GAHC010242052024

IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

PRINCIPAL SEAT

W.P(C) No. 6154/2024

M/S Bhagya Kalita

A proprietorship concern, having its office at 5th Floor, BEE KEY Tower, R.P. Road, Ganeshguri, Dispur, Kamrup (M), Assam, PIN 781006, represented by Sri. Bhagya Kalita, aged about 74 years, residence of P.P Road, Rehabari, Guwahati-781008

.....Petitioner

-***Versus***-

1. **Union of India**
   Represented by its Secretary, Ministry of Finance, Department of Revenue, New Delhi-110 001
2. **The Principal Commissioner,** Office of the Principal Commissioner, CGST Commissionerate, Guwahati, GST Bhawan, Kedar Road, Machkhowa, Guwahati-781 001, Assam
3. **Commissioner CGST,** Central Tax Commissionerate, GST Bhawan, Kedar Road, Machkhowa, Guwahati-781001
4. **The Director General,** Central Ecenomic Intelligence Bureau (CEIB), New Delhi.
5. **The Joint Director,** Directorate General of Goods and Service Tax, Intelligence, Guwahati Zonal Unit, House No. 77, Rupkonwar Jyoti Prasad Agarwalla Road, Opposite Shankardev Kalakhetra, P.O. Panjabari, Guwahati, Assam, PIN 781037

.....Respondents

6. **The Chief Engineer,** Ministry of Road, Transport and Highways, Govt. of India, Guwahati Regional Office, Rajgarh Road, Chandmari, Guwahati-781003
7. **The Chief Engineer,** PWD, NH Works, Assam Chandmari, Guwahati, PIN 7810036.

.....Performa Respondents

– B E F O R E –
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Advocate for the petitioner	**:**Dr. Ashok Saraf, Sr. Advocate Assisted by Mr. B Sarma, Advocate
Advocate for the respondents	**:**Mr. S.C Keyal, Standing Counsel, CGST Assisted by Ms. N. Kakati, Advocate
Dates of hearing	:**25.11.2025; 09.12.2024; 29.10.2025; 27.05.2026 & 11.06.2026**
Date of Judgment & Order:	: **09.09.2026**

JUDGMENT AND ORDER (CAV)

This writ petition is filed by the petitioner which is a proprietorship concern having its office at the address mentioned in the cause title and represented by its proprietor. The petitioner is a Class 1(A) contractor of the Assam PWD, NH Works and had successfully executed and completed numerous projects concerning mainly the construction of National Highways. The petitioner was awarded and allotted the works namely "*Realignment and Construction of 2-lane Highway with paved shoulders between KM. 603 to 637 of NH-37 By pass of Mohanbari, Chabua and other villages (Length= 34.85 Km) under SARDP-NE Phase 'A' in the State of Assam*" vide Chief Engineers Agreement No. 22CE/NHRD/NCB/2010-11 dated

08.12.2010. The said work is designated as Job No. SARDP-NE/NH-37/AS/PWD/2010-11-164. It is submitted that the work pertains to National Highways and comes under the Ministry of Road Transport and Highways, Government of India which has to provide the administrative approval, technical approval and financial sanction for the said works. Upon such approval, the Assam PWD, NH Works invites bid and successful bidder(s) execute the work. In the instant case, the Chief Engineer, Assam PWD, NH invited bids/tender for the aforesaid work pursuant to the approval by the Ministry and the petitioner who had participated in the tender process was declared successful as the bidder in the bid evaluation process and was therefore considered eligible for issuance of award of work.

2. In the course of its business, the petitioner entered into the agreement with the Assam PWD, NH works being Agreement No. 22CE/NHRD/NCB/2010-11 dated 08.12.2010 for execution of the works by the petitioner. The price quoted by the petitioner is a lumsum of Rs. 1,41,21,42,644.00 (Rupees One Hundred Forty One Crore Twenty One Lakh Forty Two Thousand Six Hundred Forty Four Only) which included the cost, profit as well as 5% of VAT which was applicable at that point of time. Clause 47 of the Agreement dated 08.12.2010 also provided for price escalation in case the period for completion of the work was extended by the Assam PWD,

NH Works to order to take into account the inflation and/or rising cost of materials etc. The petitioner was given the work order on 08.12.2010. Ultimately the work was completed on 30.10.2020 and the completion certificate dated 21.12.2020 was issued to the petitioner by the Executive Engineer, PWD, NH Works, Assam. In the course of the works being executed by the petitioner, running Bills were prepared and raised by the respondent authorities i.e. Assam PWD NH Works, from time to time. According to the petitioner, these running Bills for the works executed were prepared and raised by the respondent authorities and the representative of the petitioner was only required to countersign such bills. These bills were never raised by the petitioner concerned independently. These bills were prepared by the Assam PWD, NH Works were then forwarded to Ministry of Road Transport and Highways (*in short "MoRTH"*), Government of India for their approval. Against, the bills prepared by the respondent authorities and approved by the MoRTH for the portion of work completed by the petitioner, the payments were made to the petitioner by the respondent authorities. In respect of the bills raised for execution of the work, all necessary taxes including GST have been paid. The claims made by the petitioner for price adjustment were also prepared by the respondent authorities i.e Assam PWD, NH Work, for the period from December, 2010 to October, 2020. The

price adjustments pertain to works being carried both prior and after 01.07.2017 namely the date on which the Central GST Act, 2017 came into force. It is contended on behalf of the petitioner that the price adjustments for the period from April, 2018 to December, 2019, January 2020 to June 2020 and July 2020 to October, 2020 were paid vide bill No. RP/GHY/AS/22-23/191 dated 25.10.2022. The same is also reflected in the Final Bill being Bill No. 87/NH/DIB/2020-21/RA-XXI dated 11.03.2021. The total price adjustment amount in bill dated 25.10.2022 was raised at Rs. 36,47,13,262/- (Rupees Thirty Six Crore Forty Seven Thousand Thirteen Thousand Two Hundred Sixty Two Only) and after deduction under various heads, the amount paid to the petitioner was Rs. 34,39,21,768/- (Rupees Thirty Four Crore Thirty Nine Lakh Twenty One Thousand Seven Hundred Sixty Eight Only). It is contended on behalf of the petitioner that the said bill dated 25.10.2022 was prepared by the Assam PWD, NH Works, countersigned by the petitioner/ his representative and duly approved by the Ministry. The said bill does not reflect that any further Goods and Sales Tax is required to be paid by the petitioner as any such amount under appropriate head was never included by the Assam PWD, NH Works or the Ministry while computing or approving the said bill.

3. It is further contended that in the audited balance sheet for the assessment year 2023-24 (i.e. Financial Year 2022-23), the receipt of the said amount as price adjustment was duly reflected. The said audited balance sheet was duly filed before the Income Tax Authorities on 29.09.2023. Although, the said amount was disclosed in the audited balance sheet but there was lack of clarity regarding it's taxability as the same was received as price adjustments in respect of works for which the contract was entered prior to 2017. Both the Assam PWD, NH and the petitioner informed the price adjustment payment in their filings before the GST authorities and the deduction of taxes in the name of the petitioner. The petitioner affirmed and declared before the GST authorities that the amount has been received in its declaration dated 12.12.2022. Subsequently, some confusion arose as regards the liability of the GST on the amount received as price adjustment in respect of the works executed by the petitioner for which the agreement was entered into on 08.12.2010. The quoted price in the Agreement had taken into consideration only 5% VAT as it was then prevalent, however under the GST Act, 2017 the tax payable under the GST for Works Contract is 18%. There was no clarity under the GST Act, 2017 in respect of taxability of any amount received as price adjustment in respect of Works for which the Agreement was entered prior to 2017 and which

was continued to be performed till after 2017. This confusion arose because of the fact that the Bill dated 25.10.2022 did not include 9% CGST and 9% SGST on the billed amount, apart from deducting 1% CGST and 1% SGST. In view thereof, while submitting the annual GST return, the petitioner indicated the price adjustment amount as exempted under the bonafide and genuine belief that the amount received as price adjustment were shown to be "exempted" while filing the annual GST returns for the financial year 2022-23 and had disclosed the said amount. Therefore, there was no willful suppression or mis-statement or lack of intention on the part of the petitioner not to pay the renevue.

