

GAHC010260422023



undefined

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

Case No. : WP(C)/6960/2023

M/S. PEPSICO INDIA HOLDINGS PVT. LTD.,
HAVING ITS OFFICE AT PLOT NO. 1D, 1E, TIRUPATI AND ASSOCIATES P
LTD., BRAHMAPUTRA INDUSTRIAL PARK, GOURIPUR, VILLAGE- SILA,
MOUZA- SILASINDURI, KAMRUP, ASSAM-781101, REPRESENTED BY
THEIR AUTHORIZED SIGNATORY MR. CHITWAN PRABHAKAR.

VERSUS

THE UNION OF INDIA AND 3 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF COMMERCE AND
INDUSTRY, GOVERNMENT OF INDIA, HAVING OFFICE AT UDYOG
BHAWAN, NEW DELHI-110107.

2:THE ADDITIONAL COMMISSIONER

OFFICE OF PRINCIPAL COMMISSIONER
GST AND EXCISE COMMISSIONERATE
GST BHAWAN
KEDAR ROAD
MACHKHOWA
GUWAHATI-781001.

3:SUPERINTENDENT

RANGE 1F
GOODS AND SERVICES TAX
GUWAHATI DIVISION-I
ROOM NO. 215
GST BHAWAN
KEDAR ROAD
MACHKHOWA
GUWAHATI-781001.

4:PRINCIPAL COMMISSIONER

CGST AND EXCISE COMMISSIONERATE
GST BHAWAN
KEDAR ROAD
MACHKHOWA
GUWAHATI-781001

Advocate for the Petitioner : MRS. R BORAH, MR. D BORAH

Advocate for the Respondent : DY.S.G.I., SC, GST

Date of Hearing : 20.06.2025

Date of Judgment : 19.09.2025

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

JUDGMENT

Date : 19-09-2025

Heard Mr. R. Shah, learned Senior Counsel assisted by Mr. D. Borah, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned Standing Counsel, GST.

2. The petitioner before this Court is a company registered under the erstwhile Companies Act, 1956 having its registered office at Brahmaputra Industrial Park, Gouripur, Village- Sila, Mouza, Silasinduri Kamrup, Assam-781101. The petitioner company is represented in the present proceedings by the authorized signatory. The petitioner is registered under the provisions of the Central Goods and Service Tax Act, 2017 as well as under the Assam Goods and Service Tax Act, 2017 and having its Goods and Service Tax Identification No.("GSTN") 18AAACP1272G1ZM). The Board of the petitioner's company has resolved by

Resolution No.49/2022 dated 10.01.2022 to authorize one Mr. Chitwan Prabhakar as the person authorized to file the writ petition and represent the company in the present proceedings. The petitioner is, inter alia, engaged in the marketing of soft drinks and fruit juices, as well as the manufacturing and supply of food products from its various locations across the country. The petitioner in the present proceedings has assailed the vires of the show cause notice bearing E-File No.GEXCOM/ADJN/GST/ADC/297/2023/2321-23 dated 05.09.2023 issued by the respondent No.2 under the provisions of section 73(1) of the Central Goods and Service Tax Act, 2017 by alleging a purported mismatch between the details furnished by the petitioner in its annual return filed in the form GSTR-9C and the reconciliation statement filed in FORM of GSTR-9C. As per the show cause notice, the Input Tax Credit (ITC) reported in FORM GSTR-9C and the expenses reported in the financial statements, which are required to be disclosed in Table 14 of FORM GSTR-9C, appear to be unreconciled. Consequently, the petitioner is alleged to have wrongly availed and utilized Input Tax Credit amounting to Rs. 19,51,41,111/- (Rupees Two Crore Fifty Nine Lakh Fifty Eight Thousand Nine Hundred Seven only) for the period 1st of July, 2017 to 31st March 2018.

3. The learned Senior Counsel appearing for the petitioner submits that the impugned show cause notice has been assailed on the ground that the precondition necessary for the invocation of the jurisdiction of the proper officer under Section 61 is absent, and therefore, the impugned show cause notice could not have been issued on the grounds mentioned therein. The learned Senior Counsel submits that the proper officer, while scrutinizing the correctness of the returns filed by the petitioner company, apparently discovered a

'discrepancy', which is stated to be the cause of action for initiating further proceedings. The alleged discrepancy purportedly found by the proper officer is that the petitioner did not furnish the required details in Table 14 of FORM GSTR-9, and as a result, there was a mismatch with the information provided in FORM GSTR-9C. It is submitted that from the notifications issued by the competent authority and which was available at the relevant point in time, the submission of information in Table 14 of FORM GSTR-9C was made optional. Since the furnishing of information under Table 14 of FORM GSTR-9C was made optional, the petitioner did not submit the said details. Consequently, the non-furnishing of information under Table 14 of FORM GSTR-9C cannot be construed as a discrepancy or an error, as there was no mandatory requirement to furnish such details. Accordingly, the petitioner cannot be faulted for not submitting information that was expressly made optional.

4. It is submitted by the learned Senior Counsel for the petitioner that as per Section 61 of the CGST Act, 2017 read with Rule 99 of the Rules the steps and the actions prescribed thereunder must be mandatorily be undertaken before a show cause notice can be issued under section 73(1) of the CGST Act, 2017. Referring to the relevant statutory provisions, the learned Senior Counsel submits that one of the mandatory steps prescribed under the law is the issuance of a notice in Form GST ASMT-10 for initiating scrutiny proceedings. The learned Senior Counsel submits that it is not disputed by the respondents that the notice in Form GST ASMT-10 was not issued. Consequently, the issuance of the impugned show cause notice under Section 73(1) of the CGST Act, 2017, without adhering to the prescribed statutory mandate under Section 61 of the CGST Act, 2017 read with Rule 99 of the CGST Rules, completely

vitiates the jurisdiction of the proper officer to issue the said show cause notice. It is therefore submitted that this impugned show cause notice has been issued without any authority of law and in excess of jurisdiction.

