

GAHC010052522026



2026:GAU-AS:8425

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

Case No. : WP(C)/1653/2026

M/S DEBOJIT DEB AND ANR
A PROPRIETORSHIP FIRM HAVING ITS REGISTERED OFFICE AT BAGHA
BAZAR,CACHAR, ASSAM - 788120.

2: DEBOJIT DEB
PROPRIETOR OF THE PETITIONER NO. 1 FIRM AND RESIDENT OF BAGHA
BAZAR
CACHAR
ASSAM
PIN-78812

VERSUS

THE UNION OF INDIA AND 3 ORS.
REPRESENTEDBY THE SECRETARY OF ASSAM, MINISTRYOF FINANCE
AND TAXATION,DEPARTMENT OF REVENUE, NEWDELHI- 110001

2:THE ADDITIONAL COMMISSIONER OF CENTRAL GOODS AND SERVICES
TAX

CGST
A GARWAL TOWER
NST COLONY
DIMAPUR
NAGALAND.

3:COMMISSIONER (APPEALS)

GST BHAWAN
KEDAR ROAD
MACHKHOWA
GUWAHATI.

4:THE ADDITIONAL COMMISSIONER OF CENTRAL GOODS AND SERVICES

TAX

CGST
KAR BHAWAN
KEDAR ROAD
GUWAHATI
ASSAM

Advocate for the Petitioner : MS. M L GOPE, MS S SARKAR,MR S K SAHA,MS. N HAWELIA

Advocate for the Respondent : SC, CGST, MR. S K MEDHI (R-1),SC, C G S C

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 12.06.2026

Heard Ms. N. Hawelia, learned counsel for the petitioner. Also heard Dr. B. N. Gogoi, learned Standing Counsel, CGST, and Ms. R. Dutta, learned counsel appearing on behalf of Mr. S. K. Medhi, learned Central Government Counsel, for the respondents.

2. Challenge made in the present writ petition is to the Order-in-Original No. 19/Addl. Commr./S.Tax/GST/Dimapur/2022-23 dated 31.03.2023 passed by the Assistant Commissioner, Central Goods and Services Tax, Ministry of Finance, Department of Revenue, Government of India, whereby a service tax demand of Rs. 60,52,413/- (Rupees sixty lakhs fifty two thousand four hundred thirteen) only, including cesses, for the period 2016-17 has been confirmed against the petitioner under the proviso to Section 73(1) of the Finance Act, 1994 read with Sections 142(8)(a) and 174 of the CGST Act, 2017. By the said order, interest under Section 75 of the Finance Act, 1994 has also been directed to be

recovered, a penalty of Rs. 10,000/- (Rupees ten thousand) only has been imposed under Section 77 of the Finance Act, 1994 and a further penalty of Rs. 60,52,413/- (Rupees sixty lakhs fifty two thousand four hundred thirteen) only has been imposed under Section 78 of the Finance Act, 1994. The petitioner has also put to challenge the Order-In-Appeal No. GAPPL/COM/STP/1371/2023-APPEAL-GUWAHATI/ 1318, dated 29.02.2024, passed by the Commissioner (Appeals), CGST, Guwahati, whereby the appeal against the said Order-in-Original dated 31.03.2023, preferred by the petitioner, has been dismissed.

3. The petitioner No. 1 is a proprietary concern engaged in execution of construction works for various Government departments and agencies, including the Public Works Department, Government of Assam. The petitioner No. 2 is the proprietor of the petitioner No. 1. The petitioner was registered under the provisions of the Finance Act, 1994 bearing Service Tax Registration No. AGFPD4923LSD001 and was engaged in execution of works relating to construction of roads, bridges and allied infrastructure projects.

4. It is the case of the petitioner that the works contract services rendered during the financial year 2016-17 under the Government entities were exempted from levy of service tax under Entries 12 and 13 of Notification No. 25/2012-ST dated 20.06.2012. The respondent authorities, on the basis of suspicion and surmises, obtained information from the Income Tax Department in the form of Form 26AS pertaining to the financial year 2016-17 and initiated proceedings for recovery of service tax. However, the Form 26AS merely reflected payments received from Government departments after deduction of tax at source and could not, by itself, form the basis for determination of service tax liability under

the Finance Act, 1994.