4. The Respondent Authorities namely, Joint Director, Directorate General of Goods & Service Tax Intelligence, Guwahati Zonal Unit carried out an investigation on the basis that the Petitioner did not discharge his GST liabilities after receiving an amount of Rs. 36.47 Crore during the period 2022-23. Investigation was carried out under Section 67(1) of the CGST Act, 2017 in its principal place of business of the Petitioner. The respondent authorities sought for various information such as bills in respect of the work for the period April, 2018 to March 2023 from the Chief Engineer, Ministry of Road, Transport and Highways, Guwahati Regional Division. The petitioner was also summoned under Section 70 of the CGST Act, 2017 vide

summons dated 12.02.2024 for tendering his statements. Ultimately on 04.04.2024, the authorized representative of the Petitioner appeared before the Respondent Authorities and tendered his statement. It was their bonafide belief that the GST payable by the Petitioner is Rs. 82,07,714/- (Rupees Eighty Two Lakh Seven Thousand Seven Hundred Fourteen Only) and the Petitioner has already paid an amount of Rs. 30,00,000/- (Rupees Thirty Lakh only) on 30.03.2024. It was asserted before the authorities concerned that there is no intention to evade or suppress GST liability and pleaded for closure of the proceedings.

5. On such materials being furnished by the petitioner and the statements being tendered, the GST authorities requested for the Ministry to provide the dates of the bills and the period of accomplishment of work to which the price adjustment has been claimed by the petitioner. These information were duly submitted by the Ministry pursuant to which the petitioner was again summoned before the authorities concerned. The representative of the Petitioner in response to the summons issued appeared on 08.07.2024 and furnished his statements. It was asserted on behalf of the petitioner that as a matter of general practice in all engineering departments including the Assam P.W.D., the bills were all prepared by the department countersigned by the Contractor and finally approved by

the Union Ministry and it is only thereafter that the bills are released for payments. Therefore the bill and invoice dates for the purposes of GST taxability under the GST Act, 2017 are different.

6. The respondent authorities again sought to clarify the matter and requested the Ministry to provide for the completion of works in respect of the 11 bills raised as the completion dates in respect of the works for these 11 bills are crucial for deciding the tax liability. However, without awaiting for the response from the Ministry, the Joint Director, Directorate General of Good and Service Tax, Intelligence, Guwahati Zonal Unit has issued the impugned Show cause Notice dated 04.08.2024 bearing No. ZD1808240017683 and Case ID No. AD180824000459Y calling upon the petitioner to show cause as to why the GST amounting to Rs. 4,37,73,372/- for the period from July 2017 to March 2023 should not be demanded and recovered in terms of Sub-section 1 of Section 74 of the CGST Act, 2017. By the said show cause notice, the GST already paid by the petitioner amounting to Rs. 30,00,000/- (Rupees Thirty Lakh Only) should not be appropriated with the confirmed demand as mentioned in the Show cause notice. The show cause notice further called upon the petitioner to show cause as to why interest at appropriate rate should not be demanded and recovered and also as to why penalty not be imposed under Section 74 and Section 122(2)(b) under CGST

Act, 2017 read with similar provisions of the AGST Act, 2017. Being aggrieved, the present writ petition has been filed.

7. The learned Senior counsel submits on behalf of the petitioner that Section 74(1) is applicable in respect of recovery of any tax which is not paid, short paid or erroneously refunded or where input tax has been wrongly availed or utilized by reason of fraud, willful mis-statement or suppression of facts to evade tax. He therefore submits that the very basis for invocation of powers under Section 74 requires certain conditions to be fulfilled prior to issuance of the powers under Section 74(1). Dr Saraf, learned senior counsel submits that there are three pre-conditions which are necessary to be present before the authorities can invoke its powers under Section 74(1). These conditions are:

(i) fraud,

(ii) willful mis-statement and

(iii) suppression of facts.

8. The learned senior counsel for the petitioner submits that fraud has not been defined under the CGST Act, 2017. It is submitted that to invoke fraud the intention to evade tax on the part of the assesse must be shown as the intent to evade tax is inbuilt ingredient of fraud. In-fact, under the Bharatiya Nyaya Sanhita, 2023 "fraudulent

means doing anything with the intention to fraud but not otherwise". It is submitted that the impugned show cause does not allege any fraud against the petitioner, but in any event, there is no element of fraud or intention to evade tax on the part of the Petitioner. It is further submitted on behalf of the petitioner that the show cause notice issued under Section 74(1) of the CGST Act, 2017 proceeded on the basis that the Petitioner has failed to self-assess and pay GST liabilities correctly for the period from July 2017 to March 2023 thereby suppressing GST liability amounting to Rs. 4,37,73,372/- (Rupees Four Crore Thirty Seven Lakh Seven Three Thousand Three Hundred Seventy Two Only). Such conclusion arrived at by the respondents is on the basis that the Petitioner failed to self-assess its tax liability and pay the GST liabilities correctly. In view thereof, the Joint Director, GST concluded that the Petitioner being a Government Contractor who maintains books of accounts was supposed to know the legal provision of taxation matters and thus was under a legal obligation to declare and tax liability. But, the Petitioner by not interpreting Section 13(2)(b) of the CGST Act, 2017 as required and discharging its GST liability have contravened the CGST Act 2017 and AGST Act, 2017 which appears to have been committed deliberately by not declaring material facts and also willful mis-statements. The Respondent Authorities have therefore, wrongly alleged non-

declaration of material facts and willful misstatements for invocation of Section 74(1) of the CGST Act, 2017.

9. It is further submitted by Dr. Saraf that the provisions of Section 74 of the Act can be invoked only for recovery of tax not paid or short paid by reasons of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Act or Rules with intent to evade payment of tax. Further, as per Explanation 2 of Section 74 of the Act, the term 'suppression' has been explained as non-declaration of facts or information in returns. Thus, the provisions of Section 74 are applicable only if any of the ingredients specified above exist.

10. It is submitted by Dr. Saraf, learned Senior counsel for the petitioner that the term ‘wilful’ and ‘suppression’ signifies conscious withholding of information with mala fide intention and not an unintentional failure due to inadvertence. Thus, in order to invoke the extended period of limitation, it is necessary to prove an act or omission on the part of the tax payer equivalent to collusion or wilful misrepresentation or suppression of facts.

11. It is submitted by Dr. Saraf, learned senior counsel that it is a settled law that extended period cannot be invoked when the tax department is aware of the facts. "Suppression of facts" can have

only one meaning that the correct information was not disclosed deliberately to evade payment of duty. When facts were known to both the parties, the omission by one to do what he might have done not that he must have done would not render it suppression. It is settled law that mere failure to declare/disclose does not amount to wilful suppression. There must be some positive act from the side of the assessee to find wilful suppression.

12. Referring to the law laid down by the Apex Court, the learned Senior counsel for the petitioner submits that the Apex Court held that in taxation the term 'suppression of facts' can have only one meaning that the correct information was not disclosed deliberately to escape payment of duty. He refers to the Judgment of *Pushpam Pharmaceuticals Co. Vs. CCE,* reported in *1995 Supp (3) SCC 462* in support of his contentions. He submits that although the said Judgment was in the context of Section 11-A of the erstwhile Central Excise and Salt Act, 1944 but the ratio laid down in the said Judgment will equally apply in respect of the pre-conditions to be satisfied for invocation of Section 74(1) of the CGST Act, 2017. Referring to the said Judgment, it is submitted that omission does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty which is not

the case in the present proceedings. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression.

13. Dr. Saraf, learned senior counsel also refers to the Judgment of *Anand Nishikawa Co. Ltd. Vs. CCE,* reported in *(2005) 7 SCC 749* to submit that mere failure to declare does not amount to wilful suppression and there must be some positive act from the side of the assessee to find wilful suppression.

14. Reference is also made to the *Continental Foundation Joint Venture Holding Vs. CCE,* reported in *(2007) 10 SCC 337* to submit that suppression has to be accompanied by fraud and collusion and therefore it has to be strictly construed. Mere omission to give correct information is not suppression unless it is deliberately done to evade payment of duty. It is submitted that this suppression must mean a failure to disclose information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party with regard to certain information would not render it to be a suppression with there being any finding that it was with the intention to evade duty. When the revenue invokes its power under Section 74(1), the burden is cast upon the revenue to prove it suppression of facts by assessee. Reliance is also placed

upon CCE Vs. Ballarpur Industries Ltd., reported in (2007) 8 SCC 89 wherein the Apex Court had reiterated the ratio laid down in Continental Foundation Joint Venture Holding Vs. CCE, reported (2007) 10 SCC 337.

15. Reliance is also placed Uniworth Textiles Ltd. Vs. CCE, reported in (2013) 9 SCC 753 to submit that the conclusion that mere non-payment of duties will amount to collusion, wilful, mis-statement or suppression of facts in untenable.

16. The learned senior counsel for the petitioner referring to the Judgment of the Apex Court rendered in CCE Vs. H.M.M Ltd, reported in (1995) Supp (3) SCC 322 submits that in the context of Section 11(A) of the Central Excise Act, 1944 that mere non-declaration of waste/bye-product in their classification list cannot establish any wilful withholding of vital information for the purpose of evasion of excise duty due on the said product.

