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2026:GAU-AS:7748

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

Case No. : WP(C)/2881/2026

SRI GURUCHARAN KANGSA BANIK
PROPRIETOR OF M/S SREE GURU METALS, AGED ABOUT 45 YEARS, S/O
LATE SHRI SHIB DAS KANGSA BANIK, R/O RADHA MADHAB COLLEGE
ROAD, WARD NO. 13, SILCHAR, ASSAM 788006.

VERSUS

THE UNION OF INDIA AND ANR
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF FINANCE, CBIC DEPARTMENT OF REVENUE, NORTH
BLOCK, NEW DELHI 110001

2:THE ASSISTANT COMMISSIONER

CENTRAL GOODS SERVICE TAX CENTRAL EXCISE
SILCHAR DIVISION
SILCHAR REVENUE BUILDING
CIRCUIT HOUSE ROAD
SILCHAR 788001

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

Advocate for the Respondent : DY.S.G.I.,

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 03.06.2026

Heard Ms. N. Hawelia, learned counsel for the petitioner. Also heard Dr. B. N. Gogoi, learned Standing Counsel, GST, for all the respondents.

2. Challenge made in the present writ petition is to the Order-in-Original No. 37/GST/AC/SIL/2023-24 dated 28.03.2024 passed by the Assistant Commissioner, Central Goods and Services Tax & Central Excise Division, Silchar, whereby a demand of Rs. 69,56,794/- comprising IGST of Rs. 50,19,230/-, CGST of Rs. 9,68,782/- and SGST of Rs. 9,68,782/- for the period from July, 2017 to March, 2019 on the petitioner is confirmed. By the said order, interest at the applicable rate under Section 50 of the CGST Act, 2017 and the corresponding provisions of the SGST Act and the IGST Act was also directed to be recovered for delayed payment of tax and a penalty of Rs. 69,56,794/- was imposed under Section 74(1) read with Section 122 of the CGST Act, 2017 and Section 20 of the IGST Act, 2017.

3. Having considered that the similar matter has already been decided by a Division Bench of this Court and as agreed to by the learned counsel for the parties, this writ petition is heard and dispose of at the motion stage itself.

4. The petitioner is the proprietor of M/s Sree Guru Metal, having its office at Radha Madhab College Road, Ward No. 13, Silchar, Assam. It is the case of the petitioner that upon introduction of the GST regime, which replaced various

indirect taxes such as VAT, excise duty and service tax, several practical difficulties were faced by the business entities during the initial phase of implementation, particularly in filing GSTR-1 and GSTR-3B returns as the sales return and the summary return of the monthly tax payment with liability details and input tax credit (ITC) claim and there were incorrect data entry discrepancies in reporting output tax liability and input tax credit (ITC) and also with the matching invoices.

5. The petitioner purchased goods from suppliers from Kolkata for the assessment year 2017-2018 and 2018-2019 and on receipt of the goods, the petitioner paid the value of goods along with applicable GST to the sellers through proper banking channels supported by proper invoices.

6. On the allegation of availing ineligible input tax credit (ITC) on the strength of invoices issued to some proprietorship firm without actual receipt of goods and without actual supply of goods, summons were issued by the DGGI, Guwahati Zonal Unit and accordingly, the petitioner appeared before the authorities on 05.04.2019 by submitting all the relevant documents including GSTR-1, GSTR-3B and purchase invoices for the period from July, 2017 to March, 2019 on the basis of which ITC was availed and utilized.

7. Thereafter, the respondent authorities issued a search authorization and conducted a search at the business premises of the petitioner on 09.07.2019, wherein no incriminating materials were recovered or seized during the said search. The statement of the petitioner was recorded wherein he has explained the nature of his business, the manner of procurement and sale of scrap/waste batteries, source of purchase, transportation arrangements, storage practices

and the mode of payment through banking channels by stating that the goods covered under the invoices were actually received and that due payments including GST were made to the suppliers.

