



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

Case No. : WP(C)/150/2024

M/S ITI LTD
REPRESENTED BY ITS AUTHORISED REPRESENTATIVE-
KULBHUSHAN SHUKLA
ADDRESS OF PRINCIPAL PLACE OF BUSINESS-
89 SEMATILLA COLONY, DIMAPUR NAGALAND-797112

VERSUS

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

2:THE UNION OF INDIA
REPRESENTED BY THE UNDER SECRETARY TO THE GOVT. OF
INDIA (REVENUE)
MINISTRY OF FINANCE
DEPT. OF REVENUE
NEW BLOCK
NEW DELHI-110001

3:GST COUNCIL
REPRESENTED BY THE CHAIRPERSON
MINISTRY OF FINANCE
NORTH BLOCK
NEW DELHI-110001

4:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
REPRESENTED BY THE CHAIRPERSON
NORTH BLOCK
CENTRAL SECRETARIAT

NEW DELHI-110001

5:GST NETWORK
REPRESENTED BY THE CHAIRPERSON
MINISTRY OF FINANCE
NORTH BLOCK
NEW DELHI-110001

6:COMMISSIONER/JOINT SECRETARY IN THE BOARD
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
NORTH BLOCK
CENTRAL SECRETARIAT
NEW DELHI-110001

7:ASSISTANT COMMISSIONER
DIMAPUR
CGST DIVISION
6TH FLOOR'
AGARWAL TOWER
NST COLONY
CITY TOWER AREA
I
VIKHESHE ROAD
DIMAPUR
NAGALAND-79711

**BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH**

For the Petitioner(s) : Mr. P. Agarwal, Advocate

For the Respondent(s) : Mr. Z. Kulnu, SC, CBIC

- Date on which Judgment was reserved : N/A
- Date of Pronouncement of Judgment : **20.03.2026**
- Whether the pronouncement is of the Operative Part of the Judgment : No
- Whether the full Judgment has been Pronounced : Yes

JUDGMENT AND ORDER (ORAL)

Heard Mr. P. Agarwal, the learned counsel appearing on

behalf of the Petitioner and Mr. Z. Kulnu, the learned Standing counsel appearing on behalf of the Respondent Nos. 1, 2, 4, 6 and 7.

2. The present writ petition has been filed by the Petitioner seeking various reliefs. The reliefs at Clauses (i) to (ix) being the main reliefs are reproduced herein under:

*“(i) An appropriate writ/order/direction including writ of declaration may not be issued declaring the impugned Notification No.49/2019-Central Tax dated 09.10.2019 (**Annexure-19**) as unconstitutional and unreasonable being violative of Articles 14 and 19(1)(g) of the Constitution of India; and/or*

*(ii) An appropriate writ/order/direction may not be issued directing the Respondents to act as per para 2 of the Notification No.72/2017-Central Tax dated 29.12.2017, etc. (**Annexure-17**); and/or*

(iii) An appropriate writ/order/direction may not be issued directing the Respondents to accept the GSTR-3B returns without any issue of delay till the time the system is not rectified to enable filing of returns without payment of output tax, and to prohibit the Respondents from proceeding further in such like cases; and/or

*(iv) An appropriate writ/order/direction may not be issued declaring the impugned Notification No.23/2017-CT dated 17.08.2017, etc. (**Annexure-12**) as unconstitutional and ultra vires to the parent Act; and/or*

(v) *An appropriate writ/order/direction may not be issued for quashing and setting aside Notification No.09/2023-Central Tax dated 31.03.2023 (**Annexure-23**); and/or*

(vi) *An appropriate writ/order/direction may not be issued for quashing and setting aside the impugned Notification No.56/2023-Central Tax dated 28.12.2023 (**Annexure-26**); and/or*

(vii) *An appropriate writ/order/direction may not be issued for quashing and setting aside impugned order dated 30.04.2024 (**Annexure-30**); and/or*

(viii) *An appropriate writ/order/direction including a writ of prohibition, may not be issued prohibiting the Respondents from proceeding further to deny ITC and to recover tax/ITC in pursuance of the illegal impugned inactions/illegal actions /notifications of the Respondents; and/or*

(ix) *An appropriate writ/order/direction including a writ of prohibition, may not be issued prohibiting the Respondents from treating these as delayed returns and prohibit them from recovering tax by denying ITC on account of delayed filing of returns; and/or*

Upon being satisfied and after going through the records of the case Your Lordship's may be please to make the Rule absolute and/or may pass such other or further Order(s) as Your Lordship's may deem fit and proper in the facts and circumstance of the present case."

