

GAHC010021512024



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

Case No. : WP(C)/683/2024

SRI SUBHASH AGARWALLA
SON OF HANSRAJ AGARWALLA, RESIDENT OF WARD NO.13, ANAND
NAGAR PATH, P.O., P.S. AND DISTRICT-SIVASAGAR, ASSAM-786540

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, DEPARTMENT OF FINANCE AND TAXATION,
DISPUR ASSAM

2:THE PRINCIPAL COMMISSIONER
STATE GOODS AND SERVICES TAX
KAR BHAWAN
G.S. ROAD
DISPUR
GUWAHATI 781006

3:THE JOINT COMMISSIONER
STATE GOODS AND SERVICES TAX SIVASAGAR ZONE
SIVASAGAR
ASSAM

4:THE COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
MILAN NAGAR
LANE -F
P.O- C.R BUILDING
DIBRUGARH 786003

5:THE ASSISTANT COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
DIBRUGARH DIVISION C.R BUILDING
DIBRUGARH-78600

Advocate for the Petitioner : MR. A K GUPTA

Advocate for the Respondent : SC, FINANCE AND TAXATION

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 12.02.2024

Heard Mr. R.S. Mishra, learned counsel for the petitioner; Mr. B. Choudhury, learned Standing Counsel, Finance and Taxation Department for the respondent nos. 1, 2 & 3; and Mr. S.C. Keyal, learned Standing Counsel, CGST for the respondent nos. 4 & 5.

2. An authority under the SGST Act issued a Demand–cum–Show Cause Notice under Section 73 of the SGST Act on 23.11.2022 [Annexure-C] asking the petitioner to show cause as to why the amount indicated therein shall not be demanded and recovered from the petitioner-assessee for the Financial Year :- 2017-2018. An Authority under the CGST Act had thereafter, issued a Demand–cum–Show Cause Notice on 27.04.2023 also under Section 73 of the CGST Act asking the petitioner as to why the amount indicated therein shall not be demanded and recovered from the petitioner-assessee for the Financial Years : 2017-2018, 2018-2019 & 2019-2020. Both the notices had alleged that during the said period, the petitioner-assessee availed and utilized Input Tax Credit [ITC] for the amounts, indicated therein, which were inadmissible in terms of Section 16[4] of the CGST Act/SGST Act. Pursuant to the Show Cause Notice dated 27.04.2023, the authority under the CGST Act has passed an Order-in-Original on 14.11.2023 [Annexure-E]. Subsequently, the authority under the SGST Act has passed an Order-in-Original on 11.12.2023 [Annexure-F].

3. It is the contention of the writ petition that two parallel proceedings in respect of the same period, that is, 2017-2018 is not permissible under the provisions of Section 6 of the CGST Act, 2017 and SGST Act, 2017.

4. Issue notice, returnable on 18.03.2024.

5. As Mr. Choudhury has appeared and accepted notices on behalf of the respondent nos. 1, 2 & 3; and Mr. Keyal has appeared and accepted notices on behalf of the respondent nos. 4 & 5, no formal notices need to be issued in respect of the said respondents. The learned counsel for the petitioner shall serve requisite nos. of extra copies of the petition along with annexures, to Mr. Choudhury and Mr. Keyal within 2 [two] working days from today.

6. Having regard to the provisions contained in Section 6 of the CGST/SGST Act, more particularly, Section 6[2] which *inter alia* indicates that once a proceeding is initiated either of the above two Acts, another proceeding for the same period under the other Act is not to be initiated, the operation of the Order-in-Original dated 11.12.2023 [Annexure-F] passed by the respondent no. 3 shall remain suspended till the returnable date.

JUDGE

Comparing Assistant