

GAHC010004972023



2026:GAU-AS:5360

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

Case No. : WP(C)/417/2023

UDALGURI BEVERAGES PVT. LTD.
A COMPANY REGD. UNDER THE PROVISIONS OF THE COMPANIES ACT,
1956 HAVING ITS REGD. OFFICE AT VILLAGE DINJAN IN THE DIST. OF
DIBRUGARH, ASSAM AND HEAD OFFICE SITUATED AT 234, G.N.B. ROAD,
GHY-03, IN THE DIST. OF KAMRUP (M), ASSAM AND IN THE PRESENT
PROCEEDINGS REP. BY MR. H.S.KUMBHAT, ONE OF THE DIRECTORS OF
THE PETITIONER COMPANY

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, FINANCE
(TAXATION) DEPTT., DISPUR, GHY

2:COMMISSIONER OF STATE TAXES
(EARLIER KNOWN AS COMMISSIONER OF TAXES)
ASSAM
KAR BHAWAN
DISPUR
GHY-06

3:THE SUPERINTENDENT OF TAXES
GUWAHATI
UNIT-D
KAR BHAWAN
DISPUR
GHY-0

Advocate for the Petitioner : DR. ASHOK SARAF, B SARMA,MR P K BORA,MR P
BARUAH,MR. G. DUTTATRAY,MR S J SAIKIA,MR. N N DUTTA

Advocate for the Respondent : SC, FINANCE AND TAXATION,

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

JUDGMENT & ORDER (CAV)

Date : 30-03-2026

Heard Dr. A.K. Saraf, learned Sr. counsel assisted by Mr. P.K. Bora, learned counsel for the petitioner. Also heard Mr. B. Gogoi, learned Addl. AG, Assam appearing for the State respondents.

2. The petitioner in the present writ petition has assailed an order dated 20-07-2002, passed by the Superintendent of Taxes, Guwahati Unit-D, invoking the provisions of the Assam Value Added Tax Act, 2003, reversing an input tax credit claimed by the petitioner and directing for realization of the recoverable demand of tax and interest on account of such reversion of excess input tax credit claimed. Accordingly, the principle amount of input tax credit claimed was Rs. 24,81,606/- and interest due thereon for the period w.e.f. 22-07-2017 to 20-07-2022, was determined as Rs. 22,33,445/-, totaling to Rs. 47,15,051/-.

3. The petitioner, herein, is a dealer registered under the Act of 2003 and projects that it has been regularly submitting its returns, under the Act of 2003 and was being assessed by the Superintendent of Taxes, Unit-B, Guwahati. It is further projected that the Act of 2003 was repelled from 01-07-2017, except in respect of five items, i.e. sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption. It is projected that

after enactment of the Assam Goods & Service Tax Act, 2017 (in short "the Act of 2017"), the petitioner registered itself under the Act of 2017 and was granted certificate of registration. After the Act of 2017, had come into being and the Act of 2003 was repealed, the respondent No. 3, served a notice dated 06-05-2022, upon the petitioner and therein, claimed that the petitioner had claimed excess input tax credit amounting to Rs. 24,82,187/- in the return filed by it for the month of June, 2017. In the said notice it was stipulated that excess input tax credit as claimed by the petitioner was required to be reversed as per the provisions of Section 14(9)(d) of the Act of 2003 and the recoverable demand of tax and interest on account of such reversion is to be realized from the petitioner. The petitioner responded to the said notice by submitting a reply thereto on 06-06-2022. The petitioner with regard to the claim of input tax credit as finding mention in its return for the month of June, 2017, clarified that the petitioner had never utilized the said input tax reflected in its returns, during the regime of the Act of 2003. It was further projected that the petitioner had only carried forward the input tax credit which was in its book of accounts and had after the coming into force of the Act of 2017, utilized the same for meeting its liabilities under the Act of 2017. Accordingly, it was projected that the notice issued to the petitioner would not be sustainable and the same would mandate to be dropped.

It is projected that *in spite* of the said materials being brought before the Assessing Officer, the respondent No. 3, vide order dated 20-07-2012, proceeded to reverse the purported excess input tax credit amounting to Rs. 24,81,060/-, as reflected in the return filed by the petitioner for the month of June, 2017, under the Act of 2003. On the said

reversal being made, an equal amount was directed to be realized being the recoverable demand of tax along with interest, thereon. The total amount now demanded from the petitioner worked out to Rs. 47,15,051/-. In pursuance to the issuance of order dated 20-07-2002, the prescribed authority proceeded to issue notice demand of tax/ interest/ penalty upon the petitioner for the assessment year 2017-18 and an amount of Rs. 47,15,051/- was so demanded.

Being aggrieved, the petitioner has instituted the present writ petition.

