

GAHC010132472024



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

**Case No. : WP(C)/3877/2024**

M/S NITAI KANGSA BANIK AND ANR  
A PROPRIETORSHIP FIRM HAVING ITS OFFICE AT SONAI ROAD, NEAR  
HOLY CROSS SCHOOL, SILCHAR, ASSAM- 788006, REPRESENTED BY ITS  
PROPRIETOR NITAI KANGSA BANIK

2: SRI NITAI KANGSA BANIK  
SON OF SRI SUBAL KANGSA BANIK  
RESIDENT OF RAMCHARAN ROAD  
KANAKPUR MAIN ROAD  
SILCHAR  
DISTRICT- CACHAR- 78800

VERSUS

THE UNION OF INDIA AND 3 ORS  
MINISTRY OF FINANCE, REPRESENTED BY THE SECRETARY TO THE  
MINISTRY OF FINANCE, GOVERNMENT OF INDIA NEW DELHI

2:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS  
1ST FLOOR  
TOWER  
NBCC PLAZA  
SECTOR-5  
PUSHP VIHAR  
NEW DELHI- 110017

3:THE PRINCIPAL COMMISSIONER  
STATE GST  
KAR BHAWAN  
DISPUR  
GUWAHATI  
ASSAM

4:THE ASSISTANT COMMISSIONER OF STATE TAX

SILCHAR-4  
SILCHAR  
ASSA

Advocate for the petitioner(s): Ms. N Hawelia  
Ms. ML Gope

Advocate for the respondent(s): Dr. BN Gogoi  
Central Government Advocate  
Mr. B Choudhury  
Standing counsel,  
Finance and Taxation Department  
Government of Assam

**B E F O R E**  
**HON'BLE MR. JUSTICE DEVASHIS BARUAH**  
**ORDER**

**02.08.2024**

Heard Ms. N Hawelia, the learned counsel appearing on behalf of the petitioners.

2. Issue notice, making it returnable on 21.08.2024.
3. Dr. BN Gogoi, the learned CGC appears on behalf of the respondent Nos.1 and 2 and Mr. B Choudhury, the learned standing counsel, Finance and Taxation Department as well as State GST appears on behalf of the respondent Nos.3 and 4. Taking into account that the respondent Nos.1 to 4 are duly represented, extra copies of the writ petition be served upon them during the course of the

day.

4. The petitioners herein have challenged the Notification No.56/2023 dated 28.12.2023 issued by the respondent No.2 thereby extending the limitation under the provisions of Section 168(A) of the Central Goods and Service Tax Act, 2017 (for short, the CGST Act of 2017) as well as the notice under DRC-01 dated 08.05.2024 issued by the respondent No.4 under Section 73 of the CGST Act of 2017 for the period 2019-20 along with attachment to DRC 01 dated 08.05.2024.

5. The case of the petitioner herein is that the Notification which was issued being Notification No.56/2023 dated 28.12.2023 is *ultra vires* to the provisions of Section 168A of the CGST Act of 2017 *inasmuch as*, the said Notification has been issued without taking the recommendation from the GST Council, which is otherwise, a mandatory condition. In addition to that, the learned counsel appearing on behalf of the petitioners submitted that the powers under Section 168A can only be exercised in the circumstance, there is a force majeure.

6. Referring to the minutes of the 49<sup>th</sup> Meeting of the GST Council dated 18.02.2023, the learned counsel for the petitioners submitted that the reasons why the respondent authorities have sought for extension is very well spelt out and it would be seen that the reason for such extension is that they do not have adequate staff to complete the audit, assessment etc. The learned counsel submits that not having the officer and staff to complete the assessment and/or audit under no circumstances can be said to be a force majeure.

7. The learned counsel appearing on behalf of the petitioners further drawing the attention of this Court to Section 73(2) of the CGST Act of 2017 submitted that in the instant case, the notice was issued on 08.05.2024. In terms with the

mandates of the said Section, the said notice has to be issued three months prior to the passing of an order under Section 73(9) of the CGST Act of 2017. Again reiterating her submissions that the Notification No.56/2023 is *ultra vires*, the learned counsel for the petitioners submitted that the notice so issued on 08.05.2024 would also be *ultra vires*, the CGST Act of 2017. She submitted that till date no order has been passed pursuant to the said notice dated 08.05.2024.

8. This Court having given an anxious consideration of the matter is of the opinion that the matter as to whether there was a force majeure and what were the circumstances, under which the provisions of Section 168A was invoked would require a determination and the same can be done on the basis of an affidavit to be filed by the respondent authorities.

9. Be that as it may, a perusal of the materials on record *prima facie* show that there was no recommendation made by the GST Council before issuance of the Notification No.56/2023 dated 28.12.2023. Under such circumstances, it is the opinion of this Court that if the Notification No.56/2023 cannot stand the scrutiny of law, all subsequent action(s) taken on the basis thereof also cannot be sustainable.

10. Under such circumstances, this Court till the next returnable date, directs the respondent authorities not to take any coercive action against the petitioner in respect to the notice dated 08.05.2024. It is, also made clear that during the subsistence of the instant order, the respondent authorities can pass the order under Section 73(9) of the CGST Act of 2017. However, no coercive actions be taken on such order, till the next date.

11. List again on 21.08.2024.

12. Registry shall reflect the name of Mr. B Choudhury, the learned standing

counsel, Finance and Taxation Department as well as the counsel for the State GST in the cause-list.

**JUDGE**

**Comparing Assistant**