3. It is relevant to take note of that though various notifications have been put to challenge but the primary

challenge is to the order dated 30.04.2024 passed by the Assistant Commissioner, Central Goods and Services Tax, Dimapur Division i.e. the Respondent No.7 under Section 73 of the Central Goods and Services Tax Act, 2017 (for short 'the CGST Act').

4. Let this Court take into consideration why the Petitioner is aggrieved by the order dated 30.04.2024 passed by the Respondent No.7.

5. The order dated 30.04.2024 relates to the Financial Year 2018-19. The order dated 30.04.2024 was passed for two reasons. First, on account of mismatch between GSTR-1 and GSTR-3B and secondly the Input Tax Credit availed in the GSTR-3B for a tax period where such returns were filed was after the last date permissible for availment of Input Tax Credit in respect of any invoice/debit note as per Section 16(4) of the CGST Act. Taking into account that on account of the two reasons, the impugned order dated 30.04.2024 was passed by the Respondent No.7, let this Court elaborate the two reasons hereinunder:

LIABILITY MISMATCH BETWEEN GSTR-1 AND GSTR-3B:

6. It is an admitted case of the Petitioner that while mentioning the details of outward supplies, in respect to four invoices in the GSTR-1, the Petitioner showed that the rate of tax was 18% and furthermore, a Credit Note was wrongly mentioned. However, in the GSTR-3B which is filed in terms with Section 39 of the CGST Act as well as in the GSTR-9F, the correct details were inserted, i.e., the tax component against the four invoices were shown as 12% and the Credit Note amount was deducted from the details of outward supplies. This aspect is apparent from a perusal of Paragraph No.93 of the writ petition and more particularly the table mentioned therein. The said table is reproduced herein under:

Particulars of GSTR-3B & 1 for the month of March 2019	Taxable Value	SGST	CGST	Total (CGST + SGST)
<i>Outward supplies as per table 4A, 4B, 6B, 6C - B2B, SEZ, DE Invoices of GSTR-1</i>	7,65,43,817	68,88,943.53	68,88,943.53	1,37,77,887.06
Total outward Liability as per GSTR-1 return (A)	7,65,43,817	68,88,943.53	68,88,943.53	1,37,77,887.06
<i>Outward taxable</i>	7,58,73,063	45,52,384.00	45,52,384.00	91,04,768.00

<i>supplies as reported in Table 3.1 of GSTR-3B (B)</i>				
Difference [C (A-B)]	6,70,754	23,36,559.5	23,36,559.5	46,73,119.0
		3	3	6
Difference on account of inadvertent reporting of tax on 4 invoices in GSTR-1(D)	-	22,96,315.26	22,96,315.26	45,92,630.52
Difference [E (C-D)]	6,70,754	40,244.27	40,244.27	80,488.54
Less: Credit note duly reported in GSTR-3B and GSTR-9(F)	6,70,752	40,245	40,245	80,490
Balance (E-F)	2	-	-	-

7. The Respondent No.7, however, without granting an opportunity to the Petitioner to explain, straight away on the basis of the Explanation to Section 75(12) of the CGST Act which was inserted w.e.f. 01.01.2022, held that any excess liability shown in the GSTR-1 vis-à-vis is an admitted liability and recoverable from the tax payer.

