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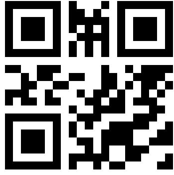

2026:GAU-AS:6025

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

Case No. : WP(C)/5050/2024

M/S MAHESH KUMAR CHANANI AND ANR
A PROPRIETORSHIP FIRM HAVING ITS OFFICE AT SBI COLONY, BISHNUPALLY, HOJAI, ASSAM REPRESENTED BY SRI MAHESH KUMAR CHANANI.

2: MAHESH KUMAR CHANANI
SON OF LATE MATU RAM CHANANI
RESIDENT OF SBI COLONY
HOJAI
PIN-782435

VERSUS

THE UNION OF INDIA AND 2 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NORTH BLOCK, NEW DELHI-110001.

2:THE COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
GST BHAWAN
KEDAR ROAD
GUWAHATI-01
ASSAM

3:THE ASSISTANT COMMISSIONER
CENTRAL GOODS AND SERVICE TAX AND CENTRAL EXCISE
GUWAHATI DIVISION-II
GST BHAWAN
KEDAR ROAD
FANCY BAZAR
GUWAHATI-1
ASSAM

Advocate for the Petitioner : MS. M L GOPE, MS. N GOGOI,MS. N HAWELIA

Advocate for the Respondent : DY.S.G.I., SC, GST

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

04.05.2026

Heard Ms. M. L. Gope, learned counsel appearing for the petitioner. Also heard Dr. B. N. Gogoi, learned Standing Counsel, CGST.

2. By way of the present petition under Article 226 of the Constitution of India, the petitioner calls in question, inter alia, the legality and validity of the adjudicating order dated 24.04.2024 passed by the Assistant Commissioner of Central GST and Central Excise, Guwahati Division-II.

3. The foundational facts, shorn of unnecessary details, are that the petitioner, a proprietorship concern engaged in execution of works contract, asserts that the services rendered by it stood exempted under the Mega Exemption Notification issued under the Finance Act, 1994. Notwithstanding such exemption, a Demand-cum-Show Cause Notice dated 11.04.2022 came to be issued for the financial year 2016–2017 under Section 73(1) of the Finance Act, 1994, alleging non-payment of service tax to the tune of Rs. 26,57,349.90/-.

The petitioner duly responded to the said notice on 17.11.2023. However, the Adjudicating Authority, by Order-in-Original dated 24.04.2024, proceeded to confirm the demand. Aggrieved thereby, the petitioner has invoked the writ

jurisdiction of this Court.

4. Assailing the impugned action, learned counsel for the petitioner submits that the very issuance of the Demand-cum-Show Cause Notice is ex facie barred by limitation as prescribed under Section 73(1) of the Finance Act, 1994. It is contended that once the notice itself is time-barred, the entire proceedings stand vitiated, rendering the adjudicating order a nullity in the eyes of law.

It is further urged that in such circumstances, the existence of an alternative statutory remedy would not operate as a bar to the exercise of writ jurisdiction. Reliance is placed upon the following decisions –

(i) ***Commissioner of Income Tax and Ors. -Vs- Foramer France (through constituted attorneys)***, reported in ***(2003) 185 CTR (SC) 512*** [Apex Court].

(ii) ***Foramer -Vs- Commissioner of Income Tax and Anr***, reported in ***(2001) 247 ITR 436*** [Allahabad High Court].

(iii) ***Union of India & Ors. -Vs- Shree Shubham Syndicate and Ors.***, ***Writ Appeal No. 359/2009***, decided on 08.11.2012 [Gauhati High Court].

5. *Per contra*, learned Standing Counsel for the respondent CGST has raised a preliminary objection as to the maintainability, contending that the petitioner has an efficacious alternative remedy of appeal under Section 107 of the CGST Act, 2017, and therefore ought to be relegated to the appellate forum. Reliance is placed upon the decision of the Apex Court in ***M/s Power Line Air Express Vs. Principal Commissioner of Central Goods and Service***

Tax & Ors., ***Special Leave to Appeal (C) No.11496/2026*** and the decision of the Delhi High Court in ***M/s Power Line Air Express Vs. Principal Commissioner of Central Goods and Service Tax & Ors., WP(C) 3328/2026***.

