

GAHC010064382025



2025:GAU-AS:8499

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

Case No. : WP(C)/1750/2025

PHANIDHAR BORSAIKIA
SON OF LATE BHADRESWAR BORSAIKIA,
RESIDENT OF VILLAGE GOPAK,
P.O.- ARDHAL, P.S. AND DISTRICT- DHEMAJI,
ASSAM, 787057.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
DEPARTMENT OF FINANCE AND TAXATION,
DISPUR, ASSAM.

2:THE PRINCIPAL COMMISSIONER OF STATE TAX
KAR BHAWAN
G.S. ROAD
DISPUR
GUWAHATI- 781006.

3:THE ASSISTANT COMMISSIONER OF STATE TAX
DHEMAJI-2
DHEMAJI
TEZPUR ZONE
ASSAM

Advocate for the Petitioner : MR. A K GUPTA, MR. R S MISHRA,MS M NIROLA,MR K J
SAIKIA

Advocate for the Respondent : SC, FINANCE AND TAXATION,

BEFORE
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

24-06-2025

1. Heard Mr. R.S.Mishra, learned counsel for the petitioner and Mr. B. Choudhury, learned Standing counsel, Finance and Taxation Department, Assam for the respondent Nos. 1 to 3.
2. The case of the petitioner herein is that the Assistant Commissioner of State Tax, Dhemaji-2, Dhemaji Tezpur Zone, respondent No. 3, has issued the summary of show cause notice dated 08.05.2024 without issuing any show cause notice under Section 73 (1) of the CGST Act, 2017 and the summary of order dated 30.08.2024 without passing any order under Section 73 (9) of the CGST Act, 2017. It is further case of the petitioner that he has sought for an opportunity of hearing, however, without giving any opportunity of hearing, the summary of order has been passed.
3. The respondents have filed an affidavit and submitted that there was a summary of show cause notice, but no show cause notice in terms of Section 73(1) of the CGST Act, 2017 was issued.
4. Both the learned counsels for the parties submit that similar issue has already been dealt in Para 29 of the judgment and order (oral) dated 26.09.2024 passed by a Co-ordinate Bench in WP(C) No. 3912/2024 and other connected petitions (**Construction Catalysers Pvt. Ltd. Vs. the State of Assam and 2 others**). Accordingly, this writ petition is having similar issue, the determination made in said **Construction Catalysers Pvt. Ltd** (supra), shall cover the present case, more particularly, the conclusion and direction arrived at Para 29.
5. Para 29 of **Construction Catalysers Pvt. Ltd** (supra), being bone of contention, is quoted herein below:-

“CONCLUSION

29. On the basis of the above analysis and determination, this Court disposes of the instant batch of writ petitions with the following observations and directions:-

(A) The Summary of the Show Cause Notice in GST DRC-01 is not a substitute to the Show Cause Notice to be issued in terms with Section 73 (1) of the Central Act as well as the State Act. Irrespective of issuance of the Summary of the Show Cause Notice, the Proper Officer has to issue a Show Cause Notice to put the provision of Section 73 into motion.

(B) The Show Cause Notice to be issued in terms with Section 73 (1) of the Central Act or State Act cannot be confused with the Statement of the determination of tax to be issued in terms with Section 73 (3) of the Central Act or the State Act. In the instant writ petitions, the attachment to the Summary of Show Cause Notice in GST DRC-01 is only the Statement of the determination of tax in terms with Section 73 (3). The said Statement of determination of tax cannot substitute the requirement for issuance of the Show Cause Notice by the Proper Officer in terms with Section 73 (1) of the Central or the State Act. Under such circumstances, initiation of the proceedings under Section 73 against the petitioners in the instant batch of writ petitions without the Show Cause Notice is bad in law and interfered with.

(C) It is also noticed that the Show Cause Notice and the Statement in terms with Section 73 (1) and 73 (3) of both the Central Act or the State Act respectively are required to be issued only by the Proper Officer as defined in Section 2 (91). Additionally, the order under Section 73 (9) is also required to be passed by the Proper officer. The Summary of the Show Cause Notice, the Summary of the Statement under Section 73 (3) and the Summary of the Order passed in terms with Section 73 (9) are to be issued in GST DRC-01, GST DCR-02 and GST DRC-07 respectively. The issuance of the Summary of the Show Cause Notice, Summary of the Statement and Summary of the Order do not dispense with the requirement of issuance of a proper Show Cause Notice and Statement as well as Page passing of the Order as per the mandate of Section 73 by the Proper Officer. As initiation of a proceedings under Section 73 and passing of an order under the same provision have consequences. The Show Cause Notice, Statement as well as the Order are all required to be authenticated in the manner stipulated in Rule 26 (3) of the Rules of 2017.

(D) The Impugned Orders challenged in the writ petitions are in violation of Section 75 (4) as no opportunity of hearing was given as already discussed herein above.

(E) The impugned orders challenged in the instant batch of writ petitions, the details of which are given in the Appendix attached to the instant judgment are set aside and quashed.

(F) This Court also cannot be unmindful of the fact that it is on account of certain technicalities and the manner in which the impugned orders were passed, this Court interfered with the impugned orders and hence set aside and quashed the same. It is also relevant to take note of that the respondent authorities were under the impression that issuance of attachment of the determination of tax which was attached to the Summary of the Show Cause Notice would constitute a valid Show Cause Notice. Under such circumstances, in the interest of justice, this Court while setting aside the impugned Orders-in-Original as detailed out in the Appendix, grants liberty to the respondent authorities to initiate de novo proceedings under Section 73, if deemed fit for the relevant financial year in question. This Court further observes and directs that the period from the date of issuance the Summary of the Show Cause Notices upon the petitioners till the date a certified copy of the instant judgment is served upon the Proper Officer, be excluded while computing the period prescribed for passing of the order under Section 73 (10) of the Central Act as well as the State Act as the case may be."

6. The issue raised in **Construction Catalysers Pvt. Ltd** (supra) and the present petition is similar and therefore, the determination made in **Construction Catalysers Pvt. Ltd** (supra), shall accordingly cover the present petition and as agreed to by the learned counsel for the parties, the present writ petition stands disposed of by setting aside the summary of show cause notice dated 08.05.2024 and the summary of order dated 30.08.2024 in terms of the determination and conclusion arrived at para 29 of Construction Catalysers Pvt. Ltd (supra).

JUDGE

Comparing Assistant