



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

Case No. : WP(C)/129/2024

MR. THEKRUBIZOLIE AND ANR
HAVING ADDRESS AT H.NO. 04, C KHEL
KUDA VILLAGE
VTC NAGARJAN
P.O.- KUDA DIMAPUR NAGALAND-797112

2: M/S DIMAPUR DIESELS
HAVING ADDRESS AT KOHIMA ROAD
2 1/2 MILE DIMAPUR
NAGALAND 79711

VERSUS

THE UNION OF INDIA AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE
DEPT. OF REVENUE
NEW DELHI-110101

2:DEPUTY COMMISSIONER OF STATE TAXES ENFORCEMENT
OFFICER (HQ) NAGALAND DIMAPUR
HAVING ITS OFFICE AT DC CT ROAD
OPPOSITE DC COURT
DIMAPUR-797112

3:ASST. COMMISSIONER OF STATE TAXES
WARD E DIMAPUR ZONE
HAVING ITS OFFICE AT TAXES COLONY
LINGRIJAN ROAD
DIMAPUR-797112

4:MR ANUPAM ROY

HAVING ADDRESS AT LHOMITHI COLONY
DIMAPUR NAGALAN

Advocate for the Petitioner : NISUKA CHISHI,

Advocate for the Respondent : CGSC,

Linked Case : WP(C)/130/2024

MR THEKRUBIZOLIE AND ANR
HAVING ADDRESS AT H.NO. 04
C KHEL
KUDA VILLAGE
VTC NAGARJAN
P.O.- KUDA DIMAPUR NAGALAND-797112

2: M/S PROGRESSIVE MOTORS
HAVING ITS OFFICE AT WARD E
AIRPORT ROAD
NAGALAND-797112
VERSUS

THE UNION OF INDIA AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA
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DIMAPUR NAGALAND

Advocate for : NISUKA CHISHI, ARATI AGARWAL, ROSY BANERJEE
Advocate for : Z. KULNU, CGSC appearing for THE UNION OF INDIA AND
3 ORS
Advocate for State Respondent Nos. 2 & 3 : VETO V. ZHIMOMI

**BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT & ORDER (ORAL)

23.03.2026

Heard Ms. Arati Agarwal, learned counsel appearing on behalf of the Petitioner. Mr. Z. Kulnu, learned CGC appears on behalf of the Respondent No. 1/Union of India and Mr. Veto V. Zhimomi, learned Government Advocate appears on behalf of the Respondent Nos. 2 and 3, i.e. GST Authorities of the State of Nagaland.

2. The Respondent No. 4 is not represented when the matter is taken up

3. The issues involved in both the writ petitions being the same, they are taken up for disposal by this common Judgment and Order. However, for the sake of convenience and clarity in passing the directions, this Court finds it relevant to take note of the brief facts which led to the filing of both the writ petitions.

WP(C)/129/2024

4. The Petitioner No. 1 herein is the Proprietor of a Firm in the name

and style of M/S Dimapur Diesels. The said Firm, namely M/S Dimapur Diesels is registered under the Central Goods & Services Tax Act, 2017 (for short 'CGST') and have been allocated a Registration No. being GSTIN13ABUPA6964C2ZO. The present writ petition so filed challenges the Order dated 18.07.2023, passed by the Respondent No. 3 under Section 74(9) of the Nagaland Goods & Services Tax Act, 2017 (for short 'NGST').

5. The materials on record shows that the Petitioner No. 2 herein was issued a Notice in DRC01-A dated 14.11.2022 wherein the determined tax interest and penalty for the periods 2019-2020, 2020-2021 and 2021-2022 were mentioned.

6. The Petitioner No. 2 upon receipt of the said Notice sought for time for complying with the same. Thereupon, the Respondent No. 2 issued another Notice under DRC01-A for the Financial Years 2019-2020, 2020-2021 and 2021-2022. It is, however, pertinent to mention that a perusal of these Notices which were issued under DRC01-A categorically mention that these Notices were issued in the context of Section 74 of the NGST Act. The said aspect of the matter is further clear from the Notice itself wherein it is stated that non-compliance with the said Notice would attract Notice under Section 74(1) of the NGST Act. The Petitioner, on 24.05.2023 submitted a Reply.

7. Be that as it may, it is alleged by the Petitioner No. 2 that as the Respondents indulged in coercive steps the Petitioner No. 2 under compelling circumstances had made certain payment under protest and

uploaded the same under DRC03 on 27.06.2023.

