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2026:GAU-AS:8739

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

Case No. : WP(C)/2345/2026

MS SARADA REFRIGERATION AND AIR CONDITION AND ANR
72, P.P. ROAD, REHABARI, GUWAHATI- 781008, IN THE DISTRICT KAMRUP(M), ASSAM, A PROPRIETOR FIRM REPRESENTED BY ITS PROPRIETOR SHRI NIPENDRA CHANDRA DEY

2: SHRI NIPENDRA CHANDRA DEY
PROPRIETOR OF SARADA REFRIGERATION AND AIR CONDITION
HAVING ITS OFFICE AT 72
P.P. ROAD
REHABARI
GUWAHATI- 781008
IN THE DISTRICT KAMRUP(M)
ASSA

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM, DEPARTMENT OF FINANCE AND TAXATION, DISPUR, ASSAM, GUWAHATI- 781006

2:THE PRINCIPAL COMMSSIONER OD STATE TAXES
ASSAM KAR BHAWAN
GANESHGURI
GUWAHATI- 781006

3:THE ASSISTANT COMMSSIONER OD STATE TAXES
ASSAM
GUWAHATI
UNIT-D
CIRCLE-7
KAR BHAWAN
GANESHGURI
GUWAHATI- 78100

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioner(s) : Mr. N. N. Jha, Advocate

For the Respondent(s) : Mr. B. Choudhury,
SC, Finance & Taxation

Date on which judgment is reserved : NA

Date of pronouncement of judgment : 17.06.2026

Whether the pronouncement is of the
Operative part of the judgment? : Yes

Whether the full judgment has been
Pronounced? : Yes

JUDGMENT AND ORDER (ORAL)

Heard Mr. N. N. Jha, the learned counsel appearing on behalf of the Petitioners. Mr. B. Choudhury, the learned counsel appears on behalf of the Finance and Taxation Department of the Government of Assam representing the Respondent Nos.1 to 3.

2. The present writ petition has been filed by the Petitioners assailing the Show Cause Notice dated 18.12.2023 issued by the Respondent No.3 as well as also the Order in Original dated 08.03.2024.

3. The learned counsel appearing on behalf of the Petitioners submitted that it is the requirement of law in terms with Section 73(1) of the Assam Goods and Services Tax Act, 2017 (for short, 'the Act of 2017'), that there has to be a Show Cause Notice. The Summary of Show Cause Notice cannot be a substitute to the Show Cause Notice to be issued in terms of Section 73(1) of the Act of 2017. The learned counsel appearing on behalf of the Petitioners further submitted that Rule 142(1)(a) of the Central Goods and Services Tax Rules, 2017 categorically mentions about the Summary of the Show Cause Notice to be issued in Form DRC-01. In that regard, the learned counsel referred to the judgment of this Court in the case of ***Construction Catalysers Private Limited vs. State of Assam and 2 Others***, reported in ***(2025) 2 GLR 85*** and submitted that the issue raised in the present proceedings is no longer res integra.

4. Mr. B. Choudhury, the learned Standing Counsel appearing on behalf of the Finance and Taxation Department of the Government of Assam submitted that the Petitioners have an alternative remedy available under Section 107 of the Act of 2017. He, however truly submitted that the issue involved in the instant proceedings is also covered by the judgment in the case of ***Construction Catalysers Private Limited (supra).*** In addition to that, it is the submission of the Standing Counsel of the Finance

and Taxation Department of the Government of Assam that as it is a technical mistake, the period of limitation which is otherwise prescribed under Section 73(10) of the Act of 2017 to pass an order in terms with Section 73(9) of the Act of 2017 be excluded from the date of issuance of the said Show Cause Notice so that appropriate orders can be passed.

5. This Court, having perused the materials on record, finds it relevant to take note of the observations of this Court at paragraph Nos.20, 21, 22, 23 & 24 of the said judgment in the case of ***Construction Catalysers Private Limited (supra)*** and it is the opinion of this Court that the issue involved in the present proceedings is squarely covered by the said observations and opinion rendered in the case of ***Construction Catalysers Private Limited (supra)***. Accordingly, paragraph Nos.20 to 24, being relevant, are reproduced herein under:-

> "***(ii) Whether the determination of tax as well as the order attached to the Summary to the Show Cause Notice in GST DRC-01 and the Summary of the Order in GST DRC-07 can be said to be the Show Case Notice and Order respectively***.
>
> *20. While deciding supra, this Court duly dealt with what would constitute a Show Cause Notice, the Statement as per Section 73 (3) as well as the Summary to the Show Cause Notice in GST DRC-01 and Summary of the Statement in GST DRC-02. This Court had also opined above that the statement to be provided by the Proper*

Officer in terms with Section 73 (3) cannot be said to be a Show Cause Notice which is required to be issued in terms with Section 73 (1). Therefore, the submission of the respondents that the statement attached to the Summary of the Show Cause Notice is the Show Cause Notice is completely misconceived and contrary to Section 73 (1) and 73 (3). Be that as it may, a very pertinent contention had been made by the learned counsel appearing on behalf of the petitioners to the effect that the attachments to both the Summary of the Show Cause Notice and Summary of the Order have no value as the same contains no authentication of the Proper Officer. In that regard, the learned counsels referred to Rule 26 (3) of the Rules and the judgment in the cases of ***M/s Silver Oak Villas LLP (supra) and A.V. Bhanoji Row (supra)****.*