17. Referring to the Judgment of Associated Cement Companies Ltd. Vs. Commr. Of Customs, reported in (2001) 4 SCC 593, the learned Senior counsel for the petitioner submits that so far as fraud and collusion are concerned, it is evident that the requisite intent i.e intent to evade duty to built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly

qualified by the word "wilful" preceding the words "mis-statement or suppression of facts" which means with intent to evade duty.

18. The learned Senior counsel submits that although these principles are essentially with regard to Section 11-A of the Central Excise Act, 1944, since the provision of Section 74(A) are parameteria to Section 11-A of the Central Excise Act, 1944, the law laid down by the Apex Court in this regard are equally applicable in respect of invocation of powers under Section 74(1) of the CGST Act of 2017.

19. The learned Senior counsel for the petitioner further refers to the Judgment of the apex Court in *CCE Vs. Chemphar Drugs and Liniments,* reported in *(1989) 2 SCC 127* to submit that something positive other than mere inaction or failure on the part of the manufacture or producer or there must be conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before the revenue the extended period limitation.

20. It is submitted that the extended period of limitation under Section 74 is only available when the pre-conditions are satisfied and it is the bounden duty of the authorities to satisfy itself that any or all these pre-conditions are available prior to invoking Section 74 of the GST Act, whereby the limitation stood extended. The learned senior

counsel for the petitioner presses the Judgment of the Apex court rendered in *Cosmic Dye Chemical Vs. CCE*, reported in *(1995) 6 SCC 117* in support of his contention.

21. The learned Senior counsel for the petitioner by referring to the Judgments strenuously submits that where the particulars are known to both the parties and where admittedly the bills have been prepared by the Assam PWD, NH Works and duly approved by the Union Ministry in the MoRTH, all the facts and figures were available before the respondent authorities and duly disclosed by the petitioner, there was no omission by the petitioner to disclose the receipts pursuant to the contract executed and the amount paid the tax , the revenue cannot proceed to invoke it's powers under Section 74 of the Act of 2017. Even assuming though not admitting that there was some shortfall, that by itself will not satisfy the three pre-conditions necessary for invocation of Section 74 namely Fraud, willful mis-statement and/or suppression of facts. The respondent authorities without proper examination of the materials available cannot invoke their powers under Section 74 and thereby extend the limitation prescribed. The invocation of jurisdiction under Section 74 by issuance of a show cause notice under Section 74(1) by the respondent authorities in the absence of any of these pre-conditions is invocation of the jurisdiction by the respondent authorities not

vested on it by the statute and therefore the same is a clear case of unauthorized and excessive jurisdiction which is an arbitrary exercise of power which calls for interference by this Court by issuance of a proper writ. The learned senior counsel for the petitioner submits that the petitioner had claimed exemption from payment of tax liability under GST on a bonafide belief that the amounts were received in respect of price adjustments and therefore, not liable for payment of GST. There was no malafide intention as the petitioner has been paying GST in respect of other receivables. Therefore, under these facts and circumstances, invocation of jurisdiction under Section 74(1) of the GST Act, 2017 by the respondent authorities was not available and the same was assumed and invoked only for the purposes of extension of the limitation period by alleging fraud, collusion and/or suppression of material facts which on a clear appreciation of the facts will reveal that none of these ingredients were available to the respondent authorities for invocation of the jurisdiction under Section 74(1). The learned Senior counsel for the petitioner submits that the respondents therefore committed serious jurisdictional error in invoking its powers under Section 74(1) without there being any enquiry and conclusion arrived at to satisfy themselves that the pre-conditions for invoking the jurisdiction under Section 74 was available.

22. Mr. S. C Keyal, learned senior counsel and Standing counsel, CGST on the other hand submits strenuously disputes the contentions raised by the counsel for the petitioner. The respondents have contested the matter by filing their affidavit in opposition. There is a clear averment in the affidavit that the writ petitioner filed NIL monthly return and did not make necessary payment of tax with the intention to evade tax although the petitioner disclosed receipt of revenue in respect of price adjustment bills as exempted in GSTR-9 return for the financial year 2022-23 on 28.12.2024 although the said amount is taxable under GST. It is submitted that upon proper enquiry and investigation by the respondent authority it was found that an amount of Rs. 32.78 crores and 3.687 Crores were withheld which were paid in the financial year 2022-23. The learned senior counsel submits that this act of the petitioner would have remained suppressed and came to light only after investigation was carried out against them. According the respondent, the petitioner willfully suppressed the material facts with the intention to evade tax and therefore, the show cause notice under Section 74(1) of the CGST Act, 2017 is legal and liable to be upheld. The learned senior counsel refers to and relies upon the Judgment rendered by the Andhra Pradesh High Court in M/S Sriba Nirman Company Vs. Commissioner (Appeal) and Ors [W.P(C) No. 25826/2023]. Referring to the said

Judgment, it is submitted that the Andhra Pradesh High Court in a similar matter had rejected the contentions of the petitioner therein and which Judgment was also not interfered with by the Apex Court. It is submitted that this revenue is payable to the Government and which has been short paid by mis-statement and suppression on material facts and therefore the proceedings initiated by the respondent authorities are correctly initiated and there is no infraction of the law and the same should not be interfered with and the writ petition should be accordingly dismissed.

23. In rejoinder, the learned senior counsel for the petitioner reiterated on the submissions made. He reiterates that provisions under Section 74 can only be invoked upon satisfaction of the three pre-conditions prescribed. The burden is on the revenue to satisfy itself that the pre-conditions existed prior to initiating the power under Section 74. He therefore submits that in view of the submissions made and the Judgments rendered, the writ petition be allowed and the show cause notice be interfered with, set aside and quashed.

24. The learned counsel for the parties have been heard. Pleadings available on record have been carefully perused.

25. The core issue which has been urged before the Court are the necessary concomitants before invocation of the powers under Section 74(1) by the GST Authorities. 74(1) of the CGST Act reads as under:

> ***"Section 74(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 by 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 equivalent to the tax specified in the notice.*
>
> ***2.*** *The proper officer shall issue the notice under Sub-section (1) at least six 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 wrong availed or utilized for such periods other than those*

covered under sub-section (1), on the person chargeable with tax.

....

....

Explanation 2 omitted by Finance (No.2) Act, 2024 (15 of 2024), dt. 16-8-2024. Effective date yet to be notified. Prior to omission, Explanation 2 reads as under:

"Explanation 2: For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer."

26. It is clear from the bare reading of Section 74(1) that this section empowers the revenue for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or willful mis-statement or suppression of facts to evade tax. Therefore, this section contained two parts prior to amendments. The first part is for determination of tax and recovery which according to the revenue was not paid or short paid by reason of fraud or any willful mis-statement to evade tax. Therefore, the mandate of the Section is very clear that it can be invoked only where the taxes are not paid or short paid by reason of

fraud or willful mis-statement or suppression of facts for the purpose of evasion of taxes and suppression of facts shall mean non-declaration of facts and information which a taxable person is required to declare in the return/statement or report filed. The second part relates to the explanation -2 provided that "suppression" will mean non-declaration of facts/information which a taxable person is required to declare in the return/statement and report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

(Emphasis Supplied)

27 At this juncture, the relevant extract of the show cause notice is also reproduced:

> ***7. Suppression of facts by the Noticee***
>
> *7.1 Section 74 of the CGST Act, 2017 and the Assam Goods & Services Tax Act, 2017 as amended- Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reasons or fraud or any willful mis-statement or suppression of facts reads as:*
>
> *74(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 by 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 equivalent to the tax specified in the notice.*

74(2). The proper officer shall issue the notice under Sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

Explanation 2- For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other documents furnished under this Act or the rules made hereunder, or failure to furnish any information on being asked for, in writing by the proper officer."

7.2. In this context, it is submitted that the noticee is a Government Contractor and maintenance of Books and Accounts, Filing of GST and Income Tax Returns etc. are basic responsibilities of the notice. From their submission, it is clear that the noticee is well aware with the legal provisions of taxation matters, including the provisions related to applicability of GST, applicability of Circular and Notification issued from time to time and payment of GST. GST is levied on the supply of goods and services under the provisions of the CGST Act, 2017 and the Rules made thereunder as well as similar provisions of the respective Assam. GST Act, 2017 and also IGST Act, 20L7 including Rules made thereunder wherein a system of self-assessment and self-disclosure through periodical returns is prescribed. In other words, it is the legal responsibility of the noticee to obtain registration, assess and discharge the tax liability as per the provisions of the Act and also declare the same through the prescribed periodical returns.

7.3 It has also been noticed during scrutiny of records/documents. submitted by the noticee in course of investigation that the noticee has failed to self-assess and pay their GST Liabilities correctly for the period from July 2017 to March 2023 thereby suppressing GST liability amounting to Rs. 4,37,73,372/- (CGST Rs. 2,18,86,686/-. SGST Rs. 2,18,86,686/-) resulting in evasion of GST in contravention of the provisions of Section 9(1) Section 49, Section 59, Section 37 and Section 39 of the CGST Act, 2017 read with relevant provisions of Assam GST Act, 2017.

