



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 245 of 2024

Date of Decision :02.06.2026

M/s Jorabat Shillong Expressway Limited
Through its authorized Representative
Umjarasi, Nongthymmai, Nongpoh,
Meghalaya-783102, Through its authorized representative
GSTIN: 17AACCCJ3827H1ZL

... Petitioner(s)

Versus

1. Union of India
Through the Secretary,
Ministry of Finance, Department of Revenue,
North Block, Government of India,
New Delhi-110001.
2. State of Meghalaya
Through the Secretary,
Finance Department, Government of Meghalaya
Room No. 305, Additional Secretariat Building
Shillong-793001.
3. The Central Board of Indirect Taxes and Customs,
Ministry of Finance, Department of Revenue,
North Block, New Delhi.
4. The Additional Director,
Directorate General of Goods & Services Tax Intelligence,
Shillong Regional Unit, 3rd Floor, Old Arunachal Pradesh
Secretariat Building, Shillong-793001.
5. The Additional Commissioner of Central Goods and
Services Tax, Shillong Commissionerate
Crecens Building, M.G. Road, Shillong-793001



6. Goods and Service Tax Council,
Through its Chairperson,
5th Floor, Tower II, Jeevan Bharti Building Janpath Road,
Cannaught Place, New Delhi-110001.

7. The Secretary to the Government of Meghalaya,
Excise, Registration, Taxation and Stamps Department,
Shillong. **... Respondent(s)**

Coram:

Hon'ble Mr. Justice H.S. Thangkhiew, Judge.
Hon'ble Mr. Justice B. Bhattacharjee, Judge.

Appearance:

For the Petitioner(s) : Mr. S. Ghosh, Sr. Adv. with
Ms. A. Agarwal, Adv.
Ms. M. Wariach, Adv.
Mr. Philemon Nongbri, Adv.
Mr. E. Lalsangluaia, Adv.

For the Respondent(s) : Dr. N. Mozika, DSGI with
Ms. M. Myrchiang, Adv. (For R 1,3&5)
Mr. N. Syngkon, GA with
Mr. J.N. Rynjah, GA (For R 2&7)

i) Whether approved for reporting in Law journals etc: Yes/No

ii) Whether approved for publication in press: Yes/No



Per. H.S. Thangkhiew, Judge:

JUDGMENT AND ORDER

1. The brief background facts are that the Government of India had entrusted the National Highways Authority of India (NHAI), a government undertaking which monitors and controls the finance and execution of projects, to augment the existing Highway of approximately 61.98 KM on the Jorabat-Shillong Section of the National Highway No. 40 in the State of Assam and Meghalaya by four laning through a Design, Finance, Operate and Transfer pattern on BOT Annuity basis, and accordingly on 08.12.2008, NHAI invited proposals from bidders. Thereafter, a proposal of a Consortium which comprised of IL&FS Transportation Networks Limited and Ramky Infrastructure, was accepted and a Letter of Acceptance dated 20.05.2010, was issued to the said Consortium. The Consortium then promoted and incorporated the petitioner entity as a Limited Liability Company under the Companies Act, 1956, which entered into a Concession Agreement dated 16.07.2010, for execution of the Highway Project on BOT (Annuity) basis. Vide the Concession Agreement, the petitioner was granted and authorized the right to construct, operate, maintain and perform all other obligations for a period of 20 years and as per the Concession Agreement, the petitioner was



entitled to annuity for discharging the obligations as per the Concession Agreement after the commercial operation date.

2. In this context, it would be useful to note that Road or Highway projects in India are classified as Built-Operate-Transfer (BOT) Toll, BOT-Annuity, Engineering, Procurement and Construction (EPC), Hybrid Annuity Model (HAM) and the Toll Operate and Transfer Model (TOT). The BOT Annuity Model is a Public Private Partnership (PPP) Model for infrastructure projects, especially Road Projects. Under the BOT Annuity Model, a developer or concessionaire builds the Highway, operates it for a specified duration and transfers it back to the Government. In this arrangement, the Government starts annuity payment to the concessionaire after the launch of the commercial operation of the project and the concessionaire, does not receive any payment at the start of the project but funds it.

3. Against the aforestated backdrop, on demand being made from the petitioner for payment of GST on annuity received, the petitioner has put a challenge to the Order in Original No. 01/Additional Commissioner/CGST Shillong/2024-25 dated 18.04.2024 and DIN No. 2024047OUS00008858B4 (“Impugned Order”) issued by Respondent No. 5, under Section 74 of the Central Goods and Service Tax Act, 2017



("CGST Act") Meghalaya Goods and Services Tax Act, 2017 ("MGST") pursuant to the Show Cause Notice No. DGGI/INV/91/2021-0/o DD-DGGI-RU-Shillong/941 (bearing DIN No. 202309DEE 3000000A006F) dated 30.09.2023, for being issued without jurisdiction, as being illegal and bad in law.

4. The petitioner has also assailed the demand of GST of Rs. 112,39,64,394/- (CGST + SGST) under Section 74 along with interest and penalty under Section 50 and Section 74 of the CGST/MGST Act on the annuity of Rs. 864,12,69,958/- received by the petitioner from the National Highway Authority of India for the period July, 2017 to December, 2022. This has been challenged on the ground that it is in contradiction to the expressed exemption of annuity under Entry 23A under notification dated 28.06.2017 as amended vide notification 13.10.2017 and notification dated 29.06.2017 as amended by notification dated 09.11.2017 (exemption notifications), issued by the respondents No. 1 and No. 2.

5. The constitutional validity of a circular being No. 150/06/2021-GST dated 17.06.2021, issued by the respondent No. 3 as well the recommendation of the respondent No. 6, in the 43rd GST Council meeting held on 28.05.2021, whereby it was clarified that Entry 23A of the exemption notification does not exempt GST on annuity paid for



construction of roads, which is the basis for issuance of the impugned Show Cause Notice has also been assailed on the ground of being without jurisdiction and therefore illegal.

6. And lastly, a challenge has also been made to notification No. 14/2017 dated 01.07.2017 read with corrigendum dated 29.07.2019 issued by the respondent No. 1, to the extent of vesting the respondent No. 4 as Central Tax Officer with the powers under the CGST Act as being ultra vires Section 2(91) read with Sections 3 & 5 of CGST Act and circular No. 3/3/2017 dated 05.07.2017 issued by the respondent No. 3, to the extent of investing the respondent No. 5 with the power of 'Proper Officer' to exercise powers under Section 74 of the CGST Act as being ultra vires Section 291. This it is alleged has rendered the impugned Show Cause Notice as being without jurisdiction or authority of law. Hence, the petition.

7. Mr. S. Ghosh, learned Senior counsel assisted by Ms. A. Agarwal learned counsel for the petitioner in his submissions has referred to the Concession agreement, whereby the petitioner is entitled to annuity for discharge of its obligations and submits that basically the respondent authorities have acted without jurisdiction in issuing the impugned Order in Original (OIO) dated 18.04.2024, which was issued pursuant to the Show Cause Notice 30.09.2023. He submits that there has been a mis-



classification of services, violation of constitutional and statutory provisions apart from dis-regard of the exemption notifications.