5. It is the contention of the petitioner that the alleged Show Cause Notice dated 21.04.2022 was never served upon the petitioner and therefore the petitioner had no opportunity to submit its reply or participate in the adjudication proceedings. The petitioner contends that without service of the Show Cause Notice and without affording any effective opportunity of hearing, the adjudicating authority proceeded to pass the impugned Order-in-Original dated 31.03.2023 confirming the service tax demand together with interest and penalty. Therefore, being aggrieved, the petitioner preferred a statutory appeal before the Commissioner (Appeals), CGST, Guwahati, contending that the proceedings were vitiated on account of non-service of the Show Cause Notice, denial of opportunity of hearing, illegal invocation of the extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994 and determination of service tax liability solely on the basis of Form 26AS. However, by the impugned Order-in-Appeal dated 29.02.2024, the Appellate Authority dismissed the appeal preferred by the petitioner.

6. Ms. N. Hawelia, learned counsel for the petitioner, submits that the petitioner is a works contractor engaged in execution of roads, bridges and other infrastructure projects for Government departments and entities. Referring to Notification No. 25/2012-ST dated 20.06.2012, she submits that the services rendered by the petitioner were exempted from levy of service tax. She submits that the impugned demand has been raised solely on the basis of Form 26AS obtained from the Income Tax Department without any independent determination regarding the nature and taxability of the services rendered by the petitioner. She submits that the alleged Show Cause Notice dated

21.04.2022 was never served upon the petitioner and consequently the impugned Order-in-Original came to be passed *ex parte* in violation of the principles of natural justice. She submits that the extended period of limitation under the proviso to Section 73(1) of the Finance Act, 1994 has been invoked without there being any allegation or finding of fraud, collusion, wilful misstatement or suppression of facts with intent to evade payment of tax. Accordingly, she submits that both the impugned Order-in-Original dated 31.03.2023 and the consequential Order-in-Appeal dated 29.02.2024 are liable to be set aside and quashed.

7. By relying on judgment and order dated 09.01.2026, passed by this Court in the case of **Technocom Vs. Union of India & Anr.**, reported in **(2026) 156 GSTR 602 (Gauhati)**, Ms. Hawelia, learned counsel for the petitioner, submits that this Court had allowed the writ petition in a similar matter and therefore, prays for grant of similar relief to the present petitioner.

8. Dr. B. N. Gogoi, learned Standing Counsel, CGST, fairly submits that the case of **Technocom** (supra), as relied by the learned counsel for the petitioner, has been rendered on similar facts and law, which would cover the case of the present petitioner.

9. Considered the submissions of the learned counsel for the parties and also perused the judgment and order dated 09.01.2026, passed by this Court in the case of **Technocom** (supra).

10. The relevant paragraphs of the aforesaid judgment are reproduced

hereinbelow:

"32. Upon a perusal of the pleadings available before the Court, it is seen that the service tax liability of services by the petitioner was stated that the contracts undertaken by the Petitioner were pertaining to Railways and the same was exempted from payment of service tax under Entry No. 14 (a) of the Mega Exemption Notification No. 25/2012 -S.T., dated 20.06.2012 w.e.f. 01.07.2012 as amended.

38. Therefore, under such circumstances, this Court is of the considered view that the determination made by the respondent authorities by issuing the demand cum show cause notice and the confirmation in the impugned order-in-original is contrary to the provisions of the Act and the law declared by the Apex Court as well as by the High Court. The impugned order-in-original is therefore is bad and the same is liable to set aside.

40. A perusal of the Section 73 of the Finance Act reveals that the extended period in respect of recovery of service tax not levied or paid or short levied or short paid or erroneously refunded can be invoked only when any or more of the conditions prescribed under the proviso to the said section is present. Under the proviso to the said section, there are five situations when the extended period of limitation can be invoked. These are:

(a) Fraud; or

(b) Collusion; or

(c) Willful misstatement; or

(d) Suppression of facts; or

(e) Contravention of any of the provisions of this Chapter or of the rules made there under with intent to evade payment of service tax.