8. Mr. P. Agarwal, the learned counsel appearing on behalf of the Petitioner submitted that filing of GSTR-1 under no circumstances can be said to be a self-assessed tax rather those are details of outward supplies furnished and if there is any mistake committed in the GSTR-1, the same can always be permitted to be corrected. He further submitted that in respect to the Financial Year 2018-19 which is the subject matter of the impugned order, the Explanation to Section 75(12) of the CGST Act could not have been applied taking into account that it only came into effect on 01.01.2022.

9. The learned counsel further submitted that if there is a discrepancy in the GSTR-1 with the GSTR-3B, the various High Courts have permitted corrections, if there was a human error and this very aspect have already been affirmed by the Supreme Court in the case of ***Central Board of Indirect Taxes and Customs Vs. M/s. Aberdare Technologies Private Limited and Others reported in 2025 (4) TMI 101***. He further submitted that based upon the said judgment passed by the Supreme Court, various High Courts have also followed the said principles and in that regard, has placed before this Court the judgment of the Madras High Court in the case of ***The Principal Chief Commissioner of GST and Central Excise, The***

Superintendent of GST, Goods and Services Tax Network (GSTN) Vs. Deepa Traders reported in 2025 (4) TMI 1009. On the basis of the said, the learned counsel for the Petitioner therefore submitted that instead of rejecting the Petitioner's GSTR-3B on the discrepancy with the GSTR-1, the Respondent No.7 ought to have sought the Explanation from the Petitioner and if satisfied permitted the Petitioner to make the correction in the GSTR-1.

INPUT TAX CREDIT AVAILED IN GSTR-3B BEYOND THE LAST DATE FOR AVAILING IN TERMS WITH SECTION 16(4) OF THE CGST ACT.

10. The second reason for being aggrieved with the impugned order dated 30.04.2024 was that the Petitioner was not permitted to avail the Input Tax Credit in the GSTR-3B for a tax period where such returns were filed after the last date of availment of Input Tax Credit in terms with Section 16(4) of the CGST Act. It is seen from the impugned order dated 30.04.2024 that the return filed for the month of March, 2019 in the GSTR-3B, the Petitioner sought to avail the Input Tax Credit on 13.03.2021. The Respondent No.7 in the impugned order dated 30.04.2024 observed that the due date of furnishing the return under Section 39 of the CGST Act for the

month of September, 2019 was 20.10.2019 and any return filed beyond this date would accordingly become ineligible for the purpose of availment of Input Tax Credit. It was also observed that as the Petitioner filed the GSTR-3B return for the month of March, 2019 on 13.03.2021 and as such, the Petitioner was not entitled for availing the corresponding Input Tax Credit.

11. The learned counsel appearing on behalf of the Petitioner submitted that the basis on which the Respondent No.7 had passed the impugned order thereby denying the Input Tax Credit had been statutorily overridden by the insertion of Section 16(5) of the CGST Act w.e.f. 01.07.2017 vide the Finance (No. 2) Act, 2024 which was notified vide a notification dated 16.08.2024 and the said provision of Section 16(5) being given effect to w.e.f. 01.07.2017 vide the Notification bearing No.17/2024-CT dated 27.09.2024.

12. This Court has also heard the learned Standing counsel who appears on behalf of the Respondents who submitted that the issue involved in respect to Notification No.56/2023-CT dated 28.12.2023 though have been held to be ultra vires by this Court in the case of ***M/s Barkataki Print and Media***

Services and Others Vs. Union of India and Others reported in **2024 (9) TMI 1398** but the validity and legality of the said notification is presently pending before the learned Division Bench of this Court and also before the Supreme Court.

ANALYSIS AND DETERMINATION

13. The Petitioner though in the present writ petition had challenged various notifications on the ground that on account of these impugned notifications, the Respondent No. 7 had the jurisdiction to pass the impugned Order in Original dated 30.04.2024.

14. The question, however, arises that in view of the insertion of Section 16(5) to the CGST Act as well as the judgment of the Supreme Court, can this Court decide the legality or validity of the impugned order dated 30.04.2024 without entering into the legality and validity of the impugned notifications.