5. It is submitted by the learned Senior Counsel that Section 61 of the CGST Act, 2017 can be invoked only upon satisfaction of the jurisdictional fact that there was a discrepancy in the returns filed by the assessee and in the context of the present proceedings the purported discrepancy is in the context of Table 14 of Form GSTR-9C, the returns filed by the petitioner for the period 2017-2018. The learned Senior Counsel submits that by notifications and amendments to the relevant rules notified by the Government the filing of Table 14 was made optional for the period 2017-2018 and continued to remain optional in the subsequent years up to 2022–2023. Under such circumstances, the petitioner's company exercised its option not to submit the particulars under Table 14 as permitted by law. Therefore, as the filing up of the Table 14 was made optional and that option was exercised by the petitioner's company legitimately in view of the notifications issued, the same cannot give rise to any discrepancy as alleged by the respondent authority. Therefore, the jurisdictional fact and the necessary precondition for the invocation of Section 61 of the CGST Act, 2017 were not satisfied in the present case. Consequently, the steps taken by the respondent authority in issuing the impugned show cause notice are without any authority of law and amount to an improper and incomplete exercise of its jurisdiction. The learned Senior Counsel has referred to the relevant notification annexed to the pleadings to support his contention that a clear notification was issued by the competent authority, declaring the submission of information in Table 14 of FORM GSTR-9C to be optional for the

periods 2017-18 and 2018-19. The said exemption was extended till the financial year 2022-23 by issuing a series of notifications. The Impugned SCN has been issued invoking Section 61(1) of the CGST Act. The jurisdictional condition for the invocation of Section 61 is that the proper officer, while scrutinizing the correctness of the returns filed, discovers a "discrepancy" – which "discrepancy" is the cause of action for further proceedings. In the present case, the alleged discrepancy is that the Petitioner did not submit information in Table 14 in Form GSTR-9C and as a result, there was a mismatch with the details furnished in Form GSTR-9. By a series of Instructions/ Notifications issued from time to time during the relevant period, it is clear that submission of information in Table 14 of Form GSTR-9C was made optional. The various Instructions/ Notifications, whereby submission of information in Table 14 of Form GSTR-9C was made optional, are in chronological order listed hereunder. Since the submission of information in Table 14 of Form GSTR-9C was optional, there could arise no issue of either "error" or "discrepancy", from the non-filing of data in Table 14 of Form GSTR-9C. The entire cause of action in the Impugned SCN is directly contrary to and in the teeth of various Instructions/ Notifications issued by the Central Board of Indirect taxes and Customs ("CBIC"), a body formed under the aegis of Respondent No. 1, which were squarely binding on the Respondents. It is therefore apparent that the jurisdictional conditions to invoke Section 61 of the CGST Act are not satisfied in the present case. The Impugned SCN is issued ultra vires the provision of Section 61 of the CGST Act. The Impugned SCN is issued without the authority of law and in excess of jurisdiction. The Notifications/Instructions are summarized in chronological sequence hereunder:

*** With effect from 01.07.2017** – Form GSTR 9C with Table 14 containing details as to 'Reconciliation of ITC declared in Annual Return (GSTR9) with ITC availed on expenses as per audited Annual Financial Statement or books of account'. Instructions to the said GSTR 9C, in relation to the said Table 14, provided that: "This table is for reconciliation of ITC declared in the Annual Return (GSTR9) against the expenses booked in the audited Annual Financial Statement or books of account. The various sub-heads specified under this table are general expenses in the audited Annual Financial Statement or books of account on which ITC may or may not be available. Further, this is only an indicative list of heads under which expenses are generally booked. Taxpayers may add or delete any of these heads but all heads of expenses on which GST has been paid / was payable are to be declared here."

*** Notification No. 56/2019** – Central Tax dated 14.11.2019 - By way of an amendment, inserted the following in the instructions to the GSTR 9C in relation to the said Table 14:

"For FY 2017-18 and 2018-19, the registered person shall have an option to not fill this Table."

*** Notification No. 79/2020 – Central Tax dated 15.10.2020** - By way of an amendment, substituted the period "FY 2017-18 and 2018-19" in the relevant 'instruction' for Table 14 with "FY 2017-18, 2018-19 and 2019-20", and made the requirement of submission of information in Table 14 optional for all these periods.

*** Notification No. 30/2021 – Central Tax dated 30.07.2021** - Further extended the option of submission of information in Table 14 of Form GSTR-9C to the period FY 2017-18, 2018-19, 2019-20 and 2020-21.

*** Notification No. 14/2022 – Central Tax dated 05.07.2022** - Further extended the option of submission of information in Table 14 of Form GSTR-9C to the period FY 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22.

*** Notification No. 38/2023 – Central Tax dated 04.08.2023** - Further extended the option of submission of information in Table 14 of Form GSTR-9C to the period FY 2017-18, 2018-19, 2019-20, 2020-21, 2021-22 and 2022-23. The tax authorities (including Respondent Nos. 2 & 3) are creatures of statute. The provisions of the CGST Act and the related GST Laws are the prescriptive framework under which the tax authorities must exercise jurisdiction. The Instructions/ Notifications issued are an intrinsic part of the statutory framework within which the tax authorities must act. The tax authorities have no jurisdiction to act either in ignorance of or in a manner contrary to the prescribed framework of the law under which they operate. The tax authorities, while acting under the GST Laws, must strictly act within the four corners of the law, or not at all. Reliance in this regard is placed on the cases of Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. and Ors. (2003) 2 SCC 111 and Management, Asst. Salt Commr. vs. Secy, Cen. Salt Mazdoor Union 2008 (224) ELT 14 (S.C.). The clear and recurrent Instructions/ Notifications in respect of Form GSTR-9C have been that the submission of information in Table 14 was optional. Consequently, in issuing the Impugned SCN, Respondent Nos. 2 & 3 have acted in a manner which is arbitrary, perverse, without the authority of

law, and in excess of jurisdiction.

