GAHC010125982022

2026:GAU-AS:11511

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

Case No. : WP(C)/4367/2022

M/S RAJKONWAR AND SONS AND ANR
A PROPRIETORSHIP FIRM HAVING ITS OFFICE AT RATANPUR, EAST MILAN NAGAR, DIBRUGARH REPRESENTED BY ITS PROPRIETOR SHRI SANJIB RAJKONWAR, HAVING ITS OFFICE AT EAST MILAN NAGAR, BY LANE- SUNDARPUR, P.O.- C.R. BUILDING, P.S.- DIBRUGARH, DISTRICT- DIBRUGARH, ASSAM, PIN- 786003.

2: SANJIB RAJKONWAR
SON OF LATE LAMBIT CHANDRA KONWAR
RESIDENT OF EAST MILAN NAGAR
BY LANE- SUNDARPUR
P.O.- C.R. BUILDING
P.S.- DIBRUGARH
DISTRICT- DIBRUGARH
ASSAM
PIN- 786003

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NORTH BLOCK, NEW DELHI- 110001.

2:THE PRINCIPAL COMMISSIONER
GOODS AND SERVICE TAX
GST BHAWAN
A.T. ROAD
KEDAR ROAD
MACHKHOWA
GUWAHATI
ASSAM.

3:THE ASSISTANT COMMISSIONER

GST AND CENTRAL EXCISE AND SERVICE TAX

DIBRUGARH DIVISION
SIBASAGAR ZONE
DIBRUGARH
ASSAM
PIN- 786003.

4:THE CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT
GOVERNMENT OF ASSAM
CHANDMARI
GUWAHATI-3
ASSAM.

5:PUBLIC WORKS DEPARTMENT (PWD) DEPARTMENT
GOVERNMENT OF ASSAM
CHANDMARI
GUWAHATI-3
ASSAM.

6:THE STATE OF ASSAM
REP. BY THE PRINCIPAL COMMISSIONER OF STATE TAXES
ASSAM
KAR BHAWAN
G.S ROAD
DISPUR
GHY-6

7:THE ASSISTANT COMMISSIONER OF STATE TAXES
DIBRUGARH UNIT
DIBRUGARH
ASSAM

B E F O R E

HON'BLE MR. JUSTICE DEVASHIS BARUAH

Advocates for the petitioner(s) : Ms. N Gogoi

Advocates for the respondent(s) : Mr. SC Keyal
Senior Advocate
& Standing Counsel, GST

Mr. K Jain
Mr. M Bhuyan
For respondent Nos.4, 5 and 6

Date on which Judgment is reserved: NA

Date of Pronouncement of Judgment : **11.08.2026**

Whether the Pronouncement is of the : NA
Operative Part of the Judgment

Whether the Full Judgment has been : Yes
Pronounced

JUDGMENT & ORDER(ORAL)

Heard Ms. N Gogoi, the learned counsel appearing on behalf of the petitioners. Also heard Mr. SC Keyal, the learned Senior Counsel as well as the Standing Counsel, GST, assisted by Mr. K Jain, the learned counsel.

2. The present writ petition has been filed by the petitioners challenging the show cause notice under Section 74 of the ***Assam Goods and Service Tax Act, 2017*** (for short, '*the AGST Act of 2017'*) dated 01.04.2022 issued by the respondent No.7 whereby the petitioners were asked to submit their reply by 30.04.2022.

3. The records reveal that the learned Coordinate Bench of this Court vide the order dated 29.06.2022 directed the respondents in the State GST not to take any coercive action on the petitioner in terms of the impugned notice dated 01.04.2022 issued under Section 74 of the GST Act of 2017.

4. The interim order thereupon has been extended from time to time. It is also apparent from the interlocutory application filed by the petitioner, being IA(C)No.1709/2026, that a show cause notice was issued to the petitioner on 23.09.2025 by the No.3 under Section 74 of the ***Central Goods and Service Tax Act, 2017*** (for short, 'the CGST Act of 2017'). The petitioner participated in the said proceedings as would appear from the contents of the Order-in-Original dated 12.02.2026, more particularly at paragraph 1.10.