15. In the foregoing paragraphs of the instant judgment, this Court categorically noted two reasons on which the impugned order dated 30.04.2024 is based upon. The first reason pertains to mismatch between the GSTR-1 and GSTR-3B. This

Court had quoted the Table which has been mentioned at Paragraph No.93 of the writ petition in the foregoing paragraphs of the instant judgment. There appears to be no contradiction between the contents of the said Table with what has been mentioned at paragraph No.2.3.I of the impugned order dated 30.04.2024 more so when it is the self-admission on the part of the Petitioner that the Petitioner while submitting the GSTR-1 which pertains to statement of outward supplies the rate of tax mentioned against the four invoices were 18%. It is the specific case of the Petitioner that it was on account of a human error that in the outward supplies in the GSTR-1 return tax rate at 18% was mentioned in the four invoices, though the rate of tax was mentioned as 12% in the actual invoices. Further to that, there was a wrong mention of Credit Note in the GSTR-1 which should have been actually deducted from the invoice value and this aspect was duly reflected in the GSTR-3B as well as in the GSTR-9F. It was the case of the Petitioner that if an Explanation was sought for by giving an opportunity, the Petitioner would have explained before the Respondent No. 7.

16. The question therefore arises that can this mistake which crept in the GSTR-1 be allowed to be corrected subsequently.

17. In the case of ***Aberdare Technologies Private Limited and Others Vs. Central Board of Indirect Taxes and Customs and Others*** reported in ***(2024) 105 GST 585 (Bombay)***, the learned Bombay High Court allowed the assessee to amend/rectify the Form GSTR-1. A challenge to the said order passed by the learned Bombay High Court was made before the Supreme Court by the Revenue by filing an application under Article 136 of the Constitution. The Supreme Court dismissed the said Special Leave Application by observing that the judgment passed by the learned Bombay high Court was just and fair and there was no loss to the Revenue. Paragraph No.4 of the order in the case of the ***Central Board of Indirect Taxes and Customs (supra)*** is reproduced herein under:

“4. The petitioner, Central Board of Indirect Taxes and Customs, must re-examine the provisions/timelines fixed for correcting the bona fide errors. Time lines should be realist as lapse/defect invariably is realized when input tax credit is denied to the purchaser when benefit of tax paid is denied. Purchaser is not at fault, having paid the tax amount. He suffers because he is denied benefit of tax paid by him. Consequently, he has to make double payment. Human errors and mistakes are normal and errors are also made by the Revenue. Right to correct mistakes in the nature of clerical or arithmetical error is a right that flows from right to do business and should not be denied unless there is a good justification and reason to deny benefit of correction. Software limitation itself cannot be a good justification, as software are meant ease compliance and can be configured. Therefore, we

exercise our discretion and dismiss the special leave petition.”

18. This Court also finds it very pertinent to observe that the learned Madras High Court in the case of **Deepa Traders (supra)** also by following the judgment of the Supreme Court in the case of **Central Board of Indirect Taxes and Customs (supra)** held that the errors in the GSTR-1 are capable of being corrected.

19. Now, this Court finds it relevant to take note of the observations made by the Respondent No.7 in respect to the mismatch between the GSTR-1 and GSTR-3B. The Respondent No. 7 applying the Explanation to Section 75(12) of the CGST Act held that any excess liability shown in the GSTR-1 vis-à-vis is an admitted liability and recoverable from the tax payer.

20. This Court finds it appropriate at this stage to take note of Section 37 of the CGST ACT which provides the requirement for every registered person, except an Input Service Distributor, a non resident taxable person and a person paying tax under Sections 10, 51, 52 of the CGST Act, to furnish electronically in such form and manner the details of outward supplies of goods or services or both effected

during a tax period on or before the 10th day of the month succeeding the said tax period and such details shall be subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies. This period can be extended by the Commissioner, for reasons to be recorded in writing, by way of a notification for such class of taxable persons as may be specified therein.