The petitioner further begs to submit that Respondent No.2 has illegally assumed the jurisdiction to issue the impugned SCN under Section 73(1) of the CGST Act in so much as they have failed to adhere to the mandatory pre-conditions prescribed under Section 61 read with Rule 99 (i.e., to issue Form GST ASMT-10) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules"). It is submitted that Section 61 of the CGST Act read with Rule 99 of the CGST Rules requires the proper officer to issue a notice in Form GST ASMT-10, informing the taxpayer of discrepancies in the returns filed by the taxpayer, if any.

As such therefore, failure to adhere to the preconditions prescribed under the CGST Act and Rules vitiates the jurisdiction of the proper officer and makes any consequent exercise of power arbitrary, illegal and ex-facie bad in law.

6. The learned Senior Counsel in support of his contention has referred to a judgment of the Rajasthan High Court rendered in *Joint Commissioner Vs. Goverdhandham Estate Pvt. Ltd. reported in (2025) 26 Centax 401 (S.C.)*. Referring to the said judgment, it is submitted that since the show cause notice is based solely on discrepancies found in the return and not on any other independent material, the proper officer is obliged under law to comply with the mandate of Section 61 before invoking jurisdiction under Section 73 of the Act. In the proceedings before the Rajasthan High Court the jurisdiction under section 73 has been invoked and show cause notice was issued on the basis of

discrepancies found in the return. If that be so, the jurisdiction under section 73 could be invoke only after complying with the mandate of Section 61 and not otherwise.

7. The learned Senior Counsel therefore submits that the judgment of the Rajasthan High Court squarely covers the issues raised in the present proceedings. That apart during the pendency of the present proceedings the SLP filed against the judgment of the Rajasthan High Court by the revenue stood dismissed by order dated 14.10.2024 in SLP (Civil) Diary No(S). 37824 of 2024 (*Joint Commissioner vs. Goverdhandham Estate Pvt. Ltd. reported in (2025) 26 Centax 401 (S.C.)*). It is therefore submitted that, in view of the judgment of the Rajasthan High Court having been affirmed by the Apex Court, the matter is squarely covered by the judgment of the Rajasthan High Court. Since the circumstances in the present proceedings are identical to those before the Rajasthan High Court, the petition should be allowed, and consequently, the impugned show cause notice ought to be interfered with, set aside, and quashed.

8. The respondents have contested the case projected by the writ petitioner by filing their affidavits.

9. Mr. S.C. Keyal, learned Standing Counsel, GST submits that the adjudicating authority while issuing the demand cum show cause notice gave five opportunities on various dates for personal hearing in respect of the demand cum show cause notice bearing E-File No. GEXCOM/ADJN/GST/ADC/297/2023 dated 05.09.2023 but the petitioner neither attended any of the personal

hearings to present his concerns before the adjudicating authority nor submitted any reply to the said demand cum show cause notice.

10. The learned Senior Counsel submits that the information required to be entered in Table 14 of Form GSTR-9C pertains to the expenses incurred by the taxpayer, which may include inputs, capital goods, or services. These goods and services procured may be taxable or exempted and may have been procured from registered or unregistered dealers. Consequently, Table 14 of Form GSTR-9C reconciles the expenses incurred with the Input Tax Credit (ITC) availed, including any excess ITC availed due to the taxpayer's ineligibility and/or blocked credits and the composition scheme. It is submitted that the furnishing of information under Table 14 of FORM GSTR-9C was mandatory; therefore, the issuance of the show cause notice invoking Section 61 of the CGST Act is legally valid.

11. Consequently, the revenue is empowered to issue the impugned demand cum show cause notice in terms of Section 73(1) of the CGST Act, 2017 read with Circular No.31/05/2018-GST, New Delhi, 9th February, 2018 issued by the Central Board of Excise and Customs. The learned counsel for the respondents submits that a statutory remedy is available under the CGST Act, 2017. It is therefore submitted that the petitioner did not avail of the statutory remedy prescribed before approaching this Court.

12. In support of his contentions the learned for the respondent refers to the judgment rendered in *M/s. Mandarin Apartment Owners Welfare Association v. Commercial Tax Officer* and *M/S.Vadivel Pyrotech Private Limited vs The*

Assistant Commissioner (St) judgment dated 27.09.2022 passed by the Madras High Court.

13. By pressing these judgments, the learned for the respondent submits that it is mandatory to furnish information under Table 14 of Form GSTR-9C. He also refers to the judgments rendered in *Brahmaputra Television Network vs Union of India* is reported as 2024 0 Supreme, GAU 855, *Commissioner of Income Tax & Ors. vs. Chhabil Dass Agarwal* reported in (2014) 1 SCC 603, *Union of India vs. Coastal Container Transporters Association* reported in (2019) 20 SCC 446 and *GNRC Limited vs. Union of India*, reported in (2024) SCC Online GAU 2074.

14. In rejoinder, the learned Senior Counsel for the petitioner submits that the instructions and notifications issued by the appropriate Government have repeatedly reiterated that the submission of information in Table 14 of Form GSTR-9C is optional; therefore, the entire basis for issuing the show cause notice is directly contrary to these notifications and is without any authority of law. It is further submitted that no disputed question of law arises in the present proceedings, as is clearly reflected in the order dated 13.12.2023 passed by the Co-ordinate Bench of this Court while issuing notice and granting interim protection to the petitioner. Therefore, the issues raised in the present proceedings are purely questions of law, and this Court has ample jurisdiction to entertain them. The assumption of jurisdiction by the proper officer is being assailed in the present proceedings as unauthorized and without legal sanctity; consequently, the show cause notice issued is without any authority of law and calls for interference by this Court. It is submitted that when the question of

jurisdiction of a competent officer is raised, the Writ Court has jurisdiction to invoke judicial review under Article 226, notwithstanding the availability of any alternative remedy. In support of his contentions, the learned counsel for the petitioner refers to the judgment rendered in *Godrej Sara Lee v. Excise and Taxation Officer-cum-Assessing Authority and Others reported in (2023) SCC Online SC 95*.

