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2026:GAU-AS:8420

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

Case No. : WP(C)/3085/2023

M/S EASTERN GAS AND ASSOCIATES
A PARTNERSHIP FIRM REGISTERED UNDER THE PARTNERSHIP ACT, 1932
AND HAVING ITS PLACE OF BUSINESS AT BAMUNIMAIDAN, KAMRUP (M),
GUWAHATI-781021 ASSAM

VERSUS

THE UNION OF INDIA AND 2 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NORTH BLOCK,
NEW DELHI-110001

2:THE COMMISSIONER OF TAXES
CENTRAL GOODS AND SERVICE TAX
GST BHAWAN
KEDAR ROAD
GUWAHATI-01
ASSAM

3:THE ASSISTANT COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
GUWAHATI
GST BHAWAN
KEDAR ROAD
GUWAHATI
ASSA

Advocate for the Petitioner : MS. M L GOPE, MS. H JAIN,MR S K SAHA,MS. N HAWELIA

Advocate for the Respondent : SC, GST,

BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE

ORDER

Date : 12.06.2026

Heard Ms. N. Hawelia, learned counsel for the petitioner. Also heard Dr. B. N. Gogoi, learned Standing Counsel, CGST, for the respondents.

2. Challenge made in the present writ petition is to the Order-in-Original No. GD/AC/29/GHY/AUDIT/CGST/2022-23, dated 17.05.2022, passed by the Assistant Commissioner, Central Goods and Services Tax, Ministry of Finance, Department of Revenue, Government of India, whereby the Demand-cum-Show Cause Notice dated 18.10.2019 has been confirmed and a service tax demand of Rs. 5,57,627/- (Rupees five lakhs fifty seven thousand six hundred twenty-seven) only, including cess, has been raised against the petitioner under Section 73(2) of the Finance Act, 1994. By the said order, interest under Section 75 of the Finance Act, 1994 has also been directed to be recovered, a penalty of Rs. 10,000/- has been imposed under Section 77 of the Finance Act, 1994 and a further penalty of Rs. 5,57,627/- (Rupees five lakhs fifty seven thousand six hundred twenty-seven) only has been imposed under Section 78 of the Finance Act, 1994, with the benefit of payment at the reduced rate in terms of the second proviso to Section 78 of the Finance Act, 1994.

3. The petitioner is a partnership firm having its office at Radhika Bhawan, MRD Road, Bamunimaidan, Kamrup(M), Guwahati, Assam, being represented by

Shri Kula Tilak Talukdar, and is a registered dealer under the provisions of the Finance Act, 1994 having Registration No. AABFE4936EST001. During the financial year 2014-15, the petitioner was engaged as a contractor under various Public Sector Undertakings, including the Indian Oil Corporation Limited.

4. It is the case of the petitioner that payments received in respect of such works contracts were exempted from levy of service tax in terms of Notification No. 25/2012-S.T and therefore, no service tax was payable on such receipts. The respondent authorities, on the basis of information obtained from the Income Tax Department in Form 26AS pertaining to the financial year 2014-15, initiated proceedings against the petitioner by issuing a Show Cause Notice dated 18.10.2019 for recovery of service tax amounting to Rs. 5,57,627/- along with interest and imposed penalties under the provisions of the Finance Act, 1994. The petitioner contends that the Form 26AS merely reflected payments on which tax had been deducted at source and could not, by itself, constitute the basis for determination of service tax liability.

5. It is the contention of the petitioner that after receipt of the Show Cause Notice, no further notice of hearing or communication was served upon the petitioner and therefore, the petitioner was under the impression that the proceedings initiated pursuant to the Show Cause Notice had not been proceeded with. However, subsequently, the petitioner received the impugned Order-in-Original dated 17.05.2022 whereby the service tax demand proposed in the Show Cause Notice was confirmed along with interest and penalties.

6. Ms. N. Hawelia, learned counsel for the petitioner, submits that the impugned Order-in-Original dated 17.05.2022 is wholly unsustainable in law inasmuch as the demand of service tax has been raised solely on the basis of Form 26AS obtained from the Income Tax Department without there being any independent material on record to establish that the petitioner had rendered any taxable service attracting liability under the Finance Act, 1994. She submits that both the Show Cause Notice dated 18.10.2019 and the consequential adjudication order dated 17.05.2022 are barred by limitation. Referring to the provisions of Section 73 of the Finance Act, 1994, she submits that the demand pertains to the financial year 2014-15 and the show cause proceedings were initiated beyond the normal period of limitation. In the absence of any material to establish fraud, collusion, wilful misstatement or suppression of facts with intent to evade payment of tax, invocation of the extended period of limitation was wholly impermissible and as such, the impugned Order-in-Original dated 17.05.2022, having been passed solely on the basis of Form 26AS and without any independent determination of taxable liability under the Finance Act, 1994, is liable to be set aside and quashed.

7. By relying on judgment and order dated 09.01.2026, passed by this Court in the case of **Technocom Vs. Union of India & Anr.**, reported in **(2026) 156 GSTR 602 (Gauhati),** Ms. Hawelia, learned counsel for the petitioner, submits that this Court had allowed the writ petition in a similar matter and therefore, prays for grant of similar relief to the present petitioner.

8. Dr. B. N. Gogoi, learned Standing Counsel, CGST, fairly submits that the case of **Technocom** (supra), as relied by the learned counsel for the petitioner, has been rendered on similar facts and law, which would cover the case of the present petitioner.

9. Considered the submissions of the learned counsel for the parties and also perused the judgment and order dated 09.01.2026, passed by this Court in the case of **Technocom** (supra).

10. The relevant paragraphs of the aforesaid judgment are reproduced hereinbelow:

> "*32. 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 to Railways 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.*
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> *38. 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.*
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> *40. 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:*
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> *(a) Fraud; or*
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> *(b) Collusion; or*
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> *(c) Willful misstatement; or*
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> *(d) Suppression of facts; or*
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> *(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.*
>
> *46. 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.

57. 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 interfered with by this Court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India.

71. 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 order in original and it is ordered accordingly.*

72. 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."

11. A perusal of the aforesaid judgment shows that the co-ordinate Bench of this Court held that a service tax demand founded solely on Form 26AS, without any independent examination of the nature of services rendered and without recording the statutory preconditions necessary for invocation of the extended period of limitation under Section 73 of the Finance Act, 1994, is unsustainable in law. It is further held that such assumption of jurisdiction by the adjudicating authority would be unauthorized and liable to be interfered with in exercise of powers under Article 226 of the Constitution of India. Consequently, the impugned order-in-original in that case was set aside and quashed together with the consequential demand of interest and penalties.

12. In the present case, both the learned counsel for the parties are in consensus that the issue involved stands covered by the decision of the co-ordinate Bench in **Technocom** (supra), to which this Court is in full agreement with. Thus, I am of the considered opinion that no further adjudication is required in the present proceedings as the issue has already settled by this Court. Thus, the petitioner is entitled to similar relief as granted in Technocom (supra).

13. Accordingly, the impugned Order-in-Original dated 17.05.2022 passed by the Assistant Commissioner, Central Goods and Services Tax, Ministry of Finance, Department of Revenue, Government of India, is hereby set aside and quashed. Consequently, the demand of service tax, interest and penalties imposed upon the petitioner pursuant thereto shall also stands set aside.

14. Writ petition accordingly stands allowed and disposed of.

JUDGE

Comparing Assistant