Sub-Section (3) of Section 37 of the CGST Act provides an opportunity to the registered person, who has furnished details in terms with Sub-Section (1) of Section 37 of the CGST ACT to rectify such error or omission, upon discovery of any error or omission in the manner as may be prescribed and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission in the return to be furnished for such tax period.

It is interesting however to take note of the first proviso to Section 37(3) of the CGST Act which stipulates that no rectification of error or omission in respect to the details furnished under Sub-Section (1) of Section 37 of the CGST Act shall be allowed after the 30th day of November following

the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

21. The prescription in respect to returns to be filed in terms with Section 37 of the CGST Act is given in Rule 59 of the Central Goods and Service Tax Rules, 2017 (for short "the CGST Rules"). Rule 59(6)(d) of the CGST Rules which was inserted vide the Notification bearing No. 26/2022-CT dated 26.12.2022 refers to an intimation to be given in the common portal in terms with Rule 88C(1) of the CGST Rules.

Now if this Court takes note of Rule 88C of the CGST Rules, it would show that this Rule was inserted vide the Notification No. 26/2022-CT dated 26.12.2022 whereby the manner of dealing with difference in liability reported in the statement of outward supplies and that reported in the return is stipulated.

22. A perusal of Rule 88C(1) of the CGST Rules would show that when there is discrepancies between the GSTR-1 and GSTR-3B, a notice has to be issued in FORM GST DRC-01B to either pay the tax liability along with interest or explain the aforesaid difference in the tax payable in the common portal.

The registered person upon receipt of the intimation can either pay the differential tax liability or submit a reply explaining the reasons for the mismatch. Sub-Rule (3) stipulates that if such payment is not made or where no explanation given or explanation is not acceptable, the said amounts as mentioned in DRC-01B in terms with Rule 88C(1) of the CGST Rules shall be recovered in terms with Section 79 of the CGST Act.

23. In the above backdrop, let this Court now take note of Section 75(12) as well as the Explanation added to the said Section which formed the basis of the impugned order dated 30.04.2024. Section 75(12) along with the Explanation are reproduced herein below:

“(12) Notwithstanding anything contained in section 73 or section 74 [or section 74A], where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

*[**Explanation.**-For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.]”*

24. A perusal of the above quoted Section along with the Explanation shows that when an amount of tax payable in terms with the self assessed tax had remained unpaid there is no necessity for invoking Section 73, 74 or 74A of the CGST Act, and the amount can be recovered in terms with Section 79 of the CGST Act.

By the Explanation which came into effect on 01.01.2022, the term self assessed tax was extended to include the tax payable in respect of the details of outward supplies furnished under Section 37(1) of the CGST Act and when the said amount is not included in the return furnished under Section 39 of the CGST Act.

25. It is in the above backdrop, let this Court take note of the facts in the present case. There is an admitted mismatch between the GSTR-1 Return filed by the Petitioner with that of the GSTR-3B submitted by the Petitioner. The mismatch pertains to four invoices wherein in the GSTR-1 Return the Petitioner had shown that the tax component was 18% which as per the Petitioner was 12%. Additionally, there was a wrong mention of the Credit Note. It appears that the Petitioner did not rectify the GSTR-1 within the period

permissible. Resultantly, the Respondent No. 7 had added the mismatched amount in terms with the Explanation to Section 75(12) of the CGST Act.

26. The order passed by the Supreme Court in the case of ***Central Board of Indirect Taxes and Customs (supra)*** would show that rectification should be permitted if there was a bona fide mistake. In the instant case, it is noticed that such mismatch was not brought to the attention of the Petitioner as required under Rule 88C of the CGST Rules and the Respondent No. 7 without affording the Petitioner the opportunity to explain the mismatch between the GSTR-1 and GSTR-3B had directly imposed the tax liability on the basis of the GSTR-1 Return along with interest.

27. It is the opinion of this Court that the Petitioner should be granted an opportunity to explain the mismatch between the GSTR-1 and GSTR-3B by placing necessary materials before the Respondent No.7 to the effect that the four invoices in question, the GST charged was only 12% as mentioned in the GSTR-3B and not 18% as mentioned in the GSTR-1.