15. Countering the submissions made by the respondent counsel that the matter can be remanded back to the Department for taking necessary steps for issuance of FORM GST ASMT-10, the learned Senior Counsel, referring to Notification No. 9/2023-Central Tax dated 31.03.2023, submits that even the Standard Operating Procedure (SOP) mandates that FORM GST ASMT-10 must be issued within one month of the filing of the returns.

16. Under such circumstances, any proceedings pertaining to the financial years 2017-18, including those under Section 73 of the CGST Act, 2017, are infructuous as they are barred by limitation prescribed under the CGST Act itself. Consequently, all the time limits prescribed under the statute, as well as relevant notifications, circulars, and instructions, have been exhausted.

17. Additionally, the learned Senior Counsel further submits in rejoinder that the respondents cannot take refuge under Section 75 of the CGST Act, which prescribes that the period of stay granted by a Court is to be excluded for the purpose of computing limitation, as this provision applies only when the stay is granted before the commencement of the limitation period. In the present case, the interim order was granted on 13.12.2023, by which date the time limit for

issuance of the show cause notice for the financial year 2017-18 had already expired on 30.09.2023. Consequently, any fresh reconsideration of the present case is not tenable under the express provisions of the Act.

18. Under such circumstances, the learned Senior Counsel submits that the impugned show cause notice be interfered with and set aside, and the writ petition be allowed by issuing an appropriate writ, direction, or order without relegating the petitioner to avail the departmental remedy, as such remedy would not provide an efficacious solution or justice to the petitioner.

19. The learned counsel for the parties have been heard and the pleadings available on record have been carefully perused as well as the judgments pressed into service have also been carefully noted.

20. The case projected before this Court is that the impugned demand-cum-show cause notice dated 05.09.2023 issued by the respondent/revenue, is without jurisdiction in view of the non-compliance with the procedures laid down under Section 61 of the CGST Act, 2017, read with Rule 99 of the CGST Rules.

21. It is the case of the petitioner before this Court that, before a demand-cum-show cause notice, as issued in the present case, can be initiated under Section 73(1) of the CGST Act, 2017, the proper officer is required to first adhere to the procedure prescribed under Section 61 of the Act, read with Rule 99 of the CGST Rules. The procedure prescribed under Section 61 of the CGST Act, 2017, read with Rule 99 of the Rules, must be mandatorily followed. A reference in

this context would be necessary to Section 61 and the relevant rules. Section 61 reads as under:

“Section 61. Scrutiny of returns.-

(1) The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.

(2) In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

(3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.”

Rule 99 reads as under:

“Rule 99 : Scrutiny of Returns

(1) Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same in accordance with the provisions of section 61 with reference to the information available with him, and in case of any discrepancy, he shall issue a notice to the said person in FORM GST ASMT-10, informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding thirty days from the date of service of the notice or such further period as may be permitted by him and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.

(2) The registered person may accept the discrepancy mentioned in the notice issued under sub-rule (1), and pay the tax, interest and any other amount arising from such discrepancy and inform the same or furnish an explanation for the discrepancy in FORM GST ASMT-11 to the proper officer.

(3) Where the explanation furnished by the registered person or the information submitted under sub-rule (2) is found to be acceptable, the proper officer shall inform him accordingly in FORM GST ASMT-12.”

For convenience section 73 is also extracted:

“(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 order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under subsection (1) or, as the case

may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by 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. From the above, it is evident that under Section 61, the proper officer is

required to scrutinize the return and the related particulars furnished by the registered person to verify their correctness and, if any discrepancies are noticed, to inform the registered person in the prescribed manner. If the explanation provided by the registered person is found to be acceptable, the officer shall inform the registered person accordingly, and no further action is required to be taken in this regard. In the event that no satisfactory explanation is furnished within a period of 30 days from the date on which the discrepancies are communicated by the proper officer, or within such further period as may be permitted by him, or where the registered person, after accepting the discrepancies, fails to take corrective measures in the return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action, including proceedings under Section 65, 66, or 67, or proceed to determine the tax and other dues under Section 73 or 74 of the CGST Act.

23. A reading of Rule 99(1) makes it clear that where the return furnished by the registered person is selected for scrutiny, the proper officer shall scrutinize the same in accordance with the provisions of Section 61, with reference to the information available with him. In the event any discrepancy is noticed, a notice is required to be issued to the said person in Form GST ASMT-10, informing him of such discrepancy and calling for his explanation within a period not exceeding 30 days.

24. A reading of Section 61 of the CGST Act, 2017, along with Rule 99 of the CGST Rules, makes it clear that the mandate of the Act, when read with the Rules, is that where, upon filing of returns by the assessee and subsequent scrutiny by the proper officer, discrepancies are noticed, the proper officer is

required to intimate such discrepancies to the assessee by issuing a notice in Form GST ASMT-10. Where the assessee accepts the discrepancies and submits an explanation within the prescribed period of 30 days, and such explanation is found to be acceptable by the proper officer, then no further action is required to be taken. It is only in the event that no satisfactory explanation is received within 30 days of the communication of discrepancies, or within such further period as may be permitted by the proper officer, or where the registered person, after accepting the discrepancies, fails to take corrective measures in the return for the relevant month, that the proper officer may initiate appropriate action, including proceedings under Section 73 of the CGST Act.

25. The question that therefore arises is whether a demand-cum-show cause notice issued under Section 73 of the CGST Act, based solely on discrepancies noticed in the returns filed, could have been validly issued by the proper officer without due compliance with the procedure prescribed under Section 61 read with Rule 99 of the CGST Rules.

26. Section 73 deals with the 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, willful misstatement, or suppression of facts. It is under these circumstances that demands and recovery can be ordered by the proper officer, in accordance with the procedure prescribed under Section 73.

