GAHC010117232026

2026:GAU-AS:12823

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

Case No. : WP(C)/3066/2026

M/S HD ASSOCIATES
A PARTNERSHIP FIRM REGISTERED UNDER THE INDIAN PARTNERSHIP ACT, 1932, HAVING ITS OFFICE AT GAROLIA, NEAR GANESH KANTA, OPPOSITE SARUSAJAI STADIUM, LOKHRA, GUWAHATI, KAMRUP(M), ASSAM 781034, REPRESENTED BY ONE OF ITS PARTNERS, SRI SIDDHANT DEORAH,

VERSUS

THE UNION OF INDIA and othrs
MINISTRY OF FINANCE, REPRESENTED BY THE SECRETARY TO THE MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, GOVERNMENT OF INDIA, NORTH BLOCK, NEW DELHI.

2:THE ASSISTANT DIRECTOR
GUWAHATI ZONAL UNIT

H.N. 77
WARD NO. 54
KALAKSHETRA
PANJABARI
GUWAHATI
ASSAM 781037.

3:THE ASSISTANTDEPUTY COMMISSIONER
CGST
GUWAHATI I DIVISION
CGST CE
GUWAHATI COMMISSIONERATE
GST BHAWAN
2ND FLOOR
KEDAR ROAD

GUWAHATI 781001
ASSAM

For the petitioner	: Mr. S.K. Saha
For the Respondents	: Mr. V.K. Chopra, (R-1)
Date on which judgment was reserved	: N.A
Date of pronouncement of judgment	: 03.09.2026
Whether the pronouncement is of the operative part of the judgment?	: N.A
Whether the judgment has been pronounced?	: Yes

JUDGMENT & ORDER (ORAL)

03.09.2026

1. Heard Mr. S.K. Saha, learned counsel for the petitioner. Also heard Mr. V.K. Chopra, learned counsel for respondent No.1 and Mr. M Kumar, learned counsel for respondent Nos.2 & 3.

2. The petitioner has approached this court, challenging the Demand notice-cum-show cause notice dated 14.08.2025, issued by the Assistant Director, DGGI, Guwahati Zonal Unit, whereby proceedings have been initiated against the petitioner for the financial years 2021-2022 to 2024-2025. The further challenge concerns the search and seizure order dated 01.02.2024, INS-02, and all actions taken in consequence thereof.

3. The principal grounds of challenge are that the search conducted on 01.02.2024 under section 67 of the Central Goods and Service Tax Act, 2017, (for short the CGST Act), was without valid authorization and without the requisite reasons to believe; the search proceedings were not compliant with the requirement of DIN; the

proceedings should not have been initiated without recourse to section 61; and the consolidated notice invoking section 74 and 74A along with section 122 of the CGST Act, 2017 is contrary to the scheme of the Act, particularly section 75(13).

4. The facts are on a narrow campus.

The petitioner is a partnership firm carrying on business under the name and style of "Detailing Bull".

On 01.02.2024, a search was conducted at its premises. A FORM GST INS-01 dated 01.02.2024 was issued authorizing the search. The search was followed by the issuance of FORM GST INS-02 and the preparation of the panchnama.

5. During the course of the investigation, statements from persons connected with the business were recorded, and the departmental officers examined, among other things, the records maintained in the "Garage Plug" software, slip pads, sales records, and other documents. Further statements were recorded during the subsequent investigation, and information was obtained from persons connected with the business.

On the basis of the materials so collected, the impugned show-cause notice was issued alleging suppression of taxable supplies.

6. The notice alleges misdeclaration/suppression of taxable value of Rs. 3,42,61,665.00, involving GST of Rs. 61,67,100.00, for the financial years 2021-2022 to 2023-2024.

The demand has been proposed under section 74(1), whereas for financial year 2024-25, section 74(A)(1) has been invoked. Interest and penalties have also been proposed, including penalties under section 122 of the Act, 2017.

The notice takes into account the payment of Rs. 300,000 made by the petitioner through DRC-03 on 22-02-2024.

7. The first argument that the charge stands vitiated for want of authorization, and therefore is void ab initio, can not be accepted in view of the pleading in the writ petition regarding the existence of FORM GST-INS-01 dated 01.02.2024.

8. The petitioner, however, submits that the reasons to believe on the basis of which the authorization was issued were never furnished to it.

9. Section 67(2) empowers the proper officer, where reasons to believe that the circumstances specified therein exist, to authorize an officer in writing to conduct the search.

Rule 139(1) of the GST rules prescribes FORM GST-INS-01 for such authorization. The requirement of reason to believe and the requirement of a written authorization are distinct.

It is true that the mere existence of INS-01 does not by itself establish that the statutory pre-condition for the exercise of power was satisfied. At the same time, the non-furnishing of the reasons to taxable persons cannot by itself be equated with the absence of reasons.

The statute does not contemplate prior disclosure of the reason to the person whose premises are to be searched, as such disclosure may defeat the very purpose of the search.

Therefore, what is required is that the competent officer has actually formed the requisite belief on the basis of materials available before the issuance of INS-01.

10. If such reasons existed contemporaneously, mere non-supply thereof to the petitioner would not necessarily invalidate the authorization. If, on the other hand, no such contemporaneous reason existed and a justification is sought to be supplied subsequently, the validity of the search would stand on a different footing.

11. This Court, at this stage of challenge to the show-cause notice, need not examine the sufficiency of the reason like an appellate authority.

The adjudicating authority, however, is required to examine the original INS-01 and the contemporaneous departmental record and thereafter record a finding as to whether the competent Officer had formed the requisite reasons to believe prior to issuance of the authorization. Thus, the validity of the subsequent proceeding shall necessarily abide by the findings on that aspect.