4. Dr. Saraf, learned Sr. counsel for the petitioner at the outset by referring to the materials brought on record has submitted that the input tax credit claimed by it in its return for the month of June, 2017, was not utilized by it for meeting its liabilities under the provisions of the Act of 2003. He further submits that in the return filed for the month of April, 2017, an amount of Rs. 82,578/- claimed as Input Tax Credit (ITC) and brought forward from 31-03-2017, was inadvertently not reflected and the said position also continued in the month of May, 2017. He submits that the said amount of Rs. 82,578/-, along with an amount of Rs. 23,30,252/-, being taxes charged by the Assam Gas Company Ltd., on the purchases made by the petitioner from the Company came to be reflected in the return so filed for the month of June, 2017. Dr. Saraf submits that a dispute was pending between the petitioner and the Assam Gas Company Ltd. since April, 2006 and was only settled in the year 2017. He submits that on the said dispute being settled, the credit for taxes charged by the Assam Gas Company Ltd. from 22-04-2006 to 30-06-2017, i.e. of Rs. 23,30,252/-, along with input tax credit brought forward in March, 2017, came to be reflected in the return filed by the petitioner for June, 2017, along with

input tax credit claimed for the purchases effected during the relevant period of time. Accordingly, he submits that the total input tax credit claimed by the petitioner worked out at Rs. 24,82,187/- and deducting, therefrom, the output tax on sales during June, 2017, the net input tax credit claim worked out at Rs. 24,81,617/-. He submits that the input tax credit claimed on account of the tax charged by the Assam Gas Company Ltd. reflected as Rs. 23,30,252/-, was corrected in the return filed by the petitioner for the month of June, 2017, as Rs. 26,27,690/- and the net input tax credit claimed by the petitioner worked out at Rs. 27,79,054/-. Dr. Saraf has further submitted that the said input tax credit claimed by the petitioner, however, was not utilized by the petitioner during the regime of the Act of 2003 for satisfying any claim/ demand of tax due from the petitioner.

5. Dr. Saraf by referring to the provisions of Section 14 of the Act of 2003, submits that a reversal of an input tax credit under the provisions of Sub-Section (9) of the Section 14 of the Act of 2003, would be permissible where excess input tax credit claimed, was availed by the dealer. Dr. Saraf submits that the petitioner under provisions of the Act of 2003, having not availed the claimed input tax credit, the Act of 2003, having been repelled by the Act of 2017, the petitioner having utilized the input tax credit claimed in its return for June, 2017, for meeting its liabilities under the regime of the Act of 2017, after 01-07-2017, the respondent No. 3 admittedly did not have the jurisdiction to issue the notice dated 06-05-2022 and further to pass the order dated 20-07-2022, making a demand of Rs. 47,15,051/- from the petitioner. Dr. Saraf submits that there being no utilization of the input tax credit claimed for meeting its liabilities under the

provisions of the Act of 2003, there would arise no occasion of making any recovery and further, to also impose an interest upon the amount involved. Accordingly, he submits that the impugned order dated 20-07-2022, would mandate interference from this Court.

6. Dr. Saraf has further submitted that the petitioner having utilized the input tax credit claimed in his return filed for the month of June, 2017, under the Act of 2003, for satisfaction of its liabilities under the Act of 2017, any proceeding mandated to be so instituted would be permissible to be so instituted under the provisions of the act of 2017, by the authority competent to do so. Dr. Saraf has further highlighted that no order and/or any adjudicating proceeding has been instituted against the petitioner under the provisions of the Act of 2017, for utilization of the purported excess input tax credit carried forward by the petitioner from the regime under the Act of 2003, to the regime under the Act of 2017 and thereafter, utilized for meeting its obligations under the Act of 2017. In the above premises, Dr. Saraf submits that the impugned order dated 20-07-2022, along with notice of demand dated 27-07-2022 would mandate interference from this Court.

7. Per contra, Mr. B. Gogoi, learned Addl. AG, Assam appearing for the State respondents, has at the outset submitted that under the provisions of the Act of 2003, no claim for input tax credit was admissible for purchase of items specified in the Schedule-IV of the Act of 2003, inasmuch as, tax in respect of the said items was levyable only at the first point of sale in the State. Accordingly, he submits that the input tax credit as claimed by the petitioner for an amount of Rs. 24,81,606/-, also being in relation to the items figuring in schedule-IV to the Act of 2003, the said claim for input tax credit made

