GAHC010044662026

2026:GAU-AS:13601-DB

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

Case No. : WA/64/2026

SURYA BUSINESS PRIVATE LIMITED
A PVT. LTD CO INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT 1956 HAVING ITS PLACE OF BUSINESS AT GAR ALI, JORHAT, ASSAM 785001 AND IN THE PRESENT PROCEEDINGS REPRESENTED BY SRI SUBHAJIT ROY, THE BRANCH MANAGER OF THE PETITIONER COMPANY.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTEDBY SECRETARY TO THE GOVT. OF ASSAMLR DEPARTMENT, DISPUR, GUWAHATI 781006

2:THE ASSTT. COMMISSIONER OF STATE TAX
JORHAT I
ASSAM
JORHAT ENGINEERING COLLEGE ROAD
JORHAT
ASSAM 785001

3:THE COMMISSIONER OF STATE TAXES ASSAM
KAR BHAWAN
GANESHGURI
GUWAHATI 78100

Advocate for the Petitioner : MR ANKIT KANODIA, MS. N UPADHYAY,MR. P DAS

Advocate for the Respondent : SC, FINANCE AND TAXATION,

BEFORE

HON'BLE THE CHIEF JUSTICE ASHUTOSH KUMAR

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellant : Mr. Ankit Kanodia, Advocate.
Mr. Zeehan Islam, Advocate.

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

Date on which Judgment is Reserved : 13.08.2026

Date of pronouncement of Judgment : **15.09.2026**

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

Whether the full Judgment has been pronounced : Yes.

JUDGMENT & ORDER (CAV)

(A.D.Choudhury, J)

1. The present intra-court appeal is directed against the Judgment and Order dated 12-02-2026 passed by a learned Single Judge in WP(C) No. 6666/2024, whereby the writ petition preferred by the appellant/ writ petitioner challenging the show cause notice dated 29-11-2024 issued under Section 73(1) of the Central Goods and Services Tax Act 2017 (***For short the CGST, Act***) read with the corresponding provisions of Assam Goods and Services Tax Act, 2017 (***For short, the AGST, Act***) came to be dismissed.

2. The appellant/writ petitioner is a registered taxable person under the CGST and AGST Acts and is engaged in the business of wholesale/distribution of cellular phones.

3. The dispute relates to the financial year 2020-2021.

The respondent had furnished its annual return in Form GSTR-9 and the reconciliation statement in Form GSTR-9C on 27.02.2022.Upon scrutiny of the returns and other records, including GSTR-1, GSTR-2A, GSTR-3B, E-Way bills, and other materials, the competent authority issued the impugned show cause notice dated 29.11.2024 under Section 73(1) of the CGST/AGST Act, proposing a total liability of Rs. 33,03,968/- besides interest and penalty on the allegation inter alia of wrongful/excess availment of Input Tax Credit (ITC) from canceled dealers, returned defaulters, and non-taxpayers.

4. The principal challenge before the learned Single Judge was to the competence of the authority to issue the notice on 29.11.2024, as it was beyond the prescribed time limit under section 73(2), but not to the merits

of the proposed demand.

5. The case of the appellant/writ petitioner is that Section 73(2) of the CGST/AGST Act expressly mandates that the notice under Section 73(1) of the CGST/AGST Act shall be issued "at least three months prior to the time limit specified in Sub-section 10 of Section 73 of the CGST/AGST Act for issuance of order". It was contended that for the financial year 2020-2021, the due date relevant for the purpose of Section 73(10) of the CGST/AGST Act was 28.02.2022, and consequently, the period prescribed under Section 73(10) of the CGST/AGST Act for issuance of the order under Section 73(9) expired on 28.02.2025.

6. According to the appellant/writ petitioner, three months prior to 28.02.2025 would be 28.11.2024, and therefore the notice issued on 29.11.2024 was beyond the period prescribed under Section 73(2) of the CGST/AGST Act.

7. The revenue opposed the challenge and contended that the notice dated 29.11.2024 was within time. According to the revenue, the date of issuance of the notice is to be treated as the starting point, and after excluding that date, three calendar months would expire on 28.02.2025. It was accordingly contended that the notice dated 29.11.2024 was issued within the period contemplated under Section 73(2) of the CGST/AGST Act.

8. The learned Single Judge first examined the statutory period prescribed for issuing the order under Section 73(9) of the CGST/AGST Act.