12. Now, coming to the challenge based on the absence of DIN, it is recorded herein that the CBIC Circular No. 122/41/2019-GST dated 05.11.2019 prescribed a mandatory DIN for specified communications, including search authorization. Subsequent Circular No. 128-47-2009-GST dated 23-12-2019 prescribed the consequences thereof, subject to the exception and regularization contemplated by the circulars.

13. The fact that the impugned show-cause notice bears a DIN does not answer the objection relating to the absence of a DIN in the search authorization. However, the issue is that those communications requiring DIN bore such a number or fell within any of the permissible exceptions, and whether they were subsequently regularized in accordance with the prescribed procedure, which are factual issues required to be determined by the adjudicating authority.

14. However, at this stage, the alleged defect in DIN without examination of relevant records and applicability of exceptions, which are otherwise factual determinations, need not be examined in the exercise of this court's power under Article 226 of the Constitution of India, inasmuch as the same cannot, by itself, furnish a ground for quashing the entire show-cause notice.

15. The further objection of the petitioner is that the Department could not have proceeded to determine liability under section 74/74A without first undertaking scrutiny under section 61 and issuing FORM GST ASMT-10.

16. Section 61 and Rule 99 prescribe a procedure for addressing discrepancies noticed during the scrutiny of returns. If a demand proceeding is founded upon a discrepancy detected in such scrutiny, the statutory procedure under section 61 cannot be bypassed, but section 61 cannot be treated as a mandatory preliminary stage in every investigation merely because during an investigation the department ultimately compares the material discovered with the returns filed by the taxpayers.

17. In the present case, the foundation disclosed in the notice is the search under Section 67 and the investigation that followed, including the material allegedly found in the course of the search, statements recorded during the investigation, the entries in the Garage Plug software, Slip Pads, and other records and information obtained from third parties.

18. In the facts of the present case, in the opinion of this court, the demand is founded on Section 67, and therefore, the absence of proceedings under Section 61 does not invalidate the notice.

19. As a caution, this court records here that, in the event that any

particular component of the proposed demand is founded solely upon a discrepancy detected in scrutiny proceedings under Section 61, the statutory requirements applicable thereto shall have to be complied with. This aspect can appropriately be examined in the adjudication itself.

20. A challenge to a show-cause notice covering financial years 2021-2022 to 2024-2025 merely on the ground of consolidation also cannot be accepted.

21. There is no statutory prohibition against the issuance of a consolidated notice covering more than one financial year. A Co-ordinate Bench in M/s ***Tata Projects Ltd vs. Union of India and others,*** reported in ***2026 SCC Online GAU 3798,*** has already considered the issue and held that a consolidated show cause notice covering different financial years cannot be termed as without jurisdiction.

22. However, it is made clear that for the financial years 2021-22 to 2023-24, the authority has invoked Section 74, whereas for the year 2024-2025, it has invoked Section 74A. The authorities are therefore required to determine the liability separately for each financial year, apply the provision applicable to that year, and examine the question of limitation and the ingredients necessary for invoking the respective provisions.

23. The contention based on Section 75(13) also does not render the notice invalid.

24. Section 75(13) does not prohibit the department from referring to Section 74/74(A) and Section 122 in the same show-cause notice. The said provision operates to prevent the imposition of more than one penalty on the same person for the same act or omission. Thus, mere proposal of penalties under both sets of provisions, at this stage of the notice, is not

sufficient to invalidate the proceeding.

25. The authorities are under a statutory obligation to ensure that Section 75(13) is given full effect and that the same act or omission is not subjected to a double penalty, contrary to the statutory prohibition.

26. Coming to the allegation of non-disclosure of any suppression, fraud, and willful misstatement in the Notice, it is clear that the notice proceeds on the basis that certain taxable supplies were not disclosed in returns and such non-disclosure was deliberate. The materials relied upon include business records, the garage plug software, slip pads, statements recorded during the investigation, and information obtained from other persons. Whether these materials establish suppression-fraud or willful misstatement and whether the quantification of alleged suppressed turnover is correct are essentially matters of adjudication. The petitioner would be entitled to explain the entries relied upon by the department, contest the statements and other materials, reconcile the figures and demonstrate the correctness of its returns and tax liability.

27. This court, in the exercise of writ jurisdiction against a show-cause notice, should not undertake that factual exercise. It is significant to note that the notice contains a quantified allegation of additional taxable value and consequential tax liability.

28. The correctness of such quantification, including the amount already paid through DRC-03, can effectively be adjudicated by the adjudicating authority on the basis of materials relied upon and explanation furnished by the petitioner.

29. In this context, the decision in ***Tata Projects*** (supra) also reinforces the principle that where the dispute involves factual

determination as to suppression, fraud or willful misstatement, the statutory adjudication should ordinarily be allowed to take place unless the notice is shown to be wholly without jurisdiction or suffers from a patent legal infirmity, which is not the case, in the present litigation, as discussed hereinabove.

30. On the overall consideration of the matter, this court is not persuaded to interfere with the impugned show-cause notice and the action of search and seizure. Accordingly, the writ petition stands dismissed.

31. However, this court is of the opinion that for the ends of justice, the petitioner ought to be granted an opportunity to submit its reply to the impugned demand-cum-show-cause notice, thereby putting the clock back to the date on which the demand-cum-show-cause notice was issued.

32. The petitioner shall be at liberty to raise all its factual and legal objections before the adjudicating authority within a period of 45 days from today, which shall be decided by the authority in accordance with the law.

33. The observations made herein are confined to the question of interference with the show-cause notice and shall not be treated as a finding on the merits of the allegations contained therein.

34. Parties to bear their own costs.

JUDGE

Comparing Assistant