27. A bare perusal of Section 73 reveals that the proceedings under Section 73 can also be initiated in cases where Input Tax Credit has been wrongly availed or utilized under the provisions of the GST Act, 2017 the assessment procedure

is prescribed under Chapter XII. Essentially GST is a self assessed tax payable under the Act. The registered person shall self assess the taxes payable and furnish a return for each period as specified under section 39. Where the person is unable to determine the value of goods or services or both or determine the rate of tax payable, then the provisions under section 60 will be applicable. In order to verify the correctness of returns submitted by the assessee under Chapter XII, the only provision prescribed is Section 61, which deals with the scrutiny of returns. Section 64 provides for summary assessment in special cases. Therefore, before issuing a demand-cum-show cause notice under Section 73 to a registered person, the proper officer must conclude that the registered person has wrongly availed or utilized Input Tax Credit. From the scheme of the Act read with the Rules, such conclusion and finding by the proper officer can only be arrived at upon scrutiny of the returns. Such scrutiny of the return is specifically provided for under section 61. Under the said chapter there is no other provision which provides for any other procedure for scrutiny of returns. Therefore, for the proper officer to arrive at a conclusion that there was wrongful utilization or availment of Input Tax Credit, the procedure followed must be in accordance with the provisions prescribed under Section 61. Therefore, for the proper officer to arrive at a conclusion that a discrepancy was noticed in the returns filed, and to issue a demand-cum-show cause notice under Section 73 and initiate other proceedings contemplated thereunder, the proper officer must first arrive at a finding as specified under Section 61(3).

28. In a given case if the discrepancies were notified to the registered person and such discrepancies were accepted and/or rectified, then under section 61(2)

no further proceedings is contemplated. Therefore from the facts which are placed before the Court by way of the pleadings, it is clear that no such proceedings was undertaken as contemplated under Section 61 of the GST Act read with Rule 99. Consequently, it prima facie appears that there is no basis for the proper officer to proceed with issuing the show cause notice under Section 73, as a bare reading of the impugned notice clearly reflects that it has been issued solely on the basis of a discrepancy noticed regarding wrongful availment or utilization of Input Tax Credit by the registered person. The absence of any procedure required to be undertaken by the proper officer as mandated under section 61 does not reflect that any opportunity to the petitioner was given as contemplated under section 61 by issuance of GST ASMT-10 Form or notice. Consequently, there was no opportunity granted to the petitioner to explain before the proper officer in respect of the discrepancies purported to have been noticed by the proper officer. The provisions of Section 73 are very specific and are meant for the recovery or determination of tax not paid or short paid, or Input Tax Credit wrongly availed or utilized, for any reason other than fraud. Therefore, where the statute itself prescribes a procedure enabling the registered taxpayer to rectify any defects, subject to such defects being brought to their notice as per the prescribed procedure, and if the explanation or rectification offered is found acceptable by the proper officer, there arises no occasion to invoke proceedings under Section 73, as has been purportedly done by the issuance of the impugned show cause notice. That opportunity mandated by the act appears to have not been furnished to the registered office.

29. In the facts of the case before the Rajasthan High Court, upon scrutiny of the returns filed by the assessee, discrepancies were noticed by the proper

officer, and a notice dated 01.09.2023 in the prescribed Form GST ASMT-10 was issued, intimating the discrepancies and initiating proceedings under Section 61 of the CGST Act, 2017, for the financial year 2017-18. The discrepancy notice pertained to the Input Tax Credit availed by the assessee, which, according to the revenue, was wrongly availed; accordingly, the assessee was put on notice to reverse the tax specified in the notice issued in Form GST ASMT-10. The assessee was called upon to furnish explanations on or before the date specified therein. In response to the said notice, the assessee submitted the preliminary reply. Although further time was sought to furnish a detailed reply, the assessee subsequently submitted a reply justifying the grounds on which the Input Tax Credit was availed. The respondent authority thereafter issued show cause notice under section 73 for initiating recovery proceedings.

30. On the facts of the case, the Rajasthan High Court held that although the explanation furnished by the assessee therein was found to be satisfactory, yet the proceedings for recovery of tax was initiated. It was held that as per procedure prescribed under Section 61 of the Act of 2017 read with Rule 99 of the Rules of 2017. The Rajasthan High Court, after a detailed discussion on Section 61 of the CGST/ RGST Act, 2017, held that the show cause notice issued to the petitioner was in violation of the provisions of Section 61. Consequently, both the show cause notice and the assumption of powers under enclosure ASMT-12 were declared illegal and unsustainable in law, and were therefore set aside. The relevant paragraphs of the said judgment is extracted below:

“15. Chapter XII of the RGST Act, 2017 deals with assessment. Section 59 provides for self-assessment. Section 60 makes provision with regard to provisional assessment. Section 61 provides for scrutiny or returns. The aforesaid provision being relevant for adjudication of the controversy

involved in the instant writ petition is extracted hereinbelow:-

"Section 61. Scrutiny of Returns.

(1) The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.

(2) In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

(3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74."

16. *Sub-Section (1) of Section 61 authorises the proper officer to scrutinise the return and related particulars furnished by the registered persons to verify the correctness of the return and inform him of the discrepancies noticed, if any, in prescribed manner and seek his explanation thereto. Sub-Section (2) and Sub-Section (3) deal with different contingencies. While sub-section (2) provides for the course of action that may be adopted in a case where explanation is found acceptable, sub-section (3) deals with the procedure to be followed in case no satisfactory explanation is furnished within a stipulated period or where after accepting discrepancy, the person concerned fails to take corrective measures in its return.*

17. *A fair, logical construction and interpretation of the aforesaid provision would mean that once the proper officer undertakes scrutiny of return and comes across any discrepancies in the said return, he may seek explanation. Where explanation is found acceptable, the registered person is required to be informed accordingly and no further action is required to be taken in this regard. It is only when no satisfactory explanation is furnished within the stipulated period or where discrepancy having been*

accepted, corrective measures are not taken, the proper officer assumes jurisdiction to initiate appropriate proceedings under Sections 65 or 66 or 67 or proceed to determine the tax and other dues under Section 73 or Section 74. That is discernible on plain reading of the aforesaid provision.

