



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

**Case No. : WP(C)/1870/2022**

M/S N.E. LOGISTICS AND ANR.  
PROPRIETOR JUGAL KISHORE MAHANTA, R/O- FLAT NO. 8A, SUSRITA  
HILLSIDE, MOTHER TERESA ROAD, P.O- BAMUNIMAIDAM, P.S-  
GEETANAGAR, GUWHTI-21, DIST- KAMRUP (M), ASSAM

2: JUGAL KISHORE MAHANTA

S/O LATE- JIBA KRISHNA MAHANTA  
R/O- FLAT NO. 8A  
SUSRITA HILLSIDE  
MOTHER TERESA ROAD  
P.O- BAMUNIMAIDAM  
P.S- GEETANAGAR  
GUWHTI-21  
DIST- KAMRUP (M)  
ASSA

VERSUS

UNION OF INDIA AND 2 ORS.  
REP BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE, NORTH BLOCK, NEW DELHI-110001

2:THE PRINCIPAL COMMISSIONER  
GST AND CENTRAL EXCISE COMMISSIONERATE  
GUWAHATI  
GST BHAWAN  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI-781001

3:THE SUPERINTENDENT  
GOODS AND SERVICE TAX  
AND CENTRAL EXCISE

RANGE -II A

GUWAHATI-78100

**Advocate for the Petitioner** : MR. J P MORE

**Advocate for the Respondent** : ASSTT.S.G.I.

**BEFORE**  
**HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

**O R D E R**

**23.03.2022**

Heard Dr. A Saraf, learned senior counsel assisted by Mr. S Chutia, learned counsel for the petitioners and Mr. SC Keyal, learned counsel appearing for the respondents in the GST Department.

2. The petitioner No. 1 is a proprietorship firm and the petitioner No. 2 is its proprietor and was engaged in the business of civil construction activities (Turnkey projects) in infrastructure sector in the State of Assam and North East and had successfully completed various projects under the PWD Assam, National Highways and Infrastructure Development corporation Ltd, Oil India Limited, Coal India Limited and many others.

3. By the impugned demand notice dated 12.11.2021 of the Principal Commissioner, GST being the order in original No. 6/Pr.Commr.ST/GHY/2021-22, the petitioner had been imposed a service tax amounting to Rs. 4, 41, 64, 329/- along with a penalty of Rs. 10,000/- and a further penalty of Rs. 4, 41, 64, 329/- along with interest in terms of Section 78 of the Finance Act 1994.

4. The petitioner takes a stand that in respect of the contract works they had undertaken for which the service tax had been imposed, they are exempted under the law from payment of service tax in respect of some of such

contractual works. In paragraph 4.5 of the impugned demand notice, it is provided that upon perusal of the work order contracts vis-à-vis Form 26AS, it is not possible to establish against which contract the petitioner had received the amount reflected in the Form 26AS and moreover the work orders are of the years 2006, 2010, 2011 and 2012. As the petitioner noticee had not submitted anything further showing any co-relation between the contracts and the entries in the Form 26AS and therefore, the department was of the view that the petitioner would be liable to pay the service tax imposed in the impugned demand notice. Clause 4.5 of the demand notice is extracted below:-

*“4.5 From Form 26AS, it appears that all receipts are from various Govt. Departments/other organizations for providing services which the said Noticee have claimed to be exempted under Sl No. 12 and 13 of the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012. However, on perusal of the work order contracts vis-à-vis Form 26AS, it is not possible to establish against which contract they received the amounts reflected in Form 26AS. More so when many of the work orders are of years 2006, 2010, 2011 and 2012. The said Noticee also did not submit anything showing co-relation between the contracts and entries in the Form 26AS.”*

5. A reading of clause 4.5 of the demand notice goes to show that the objection raised by the petitioners that for the contract work for which the service tax has been imposed they are exempted from payment of such tax had not been conclusively determined by the authorities. The authorities on the other hand appears to have gone on a presumption that as because the materials produced by the petitioner did not make it discernible for the authorities to arrive at such conclusion, therefore, the authorities were of the view that the petitioner is liable to pay the tax.

6. The liability to pay a service tax is not upon a presumption nor can it be based upon a state of indeterminateness on the part of the authorities. The liability to pay a tax has to be conclusively determined that for the given

transaction for which the tax is imposed the noticee is liable to pay such tax and such taxes are not being paid.

7. As the said determination had not been made, we remand the matter back to the Principal Commissioner, CGST, Guwahati for a fresh determination. In doing so, the petitioners be given an appropriate opportunity to produce any relevant material to show that the contract works for which the service tax has been imposed, the noticee is not liable to pay tax for such transaction and in doing so, the petitioners to also co-operate with the authorities so that they also can come to a conclusion on the aspect and produce any relevant material as may be desired.

8. After making a conclusive determination, any reasoned order or any further demand notice as may be called for may be issued by the authorities. On the other hand, if the conclusion arrived at that the petitioner is not liable to pay service tax, appropriate reasoned order be also passed. In order to substantiate the claim of the petitioners assessee that they are not liable to pay the service tax, any other ground or reason as may be desirable be also allowed to be raised by the petitioners.

9. Till such final determination, no coercive action be taken against the petitioners.

The writ petition is disposed of in the above terms.

**JUDGE**

**Comparing Assistant**