

GAHC010147942024



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

Case No. : WP(C)/3838/2024

SHREE SHYAM STEEL
A PARTNERSHIP FIRM REGISTERED UNDER THE INDIAN PARTNERSHIP
ACT, 1932, HAVING ITS OFFICE AT SOWKUCHI, LOKHRA ROAD,
KALAPAHAR, GUWAHATI, ASSAM, 781034, AND REPRESENTED BY MR.
MAHESH KHATUWALA, THE PARTNER OF THE PETITIONER FIRM

VERSUS

UNION OF INDIA AND 5 ORS
THROUGH THE SECRETARY, DEPARTMENT OF REVENUE, MINISTRY OF
FINANCE, NORTH BLOCK, NEW DELHI 110001

2:THE STATE OF ASSAM
THROUGH THE COMMISSIONER AND SECRETARY
FINANCE (TAXATION) DEPARTMENT
KAR BHAWAN
DISPUR
GANESHGURI
GUWAHATI
ASSAM 781006

3:GOODS AND SERVICES TAX COUNCIL
THROUGH THE SECRETARY
5TH FLOOR
TOWER-II
JEEVAN BHARTI BUILDING
JANPATH ROAD
CONNAUGHT PLACE
NEW DELHI 110001

4:PRINCIPAL COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX
GUWAHATI COMMISSIONERATE

GST BHAWAN
5TH FLOOR
KEDAR ROAD
MACHKHOWA
GUWAHATI
ASSAM 781001

5:PRINCIPAL COMMISSIONER OF STATE TAX
KAR BHAWAN
DISPUR
GANESHGURI
GUWAHATI
ASSAM
781006

6:ASSISTANT COMMISSIONER
GST AND CENTRAL EXCISE
DIVISION-I GUWAHATI COMMISSIONERATE
ROOM NO. 213
GST BHAWAN
KEDAR ROAD
FANCY BAZAR
MACHKHOWA
GUWAHATI
ASSAM
78100

For the Petitioner(s) : Mr. A. Jain, Advocate
: Mr. H. Betala, Advocate

For the Respondent(s) : Mr. S. C. Keyal, Standing Counsel
: Mr. H. Baruah, Standing Counsel

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 02.08.2024

Issue notice making it returnable on 21.08.2024.

2. Mr. S. C. Keyal, the learned counsel appears on behalf of the

Respondent Nos. 1, 2 and 3 and Mr. H. Baruah, the learned Standing counsel appears on behalf of the Respondent Nos. 4 & 5 accepts notice.

3. Taking into account that all the Respondents are duly represented, extra copies of the writ petition be served upon them by 02.08.2024.

4. In the instant writ petition, the Petitioners have assailed the action on the part of the Central Board of Indirect Taxes and Customs in issuance of a notification bearing No. 56/2023 dated 28.12.2023. The challenge to the said notification are for two fold. First, the said notification so issued by the Central Board of Indirect Taxes and Customs is ultra vires Section 168A of the CGST Act, 2017 on the ground that there is no recommendation of the GST Council which is the mandatory requirement for the purpose of issuance of the said notification. Referring to the various provisions of the GST Act as well as the 49th Meeting of the GST Council, the learned counsel submitted that the GST Council had made a recommendation thereby extending the time limit for passing of the order under Sub-Section (9) of Section 73 of the CGST Act, 2017 for the Financial Year 2017-2018 up to 31.12.2023; for the Financial Year 2018-2019 up to 31.03.2024 and for the Financial Year 2019-2020 up to 30.06.2024.

5. In pursuance to the said recommendation, a notification bearing No.9/2023-CE was issued on 31.03.2023 by the Central Board of Indirect Taxes and Customs. Thereupon, the GST Council has not made any recommendation till date and in spite of that, the Central Board of Indirect Taxes and Customs had issued a Notification bearing No.56/2023-CE dated 28.12.2023 thereby extending the period to pass the order under Section 73(9) of the CGST Act, 2017 for the Financial Year 2018-2019 up to the 30.04.2024 and for the Financial Year 2019-2020 up to the 31.08.2024.

6. Drawing the attention of this Court to the provision of Section 168A of the CGST Act, 2017 the learned counsel appearing on behalf of the Petitioners submitted that without the recommendation, the Government cannot issue the notification for extending the period under Section 168A of the CGST Act, 2017 and as such, the said notification bearing No. 56/2023 dated 28.12.2023 is ultra vires the CGST Act, 2017. In addition to that, the learned counsel submitted that even otherwise also the said notification cannot stand the scrutiny of law in view of the fact that the power to exercise under Section 168A is conferred only on the basis that there is a force majeure.