6. The rival submissions fall for consideration in a narrow compass. The existence of an alternative remedy is not in dispute. Equally well settled, however, is the principle that such rule is one of self-imposed restraint and not an inflexible bar.

7. The core issue that arises for determination is: whether an adjudicating order founded upon a demand notice which is ex facie barred by limitation can be sustained in law, and whether such defect strikes at the very jurisdiction of the authority so as to warrant interference under Article 226 of the Constitution of India.

8. The law on the point is no longer res integra. In ***Whirlpool Corporation Vs Registrar of Trade Marks, Mumbai and Ors***., reported ***1998 8 SCC 1***, the Apex Court authoritatively held that notwithstanding the availability of an alternative remedy, a writ petition would be maintainable in, inter alia, cases where the proceedings are wholly without jurisdiction.

9. The said principle is not merely procedural but is rooted in the constitutional duty of the High Court to prevent abuse of statutory power. Where the assumption of jurisdiction itself is in question, relegating a party to an appellate forum would amount to compelling it to participate in proceedings which are void ab initio.

10. At this stage, it becomes apposite to extract Section 73(1) of the Finance

Act, 1994, which reads as under:

> "*Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the 4[Central Excise Officer] may, within 5'eighteen months' from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :*
>
> *Provided that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of —(a) fraud; or (b) collusion; or (c) wilful mis-statement; or (d) suppression of facts; or (e) contravention of any of the provisions of this Chapter or of the rules made there under with intent to evade payment of service tax, by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words 1"eighteen months", the words "five years" had been substituted*"

11. A plain reading of the aforesaid provision makes it abundantly clear that the power to issue a show cause notice is conditioned upon issuance within the prescribed period of limitation. The statute does not merely prescribe a timeline; it conditions the very exercise of power upon adherence to such timeline.

12. The distinction between the normal period and the extended period is also not cosmetic. The extended period can be invoked only upon satisfaction of stringent jurisdictional facts, namely fraud, suppression, or wilful misstatement with intent to evade tax.

13. In that view of the matter, the prescription of limitation under Section 73(1) is not a matter of procedural convenience but a substantive fetter on jurisdiction. Once the statutory period expires, the authority stands divested of the power to initiate proceedings.

14. This position stands authoritatively settled by the Apex Court in ***Calcutta***

Discount Company Ltd. -Vs- Income Tax Officer*, *Companies District-I, Calcutta reported in ***AIR 1961 Supreme Court 372***. Relevant paragraphs of the aforesaid judgment read as under –

> "*26. Mr. Sastri argued that the question whether the Income-tax Officer had reason to believe that under assessment had occurred "by reason of non-disclosure of material facts" should not be investigated by the courts in an application under Art. 226. Learned Counsel seems to suggest that as soon as the Income-tax Officer has reason to believe that there has been under assessment in any year he has jurisdiction to start proceedings under S 34 by issuing a notice provided 8 years have not elapsed from the end of the year in question, but whether the notices should have been issued within a period of 4 years or not is only a question of limitation which could and should properly be raised in the assessment proceedings It is wholly incorrect however to suppose that this is a question of limitation only not touching the question of jurisdiction. The scheme of the law clearly is that where the Income-tax Officer has reason to believe that an under assessment has resulted from non-disclosure he shall have jurisdiction to start proceedings for re-assessment within a period of 8 years, and where he has reason to believe that an under assessment has resulted from other causes he shall have jurisdiction to start proceedings for re-assessment within 4 years. Both the conditions, (1) the Income-tax Officer having reason to believe that there has been under assessment and (1) his having reason to believe that such under-assessment has resulted from non-disclosure of material facts, must coexist before the Income-tax Officer has jurisdiction to start proceedings after the expiry of 4 years. The argument that the Court ought not to investigate the existence of one of these conditions, viz., that the Income-tax Officer has reason to believe that under assessment has resulted from non-disclosure of material facts cannot therefore be accepted.*
>
> *27.Mr Sastri next pointed out that at the stage when the Income-tax Officer issued the notices he was not acting judicially or quasi-judicially and so a writ of certiorari or prohibition cannot issue It is well settled however that though the writ of prohibition or certiorarn will not issue against an executive authority the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts, it is well settled, will issue appropriate orders or directions to prevent such consequences.*
>
> *28. Mr. Sastri mentioned more than once the fact that the company would have*

