GAHC010075472026

2026:GAU-AS:6645

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

Case No. : WP(C)/2258/2026

MS RIYAN ENTERPRISES AND ANR
HAVING ITS OFFICE AND PRINCIPAL OFFICE OF BUSINESS AT SHANTI NAGAR, FATASHIL GUWAHATI , PIN-781025, DIST. KAMRUP METRO, ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM, MINISTRY OF FINANCE AND TAXATION, KAR BHAWAN, GANESHGURI, GUWAHATI, PIN- 781006, DIST. KAMRUP METRO, ASSAM.

2:THE PRINCIPAL COMMISSIONER
KAR BHAWAN
GANESHGURI
GUWAHATI-781006
DIST- KAMRUP (M)
ASSAM

3:THE ASSISTANT COMMISSIONER OF STATE TAX
GUWAHATI
UNIT - B2
GUWAHATI ZONE -B
ASSA

Advocate for the Petitioner : DIKSHITA DAS, MR. M UDDIN,MR. N N JHA

Advocate for the Respondent : SC, FINANCE,

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT

Date : 13.05.2026

Heard Mr. N.N. Jha, learned counsel for the petitioners and Mr. B. Choudhury, learned Standing Counsel, Finance & Taxation Department, Assam for all the respondents.

2. The petitioner no. 1 is a proprietorship firm wherein the petitioner no. 2 is the proprietor and for easy reference, they are collectively referred to as 'the petitioner' hereinafter. It is stated that the petitioner is a Government Contractor with annual turnover below Rupees one crore and it carries on its business in the name and style of M/s Riyan Enterprises. For the purpose of carrying out its business, the petitioner got itself registered under the Goods and Services Tax [GST] Regime vide Registration no. 18AVOPM0352L1Z7.

3. The petitioner has approached this Court by the instant writ petition to assail a Summary of Order dated 30.04.2024 passed by the respondent no. 3 purportedly in exercise of powers conferred under Section 73 of the Assam Goods and Services Tax [AGST] Act, 2017. One of the grounds on which the Summary of Order dated 30.04.2024 has been challenged is that there is no proper and prior Show Cause Notice prescribed under sub-section [1] of Section 73 of the AGST Act, 2017 and the petitioner was only served with a Summary Show-Cause Notice dated 18.12.2023 in Form GST DRC – 01, which was also not in conformity with Section 73 read with Rule 142[1][a] of the AGST Act, 2017. It is stated that after issuing the Summary Show Cause Notice on 18.12.2023 and passing of the impugned Order dated 30.04.2024, the petitioner has been served with a Show Cause Notice for cancellation of Registration on the ground of unpaid liabilities and its Registration has been suspended w.e.f. 08.01.2026.

4. For ready reference, Section 73 of the Central Goods and Services Tax [CGST] Act, 2017 and sub-rule [1] of Rule 142 of the Central Goods and Services Tax Rules, 2017, which provisions are pari materia to Section 73 of the AGST Act and Rule 142[1] of the AGST Rules, 2017, are quoted hereinbelow :-

Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.-

[1] Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

[2] The proper officer shall issue the notice under sub-section [1] at least three months prior to the time limit specified in sub-section [10] for issuance of order.

[3] Where a notice has been issued for any period under sub-section [1], the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section [1], on the person chargeable with tax.

[4] The service of such statement shall be deemed to be service of notice on such person under sub-section [1], subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section [1] are the same as are mentioned in the earlier notice.

[5] The person chargeable with tax may, before service of notice under sub-

section [1] or, as the case may be, the statement under sub-section [3], pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

[6] The proper officer, on receipt of such information, shall not serve any notice under sub-section [1] or, as the case may be, the statement under sub-section [3], in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

[7] Where the proper officer is of the opinion that the amount paid under sub-section [5] falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section [1] in respect of such amount which falls short of the amount actually payable.

[8] Where any person chargeable with tax under sub-section [1] or sub-section [3] pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

[9] The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

[10] The proper officer shall issue the order under sub-section [9] within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

[11] Notwithstanding anything contained in sub-section [6] or sub-section [8], penalty under sub-section [9] shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a

period of thirty days from the due date of payment of such tax.

Rule 142 : [DEMANDS AND RECOVERY]. Notice and order for demand of amounts payable under the Act.-

[1] The proper officer shall serve, along with the

[a] notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01,

[b] statement under sub-section [3] of section 73 or sub-section [3] of section 74, a summary thereof electronically in FORM GST DRC-02, specifying therein the details of the amount payable.