by the petitioner was clearly impermissible. He submits that the amount of input tax credit claimed on account of the taxes charges by the Assam Gas Company Ltd., being impermissible, there was no question of the petitioner carrying forward the said input tax credit as reflected in its return for the month of June, 2017 for subsequent periods. Mr. Gogoi submits that the respondent No. 3, having detected the input tax credit claimed by the petitioner in his return for the month of June, 2017, to the extent of Rs. 24,81,606/-, to be not permissible to be so claimed, proceeded to issue a notice to the petitioner invoking the provisions of Sub-Section (9) of Section 14 of the Act of 2003. Mr. Gogoi submits that even after the coming into force of the GST regime w.e.f. 01-07-2017, any amount of payable tax/ interest/ penalty, under the Assam Value Added Tax Act of 2003 for the period up to 30-06-2017, was permissible to be levied and recovered by the competent authorities under the Act of 2003. Mr. Gogoi has further submitted that the very claim made by the petitioner for Input Tax Credit (ITC) on account of goods brought by it specified in schedule-IV to the Act of 2003, being impermissible, the reversal, thereof, was not erroneous. He further submits that the petitioner having before reversal of the same utilized the said input tax credit, a recovery thereof is mandated, which was accordingly done by the respondent No. 3. Accordingly, Mr. Gogoi submits that the impugned order dated 20-07-2002 and the consequential notice of demand dated 27-07-2022 would not mandate interference from this Court.

8. I have heard the learned counsel for the parties and have also perused the materials available on record.

9. With regard to the input tax credit claimed by the petitioner in its return submitted

for the months of June, 2017, holding the same to be not admissible and mandating reversal under the provision of Section 14(9)(a) of the AVAT Act, 2003, a notice dated 06-05-2022, came to be issued to the petitioner, by the Superintendent of Taxes, Guwahati, Unit-D. The petitioner was alleged to have claimed excess input tax amounting to Rs. 24,82,187/- (Rupees Twenty Four Lakhs Eighty Two Thousand One Hundred Eighty Seven) and along with the reversal, thereof, in the notice it was stipulated that the recoverable demand of tax and interest on the said count would also be mandated to be realized. On receipt of the said notice, the petitioner vide communication dated 11-05-2022, prayed for grant of atleast 01 (one) month's time to submit necessary details in support of their claim for setoff. Thereafter, the petitioner vide a communication dated 06-06-2022, set out in details its justification with regard to the input tax claimed by it in its return for the months of June, 2017. The petitioner clarified the background with regard to the Input Tax Credit as claimed by it in its returns for the month of June, 2017. Accordingly, the petitioner corrected Part-E of the return for the month of June, 2017 and reflected the net ITC claimed as Rs. 27,79,054/- (Rupees Twenty Seven Lakhs Seventy Nine Thousand Fifty Four).

10. It was further projected in the said reply that on account of an ongoing dispute with AGCL, the petitioner had not availed the credit of taxes as charged from it by the AGCL. However, on the issue being settled, the amount involved was reflected as ITC, claimed in the return filed for the month of June, 2017. The said clarifications, on being received by the respondent authorities, the Superintendent of Taxes, Circle- 5, Unit- D proceeded vide order dated 20-07-2022, to hold that the reply submitted by the petitioner

was not satisfactory and accordingly, on reversal of the ITC claimed by the petitioner, the recoverable amount of Tax and interest was computed as Rs. 47,15,051/- (Rupees Forty Seven Lakhs Fifteen Thousand Fifty One). After issuance of the order dated 22-07-2022, a notice for demand of tax and interest came to be issued on 27-07-2022 claiming from the petitioner an amount of Rs. 47,15,051/- (Rupees Forty Seven Lakhs Fifteen Thousand Fifty One). Breakup of the amount claimed from the petitioner is as follows:-

<i>“Principal amount of income tax credit</i>	<i>Rs. 24,81,606.00</i>
<i>Interest payable on Rs. 24,81,606/- from 22/07/2017 to 20/07/2022</i>	<i>Rs. 22,33,445.00,</i>
<i>payable demand</i>	
<i>Tax</i>	<i>Rs. 24,81,660.00</i>
<i>Interest</i>	<i>Rs. 22,33,445.00</i>
<i>Total</i>	<i><u>Rs. 47,15,051.00”</u></i>

11. The said notice having been issued to the petitioner invoking the provisions of Section 14 of the Act of 2003, the provisions of Sub-Section (1) (8) & (9), thereof, being relevant is extracted here-in-below:-

“14. Input Tax Credit.-

(1) Subject to the other provisions of this section, any registered dealer who makes purchases from another registered dealer of taxable goods other than the goods specified in the Fourth Schedule within the State, shall be eligible for input tax credit.

- (2).....*
- (3).....*
- (4).....*
- (5).....*

(6).....

(7).....