8. The petitioner company he submits, had entered into an agreement in a BOT (Annuity) model, and as such being a concessionaire is not entitled to collect tolls, a prerogative that is retained by the NHAI, and in this model, the recovery of costs is made through half yearly annuities. The scope of the project he submits, is the operation and maintenance of the project Highway and includes all matters connected with, or incidental to such operations, maintenance and provision of services, facilities in accordance with the provisions of the agreement. The learned Senior counsel has stressed that the agreement has not been executed as a contract for construction of the project Highway, which in ordinary commercial parlance, would constitute an EPC contract where no such Concession Fee is payable by the contractor, but rather a contract to construct, operate and maintain. As such he submits, unlike a construction contract, which only comprises construction and maintenance, a Concession Agreement, also includes operation which is a distinctive feature. The learned Senior counsel in this regard has taken this Court to the relevant articles in the Agreement on the points of scope of the project,



Concession Fee, the grant of concession and also operation and maintenance.

9. The learned Senior counsel has further submitted that the Concession Agreement format, is not similar or identical to a construction contract model, and that one of the vital distinctions between the two is that under the petitioner's Concession Agreement, the entire project is transferred through a detailed divestiture arrangement at the end of the concession period, and for availing the concession, the petitioner is required to pay a concession fee, whereas in the construction contract model, neither the concept of divestiture, nor the concept of payment of concession fee exist.

10. The disputes he submits, began when the GST Intelligence authorities issued a show cause notice on 13.09.2023 on the allegation that the petitioner failed to pay GST on annuity payments received for road construction under the Jorabat-Shillong Expressway project. It has been submitted that the authorities classified the activity as works contract services (SAC 9954) taxable at 12-18% instead of exempt road access services (SAC 9967) under Entry 23A and a tax demand of Rs. 130.57 Crores plus interest and penalty was raised, along with allegations of suppression and mis-statement. A challenge to the show cause notice and a



GST Circular dated 17.06.2021 he submits, was then made before this Court which was dismissed as being premature, and thereafter the matter was taken up by way of an SLP before the Supreme Court, which by order dated 05.02.2024, disposed the same by extending the time of reply, with directions for proper consideration of the submissions of the petitioner by the GST authorities.

11. Thereafter he submits, after hearing the petitioner, the respondents passed an order on 18.04.2024, confirming a reduced demand of Rs. 112.39 Crores with interest and penalty while holding that construction services (SAC 9954) are taxable, even if paid via annuity and the prayer for exemption under (SAC 9967) stood rejected. The present writ petition he submits therefore, is for quashing of the show cause notice dated 30.09.2023 and final order dated 18.04.2024, as illegal and without jurisdiction, and for declaration that annuity under BOT model is exempt. Further he submits, the proceedings also suffer from a lack of authority under the CGST Act, 2017 and the adjudicating authority failed to pass a reasoned and speaking order despite directions of the Supreme Court. It is also been contended that the respondents have erroneously classified the petitioner's services under (SAC 9954) i.e. work contract services, when the same should have been classified under (SAC 9967) i.e. service by way



of taxes to a road/bridge, which is exempted under Entry 23A including those under annuity-based models. This he submits is the core issue, inasmuch as, the exemption covers the entire consideration including deferred payments (annuities) and cannot be artificially spilt between construction and access component and the impugned order therefore, defeats the object and purpose of the exemption notification. Further he submits the impugned Circular 17.06.2021, overrides and restricts a statutory exemption notification which is impermissible in law and is in contravention of Section 11(3) of the CGST Act, 2017, which is against the settled principle that circulars cannot curtail or override statutory notification and is therefore, ultra vires and liable to be struck down. The learned Senior counsel has contended that the respondents failed to follow the binding ratio of Karnataka High Court judgment in the case of *M/s DPJ Bidar-Chincholi (Annuity) Road Project Private Limited & Anr vs. Union of India & Ors. (2024) 122 GSTR 48*, wherein it has been clearly held that the entire annuity including the construction component, is exempt and as such the Circular dated 17.06.2021, is invalid in law.

12. There has been no suppression or intent to evade tax he submits, and the invocation of Section 74 is wholly unjustified, as the petitioner regularly filed GST returns and the issue herein, involves only the



interpretation of exemption and not concealment, whereas Section 74 would apply only in cases of willful suppression with the intent to evade. Further it is submitted the demand is mathematically erroneous, as an incorrect GST rate on annuity component has been levied including components of interest on term deposits, which is fully exempt. The entire nature of the Concession Agreement he submits has been mis-interpreted, inasmuch as, the authorities mis-construed the true nature of the BOT annuity model, by ignoring the fact that the petitioner provided integrated service of road development and access and that the right to collect toll being with NHAI, does not negate exemption. It has also been argued that the period prior to introduction of GST i.e. pre-July 2017 period, cannot be subjected to GST, and therefore the demand to that extent is illegal and liable to be quashed. In summing up of his preliminary arguments, the learned Senior counsel has submitted that the case hinges on a pure question of law i.e. whether annuity receipts under BOT road projects are exempt and has emphasized that the petitioner's position, is supported by statutory notifications, judicial precedent and a settled principle on interpretation of exemptions and circulars.

13. The other submissions of the learned Senior counsel on the points of availability of alternate remedy, interpretation of the GST



exemption notification, validity of the notification No. 14/17 (proper officer issue) and other points on jurisdiction, nature of services are summed hereinbelow: -

- i) Eight principles where alternate remedy is not a bar
 - a) Whirlpool principle
 - b) Futility of alternate remedy
 - c) Pure question of law
 - d) Absence of jurisdictional facts
 - e) Premediated show cause notice
 - f) Error apparent on the face of the record
 - g) Action without jurisdiction/jurisdictional defect justifying writ
 - h) Violation of fundamental rights.

It has been argued that the case of the petitioner squarely falls within the above noted recognized exceptions and therefore the existence of an alternate remedy does not bar the writ petition. On the first principle, it is submitted that the constitutional validity has been challenged i.e. notifications that gave rise to the Show Cause Notice, a Circular that gave authority to issue the adjudication order and another Circular dated 17.06.2021, that form the basis of the impugned order. These issues it is



submitted that go to the root of the matter cannot be decided by appellate authorities, as only constitutional courts have powers of judicial review.

Resort to alternative remedy, it is submitted would be ineffective and the appeal process would be futile because the impugned Circular was issued by the CBIC the highest authority under statutory powers and under Section 168 of the CBIC Act, all GST officers are bound by such circulars and that even prior of issuance of the Show Cause Notice, the Department had already pre-decided the issue based on the Circular. Further it has been argued that there is lack of safeguards under GST law, unlike the Customs Act or Central Excise Act because by virtue of Section 168 of the CGST Act, the authorities may act under dictation which violates natural justice and even appellate authorities are not independent as they are bound by the Circular. On this point, the learned Senior counsel submits that as the case involves constitutional challenges, the alternate remedy would be ineffective and biased due to the binding circulars, and therefore the writ petition is maintainable.

