

GAHC010139512025



2026:GAU-AS:12825

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

Case No. : WP(C)/3640/2025

M/S RAGINI COMMUNICATION
REPRESENTED BY ITS PROPRIETOR MRS. NIRMALA AGARWALLA
HAVING PLACE OF BUSINESS AT SARUPATHAR, GOLAGHGAT, ASSAM-
785601.

2: NIRMALA AGARWALLA
PROPRIETOR OF M/S RAGINI COMMUNICATION RESIDENCE OF WARD
NO. 2
P.O. AND P. S. SARUPATHAR
DIST. GOLAGHAT
ASSAM- 785601

VERSUS

THE UNION OF INDIA AND ANR
REPRESENTED BY THE PRINCIPLE COMMISSIONER AND SECRETARY,
MINISTRY OF FINANCE AND REVENUE DEPARTMENT, CENTRAL GOODS
AND SERVICE TAX.

2:THE SUPERINTENDENT
CENTRAL GOODS AND SERVICE TAX
GOLAGHAT
RANGE I AND II

Advocate for the Petitioner : MR. AMIT GOYAL, MR. DIVYANSH RATHI,MR. A
CHOUDHURY

Advocate for the Respondent : DY.S.G.I., MS J SARMAH(C.G.C),SC, GST

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 03.09.2026

1. Heard Mr. A Goyal, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned standing counsel, GST, assisted by Ms. M Dekka, learned counsel for the respondents.

2. By way of this writ petition, the petitioner, a proprietorship concerned carrying on business under the name and style "M/s Ragini Communication", has challenged the proceedings initiated against it under Section 73 of the Central Goods and Services Tax Act, 2017 (for short, CGST Act) culminating in the impugned order dated 15-12-2023 and consequential summary in FORM G.S.T. D.R.C. 07, dated 28-12-2023.

3. The case of the petitioner, in a nutshell, is that it availed input tax credit of Rs. 6,94,877 for the period from July 2017 to March 2018, which, according to the revenue, was inadmissible.

4. The petitioner contends that ITC was duly supported by tax invoices and payments through banking channels.

It is also contended that the statutory notice contemplated by Section 73(1) was not issued; that Form GST DRC-01 was not served; that no opportunity of hearing was afforded to the petitioner; and that DRC-07 is unsigned and also contains discrepancies with regard to the period and quantum of demand.

Reliance has been placed inter alia upon the decision of this court in

Construction Catalysters Pvt. Ltd. v. State of Assam and others in
WP(C) No.3910/2024.

5. The Revenue Department has opposed this writ petition by contending that the petitioner itself has admitted service of demand cum show cause notice dated 22-03-2023, whereby the allegation of excess availment of ITC was communicated to the petitioner.

It is submitted that a challenge to the entitlement to ITC involves disputed questions of fact, and the petitioner has an efficacious statutory remedy of appeal against the adjudication order.

6. The first and foremost contention of the petitioner that the order impugned in the writ petition was passed without issuance of a notice under Section 73(1) of the Act is not borne out by the pleadings or from the material placed on record.

7. Section 73(1) requires the proper officer, where it appears that tax has not been paid or has been short-paid, or input tax credit has been wrongly availed or utilized, to serve notice upon the taxable person requiring him to show cause why the amounts specified in the notice, together with interest and penalty, should not be paid.

Rule 142(1)(a) of the Rules 2017 further contemplates the furnishing of a summary of such notice electronically in Form GST DRC-01.

The statutory notice and the electronic summary of notice are, therefore, not one and the same. The requirement of furnishing a summary in Form GST-01 cannot dispense with the requirement of a notice under Section 73(1).

8. Now, let us examine, from the facts of the case, whether there was

a complete absence of notice under Section 73(1).

The petitioner has specifically pleaded in the writ petition that it was served with a demand cum show-cause notice dated 22-03-2023 issued by the Respondent No. 2 alleging excess availment of ITC of Rs 6,94,877 for the period of July 2017 to March 2018.

The petitioner has thus not merely admitted receipt of the communication; it has specifically described the communication dated 22-03-2023 as the demand cum show-cause notice and has also disclosed the precise allegation forming the subject matter of the proceeding.

Having pleaded so, the petitioner, without explaining the apparent contradiction, contended in subsequent paragraphs that no show-cause notice under Section 73(1) was issued at all.

The plea of total absence of notice, which constitutes the foundation of the challenge to the jurisdiction of the proper officer, is thus not born out of the petitioner's own pleading.

9. It is apposite to distinguish here between a case where the statutory notice itself is absent and a case where an electronic summary accompanying an otherwise existing notice is alleged to suffer from a defect.

10. In the present case, the petitioner admittedly received the communication dated 22-03-2023 containing the allegation of wrongful availment of ITC.

11. The petitioner has thereafter placed before this Court its defense on the merits of the ITC claim. The proceeding, therefore, cannot be characterized as one in which the petitioner was called upon to answer a

demand for the first time to the final order without any prior notice.

12. The contention of the petitioner as regards Form GST DRC-07 stands on a different footing.

13. Rule 142(5) contemplates the uploading of the summary of the order in Form GST-DRC-07. Such a summary cannot substitute for the adjudication order itself.

