

GAHC010242052024



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

Case No. : WP(C)/6154/2024

M/S BHAGYA KALITA
A PROPRIETORSHIP CONCERN HAVING ITS OFFICE AT 5TH FLOOR, BEE
KEY TOWER, R.P ROAD, GANESHGURI, DISPUR KAMRUP M ASSAM
781006.
REPRESENTED BY SRI BHAGYA KALITA AGED ABOUT 74 YEARS,
RESIDENCE OF PP ROAD, REHBARI, GUWAHATI 781008

VERSUS

UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY MINISTRY OF FINANCE, REVENUE
DEPARTMENT, NEW DELHI 110001.

2:THE PRINCIPAL COMMISSIONER

O/O PRINCIPAL COMMISSIONER
CGST
COMMISSIONERATE
GUWAHATI
GST BHWAN
FIRST FLOOR
KEDAR ROAD
MACHKHOWA
GUWAHATI 781001

3:THE COMMISIONER CGST
CENTRAL TAX COMMISSIONERATE
GST BHAWAN
KEDAR ROAD
MACHKHOWA
GUWAHATI 781001

4:THE DIRECTOR GENERAL
CENTRAL ECONOMIC INTELLIGENCE BUREAU (CEIB) NEW DELHI

5:THE JOINT DIRECTOR

DIRECTORATE OF CENTRAL GOODS AND SERVICE TAX INTELLIGENCE
GUWAHATI ZONAL UNIT
HOUSE NO. 77
RUPKONWAR JYOTI PRASAD AGARWALLA ROAD OPP. SHANKARDEV
KALAKHETRA
PO PANJABARI
GUWAHATI ASSAM 781037

6:THE CHIEF ENGINEER
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
GOVT. OF INDIA
GUWAHATI REGIONAL OFFICE
RAJGARH ROAD
CHANDMARI GUWAHATI 781003

7:THE CHIEF ENGINEER

PWD
NH WORKS
ASSAM
CHANDMARI
GUWAHATI 78100

Advocate for the Petitioner : R SARMAH, MR K J HAZARIKA,MS M KAKOTY,MR. P K GOSWAMI

Advocate for the Respondent : DY.S.G.I., SC, NHAI,SC, PWD (NH),SC, FINANCE

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 25.11.2024

- 1)** Heard Mr. P. K. Goswami, learned Senior counsel assisted by Mr. R. Sharma, learned counsel for the petitioner.
- 2)** This writ petition is directed against the show cause notice issued to the petitioner dated 03.08.2024 by the Joint Director, GST Intelligence, Guwahati Zonal Unit as to why powers under Section 74(1) of the CGST Act, 2017 should not be invoked against the petitioner in respect of the amounts raised in the show cause notices at Paragraph-8 thereto.
- 3)** The learned counsel for the petitioner submits that for invocation of jurisdiction of the Department under Section 74(1) of the CGST Act, 2017, there must be prima facie evidence to suggest that the petitioner has resorted to wilful suppression, misstatement or fraud and thereby depriving the revenue of the taxes due to be recovered from the petitioner.
- 4)** The learned counsel for the petitioner submits that the amounts paid by the petitioner are clearly acknowledged in the portal of the dept under the provisions of the Rules read with the Act which clearly reflects the amount of tax paid by the petitioner.
- 5)** He, therefore, submits that unless prima facie there is some material before the jurisdictional authority to arrive at a conclusion that there was an attempt by the petitioner for wilful suppression, misstatement or fraud and thereby attempting to deprive or depriving the revenue of the taxes required to

be paid by the petitioner, the respondent authorities cannot assume jurisdiction under this Section.

6) He has also referred to the circular issued by the Central Board of Direct Taxes and Customs to submit that the competent authority has recently issued a Circular dated 13.12.2023 on this issue whereby the Central Board of Direct Taxes and Customs had clearly instructed the revenue authorities not to invoke Section 74(1) unless there are instances of wilful suppression, misstatement or fraud.

7) As per the said Circular, mere failure to pay appropriate GST will not be considered to be a ground for invocation of Section 74(1). He further submits that the law in this respect is very clear and the circular issued by the authorities are binding on the Departmental Officers as they are duty bound to follow it.

8) It is submitted that perusal of the show cause notice does not reflect that the initiation or invocation of the jurisdiction under Section 74 of the GST Act against the petitioner was considered to be a situation outside the purview of the circular dated 03.08.2024 issued by the competent authority.

9) He therefore submits that where the authority prescribed under law has assumed jurisdiction without any authority, the statutory alternative remedy prescribed will not be an efficacious remedy. Therefore under such circumstances, a constitutional court will have to invoke its discretionary powers under Article 226 of the Constitution as there is no other efficacious alternative remedy.

10) He has referred to the judgment of the Apex Court rendered in "**Calcutta**

Discount Company Limited –Vs- Income-Tax Officer, Companies
reported in "***1961 AIR 372***".

11) He therefore submits that the petitioner should not be relegated to participate in a proceeding which was initiated by an officer contrary to the law laid down by the Courts as well as to the instructions issued under the Departmental Circular.

12) He submits that appropriate order be issued and during the pendency, adequate interim protection be also granted.

13) Mr. S. C. Keyal, learned Standing counsel appears for the Central GST, Mr. B.Gogoi, learned counsel Standing counsel appears for the respondent No.7.

14) Mr. Keyal Submits that he would like to obtain instructions in the matter and has fairly submitted that the petitioner could be benefited by the recent amendments carried out in the GST Act pursuant to the GST Counsel recommendation. He, therefore, craves leave of the Court to complete his instructions in this regard.

15) Having heard the learned counsel for the parties and upon perusal of the materials before the Court, at this stage let notice be issued, returnable in 2 weeks.

16) Respondents may complete their instructions and file their counter affidavit in the meantime, if so advised.

17) In the meanwhile, further proceedings pursuant to the show cause notice dated 03.08.2024 (Annexure-17) page-132 of the writ petition shall remain stayed till the next date of listing.

18) List on 09/12/2024.

19) The learned counsel for the respondent counsel will be served with sufficient extra copies of the writ petition within 2 working days from today.

20) List accordingly.

JUDGE

Comparing Assistant