The learned Single Judge noticed the extension of the due date for furnishing the annual return for the financial year 2020-2021 and held that the order contemplated under Section 73(9) of the CGST/AGST Act would

be issued up to 28.02.2025.

9. The learned Single Judge thereafter examined the expression "three months" occurring in Section 73(2) of the CGST/AGST Act. It was noticed that the CGST/AGST Acts do not contain a specific definition of "month," and reference was therefore made to Section 3(35) of the General Clauses Act, 1897, which defines " month" as " a month reckoned according to the British calendar."

10. The learned Single Judge then considered the decision of **Dodds –Vs-Waker,** reported in **(1981) 2 AII ER 609**, **Bibi Salma Khatoon –Vs-State of Bihar and others** reported in **(2001) 7 SCC 197**, and **the State of Himachal Pradesh v. Himachal Techno-Engineers and another** reported in **(2010) 12 SCC 210**, amongst others, for the proposition that a period expressed in months is to be recounted by the reference to calendar months and cannot be treated as an equivalent number of days.

11. The learned Single Judge also referred to Section 9 of the General Clauses Act 1897 and the decision in **Tarun Prasad Chatterjee v. Dinanath Sharma** reported in **(2000) 8 SCC 649** and **Saketh India Ltd. And another -vs- India Securities Ltd.,** reported in **(1999) 3 SCC 1**, for the principle that where a period is prescribed from a particular date, the date from which the period commences is to be excluded.

12. Proceeding on that basis, the learned Single Judge treated the date of issuance of the show cause notice as the starting point of the period in question and, excluding that date, counted three calendar months thereafter.

Since the notice was dated 29.11.2024, the three months were taken to comprise December 2024, January 2025, and February 2025, ending on 28.02.2025.

13. The learned Single Judge accordingly held that the notice dated 29.11.2024 could not be regarded as having been issued beyond the period prescribed under Section 73(2), as, on excluding the date of issuance and reckoning three calendar months thereafter, the period would expire on 28.02.2025.

14. During the pendency of the writ petition, an ex-parte order dated 28.02.2025, under Section 73(9) was determining the tax, penalty etc. Accordingly, by an interim order dated 12.02.2025, the learned Single Judge, directed the respondents not to take any coercive action against the petitioner.

It is also brought to our notice that an amount of Rs. 10 Lakhs, has already been recovered from the Appellant after the pronouncement of the judgment by the learned Single Judge.

We shall deal with this aspect of the matter, which arose during the pendency of the writ petition, at a later stage of this judgment.

15. We have heard Mr. A. Kanodia, learned counsel for the appellant, and Mr. B. Gogoi, learned Additional Advocate General, appearing for the Finance and Taxation Department, Government of Assam. The learned counsel has reiterated before us the submissions advanced before the learned Single Judge.

16. We have carefully considered the reasoning of the learned Single Judge.

We have also considered the submissions advanced on behalf of the parties and the authorities on which they relied.

17. There is no dispute, and we agree with the finding of the learned Single Judge that 28.02.2022 is the relevant terminal date for examining the requirement contained in section 73(2) of the CGST/AGST Act.

18. This date, 28.02.2022, in our opinion, is relevant for determining the commencement of the 3 (three) year period under section 73(10) of the CGST/AGST Act;

19. We also find no difficulty with the proposition expounded by the learned Single Judge that a month "means a calendar month and not a period of 30 days".

We also cannot have any disagreement with the settled principle that where a statutory period is prescribed "from a specified date", the date from which the period commences is ordinarily excluded in terms of Section 9 of the General Clauses Act.

20. However, a difficulty arises when that principle is applied to section 73(2) of the CGST/AGST Act, as argued by the Appellants.

21. Before proceeding further on it, and we consider it necessary to reproduce, the provisions of Section 73(1), 73(2), 73(9), and 73(10) of the CGST/AGST herein below:

> ***Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful misstatement or suppression of***

facts.-

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of an order.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date

for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

22. Section 73 of the CGST/AGST Act constitutes a statutory mechanism for determination of tax which has not been paid, or has been short paid, or erroneously refunded, or where input tax credit has been wrongly availed or utilized for reasons other than fraud, wilful misstatement, or suppression of facts to evade tax.

23. The process commences when, upon requisite satisfaction, the proper officer proceeds, under Sub-section 1, to serve notice upon the taxable person requiring him to show cause as to why the amount specified in the notice, together with interest and penalty, should not be paid.

Issuance of such a notice is, however, not the determination of liability. It is the commencement of the statutory adjudicatory process.