14. It has also been submitted that the issues to be decided in the instant writ petition, are pure questions of law and that there are no disputed facts requiring evidence, and further in the instant case it is contended, the writ petition would be maintainable, as the conditions for assuming



jurisdiction are missing. It has also been argued that the Show Cause Notice was already premeditated and there is error apparent on the face of the record on the misinterpretation of prevailing law by the respondents, which has resulted in the violation of the petitioner's fundamental rights to carry on trade. He therefore, submits that the case fits within the recognized exceptions and as it involves constitutional challenges, the alternate remedy is ineffective and biased, more so due to the binding circulars. The learned Senior counsel has given the list of cases relied upon, which are as follows:

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- i) Whirpool Corporation v. Registrar of Trademark: (1998) 8 SCC 1***
- ii) Onkar Nand Lal v. State of Rajasthan: (1985) 4 SCC 404***
- iii) Filter Co. and Another v. Commissioner of sales Tax, Madhya Pradesh and Anr. (1986) AIR SC 626***
- iv) Canon India Private Limited. V. State of Tamil Nadu and Ors. 2014(305) ELT 255(Mad)***
- v) Vistar Construction (P) Ltd. Ltd. v. Union of India & Ors.:2013 SCC Online Del 308***
- vi) M/s Godrej Sara Lee Ltd. v. The Excise and Taxation Officer-cum-Assessing Authority and Ors.: 2023 SCC Online SC 95***
- vii) Aircel Ltd. and Anr. v. Commissioner Tax Officer: W.P.(C) No. 1055/2013***
- viii) Union of India v. State of Haryana:(2000) 10 SCC 482***
- ix) Carona Ltd. v. Parvathy Swaminathan & Sons:(2007) 8 SCC 559***



- x) *Raza Textiles v. Income Tax Officer: AIR 1973 SC 1362*
- xi) *Calcutta Discount Co. v. Income Tax Officer, Companies District I Calcutta and Another: AIR 1961 SC 372*
- xii) *NCS Pearson Inc. v. UOI: W.P. No. 7635 of 2024*
- xiii) *Siemens Ltd. v. State of Maharashtra:2006 12 SCC 33*
- xiv) *Onyx Fisheries Ltd. v. Union of India:(2010) 13 SCC 427*
- xv) *Syed Yakoob v. K.S. Radhakrishnan: AIR 1964 SC 477*

15. Dr. N. Mozika, learned DSGI assisted by Ms. M. Myrchiang, learned counsel on behalf of the Union respondents has submitted that the Show Cause Notice (SCN) and Order-in-Original (OIO), are valid and lawful and the petitioner's claim for GST exemption is misconceived and baseless. It has been contended that the Show Cause Notice issued by the respondent No. 4, is legal and maintainable as he derives his power to act as a Proper Officer by virtue of a Notification No. 14/2017 dated 01.07.2017, and by the CBIC Circular No. 31/05/2018-GST dated 09.02.2018, all officers up the rank of Additional/Joint Commissioner of Central Tax are empowered as Proper Officers for issuance of show cause notices and orders under various clauses of Section 73 and Section 74 of the CGST Act, IGST Act, as per monetary limit involved in the SCN. As such he submits, the challenge to jurisdiction is baseless and invalid. It is further submitted that the case falls under Section 74 of the CGST Act,



which is for tax not paid, or erroneously refunded, or input tax credit wrongly availed due to mis-statement or suppression of facts. It is submitted that the petitioner despite the fact that they had received the payment on execution of the construction activities which is not in lieu of toll, had mis-stated the true nature of services by declaring the same to be under SAC 9967 rather than SAC 9954, and had attempted to avoid GST, on the construction services.

16. The learned DSGI on the issue of GST on the Annuity Payment, submits that in the 22nd GST Council meeting on a proposal that had been floated to treat annuity at par with toll and to exempt from tax service by way of access to a road or bridge on payment of annuity, a notification dated 13.10.2017 had been issued inserting Entry 23A, by which service by way of access to a road or a bridge on payment of annuity was exempted. However, he submits in the 43rd GST Council meeting, a clarification to Entry 23A was proposed to not exempt annuity paid for construction of road, and to only exempt services provided by way of access to a road or bridge on payment of annuity for it. Accordingly he submits, a Circular dated 17.06.2021 was issued, clarifying that Entry 23A does not exempt GST on the annuity (deferred payments) paid for construction of roads. Thus, he submits the Circular dated 17.06.2021, is valid and based on GST



Council recommendations. It is submitted that the judicial precedent i.e. the case of DPJ-Bidar-Chincholi (Annuity) Road Project cited by the petitioner is still pending consideration in appeal and has not attained finality, to make it binding in any manner.

17. The petitioner he submits as is borne out by records, is engaged in construction, operation and maintenance of highways (BOT annuity model) and as per the Concession Agreement, the work includes design, engineering, finance, construction and maintenance, but however the toll rights and other related commercial activities belong to the Government (MoRTH), and not to the petitioner. It is then contended that the argument of the petitioner that the substantial portion of the transactions entered prior to GST could not be brought within the fold of GST is baseless, inasmuch as, as per Section 142 (10) of the CGST Act, 2017, the services are taxable where the goods and services are both supplied on or after the appointed date in pursuance of a contract prior to the appointed date, shall be liable to pay tax under the provisions of CGST Act, 2017. Further it submitted Section 13, which determines the time of supply also covers the case the petitioner, inasmuch as, the petitioner is providing continuous services in different phases of construction etc., under a single agreement dated 16.07.2010, wherein as per the agreement itself the petitioner is obliged to



issue invoices only after the date of commercial operations. The annuity payments having been made after the commercial operation date, and the amount of consideration received as annuity during 2017-18 to 2022-23, only being taken into consideration, it has been submitted as per the time of supply and services and the dates of issue of invoice, the GST liability does arise. The petitioner therefore he submits, is not exempt from payment of GST by virtue of the agreement dated 16.07.2010 and the nature of the work that has been undertaken, which though composite, involving design, finance, construction, operation and maintenance, however does not include road access services, which is exempt.

18. On the point of the application of insolvency proceedings filed before the Mumbai Bench of the NCLT, the learned DSGI submits that apart from the fact that these insolvency proceedings were never informed to the investigating authorities in Meghalaya by the petitioner or by the Interim Resolution Professionals, ongoing insolvency proceedings do not bar GST recovery, especially since the department is not part of the resolution process, and nor is the resolution process binding on them. In support of this submission, the learned DSGI has placed reliance in the case of *Electro Steels Ltd., vs State Jharkhand*. Referring back to the case of **DPJ Bidar** (supra), wherein the Karnataka High Court had declared the



Circular dated 17.06.2021 bad in law, as it had the overriding effect on the notification dated 13.10.2017, the learned DSGI submits that the petitioner herein failed to mention that in the same order dated 11.07.2022, it was also held that nothing prevents the Department from imposing GST on the consideration paid to concessionaires, like the petitioner on payment received by way of annuity but that the same has to be done in the manner known to law. The submission made earlier that the judgment has not attained finality and the appeal still pending consideration, has also been reiterated.