* * * * * * * * * * * *

5. Mr. Jha, learned counsel for the petitioner has referred to a number of other contentions raised and pleaded in this writ petition. Mr. Jha has further placed reliance on a common Judgment and Order dated 26.09.2024 passed by this Court in a batch of writ petitions, W.P.[C] no. 3912/2024 and others and an Order dated 29.10.2025 passed in W.P.[C.] no. 946/2025.

6. Mr. Choudhury, learned Standing Counsel, Finance & Taxation Department has fairly submitted that the common Judgment and Order dated 26.09.2024 has been passed after hearing all the sides and some of the observations made therein would cover the case of the petitioner herein. Mr. Choudhury has referred to the direction made in Paragraph 29[F] of the Judgment and Order dated 26.09.2024 to submit that in case of an adverse order passed in this writ petition, it would be open for the respondent authorities to initiate de novo proceedings in strict observance of the procedure.

7. On perusal, it is found that in the batch of writ petitions, W.P.[C] no. 3912/2024 and others, the following three numbers of issues came up for consideration :-

> [i] Whether Show Cause Notices were issued prior to passing the Impugned Order under Section 73[9] of the State Act?
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> [ii] Whether the determination of tax as well as the Order attached to the Summary of the Show Cause Notice in GST DRC-01 and Summary of the Order in GST DRC-07 can be said to be the Show Cause Notice and Order respectively?
>
> [iii] Whether the impugned orders under Section 73[9] of the State Act is in conformity with Section 75[4] of the State Act and is in consonance with the principles of natural justice?

8. The said batch of writ petitions has been disposed of by a common Judgment and Order dated 26.09.2024 with the following conclusions :-

> **CONCLUSION**
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> 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 DRC-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 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.

9. The parties are not in disagreement on the facts that in the case in hand, there was a Summary of Show Cause Notice in Form GST DRC-01, appended as Annexure-2 to this writ petition, and there was no proper and prior Show Cause Notice issued to the petitioner, as prescribed under sub-section [1] of Section 73, AGST Act, 2017.

10. Non-issuance of a proper and prior Show Cause Notice, as prescribed under sub-section [1] of Section 73 of AGST Act, 2017 and issuance of only a Summary of Show Cause Notice cannot be said to be in compliance with sub-section [1] of Section 73 and sub-rule [1] and Rule 142 of the AGST Rules. A Summary of Show Cause Notice is held to be not a substitute of a Show Cause Notice, prescribed by the provisions of sub-section [1] of Section 73, AGST Act to set the proceeding in motion.

11. From the provisions of Section 73, it emerges that the Show Cause Notice is required to be issued by the Proper Officer, the statement under Section 73[3] is to be issued by the Proper Officer as well as the Order under Section 73[9] is required to be issued by the Proper Officer. Compliance of the provisions contained in sub-section [1] to sub-section [8] and sub-section [10] to sub-section [11] of Section 73 and sub-rule [1] of Rule 142 are conditions precedent to term an Order passed under sub-section [9] of Section 73 as a valid one.

12. Having regard to the fact that a proper and prior Show Cause Notice under sub-section [1] of Section 73 of the AGST Act, 2017 was not issued along with the Summary of Show Cause Notice in Form GST DRC-01 [Annexure-2 to the writ petition], and in terms of the observations made in the common Judgment and Order dated 26.09.2024 [supra], the impugned Order dated 30.04.2024 [Annexure-3 to the writ petition] is found not sustainable in law and the same deserves to be set aside and quashed. It is accordingly ordered. As a result, all other consequential and subsequent actions taken on that basis are held to be infirm.

13. In view of the above determination, it appears not necessary to dilate on the other grounds raised on behalf of the petitioner.

14. It would, however, be open for the respondent authorities to proceed with the matters in accordance with the observation made in Paragraph 29[F] of the common Judgment and Order dated 26.09.2024. Therefore, the period from 18.12.2023, that is, the date of issuance of the Summary of the Show-Cause Notice till the date a certified copy of the instant order is served upon the proper Officer by the petitioner, which is to be done within a period of two weeks from today, is to be excluded while computing the period prescribed for passing of the Order under Section 73[10] of the AGST Act. It is further observed that in the event the respondent authorities proceed in accordance with the provisions of Section 73[1] of the AGST Act by issuing a valid Show Cause Notice and in compliance with the other ancillary legal provisions; and in terms of Paragraph 29[F] of the common Judgment and Order dated 26.09.2024, it would be open for the petitioner to raise all the grounds available under the law.

15. With the above observations, the writ petition is allowed to the extent indicated above. No cost.

JUDGE

Comparing Assistant