(8) If the goods purchased were intended for the purposes specified under sub-section (3) and are subsequently used fully or partly for purposes other than those specified under the said sub-section or are used fully or partly in the circumstances described in sub-section (6), the input tax credit, if availed of, shall be reduced on account of such use, from the tax credit being claimed for the tax period during which such use has taken place; and such reduction shall be done in the manner as may be prescribed.

(9) Without prejudice to the generality of the provisions of subsection (8), input tax credit already availed of shall stand reversed in the following circumstances,-

(a) if the dealer discontinues his business and he holds the stock of taxable goods at the time of such discontinuance; or

(b) if the registration certificate granted to a dealer is cancelled and at the time of such cancellation, he holds the stock of taxable goods, or

(c) if the purchased goods or the goods manufactured out of the goods purchased or the packing materials are stolen or destroyed or lost or disposed of or dispossessed of otherwise than in the course of business; or

(d) where excess input tax credit has been claimed, or

(e) if the purchased goods are returned to the selling dealer, or

(f) if the goods purchased inside the State are dispatched to a place outside the State not as a direct result of sale in the course of inter-state trade, but it shall be subject to the provisions of clause (h) of sub-section (6); or

(g) if the credit note has been received from the selling dealer for the amount of tax charged in excess of the tax due according to the provisions of this Act."

12. A perusal of the provisions of Sub-Section (8) of Section 14 of the Act of 2003 reveals that the ITC, if availed of, shall be reduced on account of such use from the tax credit being claimed for the tax period during which such use has taken place and such reduction shall be done in the manner as prescribed. Further, Sub-Section (9) of Section 14 of the Act of 2003, mandates that without prejudice to the generality of the provisions

of Sub-Section (8), input tax credit already availed of shall stand reversed, amongst others, where excess input tax credit has been claimed. A perusal of the said provisions would reveal that reversal of an input tax credit is available when the same is utilized for meeting any tax liability under the provisions of the Act of 2003. The ITC claimed by the petitioner in its returns for the month of June, 2017, admittedly was not utilized by it under the regime of the 2003 Act. As projected in the writ petition, the said ITC as claimed in the return submitted for the month of June, 2017, under the provisions of the Act of 2003, was utilized by the petitioner for meeting its liabilities arising under the provisions of the GST Act, 2017 which had come into force, w.e.f. 01-07-2017.

13. The petitioner admittedly not having utilized the ITC claimed by it in its returns of June, 2017, till the repeal of the Act of 2003, for meeting any tax liability under the Act of 2003, there exists no occasion for the respondent authorities to recover any such ITC claimed in excess by the petitioner by invoking the provisions of Sub-Section (9) of Section 14 of the Act of 2003. Further, the petitioner not having utilized the purportedly excess ITC claimed and figuring in its returns for meeting any tax liability under the Act of 2003, there had arisen no occasion to claim any interest upon such amount upon reversal of the same. The Input Tax Credit (ITC) actually utilized would have only mandated to be recovered. The petitioner having utilized the said ITC, claimed by it in its returns filed under the regime of 2003 Act, for meeting its liability arising after coming into force of the Act of 2017, in the considered view of this Court, such amount would be permissible to be so recovered by issuance of any order and/ or institution of adjudication proceeding under the Act of 2017. Admittedly, in the case of the petitioner, no such proceedings have been

instituted under the Act of 2017, in respect of utilization of the ITC, by the petitioner for meeting its tax liability under the Act of 2017 after 01-01-2017. Accordingly, initiation of proceeding for recovery of such amount under the provision of the repealed Act of 2003, in the considered view of this Court, would not be maintainable. This Court reiterates that the provisions of Sub-Section (8) & (9) of Section 14 mandates reversal only in the eventuality of such excess ITC, being availed by the dealer for meeting its tax liabilities under the Act of 2003. Said circumstance not having arisen in the case of the petitioner, herein, this Court is of the considered view that the notice dated 06-05-2022, along with the order dated 20-07-2022 and the notice of demand of tax dated 27-07-2022, would mandate an interference from this Court. Accordingly, the notice dated 06-05-2022, order dated 20-07-2022 and the notice of demand for tax/ interest/ penalty dated 27-07-2022 stand set aside.

14. Having interfered with the said notice dated 06-05-2022, order dated 20-07-2022 and the notice of demand for tax/ interest/ penalty dated 27-07-2022, the petitioner having utilized the ITC as claimed by it in its return for the month June, 2017 submitted under the Act of 2003, for meeting its liabilities under the Act of 2017 after 01-07-2017, the competent authority under the Act of 2017, would be at liberty to institute appropriate proceeding for reversal of the said excess ITC claimed by the petitioner and utilized by it for meeting its tax liability under the provisions of the Act of 2017, provided initiation of such proceeding is permissible under the provision of the Act of 2017.

15. With the above observations and directions, the present writ petition stands disposed of.

Comparing Assistant