19. It has further been submitted that all the documents i.e. Show Cause Notice, related notifications, circulars and documents submitted by the petitioner have been examined thoroughly, which led the Adjudicating authority to come to the conclusion that the petitioner had not paid GST, on annuity payment received for the construction of road under the Jorabat-Shillong Expressway project. Though demand of duty on annuity for the month of December, 2022, had been found to be erroneously calculated, it is submitted that notwithstanding this fact, as per the Order-in-Original 18.04.2024, passed by the Additional Commissioner of CGST, Shillong, the Adjudicating authority had passed the said order subsequent to the detailed submissions made during the personal hearing on 19.03.2024, and



also after careful examination of all the relevant documents. In this context therefore, it is submitted that the judgments relied upon by the petitioner i.e. *order dated 12.09.2006* passed by the Supreme Court in the case of *M/s Tata Engineering and Locomotive company vs. Collector of Central Excise, Pune, order dated 29.10.2010 passed in Civil Appeal No. 9489/2010* in the matter of *Oryx Fisheries Pvt. Ltd., vs UOI* and *order dated 20.10.2015*, passed by the High Court of Kerala in the case of *Flipkart Internet Pvt. Ltd., vs. State of Kerala*, are not applicable in the instant case.

20. On the arguments of availability of alternate remedy, it has been submitted that the petitioner has not exhausted the Departmental remedies available to them, which would make the writ petition not maintainable. The petitioner he submits, instead of filing appeal under Section 107 of the CGST Act, 2017 read with Rule 108 of the Rules of 2017, has approached this Court seeking constitutional remedies in spite of efficacious alternate remedy being available. Though notwithstanding the availability of appeal remedy he submits, this Court has the power to exercise writ jurisdiction in certain situations, such as the breach of fundamental rights, violation of the principles of natural justice, excess of jurisdiction, or a challenge to the vires of a statute or delegated legislation. In the present case however, he



submits none of the above exceptions are present coupled with the fact that writ jurisdiction is not available for interpretation of statutory provision, when alternative remedy is available, which should be first exhausted and also that a High Court cannot examine an assessment order, for the purpose of interpretation of provisions. Hence, it is contended the writ petition is not maintainable.

21. In concluding his submissions, the learned DSGI has stressed that even on merits, i.e. the Proper Officer for issuance of show cause notice, the same was in exercise of notification dated 01.07.2017 issued under Section 3 read with Section 5 of the CGST Act, 2017, and Section 3 of the IGST Act, 2017 by CBEC (now CBIC) and these relevant notifications and circulars are legally valid and issued under statutory powers and GST Council recommendations. With regard to the validity of a circular dated 05.07.2017 i.e. Proper Officer for adjudication of SCN, it has been submitted that the same was issued in exercise of the powers conferred by clause 2 (91) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 and subject to Section 5 (2) of the CGST Act, 2017 by CBEC (now CBIC). Thus he submits, the petitioner is liable to pay GST on annuity receipts as they represent consideration for taxable construction



services and the Show Cause Notice and Order-in-Original being valid, lawful and within jurisdiction, the writ petition should be dismissed.

22. On behalf of the State respondents Nos. 2 & 7, apart from endorsing the submissions made by the learned DSGI, Mr. N. Syngkon, the learned GA has submitted that exemption cannot be allowed to the petitioner, in view of Entry 23A in the exemption notification, exempting only service by way of access to a road or a bridge on payment of annuity. This he submits, will apply to cases where the NHAI grants any third-party permission/license to collect toll, but such third party are paid in lieu of such collection by way of annuity. The whole object he submits, of bringing this amendment and insertion of Entry 23A was due to the reason that toll was already exempted from GST, and the concessionaire engaged in service of giving access to a road or a bridge, and gets paid from the share of toll collection is not required to pay GST, in view of the exemption given to toll. The petitioner he submits, has attempted to create confusion to portray that BOT (annuity) which is the model of execution of work which had been exempted by way of notification No. 12/2017 dated 28.06.2017, when in fact what was exempted by Entry 23A was a service of a specific description i.e. service by way of access to a road or a bridge on payment of toll entry (Entry 23) and service by way of access to a road or a bridge



on payment of annuity (Entry 23A). The levy of GST rate he submits, will depend on the kind of actual supply of service or goods and the service provided by the petitioner being composite supply of work contract is covered under Section 2 (119) of the CGST Act, and as such the contention that they are engaged in more than construction and that they are into business of giving access to the road is not correct as it does not have the authority to collect toll in the instant project, and as such they are not in the business or service of giving access to a road or a bridge, and their main job is to construct, maintain and repair of the road.

23. The learned GA then further submits composite supply has been mentioned in Section 8 of the CGST Act, which provides for tax liability on composite and mixed supply. Section 8 (a) he submits, stipulates that a composite supply comprising of two or more supplies, one of which is a principal supply shall be treated as a supply of such principal supply. Therefore, the rate of tax will be in terms of the rate of tax applicable for the principal supply out of the total composite supply, which naturally has to be bundled together. The construction of the road being a principal supply engaged in by the petitioner, the rate of tax applicable on the construction of the road will thus be applicable for the entire supply of services like operation, maintenance, construction, repair etc., and thus if



the principal supply is not under an exemption notification, it would follow that the whole supply will be taxed at the rate of the principal supply. This he submits, will be applicable even if some items of the composite/ancillary supply may be under an exemption notification. In this context, the learned GA has referred to a write-up on understanding the meaning of composite supply and mixed supply, and submits that in a composite supply the combination of goods and services are naturally bundled, whereas in a mixed supply the same are not naturally bundled and the services provided by the petitioner being composite supply, therefore, principal supply will be the predominant of a composite supply, which in the instant case is the construction activities of the petitioner.

24. With regard to the contention of the petitioner that the show cause notice as well as the adjudication order was passed by officers, who are not proper officers, the learned GA has submitted that the same is incorrect for the reason that the show cause notice was issued by the Additional Director DGGI (Director General of Goods and Service Tax Intelligence), who is the Proper Officer in terms of Section 2 (91) CGST Act, inasmuch as, in terms of the said Section proper officer means the Commissioner or an Officer of the Central Tax authority is assigned that function by the Commissioner in the Board. In the instant case he submits,



by a notification No. 14/2017 dated 01.07.2017, the Board appointed the DGGI, as a Central Tax officer and vested him with the power of Commissioner, and as such the Additional Director, DGGI could exercise the powers of the Commissioner. Further he submits, the adjudication order was passed by the Additional Commissioner, CGST, Shillong, who is also a Proper Officer in view of his appointment as a Central Tax officer vide notification No. 2/2017 dated 19.06.2017, and subsequently vide notification No. 2/2022 dated 11.03.2022, whereby amendment was made to the earlier notification No. 2/2017, wherein Paragraph 3A was inserted. Para 3A he submits, provides that notwithstanding anything contained in paragraph 3, the Additional Commissioner or the Joint Commissioner of Central Tax or the Commissioner of Central Tax are vested with the powers for passing orders in respect of notices issued by the Officers of the Director General of Goods and Service Tax Intelligence. Therefore he submits, the Additional Commissioner having been appointed as Central Tax officer and being vested with powers under Section 74 to pass orders in respect of notices issued by the DGGI, he is the Proper Officer in terms of Section 2 (91) of the CGST Act, and as such there is no question of any lack of jurisdiction, In support of his submission the learned GA has relied upon the decision of the Allahabad High Court in the case of ***R.C. Infra Digital***



Solution vs. Union of India passed in *Case No. Writ Tax No. 229 of 2023* and in the case of *Union of India vs. Azadi Bachao Andolan & Anr. (2004) 10 SCC 1*, where he submits it has been held that as long as an authority has power which is traceable to a source, the mere fact that the source of powers is not indicated in an instrument does not render the instrument invalid.

