GAHC010166582018

2019:GAU-AS:20839

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

Case No. : WP(C)/7686/2018

M/S. AGLOWMED LTD.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF COMPANIES ACT, 1956 (READ WITH THE COMPANIES ACT 2013) HAVING ITS PLACE OF BUSINESS AT A.K. AZAD ROAD, REHABARI, GUWAHATI, ASSAM, REP. BY SHRI GOPAL KUMAR PRASAD.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY, TO THE GOVT. OF ASSAM, DEPARTMENT OF FINANCE AND TAXATION, DISPUR, ASSAM, GUWAHATI - 781006.

2:THE COMMISSIONER OF STATE TAX
(EARLIER COMMISSIONER OF TAXES)

ASSAM KAR BHAVAN

DISPUR
GUWAHATI- 781006.

3:THE JOINT COMMISSIONER OF STATE TAX
(EARLIER JOINT COMMISSIONER OF TAXES)
ASSAM
GUWAHATI
KAR BHAWAN
GUWAHATI
ASSAM-05.

4:THE SUPERINTENDENT OF STATE TAX

(EARLIER SUPERINTENDENT OF TAXES)

UNIT -D)
KAR BHAWAN
DISPUR
GUWAHATI-05.

5:THE STATE BANK OF INDIA

A.T. ROAD
BRANCH
GUWAHATI
ASSAM-01

Advocate for the Petitioner : MS. M L GOPE, MS. N HAWELIA,MS. N GOGOI,MS. N MECH

Advocate for the Respondent : SC, FINANCE AND TAXATION, MS B GOGOI

Linked Case : WP(C)/6728/2018

M/S. AGLOWMED LTD.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT
1956 HAVING ITS PLACE OF BUSINESS AT A K AZAD ROAD
REHABARI
GUWAHATI
ASSAM
REP. BY SRI GOPAL KUMAR PRASAD

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
DEPT OF FINANCE AND TAXATION
DISPUR
ASSAM
GUWAHATI- 781006

2:THE COMMISSIONER OF STATE TAX (EARLIER COMMISSIONER OF TAXES)
ASSAM KAR BHAVAN
DISPUR
GUWAHATI- 781006

3:THE JOINT COMMISSIONER OF STATE TAX (EARLIER JOINT COMMISSIONER OF TAXES)
ASSAM
GUWAHATI
KAR BHAWAN
GUWAHATI
ASSAM

4:THE SUPERINTENDENT OF STATE TAX (EARLIER SUPERINTENDENT OF TAXES)
UNIT D
KAR BHAWAN
DISPUR
GUWAHATI

5:THE STATE BANK OF INDIA
A T ROAD BRANCH
GUWAHATI
ASSAM

Advocate for : MS. M L GOPE
Advocate for : SC
TAXES appearing for THE STATE OF ASSAM AND 5 ORS

Linked Case : WP(C)/7582/2018

M/S. AGLOWMED LTD.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF COMPANIES ACT
1956 (READ WITH THE COMPANIES ACT
2013) HAVING ITS PLACE OF BUSINESS AT A.K. AZAD ROAD
REHABARI
GUWAHATI
ASSAM REPRESENTED BY SRI GOPAL KUMAR PRASAD.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMMISSIONER AND SECRETARY
TO THE GOVERNMENT OF ASSAM
DEPTT. OF FINANCE AND TAXATION
DISPUR
GUWAHATI- 781006.

2:THE COMMISSIONER OF SALES TAX (EARLIER COMMISSIONER OF TAXES)

ASSAM KAR BHAVAN
DISPUR
GUWAHATI- 781006.

3:THE JOINT COMMISSIONER OF STATE TAX (EARLIER JOINT COMMISSIONER OF TAXES)
ASSAM
GUWAHATI
KAR BHAWAN
GUWAHATI
ASSAM.

4:THE SUPERINTENDENT OF STATE TAX (EARLIER SUPERINTENDENT OF TAXES)

UNIT-D
KAR BHAWAN
DISPUR
GUWAHATI.

5:THE STATE BANK OF INDIA
A.T. ROAD BRANCH
GUWAHATI
ASSAM.

Advocate for the petitioner(s): Ms. N Hawelia

Advocate for the respondent(s): Mr. M Bhuyan

B E F O R E

HON'BLE MR. JUSTICE DEVASHIS BARUAH

ORDER

17.02.2026

Heard Ms. N Hawelia, the learned counsel appearing on behalf of the

petitioner. I have also heard Mr. M Bhuyan, the learned counsel, who appears on behalf of the respondent Department.

2. These three writ petitions have been filed by the petitioner against the common Revisional Order dated 10.05.2018 passed by the Joint Commissioner of Taxes for the assessment years i.e. 2007-2008, 2008-2009, 2009-2010 under the ***Assam Value Added Tax Act, 2003*** (for short, '*the Act of 2003*').

3. Ms. N Hawelia, the learned counsel appearing on behalf of the petitioner has submitted that the respondent Department had passed the orders of re-assessment thereby imposing tax on the free samples which the petitioner Company as wholesale distributor have provided to the retailers. The learned counsel submitted that in respect to free sample which has been provided to the retailer by the wholesale distributor as there is no consideration taken for the free samples, the question of imposition of a tax on such free samples is not permissible. The learned counsel further submitted that this aspect was brought to the notice of the Revisional Authority by filing three revision applications. However, the same was rejected vide a common order passed on 10.05.2018 which is the subject matter of the instant three writ petitions.

4. The learned counsel for the petitioner referred to the judgment of the Supreme Court in the case of the ***State Of Rajasthan And Anr. Vs. Rajasthan Chemist Association*** reported in ***(2006) 6 SCC 773*** and as per the submission of the learned counsel, the said judgment would show that the impugned order as well as the impugned Notification which form the basis of the impugned order cannot be sustained in law.

5. This Court has duly perused the judgment of the Supreme Court in ***Rajasthan Chemist Association*** (supra) and the issue involved therein is as

to whether the taxable turnover of a wholesale distributor is to be calculated on the basis of the maximum retail price or on the basis of the price at which the wholesale distributor has sold the medicines to the retailers.

6. In the *prima facie* opinion of this Court, the issue involved in the instant case, however, is different and the said judgment in the case of ***Rajasthan Chemist Association*** (supra) would not come in aid of the petitioner unless and until the Explanation 3 to Section 10 of the Act of 2003 is not challenged.

7. Be that as it may, Ms. N Hawelia, the learned counsel appearing on behalf of the petitioner submitted that taking into account that the instant writ petition is already 8(eight) years old, she would like to obtain instructions from her client as to the mechanism in which the petitioner as a wholesale distributor sold the drugs and medicines to the retailers in respect to which free samples were distributed to the retailers.

8. List these matters again on 24.02.2026 at 2 P.M. for final disposal showing it as part-heard.

JUDGE

Comparing Assistant