8. On 28.06.2023, the Respondent No. 1 issued a Show Cause Notice under Section 74(1)&(7) thereby intimating the Petitioner No. 1 that for the period 2019-2020, 2020-2021, 2021-2022 and 2022-2023 the Petitioner had paid only the penalty portion of 15% amounting to Rs. 12,11,020/- (Rupees twelve lakhs eleven thousand and twenty) for the period 2019-2020, Rs. 68,95,004/- (Rupees sixty eight lakhs ninety five thousand and four) for the period 2020-2021, Rs. 4,31,406/- (Rupees four lakhs thirty one thousand four hundred and six) for the period from 2021-2022 and Rs. 4,37,926/- (Rupees four lakhs thirty seven thousand nine hundred and twenty six) for the period 2022-2023. The Petitioner No. 1 was asked to show cause as to why the Payment Notice in DRC07 should not be issued to the Petitioner for the remaining amount of tax and interest as detailed therein.

9. It appears that the Petitioner did not file a Reply to the said Show Cause and this resulted in passing of an Order on 18.07.2023 wherein it was mentioned that the Show Cause Notice was served upon the Petitioner and the Petitioner having not complied with the same, the Petitioner was directed to pay the remaining unpaid dues within 15 (fifteen) days. The summary of the Orders for the three Financial Years 2020-2021, 2021-2022 and 2022-2023 were issued in DRC07 on 18.07.2023. The Petitioner thereupon approached this Court by filing the present writ petition on 03.07.2024 almost one year from the date of passing of the Order dated 18.07.2023 in DRC07.

WP(C)/130/2024

10. The Petitioner No. 1 is the Proprietor of the Petitioner No. 2. The Petitioner No. 2 is registered under CGST and have been issued Registration Number being GSTIN13ABUP6964C1ZP. The Petitioners have challenged the Orders dated 17.07.2023 in the instant proceedings which relates to the Financial Year 2020-2021 and 2021-2022.

11. The case of the Petitioners herein are that on 04.11.2022, the Respondent No. 2 had issued a Tax Determination Order under DRC01-A and determined a total tax, interest and penalty for the purpose of 2019-2020, 2020-2021 and 2021-2022. The Petitioner sought for extension of time for the purpose of complying with the said Notice. Subsequent thereto, the Respondent No. 2 rectified its tax determination and issued again another Notice under DRC01-A providing on 09.03.2023 on stating the tax, penalty as well as the interest.

12. The Petitioners' case is that under coercion, on 27.06.2023 the penalty portion of Rs. 23,15,044/- (Rupees twenty three lakhs fifteen thousand and forty four), Rs. 79,70,949/- (Rupees seventy nine lakh seventy thousand nine hundred and forty nine) and Rs. 9,91,546/- (Rupees nine lakhs ninety one thousand five hundred and forty six) were paid for the period 2019-2020, 2020-2021 and 2021-2022 respectively. The payments were made on 27.06.2023.

13. A Show Cause Notice was issued under Section 74(1) of the NGST Act on 28.06.2023 wherein it was mentioned that pursuant to the liability ascertained on 09.03.2023 the Petitioner had voluntarily paid only the

penalty portion of 15% for the period 2019-2020, 2020-2021 and 2021-2022. The Petitioner was asked to show cause as to why the Payment Notice in DRC07 should not be issued to the Petitioner for the remaining amount of tax and interest indicated therein. The Petitioner did not submit any reply.

14. On 17.07.2023, the Respondent No. 3 passed an Order stating that there was no compliance to Show Cause Notice served and the Petitioner was therefore, directed to pay the remaining unpaid dues as indicated in the said Order under Section 74 of the NGST within 15 (fifteen) days. In pursuance to the said Order, the Summary of the Orders were issued on 17.07.2023 for the Financial Year 2020-2021 and 2021-2022. The Petitioner being aggrieved have assailed the Order dated 17.07.2023 as well as the Summary of the Orders in DRC07, both dated 17.07.2023 by filing the present writ petition on 03.07.2024.

15. The record reveals that this Court initially issued notice but did not grant any interim directions. However, subsequently, vide an Orders dated 23.09.2024 in both the writ petitions, the Payment Orders so passed on 18.07.2023 impugned in WP(C)/129/2024 and payment Orders dated 17.07.2023 impugned in WP(C)/130/2024 were suspended. The interim orders thereupon have been extended from time to time.