25. The learned GA has further argued that Section 2 (91) of CGST is a provision which provides definition of a Proper officer, but however it is not an enabling provision which are Sections 3 & 5, wherein the Central Government by exercising Section 5 can invest power on any other officers of Central Tax. Section 3 of the CGST Act, he submits provides that the Government shall by notification appoint certain classes of officers for the purpose of the Act and the Additional Commissioner of Central Tax, who has passed the adjudication order has been mentioned in the classes of officers in Section 3. The learned GA has then contended that the power to appoint includes the power to invest with duties, is rooted in “the Doctrine of Implied Powers” which means that when a law grants a specific power to an authority, it implicitly grants all the ancillary powers to effectively carry out that primary power. Article 73 of the Constitution he submits, extends the executive power of the Union to matters on which Parliament



has the right to legislate, implicitly granting the executive the necessary authority to act on these matters. In support of his contention, the learned GA has placed reliance upon the case of *Union of India vs. Paras Laminates (P) Ltd., (1990) 4 SCC 453*, which he submits has held that when a statute confers a jurisdiction, it also confers by implication the power of doing of such acts or employing such means as are essentially necessary to the execution. Reliance has also been placed in the case of *Union of India vs. Gurbux Singh & Anr. (1975) 3 SCC 638*. He then submits that the argument advanced by the petitioner that there was no investment of power to issue the show cause or to pass the adjudication order is hyper technical and without any basis. It is further submitted that it is not the case of the petitioner that have not been provided with a show cause notice or that they were not given an opportunity to reply, and as such cannot allege that there has been a violation of natural justice.

26. On the exception referred to by the petitioner under Schedule-II, 5 (b) of the CGST Act, wherein it has been asserted that on the supply of the services, payment has been received by the petitioner after issuance of the completion certificate, and hence in terms of the exception, the petitioner is not required to pay GST, the learned GA has contended that the same, would have no application as it does not relate to road



construction but to real estate, where buildings are made with an intention to sell to a buyer. In the instant case he submits, it is never the case that the petitioner had acquired or owned land where the road has been constructed or sale, and as such the exception under Schedule-II 5(b) is not attracted. The petitioner's liability as per the agreement is only to maintain, construct and repair the road till the year 2031, when the concession period will end, and that the services supplied come under paragraph-6 of Schedule-II, which relate to composite supply covered under definition of works contract under Section 2 (119) of the CGST Act. The learned GA then closes his submission by praying that in the facts and circumstances placed above, the writ petition be dismissed.

27. This Court has heard the lengthy submissions advanced by the parties and also perused the written submissions that have been filed. As noted earlier the entire dispute revolves around the jurisdiction to issue the show cause notice and adjudicating order, the classification of services whether the same would be under SAC 9967 or 9954, whether annuity payments can be treated at par with toll and exempted from GST. Heavy reliance has been placed by the petitioner in the Karnataka High Court Judgment namely; the DPJ Bidar case, wherein Circular No. 150/06/2021 was declared invalid and annuity to be exempt from payment of GST. An



issue has also been raised that the agreement being pre-GST, liability cannot arise, and that writ remedy was sought as jurisdictional challenges have been made to the notifications/circulars which the petitioner contends are unconstitutional.

28. Before embarking and deliberating on the issues raised, it must be kept in mind that the legal position is not settled, as even Courts like the Karnataka High Court, have given mixed rulings where from, appeals are still pending adjudication. However, for the purposes of this case, this Court will examine the core issues i.e. firstly whether in the circumstances this Court can exercise its discretionary powers under Article 226, or to relegate the petitioner to avail of alternate remedy. As noted earlier, the petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking inter alia quashing of the Show Cause Notice dated 30.09.2023 and Order-in-Original dated 18.04.2024 issued under Section 74 of the Central Goods and Services Tax Act, 2017 and corresponding provisions of the Meghalaya Goods and Services Tax Act, 2017. Challenge has also been made to validity of the notifications and circulars i.e. Notification No. 14/2017 (01.07.2017), CBIC circular No. 31/05/2018-GST and circular No. 03/03/2017-GST investing powers of Proper Officer to issue the Show Cause Notice and the Order-in-Original,



which it has been contended is incompetent and without jurisdiction. It is settled law that to entertain a petition under Article 226, there must exist facts which goes to the root of the jurisdiction of the officer, which would show that injustice would be caused to force an assessee to adopt the remedy provided under the Act.

29. It is a settled proposition of law that although the power of judicial review vested in High Courts under Article 226 of the Constitution is wide and plenary in nature, such power is ordinarily not exercised where the statute itself provides a complete machinery for redressal of grievances. The doctrine of alternate remedy is a rule of self-imposed restraint and judicial discipline evolved over time so that statutory authorities and appellate mechanisms created under legislation may first be permitted to examine and adjudicate disputes arising under such enactments.

30. The petitioner has attempted to bring the present case within the recognized exceptions carved out by judicial pronouncements, namely: (i) violation of principles of natural justice; (ii) proceedings initiated without jurisdiction; (iii) infringement of fundamental rights; (iv) challenge to constitutional validity; and (v) cases where the remedy is inefficacious.



31. The Court is therefore required to examine whether the facts of the present case satisfy any of the recognized exceptions so as to justify invocation of extraordinary jurisdiction.
32. The principal submission of the petitioner is that the authorities issuing the Show Cause Notice and the Order-in-Original lacked jurisdiction and consequently the proceedings are void ab initio. In support thereof, challenge has been made to Notification No. 14/2017 dated 01.07.2017, Circular No. 03/03/2017 and other notifications by which officers of DGGI and officers of the rank of Additional Commissioner have been vested with powers under the CGST Act.
33. This Court is unable to accept the contention of the petitioner. Section 2(91) of the CGST Act defines a "Proper Officer" to mean the Commissioner or officer of central tax assigned that function by the Commissioner in the Board. Sections 3 and 5 of the Act confer authority upon the Government to appoint classes of officers and vest powers upon such officers for carrying out purposes under the Act. The Show Cause Notice was issued by the Additional Director DGGI (Director General of Goods and Service Tax Intelligence), who in terms of Section 2 (91) of the CGST Act, would be regarded as Proper Officer, inasmuch as, it is provided therein, that the same can mean the Commissioner or the Officer of the



Central Tax, who is assigned that function by the Commissioner in the Board. The function therefore, in the context of the instant case, would mean the function of the Commissioner and as by notification No. 14/2017 Central Tax dated 01.07.2017, the Board having appointed the Additional Director DGGI as Central Tax Officer and having invested him with the power of Commissioner, in the considered view of this Court the Additional Director DGGI was competent to issue the Show Cause Notice in terms of Section 74 of the CGST Act.