8. It is the further case of the petitioner that all GST returns were filed within the prescribed time and output tax liabilities were duly discharged after adjustment of eligible input tax credit. During the financial years 2017-18 and 2018-19, the ITC was claimed strictly in accordance with Section 16(2) of the CGST Act, 2017 after fulfilling all statutory conditions prescribed thereunder. Subsequently, the respondent authority issued a Show Cause Notice dated 26.08.2022 for the assessment year May, 2017 to March, 2019 alleging that the petitioner had wrongly availed and utilized the ITC of Rs. 69,56,794/- in violation Section 16(2)(a)(b) of the CGST Act, 2017 without actual receipt of goods and thereby proposed recovery of tax along with interest and penalty.

9. It is the case of the petitioner that despite submission of all relevant documents and repeated request, no effective opportunity of hearing was granted and no notice was uploaded on the GST portal and were only manually served on the petitioner beyond the date of hearing. Consequently, the adjudicating authority proceeded to pass the impugned Order-in-Original dated 28.03.2024 without affording a meaningful opportunity of hearing and without issuance of Form GST DRC-07. The petitioner further contends that the sole basis for denial of ITC is the alleged failure of the suppliers to discharge their tax liability, a circumstance which is entirely beyond the control of the petitioner. The petitioner had paid full tax to the supplier and he had no involvement on the affairs of the said supplier and had acted in good faith by verifying tax

invoices, receiving goods and making payment through proper banking channels including applicable GST. Even if the allegation of non-supply of goods is accepted, no tax can be levied in absence of actual supply as the GST is leviable only on supply of goods which is fortified by the Circular dated 06.07.2022, which clarifies that when there is no supply, no tax can be demanded.

10. It is the further case of the petitioner that Sections 73 & 74 of CGST Act, 2017 could not have been invoked as the time period for passing the assessment year under Section 73 has already expired and therefore, no order could have been passed under Section 74 and also the clubbing of multiple assessment years for passing a consolidated order under GST is not permissible. Therefore, the impugned orders of demand and the Order-in-Original dated 28.03.2024 is time barred and passed by depriving the petitioner to avail the effective statutory remedy and as such is liable to be set aside and quashed.

11. Ms. N. Hawelia, learned counsel for the petitioner, while relying on the judgment of the Division Bench of this Court in the case of **National Plasto Moulding Vs. State of Assam & Ors.**, reported in **[2024] 129 GSTR 544 (Gauhati)**, submits that the controversy involved in the present writ petition is squarely covered by the said decision, as the purchasing dealer cannot be penalized for the failure of the selling dealer to deposit the tax collected from the purchaser.

12. Dr. B. N. Gogoi, learned Standing Counsel, GST, for the respondents, fairly submits that the issue raised in the present proceeding is squarely covered by the judgment of **National Plasto Moulding** (supra), relied by the learned

counsel for the petitioner, as the Division Bench of this Court has, while relying on the judgment of the Hon'ble Delhi High Court in the case of **On Quest Merchandising India Pvt. Ltd. Vs. Government of NCT of Delhi**, reported in **[2018] 56 GSTR 177 (Delhi)**, held that a bona fide purchasing dealer cannot be denied input tax credit merely because the selling dealer failed to deposit the tax with the Government and therefore, the writ petition can be disposed of by providing opportunity to the respondent authorities to take action where the purchase transactions are not bona fide in accordance with law.

13. I have considered the submissions of learned counsel for the parties and perused the materials available on record.

14. The Division Bench of this Court in **National Plasto Moulding** (supra) has examined and considered the issue as regards the input tax credit and failure of the selling dealer to deposit tax collected from the purchasing dealer and upon consideration of the law laid down by the Delhi High Court in **On Quest Merchandising India Pvt. Ltd.** (supra) has held that for failure of the selling dealer for depositing tax, purchasing dealer cannot be punished. In other words, a purchasing dealer cannot be punished for the act of selling dealer in case the selling dealer had failed to deposit the tax collected by it. The relevant paragraphs of the judgment are reproduced herein below:

"4. Before the Delhi High Court, the validity of Section 9(2)(g) of the Delhi Value Added Tax Act, 2004 was under challenge. The said provisions of the Delhi Value Added Tax Act are analogous to the provisions of Sections 16(2)(c) and 16(2)(d) of the Assam Goods and Services Tax Act, 2017 as well as Sections 16(2)(c) and 16(2)(d) of the Central Goods and Services Tax Act, 2017.