7.4. The said contravention. on the part of noticee as discussed in pare 7:1 to 7.3 above appeared to have been committed deliberately by way of not declaring material facts to the department and willfully mis-stating 'or suppressing outward tax liability and this act of intentional commission or omission shows mens rea on the part of the notices, The amount of tax so evaded by the notice is required to be demanded/recovered from them by invoking the extended period of limitation in terms of the Proviso to Section 74(1) of the CGST Act, 2017.

7.5 It also appears that the tax-payer had willfully suppressed these material facts from the department and thus they contravened the provisions of Section 37, Section 39 and Section 49 of the GST Act, 2017 read with Rule-59 and Rule 61 of the CGST Rules, 2017 and the similar Sections and Rules under the. Assam GST Act, 2017, with intent to evade payment of GST and has also failed to make a true and comprehensive

disclosure of the GST liability in the prescribed returns. Hence, it is a clear violation of the aforementioned provisions of the CGST Act, 2017 and the similar sections of Assam GST Act, 2017, which would attract the extended period and the penal provisions under the Act as per the provisions of Section 74(1) of the GST Act, 2017 and similar provisions of the Assam GST Act, 2017. Hence, it appears that the noticee by not disclosing all the material facts, have wilfully suppressed the facts of providing taxable service and have also contravened the provisions of CGST Act, 2017, the Assam GST Act, 2017 and Rules made thereunder with intent to evade payment of GST.

28. What is fraud or willful mis-statement or suppression of facts is not defined in the statute. Therefore recourse will have to be had to the various authoritative findings of the Courts in India. It is also necessary to note the averments made in the affidavit filed by the respondents that in Paragraph-9 that *the date of provision of services is not known precisely but it is surely prior to the dates of the respective original departmental bills in respect of price adjustment.* There is also an averment in the affidavit that the petitioner had filed NIL monthly returns and not made the necessary payment of tax with intention to evade tax and that the petitioner had also disclosed the money received in respect of price adjustment bills in the GSTR-9 return for the Financial Year 2022-23 on 28.12.2023 though the said amount is taxable under GST. Averments are also made in paragraph-22 of the affidavit filed by the respondents that although a request was made to the Ministry of Road Transport in respect of the dates of completion of works in respect of 11 number of bills of price adjustments and the amount

paid to the petitioner individually for each bill, no reply was received from the said authority. Although, there was a statement by the petitioner that they will try to provide evidence showing date of completion of the work in respect of the said 11 number of bills of price adjustment and the same was not furnished and therefore to avoid the limitation period for the period 2017-18 as provided in the statute and also to save guard government revenue show cause notices under Section 74(1) of the CGST has been issued. There is also an avernment made in the affidavit that the limitation for issuance of a show cause notice in respect of Assam under Section 74 CGST, 2017 is 7th of August 2024 whereas the show cause notice was issued on 03.08.2024.

29 In Pushpam Pharmaceutical Co (Supra), although the Judgment pertains to interpretation of Section 11A of the Central Excise and Salt Act, 1944, the ratio in the judgment in respect of suppression of facts, fraud, collision or willful mi-statement would be applicable in the facts of the case. In the said Judgment, the Apex Court held as under:

> *"Section 11-A empowers the Department to reopen proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise*

this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."

30. In Anand Nishikawa Co. Ltd (Supra), the apex court held that after referring to the earlier precedents that "suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty. When facts were known to both the parties, the omission by one to do what he might have done and not that he must have done, would not render it suppression. It is settled law that mere failure to declare does not amount to wilful suppression. There must be some positive act from the side of the assessee to find wilful suppression. Therefore, in view

of our findings made hereinabove that there was no deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of duty, it was not open to the Central Excise Officer to proceed to recover duties in the manner indicated in the proviso to Section 11-A of the Act.

31. In Continental Foundation Joint Venture Holding (Supra), the Apex Court held that the expression "suppression" has been used in the proviso to Section 11A of the Act is accompanied by very strong words as "fraud" or "collusion" and, therefore, has to be construed strictly. Therefore, mere omission to give correct information is not suppression of facts unless it was deliberate attempt to evade the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the Revenue invokes the extended period of limitation under Section 11-A the burden is cast upon it to prove suppression of fact with the intention to evade payment of duty. An incorrect statement cannot be equated with a wilful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct.

32. In CCE Vs. Chemphar Drugs and Liniments (Supra), the Apex court held that in order to make the demand for duty sustainable

beyond a period of six months and up to a period of 5 years, in view of the proviso to sub-s. 11A of the Act, it has to be established that the duty of excise had not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, beyond the period of six months. Whether in a particular set of facts and circumstances there was any fraud or collusion or wilful mis-statement or suppression or contravention of any Provision of any Act, is question of fact which will depend upon the facts and circumstances of a particular case.

33. In Cosmic Dye Chemical (Supra), the Apex Court again in the context of Section 11-A of the Central Excise and Salt Act, 1944 held that the main limb of Section 11-A provides limitation of six months. In cases, where the duty is not levied or paid or short-levied or short-paid or erroneously refunded, it can be recovered by the appropriate officer within six months from the relevant date. (The expression "relevant date" is defined in the section itself.) But the

said period of six months gets extended to five years where such non-levy, short levy, etc. is *"by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the rules with intent to evade payment of duty"*. In so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as misstatement or suppression of facts are concerned, they are clearly qualified by the word 'wilful' preceding the words "misstatement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or rules" are again qualified by the immediately following words "with intent to evade payment of duty". It is, therefore, not correct to say that there can be a suppression or misstatement of fact which was not wilful but yet constitutes a permissible ground for the purpose of the proviso to Section 11-A. Misstatement or suppression of fact must be wilful.

34. In CCE Vs. Ballarpur Industries Ltd (Supra), the law laid down in Continental Foundation Joint Venture Holding Vs. CCE, reported in (2007) 10 SCC 337 was reiterated and it was held by the Apex Court that the suppression would mean failure to disclose full and true information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party would not

constitute suppression. Further an incorrect statement cannot be equated with a wilful misstatement. The latter implies making of an incorrect statement deliberately with the knowledge that the statement made was not correct.

35. In Uniworth Textiles Ltd. Vs. CCE, reported in (2013) 9 SCC 753, the Apex Court held that the conclusion that mere non-payment of duties is equivalent to collusion or wilful misstatement or suppression of facts is, in our opinion, untenable. It was held that if that were to be true, one would fail to understand which form of non-payment would amount to ordinary default? Construing mere non-payment as any of the three categories contemplated by the proviso would leave no situation for which a limitation period of six months may apply. The Apex Court held that the main body of the section, in fact, contemplates ordinary default in payment of duties and leaves cases of collusion or wilful misstatement or suppression of facts, a smaller, specific and more serious niche, to the proviso. Therefore, something more must be shown to construe the acts of the appellant as fit for the applicability of the proviso. Therefore, if non-disclosure of certain items assessable to duty does not invite the wrath of the proviso, we fail to understand how the non-payment of duty on disclosed items, after inquiry from the department concerned meets with that fate. The Apex Court further held that in fact, the

Act contemplates a positive action which betrays a negative intention of wilful default. The Apex Court held that it is a settled law that for invoking the extended period of limitation, duty should not only have been not paid, short-levied or short-paid or erroneously refunded but such not paid, short paid, short levied or erroneously refunded must be due to either fraud, collusion, wilful misstatement, suppression of facts or contravention of any provisions of the Act. These ingredients postulate a positive act and, therefore, mere failure to pay duty and/or take out a licence which is not due to any fraud, collusion or wilful misstatement or suppression of fact or contravention of any provision is not sufficient to attract the extended period of limitation

36. Again in CCE. Vs. H.M.M Ltd (Supra), the Apex Court held that that mere non-disclosure of certain items assessable to duty does not tantamount to the mala fides elucidated in the proviso to Section 11A of the Central Excise Act, 1944. It was held that mere non-declaration of the waste/by-product in their classification list cannot establish any wilful withholding of vital information for the purpose of evasion of excise duty due on the said product. There could be bona fide belief on the part of the assessee that the said waste or bye-product did not attract excise duty and hence it may not have been included in their classification list. But that per se cannot go to prove that there was any intention to evade payment of duty or that the

assessee was guilty of fraud, collusion, misconduct or suppression to attract the proviso to Section 11A(1) of the Act.