16. The record reveals that the Respondent No. 1 had filed Affidavit-in-Opposition in both the writ petitions stating *inter alia* that the investigation in the instant case have been carried by the State GST Authorities as is permissible under Section 6 of the CGST Act.

17. In the backdrop of the above, this Court finds it relevant to take note of the respective submissions made on behalf of the parties

18. Ms. Arati Agarwal who appears on behalf of the Petitioners submitted that the impugned Orders of Payment assailed in both the writ petitions is not preceded by a valid Show Cause as is the mandate under Section 74(1) of the NGST inasmuch as to be a valid Show Cause it is the requirement of law that the facts constituting exercise of powers under Section 74 of the NGST Act had to be duly mentioned. The learned counsel submitted that proceedings under Section 74 can be initiated in a case wherein it appears to the proper Officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit have been wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts or to evade tax, which is completely different when there can be an exercise of powers under Section 73 of the NGST Act, wherein the element of fraud or willful misstatement or suppression of facts is not there.

19. The learned counsel for the Petitioners, drawing attention to the Show Cause Notices issued on 28.06.2023 in both the writ petitions submitted that there is not a single whisper that the return was submitted by the Petitioners by reason of fraud or any willful misstatement or suppression of facts. The learned counsel further submitted that the exercise of powers under Section 74(9) to issue an Order in DRC07 is totally contrary to the provisions of Section 74 of the NGST Act. The learned counsel for the Petitioners further referring to the said Show Cause Notices issued in both the writ petitions submitted that in absence

of allegations of fraud or any willful misstatement or suppression of facts to evade tax the exercise of power under Section 74 was not permissible.

20. The learned counsel for the Petitioners further submitted that taking into account the contents of the Show Cause Notices dated 28.06.2023 issued to the Petitioners, the Petitioners did not file any reply. Be that as it may, an opportunity of hearing had to be given to the Petitioner in terms with Section 75(4) of the NGST.

21. The learned counsel for the Petitioners further submitted that a perusal of the impugned Orders dated 18.07.2023 and 17.07.2023 which have been assailed in both the writ petitions would show there is non-compliance to Section 75(6) of the NGST inasmuch as it obligates the proper Officer to pass an Order by stating out the relevant facts. The learned counsel, therefore, submits that the impugned Orders dated 18.07.2023 as well as 17.07.2023 in both the writ petitions, therefore, cannot be sustained in law.

22. The learned counsel for the Petitioners further submitted that a perusal of the Show Cause Notices issued in both the writ petitions dated 28.06.2023 would show that the Show Cause Notice have been issued by the Respondent No. 2 whereas the Orders dated 18.07.2023 and 17.07.2023 were passed by the Respondent No. 3. The learned counsel submitted that even assuming for argument's sake that the Show Cause Notices dated 28.06.2023 in both the writ petitions can be said to be Show Cause Notices, but the non-indication in the Show Cause Notices that the Reply is to be filed before a particular Officer and in absence of

notifying before whom the hearing would take place violates the very mandate of Section 75 of the NGST Act.

23. *Per contra* the learned counsel for the Respondents submitted that in the instant case the Petitioners in both the writ petitions herein were issued Notice under DRC01-A informing the Petitioners that the Petitioners were liable for the respective Financial Years the amount of tax, interest and penalty. The Petitioners thereupon made certain payments as would be seen from a perusal of the writ petitions. However, did not make any payment of the total amount which necessitated the State Authorities to issue the Show Cause Notices in terms with Section 74(1) of the NGST Act. The Petitioners did not submit the reply and under such circumstances, the impugned Orders have been passed.

24. The learned counsel for the Respondents further submitted that the Petitioners had an alternative remedy of preferring appeals against these impugned Orders under Section 107 of the NGST Act. However, no appeals were filed and the Petitioners have approached this Court by filing the present writ petition. The learned counsels further submitted that this is not a case where the jurisdiction or authority of the Respondent Authorities to pass the impugned orders have been assailed. It is a case where inspite of there being an efficacious and effective remedy to approach the Appellate Authority under Section 107 of the NGST Act the Petitioners have come before this Court.

25. The learned counsel for the Respondents also submitted that upon issuance of the Notice in terms with Section 142(1)(A) of the Central

Goods & Services Tax Rules, 2017 which is applicable in so far as the NGST Act is concerned in Form DRC01-A, the Petitioners knew that their case fall within the ambit of suppression of facts in order to evade taxes and this aspect would be apparent from the fact that the Petitioners have submitted a Reply stating *inter alia* that the Petitioners were not responsible for the evasion of tax as alleged.

