

GAHC010258822023



DB

2026:GAU-AS:2626-

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

**Case No. : C.Ex.App./7/2025**

PRINCIPAL COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX AND  
CUSTOMS  
DIBRUGARH, MILAN NAGAR, LANE-F, P.O. CR BUILDING, DIBRUGARH-  
786003.

VERSUS

M/S NUMAL SAIKIA  
BANIPUR BYE LANE-11, BANIPUR, VIS CR BUILDING, DIBRUGARH-786003,  
ASSAM

**Advocate for the Petitioner** : MR. S C KEYAL,

**Advocate for the Respondent** : MR. S MITRA, MS. A KALITA, MR A K BORO

**BEFORE**  
**HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**  
**HONOURABLE MRS. JUSTICE SHAMIMA JAHAN**

**ORDER**

**20-02-2026**

**(M. Zothankhuma, J)**

Heard Mr. SC Keyal, learned counsel for the appellant as well as Mr. S Mitra, learned counsel for the respondent.

**[2]** Mr. Keyal, learned counsel for the appellant submits that the impugned Final Order No. 75470/2022 dated 11.08.2022 passed in Service Tax Appeal No.

75969/2021 by the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Kolkata should be set aside.

**[3]** The issue pertains to the appellant's decision to charge Service Tax on the works done by the respondent under various Government authorities, such as the PWD, Airport Authority of India, Indian Railways, etc for the period from 2014-2015 to 2017-2018.

**[4]** The facts of the case in brief is that a show cause notice-cum-demand notice dated 21.01.2019 had been issued to the respondent by the appellant for payment of Service Tax under Section 67 of the Finance Act, 1994, by basing its claim under the returns provided in Form 26AS of the Income Tax Act for the period from 2013-2014 to 2017-2018. The respondent submitted his reply to the Principal Commissioner, Central Goods & Services Tax (CGST) Department. The respondent's reply did not include the invoices of the works done by the respondent, except for work orders and other documents that had been issued to the respondent on the basis of the data provided in the 26AS Form made under the Income Tax Act. The respondent's reply was to the effect that the work done by the respondent was covered under Entries 12A, 13 and 14 of the Mega Exemption provided under Notification No. 25/12 of Service Tax dated 20.06.2012.

**[5]** The Principal Commissioner, CGST, Dibrugarh thereafter issued order dated 22.10.2021 directing payment of Service Tax from the respondent amounting to Rs.6,39,09,190/-. The respondent being aggrieved by the said order passed by the Principal Commissioner, filed Service Tax Appeal No. 75969/2021 before the CESTAT, Kolkata. The learned Tribunal thereafter disposed of the said appeal, vide final order No. 75470/2022 dated 11.08.2022, by holding that service tax

could not be levied upon the respondent on the basis of the contents of Form 26AS filed before the Income Tax authorities. The second ground for setting aside the order dated 22.10.2021 passed by the Principal Commissioner, CGST, Dibrugarh by the learned Tribunal, was on the ground that pre show cause notice consultation had not been issued to the respondent in terms of the Master Circular dated 10.03.2017. The order dated 22.10.2021 passed by the Principal Commissioner, CGST was thus set aside.

**[6]** The Principal Commissioner, CGST has accordingly filed the present appeal challenging the decision of the learned CESTAT, by proposing 3 (three) substantial questions of law in terms of Section 35(G) of the Central Excise Act, 1944, which are as follows:-

1. Whether the learned Tribunal was correct in holding that pre-show cause notice consultation is mandatory in view of Clause 5 of Circular No. 1079/03/2021-CX dated 11.11.2021?

2. Whether the service tax can be demanded on the basis of statement made in Form 26 AS?

3. Whether the show cause notice dated 21.10.2019 was in violation of the instruction issued by CBIC?

**[7]** In the case of ***Shree Kankeshwari Enterprise vs. Commissioner of Central Excise & Service Tax, Bhavnagar***, reported in ***(2023) 9 Centax 77 (Tri.-Ahmd)*** decided by the learned CESTAT, West Zonal Bench, Ahmedabad (Court No.III) on 28.06.2023, it has been held that without conducting any independent inquiry or investigation, the demand of service tax cannot be sustained only on the basis of "26AS data" provided by the Income

Tax authorities to the Central Excise Officers. Service tax demand cannot be raised on the basis of assessment by the Income Tax made by the authorities. Income Tax and Service Tax are two different and independent special Central Acts and their provisions operate in two different and independent fields. By relying only on "26AS data" of the Income Tax Act, demand of Service Tax cannot be made. The learned Tribunal in the above case further held that the data provided by the Income Tax authorities simply shows the details of income received from sale of services and Service Tax paid thereon. However, in Income Tax Returns, no further details of exemptions availed on services requires to be declared. Hence, there may be mis-match in the data of Income Tax *vis-à-vis* Service Tax Returns filed, depending on the facts of each case.

