

GAHC010066062024



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

Case No. : WP(C)/1764/2024

MAINA DEVI CHORARIA
W/O- MANG LAL CHORARIA AS SELF AND PROPRIETOR OF M/S B.C.
AUTOMOBILES, SIKARIA BUILDING, A.T. ROAD, KAMRUP
METROPOLITAN, GUWAHATI-781001, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NORTH BLOCK,
NEW DELHI-110001.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
FINANCE (TAXATION) DEPARTMENT
DISPUR
GHY-781006
ASSAM

3:THE PRINCIPAL COMMISSIONER

CENTRAL GOODS AND SERVICE TAX AND CENTRAL EXCISE
GST BHAWAN
KEDAR ROAD
GUWAHATI-781001.

4:THE COMMISSIONER OF TAXES

STATE GOODS AND SERVICE TAX
KAR BHAWAN
BISHNU PRASAD RAVA FLYOVER

DISPUR
GANESHGURI
GHY-781006.

5:THE ASSISTANT COMMISSIONER OF STATE TAX

UNIT-C
KAR BHAWAN
GANESHGURI
GUWAHATI-781006.

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

7:THE CHAIRPERSON

GOODS AND SERVICE TAX COUNCIL
5TH FLOOR
TOWER-II
JEEVAN BHARTI BUILDING
JANPATH ROAD
CONNAUGHT PLACE
NEW DELHI-110001

Advocate for the Petitioner : MR. D SARAF

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

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 02.04.2024

Heard Mr. D. Saraf, learned counsel for the petitioner. Also heard Mr. K.K. Medhi, learned counsel appearing on behalf of Mr. S.K. Medhi, learned CGC for respondent no.1; Mr. V. Choudhury, learned standing counsel for the Finance Department, respondent nos.2, 4 and 5; and Mr. S.C. Keyal, learned standing

counsel for the CGST, respondent nos.3, 6 and 7.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the notification no. 09/2023-CT dated 31.03.2023, by virtue of which the time limit provided under Section 73(10) of the CGST Act for the financial years 2017-18, 2018-19 and 2019-20 was respectively extended to 31.12.2023, 31.03.2024 and 30.06.2024. It is projected that the time limit in respect of the petitioner for examining the annual return for the financial year 2018-19 had expired on 31.12.2023. However, on the strength of the impugned notification dated 31.03.2023, show-cause notice was issued to the petitioner for the financial year 2018-19 and accordingly, the said notification has been challenged, *inter alia* on the ground that the conditions precedent provided in explanation to Section 168(A) was not present on the date when the notification was issued. It is submitted that various Courts of the Country are also in seisin with the challenge similar to one made by the petitioner.

3. The learned standing counsel for the CGST has produced a copy of the relevant extraction of the agenda of 49th CGST council meeting held on 18.02.2023 to project that the issue regarding extension of timelines under Section 73(10) was discussed and recommendation was made for extension of time in view of the situation that prevailed during the Covid-19 period, where employees of the office either could not attend office or they were attending duty on staggered timing. It is submitted that consequently there was a huge pile-up of the files for examination and issuance of process for recovery of tax not paid or short paid or input tax credit wrongly availed or utilized during said period. Accordingly, it is submitted that issuance of show-cause notice was fully justified and therefore he opposes the admission of this writ petition.

4. The learned standing counsel for the State GST and Finance Department have submitted that the State GST had adopted the notification issued by the Central Govt. and therefore, the said notification for extension of time applied on the State *proprio vigore*.
5. In view of the issue raised, let a notice returnable on 10.05.2024 be issued.
6. Requisite extra copies of the writ petition be furnished to the learned CGC and departmental counsel in course of the day.
7. The learned counsel for the petitioner, at this stage, has submitted that pursuant to the show-cause notice, the petitioner has participated in the proceedings and final order has been passed on 09.02.2024.
8. As final order has already been passed and taking note of the fact that similar issues are being examined by various Courts of the Country, the Court is inclined to provide that till further orders of the Court, the recovery of the amount assessed against the petitioner shall not be enforced.
9. List on 10.05.2024.

JUDGE

Comparing Assistant