However, the petitioner has also challenged the underlying order dated 15-12-2023. The alleged discrepancy in DRC-07 as regards the period or amount of demand thus would necessarily require comparison of the notice, the adjudication order, and the electronic summary.

When there is an error in the summary and it does not correspond with the adjudication order, the appropriate consequence would depend upon the nature and effect of that discrepancy.

Such an issue, more particularly in a situation when the adjudication order itself is under challenge, can be examined in the statutory appellate proceeding.

An alleged discrepancy in the electronic summary cannot, in the given facts of the present case, by itself establish that the entire adjudication was without jurisdiction.

14. The petitioner has also invoked Section 75(7) of the Act and contended that the order has traveled beyond the notice inasmuch as interest and penalty have been imposed, which were not proposed in the notice.

Section 75(7) undoubtedly places a substantive limitation upon the

adjudicating authority inasmuch as the amount of tax, interest, and penalty demanded in order cannot exceed the amount specified in the notice and no demand can be confirmed on grounds other than those specified in the specified therein.

15. The contention that the order dated 15-12-2023 has traveled beyond the notice is a matter to be determined upon examination of the notice and the adjudication order together.

The mere assertion of such a violation does not, in the given facts of the present case, warrant a declaration that the entire proceedings are without jurisdiction.

The petitioner is entitled to raise this ground before the statutory appellate authority, which is competent to examine the notice, the adjudication order and the computation of demand.

16. The further contention of denial of opportunity of hearing also does not persuade this Court to exercise its extraordinary jurisdiction in the given facts of the present case.

17. Section 75(4) requires the grant of an opportunity of hearing in the circumstances specified therein. Such a statutory requirement cannot be treated as an empty formality. However, at the same time, the Court must examine the record to determine whether the alleged violation is established.

18. In the present case, the petitioner admittedly received the demand-cum-show cause notice dated 22-03-2023 and has set out a detailed defense disputing the proposed reversal of ITC before this Court, but is silent as to why a reply was not filed pursuant to the said notice before the

adjudicating authority. The materials placed before this Court do not establish that the petitioner was wholly excluded from the adjudicatory process in the manner which would render the order a nullity for want of proper hearing.

Even otherwise, the question whether the procedure contemplated by Section 75 was fully complied with or not is capable of examination in the statutory appeal.

19. There is another aspect that assumes significance. The petitioner has challenged the very basis of the reversal of the ITC. It asserts that it possessed valid tax invoices and that payments were made through banking channels.

The respondents dispute the petitioner's entitlement to the credit. The dispute as regards the statutory conditions for availment of ITC, that underlying transactions were genuine, that the goods or services were actually received, and that material produced by the petitioner is sufficient to establish its entitlements, is essentially a matter requiring examination of the factual record.

20. It is by now well settled that mere production of invoices or proof of payment through banking channels does not by itself conclude the question of genuineness of the transaction. Production of invoices and proof of payment by themselves cannot confer an indefensible right to ITC, irrespective of other statutory requirements. Such assertions depend upon the factual circumstances which are better examined by the statutory appellate authority.

21. The petitioner has an efficacious statutory remedy of appeal against the adjudication order. It is settled by a catena of decisions of the Supreme

Court, including ***Assistant Commissioner, (Ct) LtU vs. Glaxo Smith Kline Consumer Healthcare Ltd***, reported in ***AIR 2020 Supreme Court 2819***, that although the jurisdiction of High Court under Article 226 is wide, the existence of an efficacious alternative statutory remedy is ordinarily a factor which weighs against exercise of such jurisdiction, particularly in fiscal matters.

22. As a note of caution, it is recorded that this rule is, however, not absolute. The recognized exceptions include cases involving violation of fundamental rights, breach of principles of natural justice, proceedings wholly without jurisdiction, and challenge to the virus of statutory provision.

23. In the aforesaid backdrop, this Court has examined the principal allegations of the petitioner, rather than declining interference solely on the ground of the availability of an alternative remedy.

24. For the reasons recorded hereinabove, the present proceeding cannot be characterized as one wholly without jurisdiction.

The foundational plea of absence of notice is contradicted by the petitioner's own pleading. The petitioner has admittedly been served with demand-cum-show-cause notice dated 22-03-2023, concerning the very ITC demand which subsequently came to be adjudicated.

The remaining grievances substantially concern the correctness of the determination, the alleged discrepancy in the electronic summary, the applicability of Section 75(7), the computation of demand, and the petitioner's entitlement to ITC, which can effectively be examined in the statutory appellate forum.

25. This Court therefore finds no sufficient ground to exercise its

extraordinary jurisdiction under Article 226 of the Constitution for interfering with the impugned adjudication proceeding. The writ petition accordingly stands dismissed. Parties to bear their own cost.

26. While parting with the writ record, it is made clear that the petitioner shall be at liberty to avail the statutory remedy of appeal against the order dated 15-12-2023, if otherwise permissible in law. The questions raised on merit are left open for consideration by the competent statutory appellate authority, provided the appeal is maintainable and not time-barred.

JUDGE

Comparing Assistant