Surya Businees Private Limited vs. State of Assam & Ors.

Whether a fresh Show Cause Notice under Section 73 of the CGST/AGST Act, 2017 can be issued for the same period after completion of audit under Section 65 of the Act, when no discrepancy was found and tax liability was already discharged by the assessee.

Date of Order: March 5, 2026
Case Law No: GIB-GHC-2026-42
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

Surya Businees Private Limited, registered under CGST/AGST Act, 2017, had its returns for the period 2017-18 (July 2017 to March 2018) selected for audit under Section 65 of the AGST Act, 2017. A notice dated 27-09-2022 was issued requiring production of books of accounts. After audit, observations under Rule 101(4) of AGST Rules, 2017 were issued vide communication dated 29-05-2023, raising issues of short payment of tax, suppression of turnover and un-reconciled turnover. The petitioner replied on 07-06-2023 clarifying all observations. The audit report under Section 65(6) was thereafter issued. All objections on short payment of tax and suppression of turnover were dropped based on the petitioner's clarifications. Only interest of Rs. 1,34,580/- on account of late payment of tax was confirmed. The petitioner paid the said interest and intimated the authorities vide communication dated 19-06-2023, seeking closure of the matter. Despite this, the respondent No. 2 after approximately three months issued a fresh Show Cause Notice dated 28-09-2023 in Form GST DRC-01 under Section 73(1) of the CGST/AGST Act, 2017 for the same period 2017-18, alleging short payment of GST of Rs. 64,25,694/- and wrongful availment of ITC of Rs. 1,68,052/- under Section 17(5). The petitioner challenged this SCN before the Gauhati High Court.

Court Observations (Verbatim)

"*The impugned show-cause notice pertains to the same subject matter and the period for which a detailed audit under Section 65 of the Act of 2017, was already carried out by the authorities and wherein no discrepancy was found concerning any short payment of tax or wrongful availment of ITC.*"

"*The said exercise having been carried out by the respondent authorities and there being no allegation that the petitioner for the purpose had not furnished all the requisite documents/records, the issuance of the impugned notice, without a circumstance as envisaged under Sub-Section (7) of Section 65 arising in the matter, in the considered view of this Court undermines the audit process carried out and renders the same redundant.*"

"*The petitioner having discharged his liabilities as ascertained during the audit proceeding, the impugned show-cause notice for the same very purpose would not be maintainable.*"

"*The said factors basing on which a notice under Section 73 of the Act of 2017, is permissible to be so issued, not being found to have arisen in the case of the petitioner, herein, in the audit report submitted by the respondent authorities, the petitioner having discharged its liability as determined, the proceeding initiated under Section 73 of the Act of 2017 in the facts and circumstances arising in the present matter would not be sustainable.*"

"*The comprehensive audit for the period having been carried out and no discrepancy having been found, therein, issuance of show-cause notice under Section 73 of the Act of 2017, without the situation envisaged under Sub-Section (7) of Section 65 arising in the matter, in the considered view of this Court renders the impugned show-cause liable to be interfered with.*"

"*In the present case this Court having found both the issues involved in the impugned show-cause notice to have been duly considered during the process of audit assessment carried out under the provision of Section 65 of the Act of 2017, the circumstances as envisaged under Sub-Section (7) of Section 65 of the Act of 2017, not arising in the matter, the show-cause notice dated 28-09-2023, was not permissible to be so issued to the petitioner, herein.*"

Final Verdict

The Show Cause Notice dated 28-09-2023 issued under Section 73 of the CGST/AGST Act, 2017 was quashed and set aside. The Writ Petition was allowed in favour of the petitioner.

Instructions / Circulars Referred

Reference	Details
Instruction No. 13/2023-GST dated 26-12-2023	Issued by Principal Commissioner of State Tax-cum-Commissioner of Taxes, Assam — stipulating that where audit proceedings have been completed, notices again issued using IIT Big Data Software need to be dropped

Key Statutory Provisions Interpreted

Provision	Relevance
Section 2(13) CGST/AGST Act, 2017	Definition of 'Audit' — comprehensive verification of turnover, taxes, refunds and ITC

Provision	Relevance
Section 65(1) AGST Act, 2017	Audit by tax authorities
Section 65(6) AGST Act, 2017	Issuance of final audit report
Section 65(7) AGST Act, 2017	Trigger condition for initiating proceedings under Section 73/74 post-audit
Section 73(1) CGST/AGST Act, 2017	Determination of tax not paid / short paid — basis of impugned SCN
Rule 101(4) AGST Rules, 2017	Audit observations issued to taxpayer

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