

GAHC010236972023



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

Case No. : WP(C)/6322/2023

MS SURYA BUSINEES PRIVATE LIMITED
A PRIVATE LIMITED COMPANY INCORPORATED UNDER THE PROVISIONS
OF THE COMPANIES ACT, 1956 HAVING ITS PLACE OF BUSINESS AT GAR
ALI, JORHAT ASSAM, PIN-785001 AND IN THE PRESENT PROCEEDINGS
REPRESENTED BY SUNIL RANJAN JAIN, THE ,MANAGER OF THE
PETITIONER COMPANY

VERSUS

THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM,DEPARTMENT OF FINANCE AND TAXATION, ASSAM
SECRETARIAT, DISPUR, GUWAHATI-06

2:THE DEPUTY COMMISSIONER OF STATE TAX
JORHAT-1 CIRCLE
JORHAT ZONE
ASSAM
JEC ROAD
JORHAT
ASSAM
PIN-785001

3:THE COMMISSIONER OF STATE TAXES
ASSAM
KAR BHAWAN
GANESHGURI
GUWAHATI-0

Advocate for the Petitioner : MR. P DAS

Advocate for the Respondent : SC, TAXATION

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 06.11.2023

Heard Mr. A. Kanodia, learned counsel for the petitioner and Mr. B. Gogoi, learned Standing Counsel, Finance and Taxation Department for all the respondents.

2. In this writ petition, the petitioner has assailed a Show Cause Notice issued purportedly under Section 73 of the Central Goods and Services Tax Act, 2017/Assam Goods and Services Tax Act, 2017 on the ground that the noticee did not declare correct tax liability while filing the annual returns of GSTR – 09. The petitioner-noticee was asked to submit its reply by 28.10.2023.

3. Mr. Kanodia, learned counsel for the petitioner has submitted that the Show Cause Notice purportedly issued under Section 73 of the Central Goods and Services Tax Act, 2017/Assam Goods and Services Tax Act, 2017 is not tenable in view of the fact that an order under Section 65[6] of the Central Goods and Services Tax Act, 2017/Assam Goods and Services Tax Act, 2017 had already been issued under Form GST ADT-02 on 17.06.2023. Since an order under Section 65[6] had already been passed, issuance of a Show Cause Notice under Section 73[1] is without jurisdiction. Mr. Kanodia has further submitted that as the writ petition has been preferred challenging the jurisdiction to issue a Show Cause Notice under Section 73[1] of the Central Goods and Services Tax Act, 2017/Assam Goods and Services Tax Act, 2017, the petitioner has not yet submitted its reply in response to the Show Cause Notice on or before

28.10.2023.

4. Mr. Gogoi, learned Standing Counsel, Finance and Taxation Department has sought for a week's time to obtain instruction as regards the legal issue raised in this writ petition. Mr. Gogoi has further submitted that he will also obtain instruction as to whether any order has been passed subsequent to 28.10.2023 to proceed *ex parte* against the noticee.

5. As sought for by Mr. Gogoi, list the case on 15.11.2023.

6. Having regard to the issue involved in this writ petition, it is observed that if no order has been passed on or before 28.10.2023 or subsequent thereto till date, status quo as regards the proceedings stated to be drawn up vide the Show Cause Notice dated 28.09.2023, be maintained till the next date of listing.

JUDGE

Comparing Assistant