37. In Associated Cements Companies Ltd (Supra), the Apex Court held that so far as fraud and collusion are concerned, it is evident that the requisite intent i.e. intent to evade duty is built into these very words. So far as misstatement or suppression of facts are concerned, they are clearly qualified by the word "wilful" preceding the words "misstatement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or Rules" are again qualified by the immediately following words "with intent to evade payment of duty". It is, therefore, not correct to say that there can be a suppression or misstatement of fact, which is not wilful and yet constitutes a permissible ground for the purpose of the proviso to Section 11A. Misstatement or suppression of fact must be wilful.

38. A careful analysis of these Judgments reveal that the consistent view of the Apex Court in that besides the presence of the conditions precedent for issuance of show cause notice under section 74(1) of the Act of 2017. There must be a clear intention to evade payment of taxes. In the absence of the conditions precedent showing clear

intention to evade payment of taxes, the Revenue cannot invoke the provision of Section 74(1) by issuing show causes notices.

39. From the pleadings, it is seen that the petitioner had disclosed the amount received in its balance sheets filed with ITR filings as well as in its annual return filings for GST. The Petitioner as per Rule 66 of the CGST Act, 2017 affirmed and declared before the GST Authorities that the amount has been received by them in its declaration dated 12.12.2022.

40. As discussed, to confer jurisdiction to issue notices under section 74(1) of the GST Act, 2017 either of the three conditions stipulated therein will have to be satisfied. The proper officer has to come to a conclusion that tax/duty has not been paid by reason of fraud or there has been willful-misstatement or suppression of facts in order to evade payment of tax. From the impugned show cause notice, it is seen that there is no allegation of fraud, rather the impugned show cause notice is proceeds an allegation of suppression of facts. Thus, the question to be decided is the basis of the Revenue is to come to the conclusion that there has been suppression of facts by the Petitioner to evade tax. In order to decide that it is necessary to examine whether the assessee i.e. the Petitioner had disclosed all materials facts for his assessment. From the pleadings, it is seen that

the petitioner had filed the audited balance sheet for the assessment year 2023-24 (i.e. Financial Yeat 2022-23) before the Income Tax Authorities on 29.09.2023 recording the receipt of price adjustment and thereafter the Petitioner on the belief that the amounts which were received as Price-Adjustment in respect of the Works for which Agreement was entered prior to 2017 were not taxable under GST Act, had shown the amounts received as price adjustment as "exempted" while filing GST returns for the financial year 2022-23 in December 2022. The Income Tax Return as well as the GST returns are public documents and when the receipt of the price adjustment money stands reflected in such public documents it cannot be said that there was any suppression or mis-statements on the part of the Petitioner so as to invoke section 74(1) of the GST Act, 2017. According to the petitioner that every detail was maintained by the Petitioner in usual course of business and as such suppression or mis-statements cannot be held to be present for the Respondent Authorities to invoke Section 74(1) of the GST Act, 2017.

41. From the various Judgments discussed above, it clear that for an act to qualify as mis-statement or suppression of facts, the act has to be willful not mere omission as the words mis-statement or suppression are qualified by the word "willful". Thus, any omission on the part of the assessee unless it can be shown that it is deliberate

willful attempt to escape from payment of duty, it will not amount to mis-statement or suppression of facts. When the Petitioner has disclosed the receipt of price adjustment money in respect of the 11 bills in its audited balance sheet and filed the same before Income Tax Authorities then the act of the Petitioner in not paying GST in respect of the price adjustment money cannot be regarded as willful suppression of facts or mis-statement by the Petitioner as the fact of receiving the amount for price adjustment has been disclosed by the Petitioner and mere failure to pay GST on a bonafide belief as aforesaid is an omission and cannot be equated with deliberate non-payment.

42. From the materials before the Court, there appears to be no suppression or mis-statement made by the Petitioner to escape payment of duty. Any such omission by itself does not amount to willful suppression of facts or mis-statements by the Petitioner. It is also seen from the pleadings that the Petitioner has disclosed the information regarding the receipt of the price adjustment money in its audited balance sheet, ITR filling as well as GST Annual filing. The Petitioner as per Rule 66 of the CGST Act, 2017 affirmed and declared before the GST Authorities that the amount has been received by them in its declaration dated 12.12.2022 and thereby there was due intimation of the same to the Department.

Accordingly, the fact of receiving money has been disclosed by the Petitioner to the revenue authorities and therefore no suppression of facts can be said to have been resorted to by the petitioner to evade payment of taxes. Suppression of facts means non-declaration of facts or information which a taxable person is required to declare in the return, statements, report or other documents. In the instant case, the Petitioner had declared all material facts in its audited balance sheet, ITR filings and annual GST filings. The Petitioner as per Rule 66 of the CGST Act, 2017 affirmed and declared before the GST Authorities that the amount has been received by them in its declaration dated 12.12.2022 and thereby there was due intimation of the same to the Department.

43. From the pleadings it is seen that the Petitioner had disclosed the fact of receiving the price escalation amount in the audited balance sheet of the petitioner, while filing returns for income tax (which is accessible by the GST authorities too) and also while filing returns for Annual GST. The Petitioner on the basis of their understanding and bonafide belief had shown the amount as exempted from payment of GST while filing its returns for annual GST i.e. Form GSTR-9. Such bonafide belief has been further strengthened by the fact that neither the Assam P.W.D nor the Ministry has included/reflected GST charges in the bills against the

price adjustment amounts released to the Petitioner during preparation and/or confirmation of the said bills by the Assam, P.W.D. or Ministry. Therefore, the conclusion that mens rea could be deduced from the intentional erroneous self-assessment is not borne out from the record.

44. It appears to the Court that the petitioner claimed exemption from paying tax liability under GST on the bonafide belief that as the amounts were received in respect of price adjustment the same are not liable for payment of GST. No malafide intention is made out as the petitioner has been paying GST in respect of other receivables. Therefore, the issuance of show cause notice under section 74(1) is manifestly erroneous and arbitrary and error apparent on the face of the record as the conditions precedent for issuance of the show cause notice under section 74(1) are not present for which the same is without jurisdiction. In the absence of any element of fraud or willful misstatement or suppression of material fact, notices could not have been issued under section 74(1) and thereby extending the period of limitation prescribed and hence the impugned show cause notice is time barred. Further, it appears to the Court that though all details were already disclosed by the Petitioner, the GST Authorities instead of conducting enquiry as per the mandate of the GST Act,

2017 proceeded to issue notices under section 74(1) for the purpose of overcoming the period of limitation prescribed under the statute.

45. The conclusion arrived at by the Respondent Authorities that the petitioner by failing to self-assess have deliberately contravened the provisions of Act of 2017 and also by way of not declaring material facts to the department and by suppressing outward tax the petitioner have intentionally committed acts which show *mens rea* on the part of the petitioner is not based on the records of the case. Such conclusions on the part of the Respondent Authorities especially Joint Director is an error apparent on the face of the record and without any basis and not consistent with the records of the case and, as such, the impugned notices are manifestly erroneous and without jurisdiction.

46. It is also seen that the petitioner had also paid income tax in respect of the amount so received. Further, the petitioner also disclosed the amounts in respect of the 11 bills in its GST filing. However, as the amount so received pertains to price adjustments, the petitioner has stated that he was on the bonafide and genuine belief that GST is not required to be paid in respect of the said amount for which it had recorded in its GST filing/returns that GST is "exempted". The Revenue failed to take into consideration the fact

that the amount received as price adjustment were duly recorded in its balance sheets.

47. Having discussed the pre-conditions under Section 74, it is now necessary for the Court to refer to the question of assumption of jurisdiction by the authorities which is also one of the grounds pressed by the petitioner.

48. Where a subordinate Tribunal and an authority is found to have assumed jurisdiction not vested on it a superior Court may invoke its extraordinary jurisdiction to correct such errors which were exercises by the authorities. The powers of a superior Court to examine the authority assumed by a Tribunal was the issue in *Anisminic Ltd Vs. Foreign Compensation Commission and Anr. reported in (1969) 2 WLR 163.* It was held therein that the jurisdiction of the superior Court is to see that the inferior court has not exceeded its own, and for that very reason it is bound not to interfere in what has been done within that jurisdiction, for in so doing it would itself, in turn, transgress the limits within which its own jurisdiction of supervision, not of review, is confined. That supervision goes to two points: one is the area of the inferior jurisdiction and the qualification and conditions of its exercise; the other is the observance of the law in the course of its exercise. If, therefore, a tribunal while within the

area of its jurisdiction committed some error of law and if such error was made apparent in the determination itself (or, as it is often expressed, on the face of the record) then the superior court would certainly be competent correct that error unless it was otherwise forbidden to do so under the statute. It would be so forbidden if the determination was "not to be called in question in any court of law". If so forbidden it could not then even hear argument which suggested that error of law had been made. It could, however, still consider whether the determination was within "the area of the inferior jurisdiction.