7. The learned counsel appearing on behalf of the Petitioners submitted that in the instant case, the COVID period being over and there being already an extension so granted and the reasons sought for extension as could be seen from a perusal of the Minutes of the 49th Meeting of the GST Council that the authorities concerned are not in a position to carry out complete the audit, assessment etc. for lack of manpower. The learned counsel submitted that not being able to carry out the audit/assessment etc. on account of lack of man power as would appear from the Minutes of the Meeting of the 49th GST Council cannot under any circumstances be said to be a "force majeure". The learned counsel therefore submitted that even on this ground, the notification bearing No.56/2023 dated 28.12.2023 is to be rendered ultra vires the provisions of the CGST Act, 2017.

8. In addition to that, the learned counsel appearing on behalf of the petitioners also submitted that the State exercises the power to collect taxes under the provisions of the Assam Goods and Service Tax Act, 2017. In the AGST Act, 2017, there is a pari-materia provision similar to Section 168A of the

CGST Act, 2017. In the case of the State Government, there is no extension even for the Financial Year 2018-2019 and 2019-2020 as has been done by the notification bearing No.56/2023 dated 28.12.2023. Under such circumstances, the GST Authorities cannot nullify the provisions of limitation as set out in the AGST Act, 2017.

9. The learned counsel appearing on behalf of the Petitioners submitted that the order which has been impugned in the instant proceedings is an order which pertains to the Financial Year 2018-19 and had been passed post 31.03.2024. As the very notification by which the period has been extended is ultra vires the CGST Act, 2017 and there is also no notification under the provisions of the AGST Act, 2017, the impugned order in the instant proceedings is required to be interfered with.

10. I have also heard the learned counsels appearing on behalf of the respondents. It has been submitted by Mr. S. C. Keyal, the learned Standing counsel appearing on behalf of the Respondent CGST that there is no recommendation insofar as the issuance of the notification bearing No. 56/2023 dated 28.12.2023. However, in view of a recommendation so made by the GST Implementation Committee, the said notification bearing No. 56/2023 dated 28.12.2023 has been issued. The Central Government is further taking steps for the purpose of getting the GST Council ratification which is yet to take place. He however submits that in view of the new Finance Bill, 2024 whereby various amendments have been suggested and are likely to be brought into the CGST Act, 2017 by issuance of necessary notifications, the Petitioners herein would be entitled to all the reliefs insofar as the assessment proceedings are concerned. However, he submits that the notifications bringing the enactments are yet to

come into force.

11. Mr. B. Gogoi, the learned Standing counsel appearing on behalf of the Assam GST, submitted that the authorities under the Assam GST follows the notifications which has been issued by the Central GST and as such said notification bearing No.56/2023 dated 28.12.2023 shall also be applicable insofar as the Assam GST is concerned.

12. Per contra the learned counsel appearing on behalf of the Petitioners submitted that the provisions of Section 11(4) of the Assam GST Act, 2017 permits that certain notifications which relates to Section 11(1) and 11(2) of the Assam GST Act, 2017 can only be adopted. The learned counsel submitted that a notification granting an extension is not conceived in Section 11(4) of AGST Act, 2017 and as such the State GST Authorities cannot take the benefit of the Notification bearing No.56/2023-CE which is also otherwise ultra vires the CGST Act, 2017.

13. This Court having heard the learned counsels appearing on behalf of the parties is of the opinion that it prima facie appears that the notification bearing No.56/2023 is not in consonance with the provisions of 168(A) of the Central GST Act, 2017. If the said notification cannot stand the scrutiny of law, all consequential actions so taken on the basis of such notification would also fail.

14. This Court duly takes note of the submission of Mr. S.C Keyal, the learned Standing counsel that the Petitioners would be entitled to the reliefs as proposed in the Financial Bill 2024. In addition to that, this Court also finds that an examination would be required as regards the applicability of the force majeure in respect to the notification bearing No. 56/2023 taking into account

the contents of the Minutes of the 49th Meeting of the GST Council. However for the purpose of deciding the same, this Court is of the opinion that an opportunity has to be granted to the Respondent Authorities to place on record their stand as well as bringing on record the materials on which they claim the applicability of the force majeure.

15. Taking into account the above, this Court is of the opinion, that the Petitioners herein are entitled to an interim protection pending the notice. Till the next date, no coercive action shall be taken on the basis of impugned assessment order dated 26.04.2024.

16. The Respondents are directed to file their affidavits on or before 19.08.2024.

17. List accordingly.

JUDGE

Comparing Assistant