

GAHC010022642024



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

Case No. : WP(C)/528/2024

M/S SURYA BUSINESS PRIVATE LIMITED
A PRIVATE LIMITED COMPANY INCORPORATED UNDER THE PROVISIONS
OF COMPANIES ACT, 1956
HAVING ITS PLACE OF BUSINESS AT GAR ALI, JORHAT, ASSAM, 785001,
AND IN THE PRESENT PROCEEDINGS REPRESENTED BY SRI SUNIL
RANJAN JAIN, GENERAL MANAGER OF THE PETITIONER COMPANY

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, DEPARTMENT OF FINANCE AND TAXATION,
ASSAM SECRETARIAT, DISPUR, GUWAHATI - 781006

2:THE ASSISTANT COMMISSIONER OF STATE TAX
APEX GST AUDIT CELL
ASSAM
KAR BHAWAN
DISPUR
GUWAHATI-781005

3:THE COMMISSIONER OF STATE TAXES
ASSAM
KAR BHAWAN
GANESHGURI
GUWAHATI-781006

4:M/S ATIKUR RAHMAN
22 URBAN CITY COMPLEX

MAHAPURUSH SRIMANTA SANKARDEV PATH

DISPUR
KAMRUP(M)
GUWAHATI- 781005

ASSAM

Advocate for the Petitioner : MR ANKIT KANODIA

Advocate for the Respondent : SC, FINANCE AND TAXATION

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 05.02.2024

Heard Mr. A. Kanodia, learned counsel for the petitioner and Mr. B. Choudhury, learned Standing Counsel, Finance and Taxation Department for the respondent nos. 1 – 3.

2. The petitioner in this writ petition has challenged a Show Cause Notice dated 11.01.2024 issued under Section 73[1] r/w Section 50 of the Assam GST Act, 2017, whereby the petitioner was called up to show cause within 30 [thirty] days from the date of receipt of Show Cause Notice as to why an amount of Rs. 27,25,503/- [SGST Rs. 11,26,329.00, CGST Rs. 11,26,329.00 and IGST Rs. 4,72,845.00] should not be recovered from the petitioner being the Input Tax Credit [ITC] excess claimed for the period : 2018-2019 *plus* interest and penalty. The petitioner has assailed the Show Cause Notice on the ground that the petitioner had availed ITC on valid tax invoices raised by the supplier and had also made payment of taxes to the supplier. Reliance has been held in the decision of the Hon'ble Supreme Court of India in Union of India vs. Bharti Airtel Limited and others, decided on 28.10.2021, as well as a decision of the

Hon'ble Calcutta High Court in the case of Suncraft Energy Private Limited and another vs. The Assistant Commissioner, State Tax, Ballygunge Charge and others [Page 112 – 117].

3. On the other hand, Mr. Choudhury, learned Standing Counsel, Finance and Taxation Department has submitted that the Show Cause Notice has been issued after considering the Instructions contained in Circular no. 183/15/2022 dated 27.12.2022, more particularly, Clause 4.1.1 thereof.

4. The matter would require further examination.

5. As sought by the learned counsel for the parties, list the case on 22.02.2024.

6. Having regard to the submissions of the learned counsel for the petitioner, it is observed that the respondents shall not act upon the impugned Show Cause Notice dated 11.01.2024 till the next date of listing.

JUDGE

Comparing Assistant