49. By referring to Reg. Vs. Cotham, reported in (1898) 1 Q.B. 802, 808, it was noted that the distinction between, on the one hand, disregarding the provisions of a statute and considering matters which ought not to be considered and, on the other hand, what is called "a mere misconstruction of an Act of Parliament". This perhaps illustrates the clear distinction which exists between an error when in the exercise of jurisdiction and an error in deciding whether jurisdiction can be assumed: in the latter case an error may have the consequence that jurisdiction was lacking and was wrongly assumed and the result would be that any purported decision would have no validity.

50. The Court held that lack of jurisdiction may arise in various ways. There may be an absence of those formalities or things which are conditions precedent to the tribunal having any jurisdiction to embark on an inquiry. Or the tribunal may at the end make an order that it has no jurisdiction to make. Or in the intervening stage, while engaged on a proper inquiry, the tribunal may depart from the rules of natural justice; or it may ask itself the wrong questions; or it may take into account matters which it was not directed to take into account. Thereby it would step outside its jurisdiction. It would turn its inquiry into something not directed by Parliament and fail to make the inquiry which Parliament did direct. Any of these things would cause its purported decision to be a nullity.

51. Again in *Bunbury Vs. Fuller,* reported in *(1853) 9 Exch 111, 140* on the question of excessive jurisdiction of a Court of limited jurisdiction, it was held that no court of limited jurisdiction can give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limit to its jurisdiction depends; and however its decision may be final on all particulars, making up together the subject matter which, if true, Is within its jurisdiction, and however necessary in many cases it may be for it to make a preliminary inquiry, whether some collateral matter be or be not

within the limits, yet upon this preliminary question, its decision must always be open to inquiry in the superior court.

52. In *Rex Vs. Shoreditch Assessment Committee, Ex parte Morgan,* reported in *(1910) 2 K.B. 859,* it was held that no tribunal of *inferior jurisdiction can by its own decision finally decide on the question of the existence or extent of such Jurisdiction: such question is always subject to review by the High Court, which does not permit the inferior tribunal either to usurp a jurisdiction which it does not possess*, whether at all or to the extent claimed, or to refuse to exercise a jurisdiction which it has and ought to exercise. Subjection in this respect to the High Court is a necessary and inseparable incident to all tribunals of limited jurisdiction; for the existence of the limit necessitates an authority to determine and enforce it: it is a contradiction in terms to create a tribunal with limited Jurisdiction and unlimited power to determine such limit at its own will and pleasure — such a tribunal would be autocratic,not limited — and it is immaterial whether the decision of the inferior tribunal on the question of the existence or nonexistence of its own jurisdiction is founded on law or fact.

(Emphasis Supplied)

53. In Pilling Vs. Abergele Urban District Council, reported in (1950) 1KB 636, it was held that where a duty to determine a question is conferred on a authority which state their reason for the decision and the reasons which they state show that they have taken into account matters which they ought not to have taken into account or that they have failed to take matters into account which they ought to have taken into account, the court to which an appeal lies can and ought to adjudicate on the matter.

54. Similar views have been expressed by Courts in India and followed in several cases in the context of examination of jurisdiction vested on Tribunals and Court of limited jurisdiction. In Dhirajlal Girdharilal Vs. CIT, Bombay, reported in AIR 1955 SC 271, the Apex Court held that when a Court of fact acts on materials partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the Court was affected by the irrelevant materials used by it in arriving at its finding and such a finding is vitiated because of use of inadmissible material and thereby a question of law arises.

55. In Ram Avtar Sharma Vs. State of Haryana, reported in AIR 1985 SC 915, the Apex Court held that discretionary power must be exercised on relevant and not on irrelevant or extraneous considerations. It means that power must be exercised taking into

account the considerations mentioned in the statute. If the statute mentions no such considerations, then the power is to be exercised on considerations relevant to the purpose of which it is conferred. On the other hand, if the authority concerned pays attention to, or takes into account, wholly irrelevant or extraneous circumstances, events or matters or considerations then the action taken by it is invalid and will be quashed.

56. In Indian Railway Construction Co. Ltd. Vs. Ajay Kumar, reported in AIR 2003 SC 1843, the Apex Court held that in the purported exercise of its discretion, the authority conferred with discretion must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations, must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter and to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously.

57. Again in Shalini Soni Vs. Union of India, reported in (1980) 4 SCC 544, it was held by the Apex Court that it is an unwritten rule of law, constitutional and administrative, that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind

to pertinent and proximate matters only, eschewing the irrelevant and the remote. Applying this principle in CIT Vs Mahindra & Mahindra, reported in (1983) 4 SCC 392, the Supreme Court quashed a decision under Section 72-A of the Income Tax Act, as the government was "clearly influenced by irrelevant and extraneous materials vitiating the impugned conclusion.

58. In S.R Venkataraman Vs. Union of India, reported in AIR 1979 SC 49, the Apex Court held that an administrative order which is based on reasons of facts which do not exist is infested with an abuse of power. There will be an error of fact when a public body is promoted by a mistaken belief in the existence of a non-existing fact or circumstance.

59. From a detailed evaluation of the judicial pronouncements as discussed above, it is clear that if an authority while making the inquiry rejects a consideration which is relevant and/or takes into consideration/ materials and other information which are not relevant, the said decision must be held to be a decision in excess or without jurisdiction.

60. Coming to the facts of the present case, since the adjudicating authority did not take into consideration those relevant materials which it was bound to take into consideration and on the other hand

it had taken into consideration factors and materials, which if not irrelevant and not germane for deciding the liability of the service tax, cannot establish the liability of the assessee, then the said actions of the adjudicating authority in issuing the impugned show cause notice is certainly without jurisdiction and/or is in excess of jurisdiction and thereby the impugned actions, orders and notices issued by the adjudicating authority are liable to interfered with by this Court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India.

61. Coming to the question of maintainability of the writ petition in view of the facts that the matter is still at the stage of issuance of show cause notice and the petitioner has asserted the show cause notice without filing it's reply and that the Revenue is yet to take any decision, therefore, the question of issuance of any prerogative writs by this court is not called for at this stage and the writ petition should be dismissed and the petitioners should be relegated to it's reply to the show cause notice.

62. Time and again the question of issuance of prerogative writs even where statutory alternative remedies are available and/or are not availed of by the assessee, has come up before this Court as well as the Apex Court in a Catena judgments. The Assam High Court in

Hardeodas Jagannath Vs. Income Tax Officer, reported in (1961) 47 ITR 56 had clearly held that there is no inflexible rule that the existence of an alternative remedy is a bar to the issue of writ of certiorari. The issuance of prerogative writs or directions is always to the discretion of the Court and the Court while exercising its discretion may take into consideration the existence of an alternative remedy as a matter of policy, but the existence of an alternative remedy is not per se a bar to the issue of writ of certiorari.

The High Court at Paragraph 42 held as under:

> *"42 No Tribunal and no Officer can confer jurisdiction or authority or competence upon itself or himself by misconstruing a section. An authority cannot claim to exercise jurisdiction by construing a section erroneously and thereby contending that the section so wrongly construed gives him the necessary power. In such a case, if the section has been wrongly construed, it would be a clear case of absence of jurisdiction apparent on the face of the record because the Court has got to look at the section and to decide whether the officer construing the section was in the right or in the wrong."*

63. The Apex Court in *TELCO Vs. Assistant Commissioner,* reported in *AIR 1967 SC 1 401* held that though ordinarily High Court leaves an aggrieved party to take recourse to the remedies available under the ordinary law, if they are equally efficacious, yet there are certain exceptions and one of such exceptions pointed out is where action is being taken arbitrarily and without the sanction of law.

64. In *State of U.P Vs. Mohd. Nooh*, reported in *1958 SCR 595*, the Apex Court held that the rule requiring the exhaustion of statutory

remedies before the writ is granted is a rule of policy, convenience and discretion rather than rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies.

65. In *Bhopal Sugar Industries Vs. D.P Dubey*, reported in *AIR 1967 SC 549*, the Apex Court held that the High Court has undoubted jurisdiction to decide the writ application whether the taxing authority has arrogated to itself, powers which it does not posses or has committed serious errors of procedure which has affected the validity of the decision or where the taxing authority threatens to recover tax on an interpretation of the statute which is erroneous.

66. In *Altafur Rahman Vs. Union of India,* reported in *(1986) 1 GLR 14,* this Court held that when the challenges of the petitioner go to the root of the jurisdiction of the Controller and therefore the writ petition cannot be dismissed without disposing the contentions of the petitioner on merits.

67. In *Whirlpool Corporation Vs. Registration of Trade Mark,* reported in *(1998) 8 SCC 1*, the Apex Court on the question of alternative remedy held that exception on the existence whereof a Writ Court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy

provided by the statute were laid document was the exceptional land document by the Apex Court were as under :

(i) where the writ petition seeks enforcement of any of the fundamental rights.

