GAHC010181142026

2026:GAU-AS:13966-DB

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

Case No. : WA/321/2026

M/S. SURYA BUSINESS PRIVATE LIMITED
A PRIVATE LIMITED COMPANY INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT, 1956 HAVING ITS PLACE OF BUSINESS AT GAR ALI, JORHAT, ASSAM 785001, REPRESENTED BY SRI SUBHAJIT ROY, BRANCH MANAGER OF THE APPELLANT COMPANY..

VERSUS

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

2:THE ASSISTANT COMMISSIONER OF STATE TAX
APEX GST AUDIT CELL
ASSAM
KAR BHAWAN
GANESHGURI
GUWAHATI 781005.

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

4:M/S. ATIKUR RAHMAN
22 URBAN CITY COMPLEX
MAHAPURUSH SRIMANTA SANKARDEV PATH
DISPUR
KAMRUP M

GUWAHATI 781005
ASSAM

Advocate for the Petitioner : MR ANKIT KANODIA, MR. P DAS,MS. N UPADHYAY,MR. Z ISLAM

Advocate for the Respondent : SC, FINANCE AND TAXATION,

BEFORE

HON'BLE THE CHIEF JUSTICE ASHUTOSH KUMAR

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellant	:	Mr. Ankit Kanodia, Advocate. Mr. Zeehan Islam, Advocate.
For the Respondents	:	Mr. B. Choudhury, Standing Counsel, Finance and Taxation Department, Assam, Mr. M. Bhuyan, Advocate.
Date on which Judgment is Reserved	:	N/A
Date of pronouncement of Judgment	:	22.09.2026
Whether the pronouncement is of the operative part of the Judgment	:	NA.

Whether the full Judgment has
been pronounced : Yes.

JUDGMENT & ORDER (ORAL)

(A.D.Choudhury, J)

1. Heard Mr. A. Kanodia, learned counsel for the appellant. Also heard Mr. B. Gogoi, learned Standing Counsel for the Finance and Taxation Department, Assam, representing the respondents.

2. This present intra-court appeal is directed against the Judgment and Order dated 10.08.2026 passed by the learned Single Judge in WP(C) No. 528/2024, whereby the learned Single Judge declined to interfere with the show cause notice dated 11.01.2024 issued against the appellant under Section 73(1) of the Assam Goods and Services Tax Act, 2017 (the AGST Act). The learned Single Judge, however, granted liberty to the appellant to submit its reply to the show cause notice within 30 days and to raise all the contentions urged before the court before the proper officer.

3. The facts, in a nutshell, are that the appellant is a Private Limited Company carrying on business in Jorhat and registered under the GST enactments.

For the financial year 2018-2019, the appellant was selected for audit under Section 65 of the AGST Act. During the course of the audit, an observation dated 13.12.2023 was made alleging excess availment of

Input Tax Credit (ITC) of approximately 27.25 lakhs.

4. The basis of the audit objection, as projected before us, was that invoices relating to certain inward supplies from M/s Atikur Rahman, a registered supplier, were not reflected in the appellant's GSTR-2A.

The appellant submitted its reply to the audit observation on 17.12.2023. It was contended that the appellant possessed valid tax invoices, had actually received the supplies, and had paid the value of the supplies, including the tax component, through banking channels.

It was further contended that GSTR-2A was merely a facilitating mechanism and could not, by itself, form the basis for the denial of Input Tax Credit.

Reliance was placed upon **Union of India v. Bharti Airtel Ltd**. reported in **(2022) 4 SCC 328**, certain CBIC communications, and other judicial pronouncements.

5. An Audit Report in the Form GST ADT-02 was thereafter issued on 08.01.2024, and on 11.01.2024, the impugned show cause notice was issued under Section 73(1) of the AGST Act, proposing recovery of disputed Input Tax Credit along with interest and penalty.

6. The appellant challenged the show cause notice before this court, and an interim order was passed on 05.02.2024 restraining further proceedings pursuant to the show cause notice. The writ petition remained pending and was ultimately disposed of by the

learned Single Judge by the judgment under appeal.

7. The learned Single Judge held that the question of actual payment of GST to the supplier and the furnishing of returns by the supplier was a matter that could be examined by the proper officer. The appellant was granted liberty to raise its contention and rely upon the judgment cited by it before the proper officer.

8. The appellant has assailed the said judgment in the present proceedings on several grounds. Since the submissions are interconnected, we shall deal with them while considering the questions arising for determination.

9. The principal submission of Mr. Kanodia, learned counsel for the appellant, is that the appellant is a bona fide purchaser; It had invoices; had received supplies; had paid the consideration, including the tax component, through banking channels and had purchased the goods from a registered supplier. It is therefore submitted that the appellant cannot be made to suffer merely because the supplier did not cause the relevant invoices to appear in GSTR-2A.