34. With regard to the adjudication order passed by the Additional Commissioner CGST, Shillong, the same analogy would apply, inasmuch as, he would also be a Proper Officer in view of his appointment as a Central Tax Officer vide notification No. 2/2017 Central Tax dated 19.06.2017 and subsequently vide notification No. 2/2022 Central Tax dated 11.03.2023, wherein an amendment was made to the earlier notification and paragraph 3A inserted. By paragraph 3A (ii) a table namely Table-V was inserted, wherein the powers of Additional Commissioner of Central Tax, were vested with powers as specified in the corresponding entry at column-3 of the said Table. Column-3, has defined the powers exercisable throughout the territory of India and it is has invested the power for passing an order or decision in respect of notices issued by the officers of the Directorate



General of Goods and Service Tax Intelligence under Section 67, 73, 74, 76, 125, 127, 129 and 130 of the CGST Act, 2017. Further, by a corrigendum dated 29.07.2019, it is noted that notification No. 2/2017 has been corrected, wherein for “the Central Board Excise & Customs” the same to be read as “the Government”. Therefore, the Additional Commissioner Central Tax having been appointed as Central Tax Officer and vested with power under Section 74 to pass orders in respect of notices issued by the DGGI, he would be the Proper Officer in terms of Section 2(91) of the CGST Act. To illustrate the above, Notification No. 02/2022 dated 11.03.2022, Notification No. 14/2017 dated 01.07.2017, relevant extract of notification No. 2/2017 dated 19.06.2017 and corrigendum dated 29.07.2019 are reproduced hereinbelow:-

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

**Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs**

Notification No. 02/2022-Central Tax

New Delhi, the 11th March, 2022

G.S.R (E).– In exercise of the powers under section 3 read with section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 02/2017-Central Tax, dated the



19th June, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 609(E), dated the 19th June, 2017, namely: -

In the said notification,-

(i) after paragraph 3, the following paragraph shall be inserted, namely :-

“3A. Notwithstanding anything contained in paragraph 3, the Additional Commissioners or the Joint Commissioners of Central Tax, as the case may be, subordinate to the Principal Commissioners of Central Tax or the Commissioners of Central Tax, as specified in column (2) of Table V, are hereby vested with the powers as specified in the corresponding entry in Column (3) of the said Table.”;

(ii) after Table IV, the following Table shall be inserted, namely:-

“TABLE V

Powers of Additional Commissioner or Joint Commissioner of Central Tax for passing an order or decision in respect of notices issued by the officers of Directorate General of Goods and Services Tax Intelligence

<i>Sl. No.</i>	<i>Principal Commissioner or Commissioner of Central Tax</i>	<i>Powers (Exercisable throughout the territory of India)</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>1.</i>	<i>Principal Commissioner Ahmedabad South</i>	<i>Passing an order or decision in respect of notices issued by the officers of Directorate General of Goods and</i>
<i>2.</i>	<i>Principal Commissioner Bhopal</i>	
<i>3.</i>	<i>Principal Commissioner Chandigarh</i>	
<i>4.</i>	<i>Commissioner Chennai South</i>	
<i>5.</i>	<i>Principal Commissioner Delhi North</i>	
<i>6.</i>	<i>Principal Commissioner Guwahati</i>	
<i>7.</i>	<i>Commissioner Rangareddy</i>	
<i>8.</i>	<i>Principal Commissioner Kolkata North</i>	
<i>9.</i>	<i>Principal Commissioner Lucknow</i>	
<i>10.</i>	<i>Commissioner Thane</i>	



**[F. No. CBIC-20016/2/2022-
GST]**

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: The principal notification No. 02/2017- Central Tax, dated the 19th June, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 609(E), dated the 19th June, 2017 and last amended vide Notification No. 02/2021 – Central Tax, dated the 12th January, 2021 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 18(E), dated the 12th January, 2021.



[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

**Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs**

Notification No. 14/2017 – Central Tax

**New Delhi, the 1st July, 2017
10 Ashadha, 1939 Saka**

G.S.R (E).- In exercise of the powers conferred under section 3 read with section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Board of Excise and Customs hereby appoints the officers in the Directorate General of Goods and Services Tax Intelligence, Directorate General of Goods and Services Tax and Directorate General of Audit as specified in column (2) of the Table below, as central tax officers and invests them with all the powers under the Central Goods and Services Tax Act, 2017 and the Integrated Goods and Services Tax Act, 2017 and the rules made there under, throughout the territory of India, as are exercisable by the central tax officers of the corresponding rank as specified in column (3) of the said Table, namely:-

TABLE

Sl. No.	Officers	Officers whose powers are to be exercised
(1)	(2)	(3)
1.	Principal Director General, Goods and Services Tax Intelligence or Principal Director General, Goods and Services Tax	Principal Chief Commissioner
2.	Director General, Audit	Chief Commissioner
3.	Principal Additional Director General, Goods and Services Tax Intelligence or Principal Additional Director General, Goods and Services Tax or Principal Additional Director General, Audit	Principal Commissioner
4.	Additional Director General, Goods and Services Tax Intelligence or Additional Director General, Goods and Services Tax or Additional Director General, Audit	Commissioner
5.	Additional Director, Goods and Services Tax Intelligence or Additional Director, Goods and Services Tax or Additional Director, Audit	Additional Commissioner



6.	<i>Joint Director, Goods and Services Tax Intelligence or Joint Director, Goods and Services Tax or Joint Director, Audit</i>	<i>Joint Commissioner</i>
7.	<i>Deputy/Assistant Director, Goods and Services Tax Intelligence or Deputy/Assistant Director, Goods and Services Tax or Deputy/Assistant Director, Audit</i>	<i>Deputy Commissioner or Assistant Commissioner</i>
8.	<i>Senior Intelligence Officer, Goods and Services Tax Intelligence or Superintendent, Goods and Services Tax or Superintendent, Audit</i>	<i>Superintendent</i>
9.	<i>Intelligence Officer, Goods and Services Tax Intelligence or Inspector, Goods and Services Tax or Inspector, Audit</i>	<i>Inspector</i>

2. *This notification shall come into force with effect from the 1st day of July, 2017.*

[F. No. 349/52/2017-GST]

*(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India*



**[TO BE PUBLISHED IN THE GAZETTE OF INDIA EXTRAORDINARY, PART II,
SECTION 3, SUB-SECTION (i)]**

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF EXCISE AND CUSTOMS**

Notification No. 2/2017-Central Tax

**New Delhi, the 19th June, 2017
29 Jyaistha, 1939 Saka**

G.S.R (E).- In exercise of the powers under section 3 read with section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Board of Excise and Customs hereby appoints-

- (a) Principal Chief Commissioners of Central Tax and Principal Directors General of Central Tax,**
- (b) Chief Commissioners of Central Tax and Directors General of Central Tax,**
- (c) Principal Commissioners of Central Tax and Principal Additional Directors General of Central Tax,**
- (d) Commissioners of Central Tax and Additional Directors General of Central Tax,**
- (e) Additional Commissioners of Central Tax and Additional Directors of Central Tax,**
- (f) Joint Commissioners of Central Tax and Joint Directors of Central Tax,**
- (g) Deputy Commissioners of Central Tax and Deputy Directors of Central Tax,**
- (h) Assistant Commissioners of Central Tax and Assistant Directors of Central Tax,**
- (i) Commissioners of Central Tax (Audit),**
- (j) Commissioners of Central Tax (Appeals),**
- (k) Additional Commissioners of Central Tax (Appeals),**

and the central tax officers sub-ordinate to them as central tax officers and vests them with all the powers under both the said Acts and the rules made thereunder with respect to the jurisdiction specified in the Tables given below.

