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2026:GAU-AS:9749

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

Case No. : WP(C)/4312/2024

M/S ADVANCE ENGINEERING FARMS AND EQUIPMENTS
REPRESENTED BY ITS PROPRIETOR MALLIKA HAQUE, AGED ABOUT 55 YEARS, W/O- SYED SAMSUL HAQUE, RESIDENT OF H.NO 40, LACHIT LANE RAJGARH ROAD, DIST.- KAMRUP (M), PIN- 781007, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM, DEPARTMENT OF FINANCE AND TAXATION, ASSAM SECRETARIAT, DISPUR, GUWAHATI- 781006

2:THE ASSISTANT AND COMMISSIONER OF STATE TAX
APEX GST AUDIT CELL
ASSAM KAR BHAWAN
DISPUR
GUWAHATI- 781005

3:THE COMMISSIONER OF STATE TAXES
ASSAM KAR BHAWAN
GANESHGURI
GUWAHATI- 781006

4:M/S C.R GROUP
REPRESENTED BY ITS PROPRIETOR ARUP TALUKDAR
HOUSE NO. 03
OPP. AGRODOOTBHAWAN
PRAVATBARMANPATH
GUWAHATI- 781006
ASSA

BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioner(s) : Mr. S. S. Zia, Advocate

For the Respondent(s) : Mr. B. Gogoi, Addl. AG, Assam
: Mr. D. Gogoi, Advocate

- Date on which Judgment was reserved : N/A
- Date of Pronouncement of Judgment : **16.07.2026**
- Whether the pronouncement is of the Operative Part of the Judgment : Yes
- Whether the full Judgment has been Pronounced : N/A

JUDGMENT AND ORDER (ORAL)

Heard Ms. Z. Z. Zia, the learned counsel appearing on behalf of the Petitioner and Mr. B. Gogoi, the learned Additional Advocate General appearing on behalf of the Finance and Taxation Department. I have also heard Mr. D. Gogoi, the learned counsel appearing on behalf of the Respondent No.4.

2. The issue involved in the instant proceedings appears to be squarely covered by the judgment of the learned Division Bench of this Court in the case of ***National Plasto Moulding Vs. State of Assam and 3 Others*** *reported in* ***2024: GAU-AS:7506-DB*** wherein the learned Division Bench of this Court accepted the proposition

of law laid down by the learned Delhi High Court in the case of ***On Quest Merchandising India Private Limited Vs. Government of NCT of Delhi and Others*** *reported in* ***2017 SCC OnLine Del 11286.***

3. It is pertinent to take note of that the learned Delhi High Court in the said case i.e. ***On Quest Merchandising India Private Limited (supra)***, categorically held that the expression "dealer or class of dealers" occurring in Section 9(2)(g) of the Delhi VAT Act should be interpreted as not including a purchasing dealer who had bona fide entered into purchase transactions with validly registered selling dealers who had issued tax invoices in accordance with Section 50 of the said Act where there is no mismatch of the transactions in Annexures 2A and 2B. It is also seen that the Delhi High Court had read down the expression "dealer or class of dealers" appearing in Section 9(2)(g) of DVAT in order to save Section 9(2)(g) of DVAT from the mandate of Article 14 of the Constitution of India. At paragraph No.54 of the said judgment, the Delhi High Court has observed as herein under:

> "***54***. *The result of such reading down would be that the Department is precluded from invoking section 9(2)(g) of the DVAT to deny ITC to a purchasing dealer who has bona fide entered into a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting the TIN number. In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department*

> *would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC. Where, however, the Department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the Department can proceed under section 40A of the DVAT Act."*

4. From the above quoted paragraph, it is apparently clear that the Delhi High Court while reading down the expression "dealer or class of dealers" opined that the Department is precluded from invoking Section 9(2)(g) of the DVAT to deny ITC to a purchasing dealer who has bona fide entered into a purchase transaction with a registered selling dealer who had issued a tax invoice reflecting the TIN number. It was also mentioned that in the event, the selling dealer had failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC.

