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Audit Closure Bars Reopening of Same Issues Under Section 73

The Hon'ble Gauhati High Court in the case of ***M/s. Surya Businees Private Limited vs State of Assam & Ors [WP(C)/6322/2023, order dated March 05, 2026]*** held that once audit proceedings under Section 65 of the CGST/AGST Act had concluded and the assessee had discharged the liability determined in the final audit report, issuance of a subsequent show cause notice under Section 73 for the same period and same issues was not maintainable in absence of circumstances contemplated under Section 65(7) of the Act.

Facts:

M/s Surya Businees Private Limited **("the Petitioner")** was a registered dealer under the Central Goods and Services Tax Act, 2017 and Assam Goods and Services Tax Act, 2017. The returns filed by the Petitioner for FY 2017-18 were selected for audit under Section 65 of the AGST Act, 2017. Pursuant thereto, notice dated September 27, 2022 was issued requiring production of books of account and records. The Petitioner produced all records and audit was conducted by the Deputy Commissioner of State Tax, Jorhat-1 Circle. Audit observations under Rule 101(4) of the AGST Rules, 2017 were issued vide communication dated May 29, 2023 highlighting discrepancies and requiring clarification. The Petitioner submitted replies dated June 07, 2023 and June 09, 2023 clarifying the alleged discrepancies, including issues relating to turnover reconciliation and ITC reversal. Upon consideration of the replies, final audit report under Section 65(6) was issued on June 17, 2023. The objections regarding suppression of turnover, unreconciled turnover and short payment of tax were dropped, except interest liability on delayed payment of tax amounting to Rs. 1,34,580/-, which was paid through DRC-03 and intimated vide communication dated June 19, 2023.

The State of Assam & Ors **("the Respondents")**, thereafter, issued a show cause notice in Form GST DRC-01 dated September 28, 2023 under Section 73 of the CGST/AGST Act alleging short payment of GST for FY 2017-18, non-correct declaration of tax liability in GSTR-9, and excess availment of ITC on account of non-reconciliation and inadmissible credits under Section 17(5) of the Act.

The Petitioner contended that once a detailed audit under Section 65 had been concluded after examination of books, turnover, taxes paid and ITC availed, and once liabilities identified during audit were discharged, initiation of fresh proceedings under Section 73 for the same period and same issues was impermissible. It was further contended that Section 65(7) permits initiation of proceedings under Sections 73 or 74 only where audit results in detection of tax not paid, short paid, erroneously refunded or ITC wrongly availed, which situation did not arise in the present case.

The Respondent contended that mere issuance of show cause notice did not warrant interference under writ jurisdiction and the Petitioner ought to respond before the adjudicating authority. The Respondent further contended that the impugned notice was not issued in continuation of audit proceedings under Section 65 and that there existed no statutory prohibition against issuance of notice under Section 73 after completion of audit. It was also argued that while short payment of tax had been examined during audit, the issue regarding inadmissible ITC under Section 17(5) had not been considered during audit proceedings and therefore fresh proceedings were maintainable.

Aggrieved by issuance of the impugned show cause notice for the same assessment period despite conclusion of audit proceedings and discharge of liabilities determined therein, the Petitioner approached the Hon’ble Gauhati High Court by filing the present writ petition under Article 226 of the Constitution of India challenging the legality and maintainability of the DRC-01 notice issued under Section 73 of the CGST/AGST Act, 2017.

Issue:

Whether, after completion of audit proceedings under Section 65 of the CGST/AGST Act, 2017 and discharge of liabilities determined in the final audit report, the proper officer could invoke

Section 73 of the Act for the same assessment period and same subject matter in absence of circumstances contemplated under Section 65(7) of the Act?

Held:

The Hon'ble Gauhati High Court in ***WP(C)/6322/2023*** held as under:

- Observed that, Section 2(13) of the GST Act defines "audit" as examination of records, returns and documents maintained or furnished by the registered person to verify correctness of turnover declared, taxes paid, refunds claimed and ITC availed, thereby encompassing complete verification of accounts and contemporaneous records of the assessee.
- Noted that, under Section 65(7), recourse to proceedings under Sections 73 or 74 is permissible only where audit results in detection of tax not paid, short paid, erroneously refunded or ITC wrongly availed or utilized.
- Observed that, the audit proceedings conducted for FY 2017-18 had culminated in issuance of final audit report in ADT-02 wherein objections regarding suppression of turnover, unreconciled turnover and short payment of tax were dropped upon consideration of clarifications furnished by the Petitioner. Only interest liability for delayed payment of tax was confirmed and discharged by the Petitioner through DRC-03.
- Noted that, both parties were ad idem that the impugned show cause notice under Section 73 was not issued in continuation of audit proceedings conducted under Section 65.
- Observed that, no further liability having been noticed during audit proceedings and the Petitioner having discharged the liability ascertained therein, the stage for invocation of Section 65(7) had not arisen in the matter.

- Noted that, the impugned show cause notice pertained to the very same subject matter and assessment period for which detailed audit under Section 65 had already been carried out and wherein no discrepancy was found regarding short payment of tax or wrongful availment of ITC.

- Observed that, issuance of the impugned notice without existence of circumstances envisaged under Section 65(7) undermined the audit process already undertaken and rendered the same redundant.

- Further observed that, the issue relating to output tax liability had already been examined and dropped during audit proceedings after considering the Petitioner's clarification, while the issue concerning excess ITC had also been addressed by the Petitioner during audit and no discrepancy had been found by departmental authorities.

- Noted that, Instruction No. 13/2023-GST dated December 26, 2023 stipulated that notices generated using IIT Big Data Software after completion of audit proceedings were liable to be dropped.

- Held that, in absence of circumstances contemplated under Section 65(7), issuance of show cause notice dated September 28, 2023 under Section 73 for the same period and same subject matter was not permissible and consequently the impugned notice was liable to be set aside. Accordingly, the writ petition was allowed and the impugned show cause notice dated September 28, 2023 was quashed and set aside.

Our Comments:

The Court relied substantially on the statutory definition of "audit" under Section 2(13), which contemplates complete examination of turnover, taxes paid, refund claims and ITC availed. The reasoning proceeds on the premise that a concluded audit necessarily includes scrutiny of all such aspects unless specific concealment or suppression is subsequently discovered. The

Court also relied upon Instruction No. 13/2023-GST dated December 26, 2023 issued by the Principal Commissioner of State Tax-cum-Commissioner of Taxes, Assam directing dropping of notices generated through IIT Big Data Software where audit or return scrutiny proceedings had already concluded.

Relevant Provisions:

Section 2(13) of the CGST Act, 2017

"audit means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder."

Section 65(7) of the CGST Act, 2017

"65. Audit by tax authorities.-

(7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74."

Instruction No. 13/2023-GST dated December 26, 2023

"Regarding notice issued based on IIT Big Data Software.

Attention is invited to the IIT Big Data Software which has been procured by Commissionerate of Taxes, Assam for ease of operation for their jurisdictional offices. With the help of this software automated notices (in DRC-01) can be generated, based on different parameters. Representations have been received that, that even though, taxpayers have been assessed for cases like scrutiny, audit and advisory / summons etc, but notices have been issued again in *those cases for the FY. 2017-18 and 2018-19. Considering that in the initial years of GST implementation a lots of practical difficulties were encountered, it is hereby advised to drop the proceedings keeping in mind the following instructions*

1. In those cases, where audit proceeding have been completed notices again issued using the IIT Big Data Software needs to be dropped.

2. The cases where return scrutiny proceedings have been completed and notices again issued using IIT Big data software, needs to be dropped to the extent of para which are already covered in previous notice.

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