It is true that Sub-section 2 places a specific restriction upon the exercise of the power to issue such notice by requiring that the notice under Sub-section 1 shall be issued "at least three months prior to" the time limit specified in Sub-section 10 for issuance of an order.

The subsequent provisions contemplate the opportunity available to the person chargeable with tax to make payment in the circumstances provided therein, submit a representation, and have it considered by the proper officer, and ultimately determine the amount of tax, interest, and penalty and issue an order under Sub-section 9.

Sub-section 10 prescribes the outer time limit of three years from the due date of furnishing annual return for the year, for which tax has not been paid, or has been short paid, or erroneously refunded, or where input tax credit has been wrongly availed or utilised for reasons other than fraud, wilful misstatement, or suppression of facts to evade tax, for culmination of the adjudicatory process by issuing an the order contemplated under Sub-section 9.

24. Thus, notice under Sub-section 1 of Section 73 of the CGST/AGST Act is the commencement of a statutory adjudicatory process which culminates in the determination and order contemplated under Sub-section 9 of Section 73 of the CGST/AGST Act, subject to the outer time limit prescribed under Sub-section 10 of Section 73 of the CGST/AGST Act.

The scheme of Section 73 of the CGST/AGST Act establishes a statutory relationship between the commencement of proceedings by issuance of a notice under Section 73(1) and their culmination with the determination and order under Section 73(9). Section 73(2) regulates the **former** by prescribing an outer limit under Section 73(10).

25. Section 75 of the CGST/AGST Act supplements the aforesaid mechanism contained in Section 73 by laying down General provisions governing the determination. Therefore, for completeness, the relevant portion is

reproduced:

Section 75. General provisions relating to the determination of tax.-

(1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of Section 73 or sub-sections (2) and (10) of Section 74 [or sub-sections (2) and (7) of section 74A], as the case may be.

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided *that no such adjournment shall be granted for more than three times to a person during the proceedings.*

(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than those specified in the notice.

(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within the period specified in sub-section (10) of section 73 or in sub-section (10) of section 74 or in sub-section (7) of section 74A.]

26. Section 75(4) contemplates an opportunity of hearing in the circumstances therein, while Section 75(5) permits adjournment of hearing, upon sufficient cause being shown, subject to the limitation prescribed therein.

Section 75(7) confines the final demand to the amount and grounds specified in the notice.

27. These provisions demonstrate that the notice, the opportunity to contest the proposed demand, the hearing, and the final determination constitute parts of a single adjudicatory process with a legislatively prescribed terminal point.

The aforesaid construction is further reinforced by Section 75(10) of the CGST/AGST Act.

The said provision declares that the adjudication proceeding shall be deemed concluded if the order is not issued within the period specified in Section 73(10) of the CGST/AGST Act.

Thus, the date prescribed under Section 73(10) is not merely a time limit for performance of the final act of issuing an order; it is the terminal point of the adjudicatory proceeding initiated under Section 73 by issuing the notice.

28. Section 75(1) of the CGST/AGST Act is also relevant. It expressly provides for the exclusion of the period of stay while computing the periods prescribed under Section 73(2) and Section 73(10). The statutory scheme thus recognizes the time prescription for the issuance of notice and for the issuance of an order as connected parts of the same adjudicatory framework.

29. The principal question that arises for consideration is whether the expression "at least three months prior to the time limit specified in sub-section (10) for issuance of order" necessarily requires the corresponding date falling exactly three calendar months before the terminal date to be treated as the last permissible date for issuance of notice.

30. The requirement under section 73(2), therefore, is intended to ensure that the initiation of proceedings is not so close to the statutory deadline that the intervening adjudicatory process becomes illusory or unduly curtailed.

31. Once the provision is understood in the aforesaid manner, the determination required is whether, in the present case, the period between the issuance of the notice dated 29-11-2024 and the expiry of the statutory timeline on 28-2-2025 constitutes three calendar months.

In our considered opinion, it does.

32. It is not in dispute that the expression "month," in the absence of anything repugnant in the context, has to be understood in terms of section 3(35) of the General Clauses Act, namely, as a month reckoned according to the British calendar. It is also well settled that where a period is to be reckoned with reference to a particular date or event, the first day is ordinarily excluded unless the statute expresses a contrary intention.

33. The learned Single Judge relied upon this well-recognized principle while holding that the date of issuance of notice is to be excluded for determining the period available thereafter.