**[8]** The learned Tribunal had also held in the above case that the Revenue Department could not argue a case which was not made out in the show cause notice and the adjudicating authority could not travel beyond the show cause notice. As such, in view of the decision of the learned Tribunal in ***Shree Kankeshwari Enterprise (supra)***, which the appellant's counsel submits that it does not have any issue with, the levy of Service Tax on the respondent by the appellant on the basis of the "26AS data", is palpably not permissible. Similar has been the view expressed by the Division Bench of the Gujarat High Court in the case of ***Nimeshbhai Gunvantbhai Patel vs. Union Of India***, reported in ***(2024) 25 Centax 122 (Guj.)***.

**[9]** With respect to whether a pre-show cause notice consultation was a necessity, prior to the proceedings for levy of Service Tax being demanded from the respondent, we would have to consider para 5.0 of the Master Circular No.1053/2/2017-CX dated 10.03.2017, which states as follows:-

**“Consultation with the notice before issue of Show Cause Notice:**

Board has made pre show cause notice consultation by the Principal Commissioner/Commissioner prior to issue of show cause notice in cases involving demands of duty above Rs. 50 lakhs (except for preventive/offence related SCN's) mandatory vide instruction issued from F. No.1080/09/DLA/MISC/15, dated 21<sup>st</sup> December 2015. Such consultation shall be done by the adjudicating authority with the assessee concerned. This is an important step towards trade facilitation and promoting voluntary compliance and to reduce the necessity of issuing show cause notice.”

**[10]** While para 5.0 of the Master Circular dated 10.03.2017 has made it mandatory for a pre show cause notice consultation to be issued in respect of cases involving demands of duty above Rs. 50 lakhs, a subsequent Circular No. 1079/03/2021-CX dated 11.11.2021 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs has clarified para 5.0 of the Master Circular dated 10.03.2017 by stating that pre show cause notice consultation shall not be mandatory for those cases booked under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 for recovery of duties or taxes not levied or paid or short levied or short paid or erroneously refunded by reason of:

(a) fraud: or (b) collusion: or (c) willful mis-statement: or

(d) suppressions of facts: or (e) contravention of any of the provision of the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 or the Rules made there under with the intent to evade payment of duties or taxes.

**[11]** In the present case, the show cause notice was issued to the respondent on 21.10.2019 and the issue of payment of Service Tax had been finalized by the Principal Commissioner, CGST, Dibrugarh, vide order dated 22.10.2021, i.e., prior to the subsequent Circular dated 11.11.2021 and the clarification made thereunder. Further there is nothing in the show cause notice dated 21.10.2019, to show that the Service Tax sought to be levied upon the respondent, was due to fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provision of the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 or the Rules made there under.

**[12]** In view of the above, the show cause notice dated 21.10.2019 and the subsequent order dated 22.10.2021 passed by the Principal Commissioner, CGST, Dibrugarh was not proper and sustainable in law, due to non issuance of the pre show cause notice consultation.

**[13]** We are accordingly of the view that the entire issue, as on date, not having been decided on merits, but solely on the issue of technicality, the matter should be remanded back to the learned CESTAT, Kolkata, for a determination on the merits of the case, without going into the issue of whether pre show cause notice consultation or whether the "26AS data" only could be a ground for levying/demanding service tax. This is due to the fact that all the work orders, invoices and all other documents of the respondent have already been submitted to the learned CESTAT. The learned CESTAT shall accordingly take a fresh decision on the merits of the case, after giving an opportunity of hearing to both the parties, without relegating the said issue to be decided on merits to the authorities. This decision directing the learned CESTAT to take a fresh decision on the matter on merits is being made with the consent of the

parties, though we are of the view that the show cause notice dated 21.01.2019 and the order dated 22.10.2021 passed by the Principal Commissioner, CGST, Dibrugarh should also be set aside. However, as stated above, the parties want the entire matter to be decided on merits by the learned Tribunal without relegating the said case to the Principal Commissioner, as a number of years have gone by.

**[14]** Consequently, the impugned Final Order No. 75470/2022 dated 11.08.2022 passed in Service Tax Appeal No. 75969/2021 by the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Kolkata is set aside, with the above direction.

**[15]** The Appeal is accordingly disposed of.

**J U D G E**

**J U D G E**

**Comparing Assistant**