21. Rule 26 (3) of the Rules of 2017 categorically stipulates as to how notices, certificates and orders are to be authenticated. The said Sub-Rule is reproduced herein under:-

> "*26.(3) All notices, certificates and orders under the provisions of this Chapter shall be issued electronically by the proper officer or any other officer authorised to issue such notices or certificates or orders, through digital signature certificate [or through E-signature as specified under the provisions of the Information Technology Act, 2000 (21 of 2000) or verified by any other mode of signature or verification as notified by the Board in this behalf.]"*

A perusal of the above quoted Sub-Rule would show that notices, certificates and orders under the provisions of Chapter III *shall be issued electronically by the Proper Officer or any other officer authorized to issue such notices or certificates or orders through digital signature certificate or through e-signature as specified under the provisions of the Information Technology Act, 2000 or verified by any other mode of signature or verification as notified by the Board in that behalf. It is relevant to take note of that Chapter III of the Rules of 2017 pertains to* ***Registration*** *whereas in respect to* ***Demand and Recovery****, it is Chapter XVIII.*

22. Now therefore a question arises as to whether Rule 26 (3) can be applicable to Chapter-XVIII when the said Sub-Rule on refers to ChapterIII. In the case of ***M/s Silver Oak Villas LLP (supra)****, the learned Division Bench of the Telangana High Court had applied Rule 26 (3) of the Rules of 2017 even to Chapter-XVIII of the Rules of 2017. In the case of* ***A.V. Bhanoji Row (supra)****, the learned Division Bench of the Andhra Pradesh High Court held that the signatures cannot be dispensed with and Sections 160 and 169 cannot save an order, notice, communication which did not contain a signature. In another judgment of the learned Division Bench of Delhi High Court in the case of* ***Railsyls Engineers Private Limited vs. Additional Commissioner of Central goods and Services Tax (Appeals-11) and Anr.****, reported in* ***(2023) 112 GSTR 143****, the Delhi High Court held that there was a requirement of at least putting the digital signatures on the Show Cause Notice and Order in Original.*

23. A perusal of the provisions of Section 73 would show 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 passed by the Proper Officer. Section 2 (91) of the Act defines who is the Proper Officer meaning thereby either the Commissioner or the Officer who had been specifically entrusted by the Commissioner. As it is the statutory mandate that it is only the Proper Officer who has the authority to issue Show Cause Notice and the Statement and pass the order, the authentication in the Show Cause Notice, Statement as well as the Order by the Proper Officer is a must and failure to do so, makes the Show Cause Notice, Statement and Order ineffective and redundant.

24. It is also important to note that the Act only stipulates that notice would be issued and order would be passed by the Proper Officer. The manner in which the Proper Officer would authenticate the notice(s) or the order(s) in so far as other Chapters of the Rules of 2017 is silent except Chapter-III. Taking into account the utmost necessity of the authentication by the Proper Officer, this Court is of the opinion unless appropriate insertion are made in the Rules or notification are issued as per the directions of the Board to fill the void in the Rules of 2017, the authentication in the manner stipulated in Rule 26 (3) of the Rules of 2017 has to be applied as and when the Proper Officer is required to issue notice or Statement and pass Order in terms with the Act."

6. This Court also takes notice that in the case of ***Construction Catalysers Private Limited** (supra),* this Court had set aside the Orders in Original assailed therein, but while doing so granted

liberty to the Respondent Authorities to initiate *de novo* proceedings under Section 73 of the Act of 2017, if deemed fit for the relevant financial year in question. Further to that, this Court also observed and directed that the period from the date of issuance of the Summary of the Show Cause Notice till the date a certified copy of the instant judgment is served upon the proper officer be excluded while computing the period prescribed under Section 73 (10) of the Act of 2017 for passing of the order under Section 73(9) of the Act of 2017. This aspect is available at paragraph No.29(F) which is reproduced herein under:-

"*(A).....*

(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."

7. In that view of the matter, the instant writ petition stands disposed of with the following observations and directions:

(i) The impugned Order in Original dated 08.03.2024 passed by the Respondent No.3 is set aside and quashed.

(ii) This Court is not setting aside the Summary of the Show Cause Notice which was issued on 18.12.2023, which is Annexure-2 to the writ petition. However, directs the Respondent No.3 who is the proper officer to issue a Show Cause Notice in terms with Section 73(1) of the Act of 2017 detailing out the cause of action for initiation of the said proceedings under Section 73 of the Act of 2017.

(iii) The said Show Cause Notice for which liberty is granted, shall date back to the date of issuance of the Summary of the Show Cause Notice dated 18.12.2023.

(iv) This Court further observes and directs that the period from the date of issuance of the Summary of the Show Cause Notice dated 18.12.2023 till the date a certified copy of the present order is served upon the Respondent No.3 shall be excluded while computing the period of limitation in terms with Section 73(10) of the Act of 2017 to pass an order in terms with Section 73(9) of the Act of 2017.

(v) Needless to mention when a Show Case Notice is issued, the Petitioner would be at liberty to file the reply within the period stipulated in the Show Cause Notice to be issued.

JUDGE

Comparing Assistant