34. In the present case, the notice was issued on 29-11-2024. Excluding

that date, the period thereafter comprises the remainder of November and the calendar months of December, January, and February, culminating on 28-02-2025.

More importantly, from the standpoint of the statutory requirement, the taxable person had the full intervening calendar months of December, January, and February available before the expiry of the period prescribed under section 73(10) for issuance of the order under section 73(9).

35. The submission of the appellant proceeds on the basis that if the corresponding date principle is applied backward from 28-02-2025, the date obtained would be 28-11-2024 and consequently, a notice issued on 29-11-2024 must necessarily be treated as one day beyond limitation.

Such construction, in our opinion, introduces into section 73(2) a degree of rigidity which the provision itself does not expressly contain.

36. The corresponding date principle may be useful in determining a period expressed in months. However, it cannot be applied mechanically without having regard to the statutory context in which expression occurs.

Section 73(2) does not prescribe an independent period of limitation expiring on a corresponding date. It prescribes the minimum interval that must be available between the initiation of the proceeding and the outer limit fixed for its culmination.

Therefore, the requirement is satisfied if three calendar months are available after excluding the day on which the notice is issued and before the statutory terminal date.

37. The use of the expression “at least” also does not advance the case of

the appellant further.

The expression undoubtedly signifies that the minimum statutory period cannot be reduced.

However, the question remains as to how the three-month period is to be computed. If, in accordance with the established principle of exclusion of the first day, the date of issuance of notice is left out of computation, the requisite period is not curtailed in the present case. On the contrary, the statutory period contemplated under Section 73(2) remains available.

38. The construction suggested by the appellant would mean that although a notice issued on 29-11-2024 leaves the whole of December, January and February before the expiry of the terminal date, it would nevertheless be invalid merely because it was issued on a day after 28-11-2024.

39. Therefore, in our opinion, such a consequence does not necessarily follow from the language employed by the legislation.

Section 73(2) has to be construed as a provision regulating the interval between the initiation under Section 73(1) and the culmination of the statutory adjudicatory process within the period prescribed under Section 73(10) and cannot be construed fixing an artificial corresponding date as an independent cut-off for issuance of notice.

The provision does not say that corresponding date arrived at by counting backward is to be excluded. If that would have been the intention of the legislature, the legislature could have employed language clearly fixing such a date.

40. We are therefore of the considered opinion that the learned single judge

was justified in holding that the notice dated 29-11-2024 was not beyond the period contemplated under Section 73(2).

The learned Single Judge correctly found that terminal date for issuance of the order was 28-02-2025 and that the expression "three months" refers to calendar months. On excluding the date of issuance of notice, the statutory requirement of a minimum period of three months before expiry of the time limit under Section 73(10) stood satisfied.

41. We have also considered the decision referred to by the parties.

42. The decision that proceeds upon the corresponding date principle undoubtedly provides one possible method of computation.

But where another construction consistent with the rule of exclusion of the first date and with the statutory object of ensuring a minimum adjudicatory interval is reasonably possible, the view adopted by the learned Single Judge cannot be said to suffer from any legal infirmity or perversity warranting interference in an intra-court appeal.

43. We accordingly find no reason to interfere with the judgment and order dated 12.02.2026, passed by the learned Single Judge in WP(C) No.6666/2024. Consequently, the Writ Appeal is dismissed.

44. However, taking note of the interim order dated 12.02.2025 passed by the learned Single Judge and that during pendency of the writ petition, the proceeding culminated, we are of the opinion that ends of justice would be met, if an opportunity to the Appellant to contest the impugned notice dated 29.11.2024, is given in terms of section 73 and 75 of the AGST Act.

45. Accordingly, we interfere with the order dated 28.02.2025 passed under

Section 73(9) of the AGST Act., to enable the appellant to avail his right to contest the Notice dated 29.11.2024. The appellant shall, if so desired may file his reply to the notice dated 29.11.2024 within a period of four weeks from today. In the event such a reply is filed, the entire proceeding shall be completed within a period of three months thereafter. However, if no such reply is filed within the time specified hereinabove, the order dated 28.02.2025 shall revive and the Revenue authority shall proceed in accordance with AGST/CGST Act.

46. While parting with the record, we make it clear that any observation that is made in the present judgment shall not be construed as any comment on the merit of the demand or the defence of the appellant.

47. The interim order, if any, shall stand vacated. Parties shall bear their own costs.

JUDGE **CHIEF JUSTICE**

Comparing Assistant