The Delhi High Court in the said judgment has observed as under:-

"39. Applying the law explained in the above decisions, it can be safely concluded in

the present case that there is a singular failure by the Legislature to make a distinction between purchasing dealers who have bona fide transacted with the selling dealer by taking all precautions as required by the DVAT Act and those that have not. Therefore, there was need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not punish bona fide purchasing dealers. The latter cannot be expected to do the impossible. It is trite that a law that is not capable of honest compliance will fail in achieving its objective. If it seeks to visit disobedience with disproportionate consequences to a bona fide purchasing dealer, it will become vulnerable to invalidation on the touchstone of article 14 of the Constitution. ...

41. The court respectfully concurs with the above analysis and holds that in the present case, the purchasing dealer is being asked to do the impossible, i.e., to anticipate the selling dealer who will not deposit with the Government the tax collected by him from those purchasing dealer and therefore avoid transacting with such selling dealers. Alternatively, what section 9(2)(g) of the DVAT Act requires the purchasing dealer to do is that after transacting with the selling dealer, somehow ensure that the selling dealer does in fact deposit the tax collected from the purchasing dealer and if the selling dealer fails to do so, undergo the risk of being denied the ITC. Indeed section 9(2)(g) of the DVAT Act places an onerous burden on a bona fide purchasing dealer. ...

53. In light of the above legal position, the court hereby holds that the expression "dealer or class of dealers" occurring in section 9(2)(g) of the DVAT Act should be interpreted as not including a purchasing dealer who has bona fide entered into purchase transactions with validly registered selling dealers who have issued tax invoices in accordance with section 50 of the Act where there is no mismatch of the transactions in Annexures 2A and 2B. Unless the expression "dealer or class of dealers" in section 9(2)(g) is "read down" in the above manner, the entire provision would have to be held to be violative of article 14 of the Constitution.

54. The result of such reading down would be that the Department is precluded from invoking section 9(2)(g) of the DVAT to deny ITC to a purchasing dealer who has bona fide entered into a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting the TIN number. In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC. Where, however, the Department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the Department can proceed under section 40A of the DVAT Act."

6. The Hon'ble Supreme Court has dismissed the SLP preferred against the said judgment by passing the following order:-

"On hearing learned Additional Solicitor General appearing for the petitioner, we are not inclined to interfere with the impugned order. The special leave petition is dismissed.

Learned Additional Solicitor General, however, submits that a batch of petitions were

decided by the impugned order and there are some of the cases where the purchase transactions are not bonafide like the present case and those cases ought to have been remitted back to the competent authority.

The learned Additional Solicitor General submits that the petitioner would move the High court with necessary particulars for directions in this behalf for which liberty is granted, as prayed for.

Pending application(s), if any, stand disposed of.”

7. Having gone through the above referred judgments, we are of the view that the controversy raised in this batch of writ petitions is squarely covered by the decision of the Delhi High Court in the case of On Quest Merchandising India Private Limited (supra). Hence, the show cause notices impugned in the present writ petitions and the consequential orders are set aside. However, the Department is free to act in those cases, where the purchase transactions are not bona fide, in accordance with law.

8. With these observations, these writ petitions are disposed of.”

15. A perusal of the aforesaid judgment shows that the Division Bench has categorically held that where a purchasing dealer has entered into transactions bona fide with a registered supplier and has complied with the statutory requirements, denial of input tax credit solely on account of failure of the supplier to deposit tax would not be justified. The remedy of the Department, in such circumstances, lies against the defaulting supplier and not against a bona fide purchaser. However, where materials exist to indicate collusion or lack of bona fides in the transactions, it would be open to the Department to proceed in accordance with law.

16. In the present case, both the learned counsel for the parties are consensus that the issue involved stands covered by the decision of the Division Bench in **National Plasto Moulding** (supra), to which this Court is in full agreement. Thus, I am of the considered opinion that no further adjudication is required in the present proceedings.

17. Accordingly, the impugned Order-in-Original No. 37/GST/AC/SIL/2023-24 dated 28.03.2024 passed by the Assistant Commissioner, Central Goods and Services Tax & Central Excise Division, Silchar, is hereby set aside and quashed. It is, however, made clear that the respondent authorities shall be at liberty to proceed in accordance with law in the event there are materials indicating that the transactions in question were not bona fide or were entered into in collusion with the suppliers, as observed by the Division Bench in **National Plasto Moulding** (supra).

18. Writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant