GAHC010146322025

2026:GAU-AS:16490

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

Case No. : WP(C)/4327/2025

M/S SRI KRISHNA ENTERPRISE
KARITOLA, CHAWK BAZAR ROAD, BILASIPARA, PIN- 783348, DISTRICT- DHUBRI, ASSAM, REPRESENTED BY ITS PARTNER SRI SATYAJIT SAHA, SON OF LATE BIMAL CHANDRA SAHA, RESIDENT OF BILASIPARA-783348, DISTRICT- DHUBRI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISIONER AND SECRETARY TO THE GOVT. OF ASSAM, FINANCE (TAXATION) DEPARTMENT, DISPUR, GUWAHATI-781006, ASSAM

2:THE COMMISSIONER OF TAXES
ASSAM
KAR BHAWAN
DISPUR
GUWAHATI -781006
ASSAM

3:THE ADDITIONAL COMMISSIONER OF TAXES
ASSAM
KAR BHAWAN
DISPUR
GUWAHATI-781006
ASSAM

4:THE JOINT COMMISSIONER OF TAXES
ASSAM
KAR BHAWAN
DISPUR
GUWAHATI -781006

ASSAM

5:THE DEPUTY COMMISSIONER OF TAXES
GUWAHATI
ZONE- B

KAR BHAWAN
GUWAHATI-781006
ASSAM

6:THE SUPERINTENDENT OF TAXES
DHUBRI
DHUBRI-783301
ASSAM

7:THE SUPERINTENDENT OF TAXES
OFFICE OF THE DEPUTY COMMISSIONER OF TAXES
GUWAHATI ZONE- B
KAR BHAWAN
DISPUR GUWAHATI-781006
ASSA

Advocate for the Petitioner : DR B P TODI, MR A NATH,DR ANKIT TODI,MS. R JUGLI,MS M PARBIN,MS. T P THANCHUNG

Advocate for the Respondent : SC, TAXES,

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Dr. B. P. Todi, Senior Advocate assisted by Ms. P. Das, Advocate.

For the Respondents : Mr. B. Gogoi, Additional Advocate General, Assam.

Date on which Judgment is

Reserved : 10.11.2026

Date of pronouncement of
Judgment : **10.11.2026**

Whether the pronouncement
is of the operative part of the
Judgment : NA.

Whether the full Judgment has
been pronounced : Yes.

JUDGMENT & ORDER (ORAL)

(A.D.Choudhury, J)

1. Heard Dr. B. P. Todi, learned Senior Counsel, assisted by Ms. P. Das, learned counsel for the petitioner. Also heard Mr. B. Gogoi, learned Additional Advocate General, Assam, representing the Finance and Taxation Department, Government of Assam.

2. The petitioner has approached this Court challenging the Assessment Order dated 31.12.2014 and the consequential Demand Notice dated 02.01.2015 issued by the Superintendent of Taxes, Dhubri.

The petitioner has also challenged the subsequent demand communication dated 28.10.2020, whereby a sum of Rs.1,11,93,156 was demanded towards penalty for the assessment years 2009–2010 to 2012–2013.

The petitioner has further questioned the legality of the search and seizure conducted by the taxation authorities on 03.09.2014 under Section 74 of the Assam Value Added Tax Act, 2003 (hereinafter referred to as the Act, 2003).

3. The facts in brief are that on 03.09.2014, the taxation authorities, more particularly the jurisdictional Superintendent of Taxes, conducted a search on the petitioner's business premises and seized certain books of accounts, documents, and goods. The search was conducted pursuant to a warrant dated 02.09.2014 issued by the Commissioner of Taxes.

4. The seizure memorandum records that the action was taken based on a preliminary verification, which allegedly disclosed that the petitioner had failed to properly account for certain transactions and goods. The search and seizure were stated to have been undertaken by invoking the provisions of Section 74(3), (4), and (5) of the Act, 2003.

5. On the same date, a zimmanama was prepared, and the seized goods and documents were handed over to one Samrat Saha, son of Subhash Saha, a resident of M/S Krishna Enterprise, for safekeeping.

6. Subsequently, a notice dated 08.09.2014 was issued under Section 74(1) of the Act, 2003, requiring the petitioner to produce books of accounts and other documents. The petitioner submitted an objection dated 24.09.2014, questioning the legality of the search and seizure and alleging, inter alia, that the statutory procedure had not been followed. The petitioner also raised objections regarding the seizure of goods and documents allegedly belonging to another concern, namely M/s Suraksha Steel Company.

7. Thereafter, a show cause notice was issued on 12.11.2014, based on the verification of the seized documents, alleging unaccounted sales and proposing a consequential tax liability. The petitioner filed a reply to such show cause notice. Thereafter, another show cause notice was issued on 03.09.2014 under the Act with detailed particulars, which the petitioner also responded to by its reply dated 26.12.2014.

Another notice dated 02.01.2015 was issued asking the petitioner show cause against the imposition of penalty, which was also replied by the petitioner on 12.01.2015.

8. The petitioner had earlier approached this Court by filing WP(C) No. 6364/2014, challenging the search and seizure proceedings. The said writ petition was disposed of by an order dated 05.11.2019.

While considering the procedure to be followed during search and seizure under the Act, the learned Coordinate Bench referred to relevant provisions of the Code of Criminal Procedure,

1973, and observed that the authorities, while exercising powers under Section 74 of the Act, were required to follow the procedure prescribed under the said Code as far as possible.

However, the legality of the search and seizure was not finally adjudicated upon, and the writ petition was closed in the absence of any representation from the petitioner's side, leaving it open to the petitioner to approach the appropriate forum if a cause of action survived.

9. After the disposal of the aforesaid writ petition, the taxation authorities issued the demand communication dated 28.10.2020, reiterating the demand arising out of the original assessment proceedings.

10. The petitioner thereafter filed an Interlocutory Application in the disposed-of writ petition seeking, inter alia, a declaration that the search and seizure and the consequential demand are illegal. The said application was disposed of by an order dated 25.01.2021, observing that the petitioner ought to challenge the demand before the appropriate forum and not by way of an interlocutory application in a disposed-of writ petition.

11. The petitioner carried the matter in appeal before the Division Bench. The writ appeals were dismissed, noticing that the petitioner was granted liberty to challenge the assessment order and consequential demand before the appropriate forum.

In the aforesaid backdrop, the present writ petition is filed.

12. Dr Todi, learned Senior Counsel for the petitioner, argues that the entire search and seizure proceedings are without jurisdiction as the authorities proceeded under Section 74(3), (4), and (5) of the Act, without first following the procedure prescribed under Section 74(1).

It is contended that the requirement of calling upon the dealer to produce the books of account and other documents under Section 74(1) is a condition precedent for invoking the subsequent proceedings relating to the search and seizure.

13. It is further submitted that the search and seizure were conducted in violation of the procedure prescribed under the Code of Criminal Procedure, 1973, particularly the safeguards under Sections 47 and 100.

14. Dr. Todi, learned Senior Counsel, while responding to the Revenue's argument on the availability of an alternative remedy, submits that the statutory remedy of appeal is not

efficacious, as the authorities exercising original and appellate jurisdiction belong to the same category. It is contended that the petitioner would have no effective remedy if the appeal is required to be considered by an authority belonging to the same cadre.

15. It is also argued that Section 79(17)(c) and Section 73 of the Act exclude an appeal against an order relating to the seizure or retention of books of account and other documents, and therefore, the petitioner has no statutory remedy against search and seizure proceedings.

16. The petitioner has placed reliance on the decision of this Court in **Saligram & Company v. Deputy Commissioner of Taxes**, reported in **(1994) 94 STC 189** (**Gauhati**).

17. *Per contra*, Mr. B. Gogoi, learned Additional Advocate General for the State of Assam, submits that the provisions of Section 74(1) and Section 74(3), (4), and (5) operate in different fields, and that there is no requirement under the Act that the authority must issue a notice under Section 74(1) before exercising the power of search and seizure.

It is submitted that the search was conducted on the basis of an authorisation issued by the Commissioner of Taxes and in accordance with the provisions of the Act.

18. It is further argued by Mr. Gogoi, learned Additional Advocate General, that the petitioner had an effective statutory remedy against the assessment order and consequential demand, but did not avail the same. According to Mr. Gogoi, the earlier writ proceedings did not prevent the petitioner from approaching the statutory appellate authority.

19. Alternatively, it is argued that the subsequent proceedings initiated under Section 74(1) can run independently without relying on the procedure under Section 74(3) of the Act; therefore, the entire decision taken subsequent to the notice issued under Section 74(1) may not be interfered with in the exercise of the power of judicial review when the appellate provisions are available.

20. This Court has given anxious consideration to the arguments advanced by the learned counsel for the parties.

21. The first question that arises is whether the exercise of power under Section 74(3), (4), and (5) of the Act necessarily depends on prior compliance with Section 74(1).

22. Section 74(1) empowers the Commissioner, or any authority appointed to assist him, to require a dealer or any other person to produce books of accounts, registers, and other documents, or to

furnish information relating to the business.

Sub-section (3), on the other hand, empowers the competent authority to seize books of accounts, registers, or other documents where it has reason to believe that the dealer has evaded or is attempting to evade the payment of tax and is maintaining accounts in a manner likely to cause evasion of tax.

Sub-section (4) provides for the entry and search of premises for the purposes of sub-section (2) and sub-section (3), while sub-section (5) provides for the seizure of goods which are not accounted for in the ordinary books of accounts.

23. A plain reading of the aforesaid provisions does not indicate that the legislature intended the procedure under sub-section (1) to be invariably followed before the powers under sub-sections (3), (4), and (5) can be exercised.

24. The power to call for the production of accounts under sub-section (1), in the opinion of this Court, is distinct from the power of seizure under sub-section (3) and power of search under sub-section (4).

The latter provision prescribes its own conditions for exercising the powers conferred thereunder. Therefore, the mere fact that a notice under sub-section (1) of Section 74 was issued on 08.09.2014 after the search and seizure dated 03.09.2014, would not by itself render the search and seizure illegal or invalidate the Notice itself.

What is required is that the authority must satisfy the conditions prescribed under the respective sub-sections, including having a reason to believe and recording such reasons in writing wherever required.

In that case, the Court considered the provisions of Section 31 of the Assam Finance (Sales Tax) Act, 1956. The Court found that the authority had not recorded reasons in writing for the seizure of the books of account as required under Section 31(3), and that no search warrant issued by a Magistrate had been obtained as required under Section 31(4). On the aforesaid facts, the search and seizure were held to be illegal.

25. The decision rendered in **Saligram (supra)** is to be understood in the context of the statutory provision which fell for consideration therein.

Section 31(4) of the 1956 Act, specifically required a search warrant issued by a Magistrate. Section 74(4) of the present Act does not prescribe such a requirement; it authorises the Commissioner or an authority appointed under Section 3(1) to enter and search the premises specified therein.

In the present case, the Commissioner of Taxes issued the search warrant on 02.09.2014. However, that does not mean that the safeguards provided under Section 74 can be disregarded.

26. So far as the alleged non-compliance with the provisions of the Code of Criminal Procedure, 1973, is concerned, it is important to note the provisions of sub-section (10) of Section 74.

The aforesaid provision requires the authority, while making an entry, search, and seizure, to follow, as far as may be, the procedure prescribed under the said Code.

The requirement is statutory and cannot be disregarded. The provisions of Section 100 of the Code, particularly those relating to the presence of independent witnesses and the preparation of a list of articles seized, are relevant in this regard.