(ii) where there is violation of principles of natural justice;

(iii) Where the order or the proceedings are wholly without jurisdiction; or

(iv) Where the vires of an Act is challenged

68 The ratio laid down in *Whirlpool Corporation (Supra)* by the Apex Court was reiterated again in *Popcorn Entertainment v. City Industrial Development Corpn.,* reported in *(2007) 9 SCC 593* wherein in the context of maintainability of the writ petition where alternative remedy is available or where the remedies under the statute have not been exhaustive by the assessee, it was held that availability of alternative remedy or non-exhaustion of remedies is not a bar for issuance of the writ where (i) the action of the respondent was illegal; (ii) where there are violation of the principles of natural justice (iii) where the petitioner's fundamental rights have been violated.

69. In *Kaikhosrou (Chick) Kavasji Framji v. Union of India,* reported in *(2019) 20 SCC 705,* in the context of the provision of the Public

Premises (Eviction of Unauthorised Occupants) Act, 1971 and the remedies provided thereunder. The Apex Court again reiterated that availability of alternative remedy of non-exhaustion of remedy under the statute are no grounds. It was held that notices issued under the statute in a appropriate case can be maintainable on the facts and circumstances of the case an appropriate writ also may be issued by the Court.

70. In *Popatrao Vyankatrao Patil v. State of Maharashtra*, reported in *(2020) 19 SCC 241,* the Apex Court held that the State should act as a model litigant and Governments and Statutory authorities should be model or ideal litigants and should not put forth false, frivolous, vexatious, technical (but unjust) contention to obstruct to path of justice. Even if there are disputed questions of fact but if they do not require elaborate evidence to be adduced, High Court is not precluded from entertaining a petition under Article 226 of the Constitution and such power would be justified in exercising even to the exclusion of other available remedies provided it finds of the action of the State or its instrumentality is arbitrary, unreasonable and therefore violative of Article 14.

71. In *Magadh Sugar & Energy Ltd. v. State of Bihar,* reported in *(2022) 16 SCC 428* on the question of maintainability of the writ

petition without delaying the alternative remedy/the exhaustion of remedies under the Bihar Electricity Duty Act, 1948. It was held that where under a statute, there is allegation of infringement of fundamental rights or when on the undisputed facts the Taxing Authorities are shown to have assumed jurisdiction which they do not possess can be the grounds on which the writ petitions can be entertained. But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute.

72. In *Godrej Sara Lee Ltd Vs. Com. Assessing Officer*, reported in *2023 SCCOnline SC 9695*, the Apex Court held that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under Article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". The Court made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a

rule of law. The Apex Court in further held that dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper. The Apex Court further held that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the high court instead of dismissing the writ petition on the ground of an alternative remedy being available. The relevant paragraph is extracted below:

> *"9. Now, reverting to the facts of this appeal, we find that the appellant had claimed before the High Court that the suo motu revisional power could not have been exercised by the Revisional Authority in view of the existing facts and circumstances leading to the only conclusion that the assessment orders were legally correct and that the final orders impugned in the writ petition were passed upon assuming a jurisdiction which the Revisional Authority did not possess. In fine, the orders impugned were passed wholly without jurisdiction. Since a jurisdictional issue was raised by the appellant in the writ petition questioning the very competence of the Revisional Authority to exercise suo motu power, being a pure question of law, we are of the considered view that the plea raised in the writ petition did deserve a consideration on merits and the appellants writ petiton ought not to have been thrown out at the threshold."*

73. Again in Union of India Vs. Parashtom Dass, reported in 2023 SCCOnline SC 314, the Apex Court held that the provision of Article 226 of the Constitution forming part of the basic structure of the Constitution and that the self-restraint of the High Court under Article

226 of the Constitution is distinct from putting an embargo on the High Court in exercising this jurisdiction under Article 226 of the Constitution while judicially reviewing a decision arising from an order of the Tribunal. The relevant Paragraphs are extracted below:

> *"A High Court Judge has immense experience. In any exercise of jurisdiction under Article 226, the High Courts are quite conscious of the scope and nature of jurisdiction, which in turn would depend on the nature of the matter.*
>
> *We believe that there is no necessity to carve out certain case from the scope of judicial review under Article 226 of the Constitution, as was suggested by the learned Additional Solicitor General. It was enunciated in the Constitution Bench Judgment in S.N. Mukherjee case that even in respect of courts-martial, the High Court could grant appropriate relief in a certain scenario as envisaged therein, i.e., "if the said proceedings have resulted in denial of the fundamental rights guaranteed under Part III of the Constitution or if the said proceedings suffer from a jurisdictional error or any error of law apparent on the face of the record."*
>
> *There appears to be a misconception that the High Court would re-appreciate the evidence, thereby making it into a second appeal, etc. WE believe that the High Courts are quite conscious of the parameters within which the jurisdiction is to be exercised, and those principles, in turn, are also already enunciated by this Court."*

74. From a careful analysis of the judgments discussed above, it is clear that the writ Court can interfere any arbitrary action notwithstanding the availability of alternative remedy and even at the stage of issuance of a show cause notice when the authorities act without jurisdiction or in excess of their jurisdiction vested under the statute or where there is a procedural irregularity or where the authority exercises it's jurisdiction based on extraneous materials it

ought not to have acted upon or excludes any relevant materials it ought to have taken into consideration and thereby the action of the authorities is high handed and it results in a palpably illegal order in as much the same would amount to violation of Article 14 of the Constitution of India.

75. The Judgment referred to by the learned counsel for the respondent namely *M/s Sriba Nirman Company Vs. the Commissioner of Appeals [W.P No. 25826/2023]* was rendered by Division bench of the Andhra Pradesh High Court wherein the petitioner had assailed the appellate orders passed by the appellate authority upholding the penalty imposed under Section 74 of the GST Act along with other penalties imposed in the original order. The respondents have pressed into service this Judgment to apply the ratio in the Judgment that in view of Explanation-2 of Section 74 non-declaration of facts or information and non-filing of monthly returns would amount to suppression of facts. However, in M/s Sriba Nirman Company (Supra) are entirely different from the present proceedings. In the present proceedings, it is not the contention of the respondent that the returns are not filed. However, the contention of the respondents is that the information sought for has not been give. As have been discussed above, the various Judgments with regard to the finding of the Apex Court as to what would constitute suppression of fact, the

Judgment referred to by the respondents in the facts of the present proceedings cannot be said to be applicable and come to their aid. In the facts of that case, the Apex Court declined to interfere with the appeal which is preferred by the appellants before the Apex Court.

76. Again in M/S Brahmaputra Television Network Vs. The Union of India, reported in 2024 0 Supreme (Gau) 855 which is relied upon by the respondents. Although a Co-ordinate Bench rejected the petition filed by the petitioner therein challenging the order in appeal filed by the first appellate authority, the Co-ordinate Bench dismissed the writ petition on the ground of alternative remedy being available for filing an appeal before the appellate authority prescribed under the statute. In that view of the matter, the writ petition filed by the petitioner therein came to be dismissed. The said Judgment on the present facts would not be applicable as the Court has held that the very issuance of the impugned show cause notice by the respondent authority was done in excessive jurisdiction not conferred by the statute under Section 74 and under such circumstances, the apex Court by various Judgments have held that not alternative remedy being available, writ petitions are maintainable. Respectively, it is the view of this Court that the Judgment relied upon of the Co-ordinate Bench would not lend support to the petitioner in the facts and circumstances in the present proceedings.

77. The other Judgments relied upon by the respondents rendered in *Union of India Vs. Hindustan Development Corporation*, reported in *1998 Legal Eagle (SC) 73*; *Union of India and Anr. Vs. Guwahati Carbon Ltd*, reported in *2012 Legal Eagle (SC) 12380*; *Union of India & Ors Vs Coastal Container Transporters Association & Ors*, reported in *2019 Legal Eagle (SC) 237*; *Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka & Ors*, reported in *2019 Legal Eagle (SC) 1284* and *Special Director Vs. Mohd. Ghulam Ghouse*, reported in *2004 Legal Eagle (SC) 29* are Judgments which are rendered by the Apex Court where the statutory alternative remedy is prescribed and therefore the Court declined to allow the claims of the assessee therein. However, in view of the elaborate discussions the Judgments above and in view of the conclusions of this Court that the Revenue did not have the jurisdiction its ought to confer on itself under Section 74 of the GST Act, 2017, in view of the authoritative findings by the Apex Court regarding the exception in which the writ petition is maintainable notwithstanding alternative remedy, this Court respectfully holds that these Judgments relied upon by the respondents would not be applicable in the facts and circumstances of the present proceedings.

