need to be issued in respect of any of the respondents. The petitioner shall serve an extra copy of the writ petition along with annexures, to Mr. Keyal within 3 [three] working days.

7. Having regard to the provisions of Section 66 and Section 107 of the CGST Act, 2017 vis-à-vis the contents of the impugned order dated 16.11.2020 which *prima facie* does not

reflect about consideration of the two aspects mentioned in Section 66 of the CGST Act, 2017, it is provided that the respondent authorities shall not take any coercive action against the petitioner till the returnable date.

JUDGE

Comparing Assistant