26. The learned counsels for the Respondents further submitted that this very aspect is also apparent from the very writ petition wherein reference have been made in respect to one **Anupam Roy**. The learned counsel for the Respondents, therefore, submitted that the present cases are not fit for exercise of the extraordinary jurisdiction under Article 226 of the Constitution.

27. This Court have heard the learned counsels appearing for the parties and have perused the materials on record.

28. The Show Cause Notices issued to the Petitioners under Section 74(1) of the NGST Act on 28.06.2023 in the case of the writ petitioner in WP(C)/129/2024 is reproduced herein under:-

**"GOVERNMENT OF NAGALAND
OFFICE OF THE COMMISSIONER OF STATE TAXES
NAGALAND; DIMAPUR.**

NO.DCST/GST/ENF(HQ)/2022/490

Dated Dmr 28th June 23

Legal Name: Mr Thekrobizolie Angami

GSTIN: 13ABUPA6964C2ZO

Trade name: M/S Dimapur Diesels: Ward-F

Address: Airport road, Dimapur.

Sub: Show cause Notice under section 74 (1) & (7)

Whereas, out of the total liability ascertained and intimated to you vide order No DCST/GST/ENF(HQ)/2022/159 Dt.9/3/2023 for the period 2019-20, 2020-21, 2021-22 & 2022-23. you have voluntarily paid only the penalty portion (15%) amounting to Rs 12.11.020/- for the Period 2019-20, Rs 68,95,004/- for the Period 2020-21, Rs 4,31,406/-for the Period 2021-22 and Rs 4,37,926/- for the Period 2022-23.

Therefore, you are asked to show cause as to why demand notice in DRC-07 should not be issued to you for the remaining amount of tax and interest indicated below:

Year	CGST	SGST	Interest
2020-21	48,84,226.75	49,76,725.75	31,06,194.00
2021-22	14,38,023.00	14,38,023.00	4,71,540.00
2022-23	14,59,756.00	14,59,756.00	3,94,128.00
G Total	78,74,504.75	78,74,504.75	39,71,862.00

Please note that in the event of your failure to pay the amount indicated within 15 days time from the date of issuance of this notice, we shall proceed to issue you demand notice in DRC07 u/s 74 without further notice.

(ORENPONI YANTHAN)
Dy. Commissioner of State Taxes
Enforcement Officer (HQ)
Nagaland; Dimapur"

29. The Show Cause Notices issued to the Petitioners under Section 74(1) of the NGST Act on 28.06.2023 in the case of the writ Petitioner in WP(C)/130/2024 is also reproduced herein under:-

GOVERNMENT OF NAGALAND
OFFICE OF THE COMMISSIONER OF STATE TAXES NAGALAND,
DIMAPUR.

NO.DCST/GST/ENF(HQ)/2022/491

Dated Dmr 26 June 23

Legal Name: Mr Thekrobizolie Angami

GSTIN: 13ABUPA6964C1ZP

Trade name: Airport road, Dimapur.

M/S Progressive Motors; Ward-E

Address: Airport road, Dimapur.

Sub: Show cause Notice under section 74 (1) & (7)

Whereas, out of the total liability ascertained and intimated to you vide order No DCST/GST/ENF(HQ)/2022/160 01.9/3/2023 for the period 2019-20, 2020-21 & 2021-22, you have voluntarily paid only the penalty portion (15%) amounting to Rs 23,15,044/- for the Period 2019-20, Rs 79.70.994/- for the Period 2020-21, and Rs 9.91.546/-for the Period 2021-22.

Therefore, you are asked to show cause as to why demand notice in DRC-07 should not be issued to you for the remaining amount of tax and interest indicated below:

<i>Year</i>	<i>CGST</i>	<i>SGST</i>	<i>Interest</i>
<i>2020-21</i>	<i>1,34,39,607.00</i>	<i>1,34,39,607.00</i>	<i>84,66,948.00</i>
<i>2021-22</i>	<i>33,05,154.00</i>	<i>33,05,154.00</i>	<i>9,91,546.00</i>
<i>G Total</i>	<i>1,67,44,761.00</i>	<i>1,67,44,761.00</i>	<i>94,58,494.00</i>

Please note that in the event of your failure to pay the amount indicated within 15 days time from the date of issuance of this notice, we shall proceed to issue you demand notice in DRC07 u/s 74 without further notice.

