GAHC010099992025

2026:GAU-AS:10756

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

Case No. : WP(C)/2540/2025

M/S GIAS UDDIN AHMED AND ANR
A PROPRITORSHIP FIRM HAVING ITS OFFICE AT AMBARI AMBARI BAZAR GOALPARA ASAM PIN 783101 REP BY GIAS UDDIN AHMED

2: GIYASUDDIN AHMED
S/O GOLAM AMBIA R/O ABMARI BAZAR GOALPARA ASSAM PIN 78310

VERSUS

THE UNION OF INDIA AND ORS
REP BY SECY TO THE GOVT OF INDIA, MINISTRY OF FINNACEC CEIB DEPTT OF REVENUE NORTH BLOCK NEW DELHI 110001

2:THE DEPUTY DIRECTOR
DIRECTORATE GENERAL OF GOODS AND SERVICES TAX INTELLIGENCE GUWAHATI ZONAL UNIT H N 77 PUKKONWAR JYOTIO PRASAD AGARWAL ROAD OPPO SRIMANTA SANKARDEV KALAKHETRA PO PANJABARI GUWAHATGI 37 ASSAM

3:THE DEPUTY/ASSISTANT COMMISSIONER
CENTRAL GOODS AND SERVICE TAX AND CENTRAL EXCISE COMMISSIONERATE BONGAIGAON DIVISION NEAR GAURIPUR FIELD DHUBRI PIN 783301 ASSA

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioner(s) : Ms. N. Hawelia, Advocate

For the Respondent(s) : Mr. S.C. Keyal, Sr. Advocate
Ms. N. Kakati, Advocate

- Date on which Judgment was reserved : N/A
- Date of Pronouncement of Judgment : **03.08.2026**
- Whether the pronouncement is of the Operative Part of the Judgment : No
- Whether the full Judgment has been Pronounced : Yes

JUDGMENT AND ORDER (ORAL)

Heard Ms. N. Hawelia, the learned counsel appearing on behalf of the Petitioners. Mr. S. C. Keyal, the learned Senior Counsel assisted by Ms. N. Kakati, the learned counsel appears on behalf of the Respondents.

2. The present writ petition has been filed assailing the Demand-cum-Show Cause Notice dated 17.04.2024 issued by the Deputy Director, DGGI, Guwahati Zonal Unit, Guwahati, primarily on the ground that the said Demand-cum-Show Cause Notice is a consolidated show cause notice for four years. The Petitioners have also contended that their case, at best, would come within the ambit of Section 73 of the Central Goods and Services Tax Act, 2017 (for short, "the Act of 2017") and under no circumstances would come within the ambit of Section 74 of the said Act. On that basis, the Petitioners have contended that the Demand-cum-Show Cause Notice is barred by limitation.

3. It is relevant to take note of that though the Demand-cum-Show Cause Notice was issued on 17.04.2024, the Petitioners approached this Court by filing the present writ petition only on 09.05.2025, after almost one year. Nothing has been placed before this Court that on account of not filing the reply to the Demand-cum-Show Cause Notice for that matter any order had been passed by the Proper Officer during the period from the date of expiry of the 30 days period granted to the Petitioners or during the pendency of the present proceedings.

4. The learned Coordinate Bench of this Court vide order dated 19.05.2025, issued notice and further directed that till the returnable date, no coercive action shall be taken against the Petitioners in terms with the Demand-cum-Show Cause Notice dated 17.04.2024 issued by the Respondent No. 2.

5. This Court has heard the learned counsels appearing on behalf of the parties and had also perused the materials on record.

6. The primary contention on the basis of which the present writ petition was filed is whether it was permissible for the proper officer to issue a consolidated Demand-cum-Show Cause Notice for four years.

7. The said issue is no longer *res integra* inasmuch as the same had already been decided by this Court in ***M/s Tata Projects Limited Vs. Union of India, through the Secretary & Others*** reported in ***2026 SCC OnLine Gau 3798***, wherein at paragraph No. 70, this Court opined that it is permissible to issue a consolidated show cause notice for various financial years and also to pass a consolidated order covering various financial years. Paragraph No. 70 of the said judgment, being relevant, is reproduced hereinbelow:

> "***DECISION ON THE JURISDICTIONAL ISSUES RAISED IN THE PRESENT PROCEEDINGS:***
>
> ***70.*** *Accordingly, this Court opines as under:*
>
> *(a) There is no bar in issuance of a consolidated Show Cause Notice for different financial years together under Section 73(1) or under Section 74(1) of the Act of 2017.*
>
> *(b) There is no bar in passing of a consolidated order for different financial years together under Section 73(9) or Section 74(9) of the Act of 2017.*
>
> *(c) The Proper Officer in the respective cases of the three writ Petitioners was within his jurisdiction conferred upon in law to issue the consolidated Show Cause Notices as well as pass the consolidated orders against each of the Petitioners in the three writ petitions."*

8. In view of the above, as the jurisdictional issue raised had already been set at rest on account of above exposition of law, the question arises as to whether this Court should entertain the present writ petition on the issue as to whether the Respondent Authorities ought to have initiated proceedings under Section 73 of the Act of 2017 or under Section 74 of the said Act.