28. It may not be out of place to mention at this stage, an

important principle of law of taxation that tax can be charged by a registered person to the extent the tax is imposed by the State on the goods or services or both. Further to that, tax can be recovered by the State on goods or services or both at the rate the tax is charged. In other words, if the rate of tax imposed by the statute on the goods or services or both is 12%, the tax can be recovered @ 12% only. The same analogy applies, if the rate of tax on the goods or services or both is 18%, the tax has to be recovered @ 18%.

29. In respect to the second reason, i.e., whether the Petitioner herein is entitled to claim the Input Tax Credit for the month of March, 2019 which was filed on 13.03.2021, the said issue appears to have been resolved by the amendment made to the CGST Act by the Finance Act, 2024 by inserting Section 16(5) that too giving it effect from 01.07.2017 when the CGST Act came into force. This Court finds it very pertinent to reproduce Section 16(5) which was inserted by the Finance (No. 2) Act, 2024 and given effect to vide the Notification bearing No.17/2024-CT dated 27.09.2024.

“16(5) *Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21,*

the registered person shall be entitled to take input tax credit in any return under Section 39 which is filed upto the thirtieth day of November, 2021."

30. A perusal of the above quoted Sub-Section of Section 16 reveals that in respect to any invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take Input Tax Credit in any return under Section 39 which is filed upto 30.11.2021. In view of the said amendment to the CGST Act, thereby inserting Section 16(5), the Petitioner herein would therefore be entitled to claim Input Tax Credit for the GSTR-3B return filed for March, 2019 till 30.11.2021. In the instant case, the Petitioner had submitted the return on 13.03.2021 well within the period stipulated in terms with Section 16(5) of the CGST Act.

31. Under such circumstances, in view of the amendment made to the CGST Act by the Finance (No.2) Act, 2024 whereby Section 16(5) to the CGST Act was inserted, this Court is of the opinion that the impugned order dated 30.04.2024 in respect to the entitlement to claim Input Tax Credit for the month of March, 2019 is required to be interfered with.

32. The above two reasons for passing the impugned order dated 30.04.2024 as discussed and analyzed hereinabove would therefore show that even without taking into account the challenge to the various impugned notifications, the impugned order dated 30.04.2024 for which the Petitioner is primarily aggrieved can be interfered with by passing certain directions.

33. Accordingly, the instant writ petition stands disposed of with the following observations and directions:

(i) The impugned order dated 30.04.2024 passed by the Respondent No.7 i.e. Assistant Commissioner, Central Goods and Services Tax, Dimapur Division is set aside and quashed.

(ii) This Court grants the Petitioner an opportunity to explain before the Respondent No. 7 the reason for the mismatch between the GSTR-1 Return with that of the GSTR-3B Returns within 30 days from today. Upon placing such Explanation and the necessary materials the Respondent No. 7 shall decide as to whether the Explanation is acceptable or not.

(iii) It is observed that depending on the acceptance of the Explanation, the Respondent No. 7 shall do the needful as per the provisions of the CGST Act and the CGST Rules.

(iv) This Court further taking into account that the impugned order dated 30.04.2024 is interfered in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution, observes that the period in terms with the directions passed herein above shall be calculated by setting off the period during which the present writ petition was pending, i.e., from 02.08.2024 till date, i.e., 20.03.2026.

(v) The rejection of the Petitioner's claim for Input Tax Credit is not sustainable and the Petitioner would be entitled to claim Input Tax Credit for the returns filed for the Financial Year 2018-19 in terms of Section 16(5) of the CGST Act.

(vi) The impugned order dated 30.04.2024 having been adjudicated without touching on the challenge to the various notifications made in the instant writ petition,

this Court observes that the disposal of the instant writ petition shall not be construed as this Court rejected or confirmed the impugned notifications challenged by the Petitioner.

(vii) There shall be no order as to costs.

JUDGE

Comparing Assistant