27. The seizure memo dated 03.09.2014 indicates that the search was conducted in the presence of two independent witnesses, whose signatures appear on the memorandum.

An inventory of the seized documents was also prepared. A zimmanama was issued in respect of the goods, and as recorded hereinabove, the zimma was granted for safe custody.

No specific material has been brought on record to show that the procedure prescribed under the Code was violated to such an extent as to nullify the entire search and seizure, rendering the entire demand procedure invalid, except for a statement that no lady officer was available while carrying out the search, which has been refuted by the taxation authorities.

28. The next aspect requiring consideration is the petitioner’s failure to avail the statutory remedy. It is an admitted position that the assessment order dated 31.12.2014 and the consequential demand notice dated 02.01.2015 are appealable orders. However, the petitioner did not prefer any appeal against the assessment order; instead, challenged the entire assessment and demand on the ground of illegal search and seizure and violation of section 74(1)

29. Sub-section (15) of Section 79 also addresses the concern of the petitioner as regards the unavailability of an efficacious alternative remedy, inasmuch as the aforesaid provision

provides that in case of any appellate authority who had previously dealt with any case coming up before it, in any other capacity, or is personally interested in any case coming up before it, shall be disqualified to hear the case, and the Commissioner may, by an order, transfer such case to any other appellate authority for adjudication.

30. Another aspect of the matter is that the primary challenge in the earlier proceeding as well as in the present proceeding is the conduct of search and seizure, as discussed hereinabove. However, the orders passed in the earlier proceedings did not direct the petitioner to approach this Court by way of a fresh writ petition, nor did they dispense with the statutory remedy available under the Act.

31. In the aforesaid backdrop, and taking note of the provision of Section 79(17)(c), the petitioner had a remedy available. However, the liberty reserved for the petitioner in the earlier writ proceedings to approach the appropriate forum in accordance with law was not availed of by the petitioner. Instead, at the first instance, the petitioner filed an interlocutory application, and when it was dismissed, the petitioner approached the Division Bench; the same was also dismissed.

32. The filing of an interlocutory application in the disposed-of writ petition and the subsequent writ appeal cannot be treated as a substitute for a statutory appeal under the Act, nor can those proceedings, in the absence of any specific order extending or suspending the period of limitation, have the effect of keeping the statutory appellate remedy alive.

33. The Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada & Ors. v. Glaxo Smith Kline Consumer Healthcare Limited** reported in **(2020) 19 SCC 681** has emphasised that the statutory period prescribed for availing an appellate remedy cannot ordinarily be circumvented by invoking the extraordinary jurisdiction under Article 226 of the Constitution of India, merely because the statutory remedy has become time-barred.

The principle is that the constitutional jurisdiction, though wide, should not be exercised in a manner which defeats the statutory scheme governing the remedy provided by the legislature.

34. However, as a note of caution, it is recorded that the existence of an alternative remedy does not in all circumstances constitute an absolute bar to the exercise of jurisdiction under Article 226 of the Constitution, particularly where the action complained of is wholly without

jurisdiction or where there is a violation of the principles of natural justice. The exercise of such jurisdiction is discretionary.

35. In the present case, the principal contention that the exercise of power under Section 74(3), (4), and (5) was necessarily dependent on prior compliance with Section 74(1) is not sustainable on a plain reading of the statutory provision and for the reasons recorded hereinabove.

The petitioner was also specifically left at liberty in the earlier writ proceeding to pursue the appropriate remedy against the consequential assessment and demand. Despite the same, the petitioner did not avail of the statutory appellate remedy within the prescribed period.

This Court has also not found any fault in the search and seizure procedure based on the material available on record.

Having regard to the facts and circumstances, this Court is not inclined to examine the correctness of the assessment order and the consequential demand in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

36. Accordingly, the writ petition stands dismissed for being devoid of any merit. Parties to bear their own costs.

JUDGE

Comparing Assistant