9. It is the opinion of this Court that this aspect can only be decided upon factual adjudication. The Petitioners have been issued the Demand-cum-Show Cause Notice and the Petitioners were at liberty to submit their reply raising all contentions including the contention that factually the proceedings ought to been initiated under Section 73 of the Act of 2017 and not Section 74 of the said Act. However, it is noticed that neither the Petitioners submitted their reply nor the Respondents took any steps for passing of an order on the basis of the Demand-cum-Show Cause Notice.

10. At this stage, this Court, finds it relevant to observe that the initiation of proceedings under Section 73 or Section 74 of the Act of 2017 depends upon factual foundation. In the case of Section 73 of the Act of 2017, for initiation of proceedings what is required is when it appears to the Proper Officer that any tax

(a) has not been paid; or

(b) short paid; or

(c) erroneously refunded; or

(d) where input tax credit had been wrongly availed or utilized.

However, for initiation of a proceedings under Section 74 of the Act of 2017, it is the requirement of law that the Proper Officer can only initiate proceedings under the said provision when it appears to the Proper Officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit had been wrongly availed or utilized for by reason of:

(a) fraud; or

(b) any willful misstatement; or

(c) suppression of facts for to evade tax

It is the opinion of this Court that for deciding whether a case is made out in terms with Section 73 or Section 74 of the Act of 2017, there is a requirement of adjudication of facts. The aspect as to whether fraud had been committed or any willful misstatement had been made or there is suppression of facts to evade tax cannot be decided in proceedings under Article 226 of the Constitution. The Proper Officer on the other hand can adjudicate such factual aspects.

11. It is also relevant to take note of that against any order passed under Section 73 or Section 74 of the Act of 2017, there are statutory appellate remedies inasmuch as an Appeal lies to the Appellate Authority under Section 107 of the Act of 2017, and thereafter a further appeal before the Appellate Tribunal under Section 112 of the said Act. All these factual adjudication can very well be addressed before the forums available under the Act of 2017.

12. Under such circumstances, this Court is not inclined to entertain the instant writ petition.

13. This Court further takes note of that the Demand-cum-Show Cause Notice dated 17.04.2024 required the Petitioners to submit their reply within 30 days from the date of service of the said Notice.

14. Taking into account that this Court is not inclined to entertain

the present writ petition for the reasons aforementioned, this Court is of the opinion that for the ends of justice the Petitioners ought to be granted an opportunity to submit their reply to the impugned Demand-cum-Show Cause Notice thereby putting the clock back to the date on which the Demand-cum-Show Cause Notice was issued.

15. This Court also takes note of that the Petitioners approached this Court almost one year after the issuance of the Demand-cum-Show Cause Notice and that the present proceedings have remained pending from 09.05.2025 till date. On account of the interim order passed by this Court which was continued from time to time, the Respondent Authorities have also not taken any action upon the Demand-cum-Show Cause Notice. Under such circumstances, while granting the Petitioners an opportunity to submit their reply, this Court, in order to balance the equities, also considers it necessary to exclude the period from the date of issuance of the Demand-cum-Show Cause Notice till date while computing the period available to the Respondent Authorities for adjudication of the proceedings initiated by the Demand-cum-Show Cause Notice dated 17.04.2024.

Before passing appropriate directions, this Court finds it relevant to take note of the submission of the learned counsel for the Petitioners that the Petitioners approached this Court only on 09.05.2025 and as such the period which should be excluded should be from 09.05.2025 and till date. In the opinion of this Court the Demand-cum-Show cause Notice permitted the Petitioners to submit the reply within 30 days from the date of receipt of the Demand-cum-Show cause Notice. The Petitioners admittedly did not submit the reply and this Court for the ends of justice have permitted the Petitioners to submit their reply. By doing so this Court had put the clock back to the date on which the Show Cause Notice was issued. Under such circumstances, it is therefore the opinion of this Court that the period to be excluded should be w.e.f. 18.04.2024 to the date of the present judgment.

16. Accordingly, the instant writ petition stands disposed of with the following observations and directions:

(i) This Court is not inclined to entertain the instant writ petition on the ground that there is no bar upon the Proper Officer to issue a consolidated Show Cause Notice under Section 73 or Section 74 of the Act of 2017.

(ii) The Petitioners are granted 30 days from today to submit their reply to the Demand-cum-Show Cause Notice dated 17.04.2024. In the said reply, the Petitioners shall be at liberty to raise all the contentions raised in the present writ petition, except the contention relating to the jurisdiction to issue a consolidated show cause notice, which stands settled by the judgment of this Court in the case of ***M/s Tata Projects Limited (supra)*** as well as by the present judgment.

(iii) This Court further observes that the period from 18.04.2024 till today shall stand excluded while computing the period of limitation for passing an order in the proceedings initiated on the basis of the impugned Demand-cum-Show Cause Notice dated 17.04.2024.

(iv) No costs.

JUDGE

Comparing Assistant