(ORENPONI YANTHAN)
Dy. Commissioner of State Taxes

*Enforcement Officer (HQ)
Nagaland; Dimapur"*

30. In the backdrop of the above, this Court finds it very relevant to take note of Section 74(1) of the NGST Act. A perusal of the said sub section (1) of Section 74 reveals when the Proper Officer can exercise the jurisdiction under the said provision it stipulates that when it appears to the Proper Officer that any tax have been not paid or short paid or erroneously refunded or where unpaid tax credit have been wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts to evade tax, then only a Notice under Section 74(1) of the NGST Act would be issued by the Proper Officer.

31. A perusal of the above quoted Show Cause Notices which have been quoted herein above would show that there is no mention that any tax have not been paid or short paid or erroneously refunded or where unpaid tax credit have been wrongly availed or utilized by reason of **fraud** or **any willful misstatement** or **suppression of facts to evade tax**. The jurisdiction of the Proper Officer to initiate the proceedings under Section 74 of the NGST Act is subject to the fulfillment of the conditions as stipulated in Section 74(1) of the NGST Act. Under such circumstances, the non mentioning of the reasons why the exercise of powers under Section 74 of the NGST Act renders the Show Cause Notices fatal. It is, therefore, the opinion of this Court that the said Show Cause Notices which were issued on 28.06.2023 to the Petitioners in both the writ petitions cannot be said to be Show Cause Notices under Section 74(1) of the NGST Act.

32. This Court further finds it relevant to take note of Section 75 of the NGST Act which is a provision stipulating the general provisions relating to determination of tax. Section 75(4) makes it clear that an opportunity of hearing shall be granted when a request is received in writing from the person chargeable with tax or penalty or where any adverse decision is contemplated against such persons. As would be seen from the impugned Orders dated 18.07.2023 in WP(C)/129/2024 and the impugned Order dated 17.07.2023 in WP(C)/130/2024, adverse Orders were passed. However, there was no opportunity of hearing given to the Petitioners.

33. This Court further finds it relevant to take note of that in terms with Section 75(6) of the NGST Act, it is the mandate that the Proper Officer, in his Order shall set out the relevant facts and the basis of his decision. A perusal of the impugned Order dated 18.07.2023 in WP(C)/129/2024 and the impugned Order dated 17.07.2023 in WP(C)/130/2024 would clearly show that the impugned Orders have been passed without setting out the relevant facts as well as the basis of the decision.

34. Considering the above, it is, therefore, the opinion of this Court that neither the Show Cause Notices which were issued on 28.06.2023 to the Petitioners in both the writ petitions are in consonance with Section 74(1) of the NGST Act nor the impugned Orders of adjudication are in consonance with Section 75 of the NGST Act as no opportunity of hearing were granted as required under Section 75(4) of the NGST Act as well as the impugned Orders do not contain the relevant facts and the basis of the decisions. Considering the above, it is, therefore, the opinion of this Court that this is a fit case for interference in exercise of Article 226 of the

Constitution.

35. Accordingly, the instant writ petition stands disposed of with the following observations and directions:-

- (i) The Show Cause Notice dated 28.06.2023 as well as the impugned Order dated 18.07.2023 alongwith the Summary of Orders dated 18.07.2023 impugned in WP(C)/129/2024 are set aside and quashed.
- (ii) The Show Cause Notice dated 28.06.2023 as well as the impugned Order dated 17.07.2023 alongwith the Summary of Orders dated 17.07.2023 impugned in WP(C)/130/2024 are set aside and quashed.
- (iii) The setting aside of the impugned Show Cause Notices dated 28.06.2023 as well as the impugned Orders alongwith the Summary of Orders dated 18.07.2023 and 17.07.2023 in WP(C)/129/2024 and WP(C)/130/2024 respectively shall not preclude the Respondents to initiate fresh proceedings under the provisions of Section 74 of the NGST Act, if so permissible under law.
- (iv) Taking into account that this Court have exercised its extraordinary jurisdiction to set aside the impugned Show Cause Notices dated 28.06.2023 as well as the impugned Orders assailed in both the writ petitions, this Court observes that the period during which the present writ petitions were

pending, i.e. from 03.07.2024 to 23.03.2026 shall be excluded while computing the period of limitation in terms with Section 74(10) of the NGST Act.

- (v) There shall be no order as to costs.

JUDGE

Comparing Assistant