5. The respondent No.3 passed the Order-in-Original dated 12.02.2026, whereby an amount of Rs.1,36,96,200/- was demanded as the short paid tax along with interest in terms with Section 50 of the CGST Act of 2017 and the AGST Act of 2017, and further demanded penalty equivalent to Rs.1,36,96,200/- under Section 74(9) of the CGST Act of 2017 and AGST Act of 2017. This Order-in-Original dated 12.02.2026, instead of being challenged in an appeal as permissible under Section 107 of the CGST Act of 2017 was

collaterally challenged in the present writ proceeding by filing the interlocutory application.

6. The learned Coordinate Bench of this Court, vide an order dated 22.06.2016, while issuing notice, directed that no coercive action should be taken against the petitioner in terms with the Order-in-Original dated 12.02.2026. It is in the backdrop of the above, the present proceedings are taken up for disposal.

7. It is relevant to take note of that the challenge in the writ petition has no correlation with the challenge in the interlocutory application. There was also no stay or any interim directions against the Proper Officer under the CGST Act of 2017 to initiate any proceedings under Section 74 of the Act of 2017. Under such circumstances, the challenge by way of an interlocutory application to the Order-in-Original dated 12.02.2026 was completely misconceived.

8. This Court has also taken note of the Order-in-Original dated 12.02.2026 and there appears to be no jurisdictional error committed by the Proper Officer for this Court to exercise the extraordinary jurisdiction under Article 226 of the Constitution. Accordingly, it is, therefore, the opinion of the Court that the writ petition had already become infructuous, in view of the proceeding which has been

initiated by the Authorities under the CGST Act of 2017, and the Order-in-Original passed on 12.02.2026 by the respondent No.3. *Insofar as* the Order-in-Original dated 12.02.2026 passed by the respondent No. 3, there is no jurisdictional error.

9. In that view of the matter, the question of exercising the jurisdiction under Article 226 of the Constitution does not arise.

10. Ms. N Gogoi, the learned counsel appearing on behalf of the petitioners submitted that on a mistaken advice, the petitioners had approached this Court by filing an interlocutory application and further, this Court had also issued notice and passed an interim order thereby protecting the petitioners with certain interim directions. The learned counsel, therefore, submitted that if the instant writ petition is dismissed, the petitioner would have no other avenue available, taking into account that the period of limitation as prescribed under Section 107 of the CGST Act of 2017 had already in the meantime expired from the date of the Order-in-Original i.e.12.02.2026.

11. This Court has given an anxious consideration to the above submission and is of the opinion that as upon mistaken legal advice, the petitioner had approached this Court and the petitioner have been diligently and *bona fidely* pursuing the present proceedings, the

petitioner should be granted an opportunity to avail the appellate remedy as provided under Section 107 of the CGST Act 2017.

12. Accordingly, this Court, therefore, disposes of the instant writ petition with the following observations and directions:

(i).The challenge to the notice dated 01.04.2022 issued by the respondent No.7 had become infructuous in view of the passing of the Order-in-Original dated 12.02.2026 by the respondent No. 3. Accordingly, the reliefs which have been sought for in the present writ petition cannot be granted.

(ii). The challenge to the Order-in-Original dated 12.02.2026 passed by the respondent No. 3 by way of the interlocutory application is totally misconceived. In addition to that, this Court also does not find any jurisdictional error committed by the respondent No.3 in passing the Order-in-Original dated 12.02.2026.

(iii). This Court grants the liberty to the petitioners to avail remedies before the Appellate Authority under Section 107 of the CGST Act of 2017 against the Order-in-Original dated 12.02.2026.

(iv). Further to that, this Court observes for the reasons already stated hereinabove, that if the petitioners file an Appeal before the Appellate Authority under Section 107 of the CGST Act of

2017 within a period of 30(thirty) days from today, the said Appeal be considered by the Appellate Authority on merits without insisting on the question of limitation.

13. Interim order passed earlier stands vacated.

JUDGE

Comparing Assistant