46. Such conclusions as have been discussed above are contrary to the facts which are evident from the pleadings. In any view of the matter for invocation of the provisions of Section 73 for extension of the period of limitation, it must necessarily be a case which falls under any or all the conditions specified under the proviso to Section 73(1) of the CGST Act. From a plain reading of the impugned Order-in-Original and the relevant portions of which have been extracted above, it is evident that there is no finding by the Adjudicating Authority that the case of the petitioner can be considered to be a case which falls under the conditions specified in proviso to Section 73(1). Under such circumstances, the impugned Order-in-Original appears to the Court to have been assumption of jurisdiction by the revenue authorities which was not

otherwise vested on the said authority. For the revenue authorities to invoke powers under Section 73(1), there must be a finding and a conclusion arrived at based on the facts of the case that the petitioner assessee had willfully and deliberately resorted to fraud, collusion, willful misstatement, suppression of facts of contravention of any of the provision thereunder with the intent to evade payment of service tax. Therefore, for invocation of the powers proviso to Section 73(1), there must be a conclusive finding arrived at by the Revenue authorities that the petitioner assessee had resorted to any or all for these acts or omissions with the sole intention to evade payment of service tax. Such finding is not discernable from the impugned Order-in-Original passed by the Revenue Authorities. Therefore, the assumption of jurisdiction of the Revenue under the proviso to Section 73(1) has to be concluded to be a jurisdiction assumed by the Revenue authorities not vested on it by the statute. Such assumption of jurisdiction therefore, being contrary to the provisions of the statute itself, the same is colourable and therefore it is held to be unauthorized.

57. From a careful analysis 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 can be said to be a decision in excess or without jurisdiction. In the present case the adjudicating authority took into consideration the information available in form 26AS of the Income Tax Act, the sole basis for the purpose of levy of service tax. The authority did not consider the services rendered by the petitioner were exempted from levy of service tax or the liability to pay the service tax on the said services was on the recipient on the services. 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 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.

71. 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 73(1) having not been fulfilled by the Revenue authorities, their assumption of jurisdiction under section 73(1) of the GST Act was completely unwarranted and revenue authorities could not have assumed the jurisdiction under section 73(1) unless these pre-conditions mandated and a conclusion thereto has been arrived at by the Revenue authorities before assumption of such jurisdiction. It is under these circumstances that notwithstanding the availability of statutory alternative remedy, this Court considers it

an appropriate case to invoke its jurisdiction under Article 226 to interfere with the impugned order in original and to set aside and quash the order-in-original. Under these circumstances, the case laws referred to by the respondents will have no bearing in the facts and circumstances of the present proceedings. There is also no quarrel with the general proposition of law that in the face of statutory alternative remedy being available, a Writ Court would ordinarily not invoke its power of issuance of prerogative Writs. Since this Court has held that the levy of service tax on the petitioner by extending the limitation 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 order in original and it is ordered accordingly.

72. 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."

11. A perusal of the aforesaid judgment shows that the co-ordinate Bench of this Court held that a service tax demand founded solely on Form 26AS, without any independent examination of the nature of services rendered and without recording the statutory preconditions necessary for invocation of the extended period of limitation under Section 73 of the Finance Act, 1994, is unsustainable in law. It is further held that such assumption of jurisdiction by the adjudicating authority would be unauthorized and liable to be interfered with in exercise of powers under Article 226 of the Constitution of India. Consequently, the impugned order-in-original in that case was set aside and quashed together with the consequential demand of interest and penalties.

12. In the present case, both the learned counsel for the parties are in consensus that the issue involved stands covered by the decision of the co-ordinate Bench in **Technocom** (supra), to which this Court is in full agreement with. Thus, I am of the considered opinion that no further adjudication is required in the present proceedings as the issue has already settled by this Court. Thus, the petitioner is entitled to similar relief as granted in **Technocom** (supra).

13. Accordingly, the impugned Order-in-Original No. 19/Addl. Commr./S.Tax/GST/Dimapur/2022-23 dated 31.03.2023 passed by the Assistant Commissioner, Central Goods and Services Tax, Ministry of Finance, Department of Revenue, Government of India, and the consequential Order-In-Appeal No. GAPPL/COM/STP/ 1371/2023-APPEAL-GUWAHATI/1318 dated 29.02.2024 passed by the Commissioner (Appeals), CGST, Guwahati, affirming the aforesaid Order-in-Original, are hereby set aside and quashed. Consequently, the demand of service tax, interest and penalties imposed upon the petitioner pursuant thereto shall also stand set aside.

14. Writ petition accordingly stands allowed and disposed of.

JUDGE

Comparing Assistant