- 2. The Principal Chief Commissioners of Central Tax or the Chief Commissioners of**



Central Tax, as the case may be, specified in column (2) of Table I, are hereby vested with the territorial jurisdiction over the-

- (a) Principal Commissioners of Central Tax and Commissioners of Central Tax, as the case may be, specified in the corresponding entry in column (3) of the said Table;***
- (b) Commissioners of Central Tax (Appeals) specified in the corresponding entry in column (4) of the said Table;***
- (c) Additional Commissioners of Central Tax (Appeals) specified in the corresponding entry in column (4) of the said Table; and***
- (d) Commissioners of Central Tax (Audit) specified in the corresponding entry in column (5) of the said Table.***



[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

***Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs Corrigendum***

New Delhi, the 29th July, 2019

G.S.R. (E).: - In the notification of the Government of India, in the Ministry of Finance, Department of Revenue, No.14/2017-Central Tax, dated the 01st July, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub- section (i), vide number G.S.R. 818(E), dated the 01st July, 2017, in English version, in page 2, in line 3, for “ the Central Board of Excise and Customs” read “the Government”.

[F. No 349/52/2017-GST]

***(Ruchi Bisht)
Under Secretary to the Government of India***

35. It is to be noted that though Section 2(91) of CGST Act is a provision which provides the definition of a Proper officer, however the enabling provisions are Sections 3 (officers under the Act) and Section 5 (powers of officers). As per Section 5(1) of the Act, it is the Board that confers and enforces such conditions and limitation on an officer of Central Tax or exercising the powers and duties conferred under the Act. Section 2 (16) of the Act says that ‘Board’ means the Central Boards of Indirect Taxes and Customs constituted under the Central Boards of Revenue Act, 1963 and



further Section 3 of this Act, relating to constitution of Central Boards says that it is the Central Government, which shall constitute the Board and the same shall be subject to the control of the Central Government. In this context, the judgment in the case of *RC Infra Digital Solution vs. Union of India* can be referred to on the question that when the power has been invested with the Board to do certain things, how can the Government not exercise such a power. Paras 18 to 21 which are relevant are reproduced hereinbelow:-

“18. It is apparent from the above that as per section 5 (1) of CGST Act, 2017, it is the Board, which confers and impose such conditions and limitation on an officer of central tax for exercising the powers and duties conferred under the CGST Act, 2017 and section 5(3) of CGST Act, 2017 empowers the commissioner to delegate his powers to any other officer, who is subordinate to him. Further, section 2 (16) of the CGST Act, 2017 says that "Board" means the Central Board of Indirect Taxes and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963). Further, section 3 of the Central Boards of Revenue Act, 1963 relating to Constitution of Central Boards for Indirect Taxes and Customs says that it is the Central Government, which shall constitute the Central Board of Indirect Taxes and Customs and the said Board shall be subject to the control of the Central Government and shall exercise such powers and perform such duties, as may be entrusted to that Board by the Central Government or by or under any law. Thus, it appears that the Board is subservient to the Government under the Act and it could be well argued that when the power has been invested with the Board to do certain things, how can the Government not exercise such a power.

19 However, the question of investing powers on the central tax officers by the Board or the government does not end there as this court finds that the Circular No.3/3/2017-GST dated July 5, 2017



(Annexure-11) issued by the Commissioner in Board relates to assignment of various functions under CGST Act, 2017 to different class of officers, who had been construed to be DGSI officers in terms of Notification No. 14/2017.

20. A conjoint reading of Notification No. 14/2017 dated 01.07.2017 and Circular No. 3/3/2017-GST dated 05.07.2017 sufficiently contemplates the assigning of powers to DGSI officers by the Board. Let's take an example, as per the circular of 05.07.2017, a Superintendent of Central Tax has been assigned the power to function as is mentioned in Sub-section (1) of section 70 and a reading of Notification 14/2017 leads us to conclude as mentioned in serial No. 8 that a senior Intelligence officer, Goods and Service Tax Intelligence or Superintendent, Goods and Service Tax or Superintendent, Audit has been notified to be appointed under section 3 of the GST Act as a central Tax officer and is invested with all the powers under the central Goods and Service Tax Act, 201, throughout the territory of India, as are exercisable by the central Tax officers of the rank of "superintendent". In any case, this court does not find any force in holding that such technical nuances to be fatal for the Notification or to the functions performed by various DGGI officers. The jurisprudence on the implications of invocation of a wrong provision suggests that as long as an authority has power, which is traceable to a source, the mere fact that source of power is not indicated or wrongly indicated in an instrument does not render the instrument invalid.

21. For all the aforesaid reasons, this Court is not inclined to hold that the impugned Notification No. 14/2014 dated 01.07.2017 is ultra vires to the powers provided to the Government under the CGST Act, 2017.

36. The materials placed before this Court therefore, indicate that the officers concerned have been appointed by notifications issued in exercise of statutory powers under Sections 3 and 5 of the CGST Act. Further, notifications and circulars relied upon by the respondents have demonstrated that officers of DGGI as well as Additional Commissioners



have been assigned functions relating to issuance and adjudication of proceedings under Sections 73 and 74 of the Act.

37. It would also be relevant in the context of the present discourse to observe that even though a contention has been raised on jurisdiction based on the contents of the notifications on which the proceedings have been executed, especially on the point raised that the Notification 02/2017, only confers territorial jurisdiction and not subject matter jurisdiction, the same being only a technicality, the contention is rejected. As has been held in the case of *UOI vs Azadi Bachao Andolan* (supra) “*it is trite law that as long as an authority has power, which is traceable to a source, the mere fact that the source of the power is not indicated in an instrument does not render the instrument invalid*”. Further, in the case of *Union of India vs. Paras Laminates (P) Ltd.*, (supra) on this question at Para-8 thereof, Maxwell on Interpretation of statutes has been quoted, which says “*where an Act confers a jurisdiction it impliedly also grants the power of doing all such acts, or employing such mean, as are essentially necessary to its execution*”.

38. At this stage, this Court is not persuaded that the challenge raised demonstrates an inherent lack of jurisdiction or absence of jurisdictional facts going to the root of the matter. Mere disagreement regarding interpretation of the scope of powers conferred under statutory



notifications cannot by itself convert an issue into a jurisdictional defect warranting interference under Article 226.

39. The petitioner has also contended that constitutional challenges have been raised against the notifications and circulars and therefore the writ petition deserves to be entertained.

40. This Court observes that merely because a challenge to notifications or circulars has been couched in constitutional terms does not automatically confer maintainability where the substance of the dispute pertains to tax assessment and classification. Courts are required to examine the true nature of the controversy and not merely the form in which reliefs have been drafted.

41. On a careful consideration of the pleadings, it is evident that the central controversy between the parties concerns classification of services under SAC 9954 or SAC 9967, applicability of exemption under Entry 23A of Notification No. 12/2017, characterization of annuity receipts under BOT projects, and taxability of composite supplies under the CGST framework. Though on a plain analysis, by virtue of Entry 23A, the petitioner would be liable for payment of GST on Annuity, the other questions that remain however would involve the interpretation of contractual clauses, examination of the nature of services rendered under the Concession



Agreement, determination of principal supply, applicability of exemption notifications, and appreciation of factual as well as legal aspects.