sufficient opportunity to raise this question, viz whether the Income-tax Officer had reason to believe that under assessment had resulted from non-disclosure of material facts, before the Income-tax Officer himself in the assessment proceedings and if unsuccessful there before the appellate officer or the appellate tribunal or in the High Court under S 66(2) of the Indian Income-tax Act The existence of such alternative remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action.

29. In the present case the company contends that the conditions precedent for the assumption of jurisdiction under $ 34 were not satisfied and came to the court at the earliest opportunity There is nothing in its conduct which would justify the refusal of proper relief under Art 226. When the Constitution confers on the High Courts the power to give relief it becomes the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if relief is refused without adequate reasons. In the present case we can find no reason for which relief should be refused."

15. The above exposition unequivocally establishes that limitation, where it conditions the assumption of power, partakes the character of a jurisdictional fact.

16. The same principle has been reiterated in ***State of Punjab and Ors. -Vs- Bhatinda District Cooperative Milk Producers Union Ltd***, reported in ***(2007) 11 SCC 363***. Relevant paragraph of the aforesaid judgment read as under –

"*24. Question of limitation being a jurisdictional question, the writ petition was maintainable.*

25. We are, however, not oblivious of the fact that ordinarily the writ court would not entertain the writ application questioning validity of a notice only, particularly, when the writ petitioner would have an effective remedy under the Act itself This case, however, poses a different question The revisional authority, being a creature of the statute, while exercising its revisional jurisdiction, would not be able to determine as to what would be the reasonable period for exercising the revisional jurisdiction in terms of Section 21(1) of the Act. The High Court, furthermore in its judgment, has referred to some binding precedents which have been operating in the field. The High Court, therefore,

cannot be said to have committed any jurisdictional error in passing the impugned judgment."

17. In the case at hand, the Demand-cum-Show Cause Notice dated 11.04.2022 pertains to the financial year 2016–2017. Even assuming the applicability of the extended period, the notice has been issued beyond the statutorily permissible period.

18. The inevitable consequence thereof is that the very initiation of proceedings is vitiated in law. The Adjudicating Authority, lacking the foundational jurisdiction to proceed, could not have passed the impugned order dated 24.04.2024.

19. The defect is not a curable irregularity but goes to the root of the matter, rendering the proceedings non est.

20. The contention that the petitioner ought to be relegated to the appellate remedy cannot be accepted. The present case squarely falls within the exception carved out in ***Whirlpool Corporation*** (Supra), namely, where the proceedings are wholly without jurisdiction.

21. To relegate the petitioner to the appellate forum in such circumstances would amount to requiring it to challenge an order which is a nullity, a course consistently disapproved by constitutional Courts.

22. In view of the foregoing, this Court holds that:

(i) The Demand-cum-Show Cause Notice dated 11.04.2022 is ex facie barred by limitation;

(ii) The proceedings initiated pursuant thereto are without jurisdiction;

(iii) The impugned adjudicating order dated 24.04.2024 is liable to be set aside.

23. Accordingly, the impugned adjudicating order dated 24.04.2024 is hereby quashed and set aside.

24. The writ petition is allowed.

25. No order as to costs.

JUDGE

Comparing Assistant