18. *In the present case, once notice under Section 61 was issued to the petitioner requiring its explanation pointing out certain discrepancies from the return, the proper officer, before he could assume jurisdiction to issue show cause notice under Section 73 of the Act, was mandated under the law to consider the explanation offered by the petitioner.*

19. *True it is that the petitioner, when he submitted a reply on 15.09.2023 sought some more time. However, at the same time, the petitioner submitted its preliminary reply also. The course of action which could be adopted in such cases was either to issue a communication extending time for giving explanation/detailed reply or to apply mind to whatever reply was submitted before the authority. The statutory scheme engrafted in Section 61 does not allow the authority to invoke powers under Section 73 of the Act and issue show cause notice unless the explanation submitted by the registered person is considered. At this stage, we may notice that the expression contained in sub-section (3) of Section 61 clearly indicates that on the explanation offered, proper officer is required to apply its mind. The expression "in case no satisfactory explanation is furnished" is required to be rationally construed and interpreted to make it meaningful and not empty formality. The aforesaid provision is required to be interpreted in the manner that the explanation offered by the registered person is to be examined by the proper officer. Once an explanation is offered, the proper officer is obliged under the law to examine the same and record its own reasons to conclude whether there is satisfactory explanation furnished.*

20. *If we look into the notice dated 21.09.2023 issued in purported exercise of power under Section 73 of the Act, we find that the notice nowhere records that the explanation offered by the petitioner was not found to be satisfactory.*

21. *Though learned counsel for the respondents has submitted that this notice reveals consideration on explanation also, we do not find any such consideration in the said notice. The authority has reproduced the provision contained in Section 17(5) of the Act and it has been recorded as below:-*

"As such, it appears that the input tax credit claimed in the GSTR 3B returns is not available as per section 17(5) of RGST Act and Central GST Act for 2017-18 and is inadmissible in accordance with law."

22. *The petitioner has specifically stated in its reply that the lift and air conditioners formed part of plant and machinery therefore it is entitled to avail ITC. This specific assertion was not considered anywhere in the show cause notice. Therefore, even assuming that in the show cause notice itself, application of mind could be reflected, we find that the contents of notice under Section 73 fall short of this legal requirement.*

23. *The submission of learned counsel for respondents that the power under Section 73 could be invoked irrespective of whether satisfaction in terms of Section 61(3) was arrived at or not is misplaced both in law and on facts. Where show cause notice is based on discrepancies found in the return and not on any other independent material, the proper officer is obliged under the law to follow the mandate of Section 61 before invoking jurisdiction under Section 73 of the Act. Present is not a case that on any other material, the proceedings under Section 73 were initiated. Present is, on facts, a case where jurisdiction under Section 73 has been invoked and show cause notice has been issued on the basis of discrepancies found in the return. If that be so, jurisdiction under Section 73 could be invoked only after complying with the mandate of Section 61 and not otherwise. For that reason, reliance placed on the decision of the Division Bench of Allahabad High Court in the case of Nagarjuna Agro Chemicals Pvt. Ltd. (supra) is completely misplaced, being distinguishable. On facts, that was not a case where proceedings under Section 73 were initiated on the basis of scrutiny of return. The Department had not initiated any action referable to Section 61 of the Act but independent of that, on certain grounds with regard to classification and consequential tax payable on certain goods. The question which arose for consideration was whether the Department is enjoined to issue a notice under sub-section (3) of Section 61 of the CGST Act, 2017 once returns have been submitted by the assessee before initiating action under Section 74 of the Act or not. While deciding the aforesaid issue, it was held that scrutiny proceedings of return as well as proceedings under Section 74 are two separate and distinct exigencies and therefore, issuance of notice under Section 61(3) cannot be construed as a condition precedent for initiation of action under Section 74 of the Act.*

24. *At the cost of reiteration, we noticed that present is not a case where jurisdiction under Section*

73 has been assumed on ground other than discrepancies found in the return.

25. *In the present case, the invocation of jurisdiction under Section 73 is based on discrepancies found in the return. If that be so, the mandate of Section 61 is required to be followed by the proper officer before assuming jurisdiction under Section 73 of the Act.*

26. *What is apparent from the record is that initially proceedings under Section 73 were initiated without consideration of the explanation offered by the petitioner and during the pendency of those proceedings the authorities did consider the petitioner's explanation and a communication in form GST ASMT -12 was issued to the petitioner on 29.09.2023. This clearly refers to order of acceptance of reply against notice issued under Section 61 of the Act. The communication says that with reference to reply submitted by the petitioner, details of which are mentioned in the table given therein the reply submitted by the petitioner has been found to be satisfactory and no further action is required to be taken in the matter. This communication is clearly referable to the provisions contained in Section 61(2) read with Rule 99 of the CGST Rules. Sub-Section (2) of Section 61 clearly states that in case explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard. We may also carefully refer to the provisions contained in Rule 99 which read as below:-*

"99. Scrutiny of returns. - (1) *Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same in accordance with the provisions of section 61 with reference to the information available with him, and in case of any discrepancy, he shall issue a notice to the said person in FORM GST ASMT-10, informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding thirty days from the date of service of the notice or such further period as may be permitted by him and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such*

(2) The registered person may accept the discrepancy mentioned in the notice issued under sub-rule (1), and pay the tax, interest and any other amount arising from such discrepancy and inform the same or furnish an explanation for the discrepancy in FORM GST ASMT-11 to the proper officer.

(3) Where the explanation furnished by the registered person or the information submitted under sub-

rule (2) is found to be acceptable, the proper officer shall inform him accordingly in FORM GST ASMT-12."

27. *Considering the statutory scheme as engrafted in Section 61(2) read with Rule 99 of the Rules, there is clear scheme of statute that once the explanation with regard to discrepancy in the return is offered and accepted, further proceedings are not required to be drawn.*

28. *Learned counsel for the respondents laid much emphasis on the enclosure to ASMT-12. It appears that the proper officer under a misconceived notion of law sought to retain jurisdiction contrary to the provisions of law. Where the discrepancy in the return is found, the law requires explanation to be obtained from the registered person. The power under Section 73 could be invoked only when the explanation offered is not satisfactory. Once the explanation is accepted, no further proceedings could be drawn.*

29. *In view of above, the show cause notice issued to the petitioner is found against the provisions contained in Section 61 of the Act.*

Resultantly, the show cause notice as well as the assumption of power under enclosure to ASMT-12 both are declared illegal and unsustainable in law and therefore set aside.

