

GAHC010086202025



2025:GAU-AS:5016

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

Case No. : WP(C)/2153/2025

MS GANAPATI ENERPRISE AND ANR
A PROPRIETORSHIP FIRM SITUATED AT 44 A T ROAD MARWARIPATTY
NAGAON ASSAM 782001 REP BY ITS PROPRIETOR SRI BHARGAB SAIKIA
ASSAM

2: BHARGAB SAIKIA
PROPRIETOR OF THE PETITIONER NO 1 FIRM R/O VILL BHOTAIGAON PO
UDIYAGAON NAGAON ASSA

VERSUS

THE STATE OF ASSAM AND ORS
THROUGH THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSM
MINISTRY OF FINANCE AND TAXTATION KAR BHAWAN GANESGURI
GUWAHATI ASSAM

2:THE COMMISSIONER OF STATE TAX
MINISTRY OF FINANCE AND TAXTATION KAR BHAWAN GANESGURI
GUWAHATI ASSAM

3:THE ASSISTANT COMMISSIONER OF STATE TAX NAGAON 3
NAGAON ZONE ASSAM

4:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
1ST FLOOR TOWER NBCC PLAZA SECTOR 5 PUSHP VIHAR NEW DELHI
11001

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

Advocate for the Respondent : SC, GST, SC, FINANCE AND TAXATION

BEFORE

HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 25-04-2025

1. Heard Ms. M Gope, learned counsel for the petitioner and Mr. B. Choudhury & Mr. B Gogoi, learned Additional Advocate General, Assam for the respondent Nos. 1 to 3.

2. The case of the petitioner herein is that the respondent No. 3 has passed the order dated 28.04.2024 without issuing any show cause notice under Section 73 (1) of the CGST Act, 2017. It is further case of the petitioner that he has sought for an opportunity of hearing, however, without giving any opportunity of hearing, the summary of order has been passed.

3. Both the learned counsels for the parties submit that similar issue has already been dealt in Para 29 of the judgment and order (oral) dated 26.09.2024 passed by a Coordinate Bench in WP(C) No. 3912/2024 and other connected petitions (Construction Catalysers Pvt. Ltd. Vs. the State of Assam and 2 others). Accordingly, this writ petition is having similar issue, the determination made in said Construction Catalysers Pvt. Ltd (supra), shall cover the present case, more particularly, the conclusion and direction arrived at Para 29.

4. Para 29 of Construction Catalysers Pvt. Ltd (supra), being bone of contention, is quoted herein below:-

“CONCLUSION

29. On the basis of the above analysis and determination, this Court disposes of the instant batch of writ petitions with the

following observations and directions:-

(A) The Summary of the Show Cause Notice in GST DRC-01 is not a substitute to the Show Cause Notice to be issued in terms with Section 73 (1) of the Central Act as well as the State Act. Irrespective of issuance of the Summary of the Show Cause Notice, the Proper Officer has to issue a Show Cause Notice to put the provision of Section 73 into motion.

(B) The Show Cause Notice to be issued in terms with Section 73 (1) of the Central Act or State Act cannot be confused with the Statement of the determination of tax to be issued in terms with Section 73 (3) of the Central Act or the State Act. In the instant writ petitions, the attachment to the Summary of Show Cause Notice in GST DRC-01 is only the Statement of the determination of tax in terms with Section 73 (3). The said Statement of determination of tax cannot substitute the requirement for issuance of the Show Cause Notice by the Proper Officer in terms with Section 73 (1) of the Central or the State Act. Under such circumstances, initiation of the proceedings under Section 73 against the petitioners in the instant batch of writ petitions without the Show Cause Notice is bad in law and interfered with.

(C) It is also noticed that the Show Cause Notice and the Statement in terms with Section 73 (1) and 73 (3) of both the Central Act or the State Act respectively are required to be issued only by the Proper Officer as defined in Section 2 (91). Additionally, the order under Section 73 (9) is also required to be passed by the Proper officer. The Summary of the Show Cause Notice, the Summary of the Statement under Section 73 (3) and the Summary of the Order passed in terms with Section 73 (9) are to be issued in GST DRC-01, GST DCR-02 and GST DRC-07 respectively. The issuance of the Summary of the Show Cause Notice, Summary of the Statement and

Summary of the Order do not dispense with the requirement of issuance of a proper Show Cause Notice and Statement as well as Page passing of the Order as per the mandate of Section 73 by the Proper Officer. As initiation of a proceedings under Section 73 and passing of an order under the same provision have consequences. The Show Cause Notice, Statement as well as the Order are all required to be authenticated in the manner stipulated in Rule 26 (3) of the Rules of 2017.

(D) The Impugned Orders challenged in the writ petitions are in violation of Section 75 (4) as no opportunity of hearing was given as already discussed herein above.

(E) The impugned orders challenged in the instant batch of writ petitions, the details of which are given in the Appendix attached to the instant judgment are set aside and quashed.

(F) This Court also cannot be unmindful of the fact that it is on account of certain technicalities and the manner in which the impugned orders were passed, this Court interfered with the impugned orders and hence set aside and quashed the same. It is also relevant to take note of that the respondent authorities were under the impression that issuance of attachment of the determination of tax which was attached to the Summary of the Show Cause Notice would constitute a valid Show Cause Notice. Under such circumstances, in the interest of justice, this Court while setting aside the impugned Orders-in-Original as detailed out in the Appendix, grants liberty to the respondent authorities to initiate de novo proceedings under Section 73, if deemed fit for the relevant financial year in question. This Court further observes and directs that the period from the date of issuance the Summary of the Show Cause Notices upon the petitioners till the date a certified copy of the instant judgment is served upon the

Proper Officer, be excluded while computing the period prescribed for passing of the order under Section 73 (10) of the Central Act as well as the State Act as the case may be.”

5. The issue raised in Construction Catalysers Pvt. Ltd (supra) and the present petition is similar and therefore, the determination made in Construction Catalysers Pvt. Ltd (supra), shall accordingly cover the present petition and as agreed to by the learned counsel for the parties, the present writ petition stands disposed of by setting aside the impugned order dated 28.04.2024 and the summary of show cause notice dated 13.12.2023 in terms of the determination and conclusion arrived at para 29 of Construction Catalysers Pvt. Ltd (supra).

JUDGE

Comparing Assistant