78. From a perusal of the show cause notice, it is seen that there is no clear findings by the respondent authorities or any material to

that effect placed prior to issuance of the show cause notice before this Court by the Revenue which reveal that a proper enquiry was made by the authorities to arrive at least prima facie at a finding that the petitioner resorted to fraud or mis-statement with the intention to evade payment of tax. Although the Revenue alleges in the show cause notice that there was suppression of facts, from the pleadings, it is seen that the petitioner assessee had submitted the details of the receipt of the price adjustments in the returns filed before Income Tax and GST. Those particulars have also been submitted by the Government of Assam and PWD, NH as also the MoRTH, Government of India before the Revenue authorities. Therefore, there was no suppression of facts as per Explanation 2 to Section 74(1) as alleged by the Revenue. The law laid down by the Apex Court authoratively holds that these pre-conditions must be satisfied before invocation of the powers under Section 74 of the CGST Act, 2017. On the contrary there are clear averments made in the affidavit of the respondents that the date of provision of services is not known precisely but it is surely prior to the dates of the respective original bills in respect of the price adjustment. The respondents have also made an averment in his affidavit that the request made to the Ministry of Road Transport and Highways with regard to the dates of the completion of the works in respect of 11

number of bills or price adjustment and the amounts paid to the petitioner individually for each bill was never received and since there was an urgency in the matter as investigation in respect of financial year 2017-18 was involved which was going to be time barred on 2024. It is clear that the complete materials with regard to the queries raised by the respondent authorities were never within their possession to arrive at a conclusion that the impugned show cause under Section 74(1) satisfied the pre-conditions in the facts and circumstances of the present proceedings and was therefore required to be issued. It is clear from the averments that the show cause notice was issued in undue haste as the period of limitation was first approaching.

79. It is therefore clear that the adjudicating authority has invoked the extended period of limitation without having arrived at a conclusion that there was any suppression or misstatement or fraud or collusion and/or contravention of any of the provisions of the Act and Rules with the intent to evade payment of any tax and thereby the issuance of the show cause notice itself after the period the limitation was absolutely without jurisdiction.

80. Although ordinarily it is the law enunciated by this court as well as by the Apex Court that an aggrieved assessee ought to avail of

statutory remedies ascribed or prescribed under the statute, there is no quarrel with this principle of law. The GST is a complete code in itself providing for filing of returns, assessments, recovery as well as for appeals before the appropriate appellate authority. It is equally not in dispute that at the stage of issuance of a show cause notice, no rights of the petitioner are violated. However, this is subject to the requirement that the Revenue has issued the show cause notice in strict compliance of the statute. Where the statute mandates that show cause notice under Section 74(1) of the CGST Act, 2017 can be issued only upon satisfaction of the essential pre-conditions then the Revenue must necessarily place materials to show that the pre-conditions are indeed satisfied and therefore it necessitated the issuance of the show cause notice under Section 74(1) of the CGST Act, 2017

81. The facts involved in the present proceedings are however peculiar in essence that this show cause notice was issued by the respondent authority after invoking the extended period of limitation under Section 74(1). Therefore, ordinarily in respect of proceedings seeking recovery of tax demanded, the normal course would be to relegate the assessee to avail of the statutory remedies prescribed. However, before the authorities invoke their jurisdiction under section 74(1), it is the mandate of the statute read with the law

enunciated by the Apex Court that the authorities must come to a specific conclusion before the jurisdiction conferred on the revenue authorities under Section 74 (1) can be invoked in the facts and circumstances of the present case. As have been elaborately discussed in the preceeding paragraphs that for invocation of jurisdiction under section 74(1), the respondent authorities must come to a conclusion that the invocation of the powers under section 74(1) is necessary as the petitioner's case falls under any of the pre-conditions mentioned in section 74(1) of the CGST Act. However, from the impugned show cause notice, it is seen that the primary reason for invoking the jurisdiction under section 74(1) is non furnishing of the required documents/information by the petitioner assessee to be full satisfaction of the respondent authorities and the period of limitations. These grounds in itself cannot be construed to have given rise to a situation that any or all of these pre-conditions under section 74(1) were satisfied in order to levy service tax by extending limitation by the revenue authorities

82. Under such circumstances, ordinarily the revenue authorities could not have issued the impugned show cause notice as it would have been hit by limitation. The revenue authorities have erroneously assumed jurisdiction for issuance of the impugned show cause notice under Section 74. The pre-conditions prescribed under the proviso to

section 74 (1) are to be scrupulously and diligently followed by the revenue authorities. It does not depend on the *ipse dixit* of the revenue authorities. They must certainly arrive at a specific conclusion that any or all the pre-conditions exist leading to non-payment of GST and that it is a deliberate and willful attempt by the petitioner assessee to evade from payment of the taxes due. The revenue authorities were within their rights to issue appropriate notices and carry out proceedings within the ordinary period of limitation prescribed, if it was their conclusion that on due examination of the materials before them there was any shortfall in the payment of GST and the same was required to be recovered. However, this process for demand and recovery was not initiated within the period of limitation ordinarily prescribed under the provisions of the Act for reasons best known. The revenue authorities instead invoked the provisions under Section 74(1) to issue the show cause notice for recovery of the demand and imposition of penalty and interest. It is the considered view of this Court that while demand and recovery of taxes as ordinarily prescribed under the provisions of the Act requires careful consideration of the facts and circumstances and satisfaction of all the parameters prescribed upon, the demand and recovery under section 74(1) being an exception to the General Rule, requires a higher degree of responsibility and

diligence on the part of the revenue authorities before they can proceed to invoke the powers conferred under section 74 (1).

83. It is a trite law that greater the power prescribed under the statute, greater will be the responsibility on the authorities on whom it has been bestowed to ensure that no infraction of the provisions of the Act and the Rules are made and no injustice is caused to the assessee during the process of demand and recovery. This Court while examining the facts and circumstances in minute detail and the exposition of the law laid down by various Courts including this Court as well as the Apex court of the country has held that for the Revenue authorities to invoke the powers under section 74(1), there must be a conclusive finding by the Revenue authorities that the petitioner assessee under the facts and circumstances, had willfully and deliberately evaded or neglected to pay the GST. This conclusion by the Revenue authorities is not apparent and discernible from a plain reading of the impugned show cause notice. It is not a case that the petitioner assessee never responded to the notices issued by the respondent. It is not a case that the documents which were called for required to be submitted were not furnished. The Returns filed by the petitioner assessee were available in the records of the revenue authorities and which would have given a complete picture of the services rendered by petitioner assessee and/or whether such

services come within the ambit of service taxes or are excluded by any circular or notification issue. However, there is no finding by the revenue authorities as to why this aspect was not examined. There is no conclusion of the revenue authorities in this aspect of the matter as is evident from the impugned order in original. It has been held by the Apex Court in a recent Judgment rendered in M/s G.R Infra Limited Ratlam [Civil Appeal No. 11277/2026 (SLP(C) No. 33594/2025] that for extending the period of limitation by invoking Section 74, the inference of a fraud or concealment resulting in suppression of facts should emanate from the notice itself.

84. This being a position, it is a clear case of assumption of excessive jurisdiction by the Revenue authorities which the statute did not confer on them such jurisdiction by default. A Writ Court while exercising its powers under Article 226 can certainly examine whether the Tribunal or the quasi-judicial authority by exercising its jurisdiction mandated under the statute has fulfilled the necessary pre-conditions prescribed by the statute itself. Therefore, under such circumstances the impugned show cause notice issued under section 74(1) will have to be held by this Court to be invalid and contrary to the prescriptions mandated by law.

85. In the facts and circumstances of the case, it is the conclusion arrived at by this Court that such preconditions mandated by law under section 74(1) having not been fulfilled by the Revenue authorities, their assumption of jurisdiction under section 74(1) of the GST Act was completely unwarranted and revenue authorities could not have assumed the jurisdiction under section 74(1) unless these pre-conditions mandated and a conclusion thereto has been arrived at by the Revenue authorities before assumption of such jurisdiction. The very basis of issuance of the show cause notice under Section 74(1) under the CGST Act, 2017 being unwarranted, action of the Revenue being arbitrary and unjust, this is a case where the Court must invoke it's extra-ordinary jurisdiction to invoke a prerogative writ as prayed for.

86. It is under these circumstances that notwithstanding that the proceedings initiated are at the stage of issuance of show cause notice, this Court considers it an appropriate case to invoke its jurisdiction under Article 226 to interfere with the impugned show cause notice and to set aside and quash. Since this Court has held that the issuance of the impugned show cause notice under Section 74(1) is contrary to the provisions of law, the natural corollary that would follow is that the levy of all penalty, surcharge and interest are also not leviable on the petitioner, this Court therefore issues a writ

of certiorari setting aside the impugned show cause notice and it is ordered accordingly.

87. Therefore the writ petition stands accordingly allowed. However no order as to cost. Pending I.A.s are also dismissed and the interim order if any stands merged.

JUDGE

Sandipon

Comparing Assistant