30. *Accordingly, the petition stands allowed. No order as to costs."*

31. The learned Senior Counsel for the petitioner has placed before the Court the order dated 14.10.2024 passed in SLP(Civil) Diary No(S). 37824 of 2024 decided on 14.10.2024. By the said order the SLP preferred by the revenue against the judgment of the Rajasthan High Court stood dismissed.

32. Consequently, the view rendered by the Division Bench of the Rajasthan High Court in *Goverdhandham Estate Pvt. Ltd. (supra)* has attained finality. From the perusal of the judgment rendered by the Division Bench of the

Rajasthan High Court, it is evident that the Court held that where the procedure prescribed under Section 61 read with Rule 99 was not followed, and the explanation of the assessee to the discrepancies pointed out by the revenue was found to be satisfactory. There was no scope for the Authority to proceed any further. In the said case also the show cause notice was issued on the ground of discrepancies noticed in respect of utilization of Input Tax Credit and notwithstanding the explanation furnished by the assessee found to be satisfactory, the revenue proceeded to invoke the provisions under section 73 of the GST/SGST Act, 2017 and the Rajasthan High Court in view of the specific provisions under section 61 and the procedure prescribed has struck down the show cause notice.

33. Coming to the facts of the present case, it is seen that the only ground for issuance of the show cause notice is demand of tax for wrong availment of Input Tax Credit amounting to Rs.19,51,41,111/- by the petitioner. This assumption of power by the respondent authority under section 73 has to be preceded a conclusion arrived at by the revenue. As have been discussed above, the provision for scrutiny of returns is specified under section 61. The mandate of section 61 is very clear and any discrepancy noticed in the returns filed and which are scrutinized by the revenue is to be confronted to the registered dealer in Form GST ASMT-10. This admittedly was not done and this is also not disputed by the revenue in its pleadings before this Court. Consequently, the procedure prescribed under section 61 was not followed and on the basis of the non disclosure of information under Table 14 of Form GSTR-9C which was considered to be mandatory by the revenue required invocation of the powers of the proper officer under section 73.

34. The further question urged before this Court is whether the information sought for under Table 14 of Form GSTR-9C was mandatorily required to be furnished by the assessee was optional and therefore was not submitted by the assessee as erupted for non submission of the said form. This is disputed by the respondent authority that the submission of the information in the form was mandatory and not optional at the instance of the assessee. The assessee refers to various circulars to support the contention that the circulars issued by the competent authority in the Government clearly established that the information required to be furnished under Table 14 of GSTR-9C was optional and not mandatory, contrary to the respondents' assertion. The circulars pressed by the petitioner in support of its contention that the information required to be furnished under Table 14 of GSTR-9C was optional will be referred to later in the paragraphs. However, even assuming that this information was mandatory and was not furnished by the petitioner, this non-furnishing formed the basis of the discrepancy noticed by the revenue; therefore, if jurisdiction under Section 73 of the CGST Act, 2017, was to be invoked, the procedure prescribed under Section 61 was nonetheless mandatorily required to be followed by the revenue. The revenue was duty bound in law to bring this discrepancy to the notice requiring the assessee to submit its explanation as per the procedure prescribed. It is only in the event of the assessee failure to submit explanation as required and/or in the event the explanation was not found satisfactory, the proceedings under section 73 could have been invoked. No other provision under the Act has been pointed out by the revenue to support their contention that the discrepancy noticed was due to the assessee's failure to furnish information under Table 14 of GSTR-9C, which was mandatory; therefore, proceedings under Section 73 could have been invoked without following the procedure

prescribed under Section 61 of the Act, 2017.

35. By notification No.56/2019 dated 14.11.2019 (Annexure 3 to the writ petition relevant portion at page 66) the competent authority has notified that the submission of information in Table 14 in Form GSTR-9C was optional for the period 2017-18 and 2018-19. The same exemption was further extended till the period of financial year 2022-2023 by series of notifications being notification No. 79/2020-Central Tax dated 15.10.2020, Notification No. 30/2021-Central Tax dated 30.07.2021, Notification No.14/2022-Central Tax dated 05.07.2022 and Notification No.38/2023-Central Tax dated 04.08.2023.

36. The position that is evident from the pleadings in respect of the notifications issued by the competent authority whereby submission of information in Table 14 in Form GSTR-9C was made optional for the assessment year 2017-18 till the year 2022-23, is not disputed by the revenue.

37. Under such circumstances, the revenue was duty bound to comply with the decisions taken by the competent authority in the Finance Department. It is a settled law that circulars issued by the Department are binding on the Revenue authorities. In *Commr. Of Customs Vs. Indian Oil Corpn. Ltd. reported in (2004) 3 SCC 488*, the Apex Court in this judgment after considering the earlier precedents culled out the principles in this regard. The relevant paragraphs of the said judgment is extracted below:-

“**9.** This Court has, in a series of decisions, held that circulars issued under Section 119 of the Income Tax Act, 1961 and Section 37-B of the Central Excise Act are binding on the Revenue. [See *Navnit Lal C. Jhaveri v. K.K. Sen*, (1965) 56 ITR 198 (SC); *Ellerman Lines Ltd. v. CIT*, (1972) 4 SCC 474 : 1974

SCC (Tax) 304 : (1971) 82 ITR 913 : AIR 1972 SC 524; K.P. Varghese v. ITO, (1981) 4 SCC 173 : 1981 SCC (Tax) 293 : AIR 1981 SC 1922; Union of India v. Azadi Bachao Andolan, (2003) 8 Scale 287, 308; CCE v. Usha Martin Industries, (1997) 7 SCC 47 : (1997) 94 ELT 460; Ranadey Micronutrients v. CCE, (1996) 10 SCC 387 : (1996) 87 ELT 19; CCE v. Jayant Dalal (P) Ltd., (1997) 10 SCC 402 : (1996) 88 ELT 10; CCE v. Kores (India) Ltd., (1997) 10 SCC 338 : (1997) 89 ELT 441; Paper Products Ltd. v. CCE, (1999) 7 SCC 84 : (1999) 112 ELT 765; Dabur India Ltd. v. CCE, (2003) 157 ELT 129]

10. *The somewhat different approach in Hindustan Aeronautics Ltd. v. CIT [(2000) 5 SCC 365] by two learned Judges of this Court, apart from being contrary to the stream of authority cannot be taken to have laid down good law in view of the subsequent decision of the Constitution Bench in CCE v. Dhiren Chemical Industries (I) [(2002) 2 SCC 127] . After this Court had construed an exemption notification in a particular manner, it said: (SCC p. 130, para 11)*

“11. We need to make it clear that, regardless of the interpretation that we have placed on the said phrase, if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding upon the Revenue.”