10. There is considerable force in the submission that an assessee's entitlement to ITR cannot be determined merely by looking at one electronic statement without examining the statutory conditions governing availment of such credit. However, at this stage of the show-cause notice, this court ought not to undertake the adjudication of the appellant's entitlement to ITR and consequently quash the notice.

11. The defense of the appellant against the proposed demand, as noted hereinabove, is a matter which the appellant is entitled to establish before the proper officer. Therefore, in our opinion, the learned Single Judge committed no error in holding that the question of whether the appellant had actually paid the GST amount to the supplier and whether the supplier had submitted the relevant returns could be considered by the proper officer. Therefore, we find no merit in the submission that the existence of the documents relied upon by the appellant renders the show-cause notice itself without jurisdiction.

12. The learned counsel for the appellant has next submitted that the issue is no longer *res integra* and has relied upon the decision of this court in **National Plasto Molding –Vs- State of Assam and others** reported in **2024 SCC Online Gau 1595**. It is contended that the department cannot deny Input Tax Credit to a bona fide purchaser merely because of a default committed by a selling dealer.

13. We do not propose to examine the ultimate applicability of the said decision to the appellant's case at this stage. Even assuming that the appellant is correct in understanding **National Plasto Molding** (supra), that decision can certainly be placed before the proper officer. If the decision is applicable to the facts of the case, the proper officer is bound to take notice of the same and decide the matter in accordance with the law declared by this court.

14. The learned Single Judge has specifically preserved this right of the appellant by permitting it to place the judgments before the

proper officer.

The appellant's contention regarding GSTR-2A stands on the same footing. We are not called upon at this stage to pronounce upon the ultimate entitlement of the appellant.

15. Mr. Kanodia, learned counsel for the appellant, has next submitted that the respondents did not file any counter-affidavit despite notice and opportunities granted, and therefore the appellant's assertions regarding valid invoices, receipt of supplies, payment through banking channels, and the registration of the supplier remain uncontroverted.

16. It is true that the absence of a counter-affidavit is a circumstance which a writ court may take into consideration while examining a factual controversy. However, in our opinion, it cannot have the consequence as contended by the appellant in the facts of the present case inasmuch as the statutory authority had yet to adjudicate the show-cause notice.

17. The question before the learned Single Judge was whether the notice itself was liable to be quashed for want of jurisdiction and not to finally determine the appellant's entitlement to ITR on the basis of the pleadings made in the writ petition.

Therefore, such arguments do not find favor with us either.

18. Now, coming to the submission that the show cause notice was issued on 11.01.2024, only three days after the audit report dated 08.01.2024, without dealing with the detailed reply of the appellant

dated 17.12.2023, and thus demonstrates that the authority had already made up its mind, does not persuade us any further.

19. Such a fact by itself shall not establish a predetermined mind inasmuch as an audit finding may legitimately form the basis for initiation of proceedings under Section 73.

The show cause notice is not the adjudication of the liability, but its initiation with due opportunity to the appellant.

20. The appellant has also urged that the impugned notice is wholly without jurisdiction for the reason that the department, without first proceeding against the defaulting supplier, proceeded against the recipient.

21. The authority issuing a show-cause notice undoubtedly possesses jurisdiction to initiate proceedings under Section 73 against the alleged wrongful availment or utilization of Input Tax Credit; however, the sustainability of such proposed demand shall depend upon the adjudication prescribed under Section 73 read with Section 75 of the AGST Act.

22. The appellant's legal defense may ultimately succeed before the proper officer, but the possibility that the appellant may succeed in adjudication is not a ground for holding that initiation of the proceeding itself is without jurisdiction.

23. The appellant has also challenged paragraph 9 (iii) of the impugned judgment, whereby the learned Single Judge directed that the period from 12.01.2024 till 10.08.2026 be excluded while

computing the period of limitation under Section 73(10) of the AGST Act.

24. Having regard to the peculiar circumstances of the present date, we find no reason to interfere with the said direction. The proceedings pursuant to the show-cause notice could not proceed during the pendency of the writ proceeding due to the interim order passed by the learned Single Judge.

The learned Single Judge, therefore, while declining to interfere with the show-cause notice, has consciously directed the exclusion of the said period during which the matter remained pending before the learned Single Judge.

25. The fact remains that the appellant has approached this court against the show-cause notice and has obtained protection against further proceedings. The period consumed in such proceedings cannot, in the circumstances of the present case, be permitted to operate to the prejudice of the statutory proceeding in the manner apprehended by the appellant.

We therefore decline to interfere with the direction contained in paragraph 9 (iii) of the judgment under appeal.

26. Accordingly, the learned Single Judge, in our opinion, adopted an appropriate course by permitting the statutory process to continue while preserving the appellant's right to raise all its factual and legal defenses.

27. We, therefore, find no error warranting interference in intra-

court appellate jurisdiction.

28. The writ petition is accordingly dismissed.

29. The Judgment and Order dated 10.08.2026 passed by the learned Single Judge in WP(C) No. 528/2024 is affirmed in its entirety.

JUDGE **CHIEF JUSTICE**

Comparing Assistant