5. It is also seen that the learned Division Bench of this Court in the case of ***National Plasto Moulding (supra)*** categorically held that the vires of Sections 16(2)(c) and 16(2)(d) of the Assam Goods and Services Tax Act, 2017 can also be taken care of by reading down the said provisions by applying the proposition of law so laid down by the Delhi High Court in the case of ***On Quest Merchandising India Private Limited (supra)***.

6. In the backdrop of the above, let this Court now take note of the facts which are involved in the instant proceedings.

7. The Petitioner herein is a proprietorship firm registered under the provisions of the Central Goods and Services Tax Act, 2017 bearing Registration No.18ACJPH5004J1ZP. During the Financial Year 2017-18, the Petitioner purchased generators from the Respondent No.4 of a total value of Rs.9,44,000/- out of which the Central Goods and Services Tax and Assam Goods and Services Tax were Rs.72,000/- each. The said payment was duly made.

8. Be that as it may, the Petitioner was issued a Show Cause Notice on 30.09.2023 wherein it was intimated to the Petitioner that the Petitioner was liable to make payment of tax and interest along with penalties on the question of excess ITC claimed. The Petitioner submitted a reply explaining the ITC claimed. Insofar as the payment of GST on the purchase so made from the Respondent No.4, due details were provided at paragraph Nos. 2.6 and 2.7 of the said reply. Be that as it may, the order was passed on 30.09.2023 that the Petitioner was held to be liable to pay tax of an amount of Rs.2,08,802/-, interest of Rs.2,16,632/- and penalty of Rs.20,880/-.

9. Pursuant thereto, the Petitioner filed an application for rectification on 29.01.2024 thereby again explaining that there was no dues to be paid by the Petitioner inasmuch as there was no claim of excess ITC. The Respondent Authorities thereupon rectified the order dated 31.12.2023 vide an order dated 10.04.2024 whereby all other contentions of the Petitioner were accepted except the claim of the Input Tax Credit by the Petitioner on the goods purchased from the Respondent No.4 which was rejected. It is under such circumstances, the present writ petition has been filed.

10. The record reveals that after issuance of notice, the State Respondents filed their affidavit-in-opposition. A perusal of the said affidavit-in-opposition shows that on account of the Respondent No.4 not filing the returns, the ITC amount have been claimed from the Petitioner who is the purchasing dealer. It is therefore apparent that the said affidavit-in-opposition has been filed without taking into consideration the judgment of the learned Division Bench in the case of ***National Plasto Moulding (supra)***.

11. Mr. D. Gogoi, the learned counsel appearing on behalf of the Respondent No.4 though admitted that the Respondent No.4 duly received the GST amount which have been paid by the Petitioner

at the time of purchase of the generators, but the Respondent No.4 had not filed the returns.

12. Taking into account the above, it is the opinion of this Court that as the Petitioner had duly made payment to the Respondent No.4 at the time of purchasing the generators, the GST of Rs.72,000/- each on account of Central Goods and Services Tax and State Goods and Services Tax as would be apparent from the tax invoice cum delivery challan dated 14.02.2018 which is enclosed as Annexure-6 to the writ petition, the imposition of the ITC or holding that the Petitioner has made excess claim of ITC is contrary to the law laid down by the learned Division Bench of this Court in ***National Plasto Moulding (supra)***.

13. Accordingly, this Court therefore disposes of the instant writ petition thereby interfering with the demand so made upon the Petitioner on the basis of the rectification order dated 10.04.2024 for the Financial Year 2017-18.

14. Taking into account the above, the instant writ petition stands disposed of with the following observations and directions:

(i) The impugned order dated 10.04.2024 in Reference No.ZD180424010028S issued by the Respondent Authorities thereby demanding an amount of Rs.1,60,506/- on account of CGST and Rs.1,60,506/- on account of SGST is set aside an quashed.

(ii) The setting aside and quashing of the demand in the order dated 10.04.2024 shall not preclude the Respondent Authorities to initiate steps for recovery against the Respondent No.4 in terms with the provisions of the Assam Goods and Services Tax Act, 2017 as well as the Central Goods and Services Tax Act, 2017.

(iii) No costs.

JUDGE

Comparing Assistant