42. Such questions, in the considered opinion of this Court, cannot be regarded as pure questions of law capable of adjudication in writ jurisdiction in the first instance.

43. The contention of the petitioner that the issue stands concluded by the judgment rendered by the Karnataka High Court in the matter relating to *DPJ Bidar*, also cannot persuade this Court to entertain the writ petition. The respondents have pointed out that proceedings arising therefrom, are stated to be pending consideration and, in any event, the legal position itself has not attained finality.

44. This Court also notices that the petitioner had participated in adjudication proceedings pursuant to directions of the Hon'ble Supreme Court, submitted replies, appeared during personal hearing and advanced detailed submissions before the adjudicating authority. The Order-in-Original records consideration of such submissions and ultimately arrived at conclusions on merits.

45. Whether the findings recorded therein are correct or erroneous is a matter falling squarely within the appellate mechanism contemplated under the statute.



46. The petitioner has further argued that the alternate remedy available under the CGST Act is inefficacious because authorities under the statute would be bound by circulars issued under Section 168 of the Act.

47. This argument also cannot be accepted. Mere existence of binding circulars does not render the statutory appellate mechanism otiose or ineffective, and though remedy may not be as efficacious as a writ petition, alternate remedy however, as in the present case, is handy and accessible. Moreover, though orders or instructions issued by the Board is not law, it may be binding upon the authorities but not the Appellate Authority, who is not bound to take judicial notice of such order or instruction. The instant case is not a case of palpable injustice being caused to force an assessee to adopt the remedy, inasmuch as, the appellate authority under the Act, possesses powers to examine questions arising from the adjudication order, and thereafter, statutory remedies extending up to judicial forums are also available. On this aspect reference, can be made to the judgement in the case of *Bela Singh Daulat Singh Vs Commissioner of Income Tax reported in (1966) 62 ITR 250, 1965 SCC online All 499* wherein, in an extract from paragraph 7 it has been held as follows:-

“ The assessee relied upon a circular said to have been issued by the Central Board of Revenue. The circular is not a law; it may bind the income-tax authorities but cannot be said to be



law merely because it does so. A party is bound by a decree passed against him and a Government is bound by a mandamus issued against it but neither the decree in the first instance nor the mandamus in the second instance amounts to law. Consequently, the Tribunal was not, and this court is not, bound to take judicial notice of the circular. ”.....

Similarly, in another case that is *Indo- Gulf Fertilizers and Chemicals Corporation Limited Vs Union of India* and another reported in 1992 SCC Online All 1067, at paragraph 11 thereof, it has been held as follows:-

“11. To re-enforce the submission that the additional tax on the loss figure, after adjustment, has been rightly levied, learned counsel for the opposite parties has placed reliance upon the directions issued by the Board under the title “Kar Niriharan ke Naye Pravidhan Aur Unki Prakriya”. It contains certain examples on the working of (sic) section 143 of the Act. In one of the examples, it is provided that additional tax is chargeable even if, after adjustment, it results in loss return. The submission is that the authorities are bound by the directions issued by the Board, hence they have committed no mistake in passing the impugned order in accordance with the directions indicated above. He refers to section 119 of the Act under which the authorities of the Department are bound to carry out the directions issued by the Board. In this connection, it may be observed that so far as the direction given by the Board is concerned, it may no doubt be binding upon the departmental authorities, but such directions do not bind the courts, and it is needless to cite cases on the point. So far as courts are concerned, they would only examine whether the orders passed by the departmental authorities are in accordance with the provisions of the Act or not. If the directions of the Board are beyond the scope of the provisions of the Income-tax Act, they will not hold good and the authorities can very well be asked to act according to law.”

(Emphasis supplied)



As such therefore, in view of the above, acceptance of such an argument, would effectively result in bypassing statutory remedies in every case involving departmental circulars, which would defeat the legislative intent underlying the enactment.

48. The Supreme Court has repeatedly emphasized that tax statutes constitute complete codes in themselves providing remedies by way of appeal and revision. Interference in writ jurisdiction at the stage of assessment or adjudication is therefore to be exercised sparingly and only in exceptional circumstances.

49. Several decisions to support the contention as to maintainability or entertainability of this writ petition, were cited at the bar, which have been noted above and it may not be necessary to refer to all those decisions except to outline the more defining ones namely; i) *Whirlpool Corporation vs. Registrar of Trademarks* (supra), wherein the Supreme Court identified three well recognized exceptions where the writ petition remain maintainable despite alternative remedies which are; *Enforcement of fundamental rights, Violation of the principles of natural justice and Orders/Proceedings that are wholly without jurisdiction or where the vires of a statute is challenged.* ii) *Canon India Private Limited vs. State of Tamil*



Nadu, which supports the direct invocation of writ jurisdiction where departmental policy pre-determines the outcome. iii) *Aircel Limited vs. Commissioner Tax* (supra), wherein it was held that since the material facts were undisputed and only legal question arose, the High Court ought to have adjudicated the matter instead of dismissing it on the ground of alternative remedy. iv) *Calcutta Discount Company vs. Income Tax Officer Companies District etc.*, (supra) on the principle that the existence of statutory preconditions is essential before jurisdiction can be exercised which supports judicial interference when statutory conditions authorising action are absent. v) *NCS Pearson Inc. vs. UOI* on the principle that jurisdiction under Section 74 of the CGST Act depends upon the existence of wilful suppression with intent to evade tax and that when this fact is neither satisfied or fulfilled in the SCN, the same deserves to be quashed. vi) *Onyx Fisheries Ltd., vs Union of India*, on the point that a quasi-judicial authority while exercising its statutory power must act fairly and with an open mind while initiating a show cause proceeding without displaying bias or predetermination.

50. Having considered the entirety of the facts and circumstances, and taking into account the authorities placed by the petitioner, this Court is



of the considered view that none of the recognized exceptions to the rule of alternate remedy have been made out by the petitioner.

51. No violation of principles of natural justice has been demonstrated. No patent lack of jurisdiction has been established. The challenge raised by the petitioner substantially pertains to adjudicatory findings and interpretation of statutory provisions and exemption notifications which are amenable to examination before the appellate authority under the CGST Act.

52. Consequently, this Court declines to exercise jurisdiction under Article 226 of the Constitution of India.

53. Accordingly, the writ petition stands dismissed on the ground of availability of an efficacious alternate statutory remedy.

54. However, considering the fact that the petitioner has pursued proceedings before this Court bona fide, liberty is granted to the petitioner to avail the statutory remedy of appeal under Section 107 of the CGST Act within a period of four weeks from today. In the event such appeal is preferred within the aforesaid period, the appellate authority shall consider the same on its own merits and in accordance with law, without being influenced by any observations made in this judgment.



55. Pending Miscellaneous applications, if any, shall stand disposed of.

56. No order as to costs.

(B. Bhattacharjee)
Judge

(H.S. Thangkhiew)
Judge

Meghalaya
02.06.2026
"V. Lyndem- PS"