11. *Despite the categorical language of the clarification by the Constitution Bench, the issue was again sought to be raised before a Bench of three Judges in CCE v. Dhiren Chemical Industries (II) [(2002) 10 SCC 64 : (2002) 143 ELT 19] where the view of the Constitution Bench regarding the binding nature of circulars issued under Section 37-B of the Central Excise Act, 1944 was reiterated after it was drawn to the attention of the Court by the Revenue that there were in fact circulars issued by the Central Board of Excise and Customs which gave a different interpretation to the phrase as interpreted by the Constitution Bench. The same view has also been taken in Simplex Castings Ltd. v. Commr. of Customs [(2003) 5 SCC 528] .*

12. *The principles laid down by all these decisions are:*

(1) Although a circular is not binding on a court or an assessee, it is not open to the Revenue to raise a contention that is contrary to a binding circular by the Board. When a circular remains in operation, the Revenue is bound by it and cannot be allowed to plead that it is not valid nor that it is contrary to the terms of the statute.

(2) Despite the decision of this Court, the Department cannot be permitted to take a stand contrary to the instructions issued by the Board.

(3) A show-cause notice and demand contrary to the existing circulars of the Board are ab initio bad.

(4) It is not open to the Revenue to advance an argument or file an appeal contrary to the circulars."

38. In view of the aforesaid discussion, it is evident that the petitioner's contention that furnishing information under Table 14 in Form GSTR-9C was made optional by the competent authority for the Government holds merit. Accordingly, the assessee chose not to submit the same. If, during scrutiny, such information was deemed necessary to determine whether the utilization of Input Tax Credit by the assessee was proper or involved wrongful availment, the revenue was legally obligated to bring these discrepancies to the assessee's notice by issuing Form GST ASMT-10, as prescribed under Section 61 of the CGST Act, 2017. The failure to do so clearly indicates that the demand and recovery proceedings initiated under Section 73 were without a proper finding that the amount sought to be recovered was wrongfully availed by the petitioner. The scheme of the act itself clearly provides that an opportunity must be granted to the assessee to rectify or at least explain the discrepancies found by the revenue in the scrutiny of the returns. This opportunity was admittedly not offered to the assessee. The revenue, without calling for any explanation from the assessee proceeded to initiate proceeding pass under section 73 by issuing the impugned show cause notice.

39. Under such circumstances, in view of the discussions above read with the

judgment of the Rajasthan High Court rendered in *Joint Commissioner vs. Goverdhandham Estate Pvt. Ltd. (supra)* and which came to be confirmed by dismissal of the SLP filed by the revenue, this Court is of the considered view that the invocation of jurisdiction under Section 73, without mandatorily following the procedure prescribed under Section 61 read with Rule 61 of the Act, 2017, read with Rule 99 of the Rules, 2017, is contrary to the prescribed procedure and opposed to the very scheme of the Act. This Court holds that the revenue, through the proper officer, invoked its jurisdiction under Section 73 without due compliance with the procedure prescribed under Section 61; therefore, such invocation of jurisdiction is completely unauthorized, and consequently, all further actions taken thereunder must be held to be contrary to the provisions of law.

40. Coming to the objections raised by the revenue that alternative remedy being available and therefore, this writ petition is not maintainable and liable to be dismissed; the petitioner may be relegated to avail the statutory remedy prescribed under the relevant provisions, in this context it is necessary to refer to the judgments of the *Apex Court rendered in Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority and others reported in (2023) SCC Online SC 95, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others reported in (1998) 8 SCC 1, Union of India & Ors. v. Coastal Container Transporters Association & Ors reported in 2019 (20) SCC 446.* The law enunciated by the Apex Court is very clear that where the jurisdiction invoked by a statutory authority is unauthorized and contrary to the statutory provisions itself, presence of alternative remedy, including statutory remedy is not a bar for invoking the jurisdiction under Article 226 of the Constitution of India.

41. In that view of the matter, the objections raised by the revenue that the presence of statutory alternative remedy would bar judicial review under 226 is cannot be accepted and therefore rejected.

42. In so far as the contention of the revenue that the furnishing of the information under Table 14 in Form GSTR-9C is mandatorily required, as have been discussed above, although no material has been placed by the revenue in support of such contentions by referring to the relevant provisions of the Act, Rules and/or any circular or notification issued by the Board, this question in view of the discussions above and more particularly in view of the decision of the Rajasthan High Court rendered in *Joint Commissioner Vs. Goverdhandham Estate Pvt. Ltd. (supra)* and subsequently affirmed by the Apex Court is not required to be discussed at this stage. The judgments referred by the revenue also are not required to be discussed.

43. In view of the above discussions and the findings of the Rajasthan High Court in *Joint Commissioner Vs. Goverdhandham Estate Pvt. Ltd. (supra)* which stood affirmed by the Apex Court vide its order dated 14.10.2024 in SLP(Civil) Diary No(s). 37824 of 2024. The assessee cannot proceed to invoke the provisions under Section 61 as the same would now be barred by limitation.

44. This writ petition therefore stands allowed, impugned show cause notice stands set aside.

45. Interim order, if any, passed earlier stands merged.

46. Pending interlocutory application, if any, is also disposed of.

JUDGE

Comparing Assistant