

GAHC010044382026



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

**Case No. : WP(C)/1359/2026**

MAHESH KUMAR AGARWALA  
SON OF MEGHRAJ AGARWALA, PROPRIETOR, M/S GANESH ENTERPRISE,  
KABAITARY, JOGIGHOPA, BONGAIGAON, PIN-783382, ASSAM

VERSUS

THE UNION OF INDIA AND 3 ORS.  
THROUGH THE SECRETARY, MINISTRY OF FINANCE, DEPARTMENT OF  
REVENUE, NEW DELHI-110001

2:THE PRINCIPAL COMMISSIONER  
CENTRAL GOODS AND SERVICE TAX AND CENTRAL EXCISE  
COMMISSONERATE  
GHY  
GST BHAWAN  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI-781001

3:THE JOINT COMMISSIONER  
CENTRAL GOODS AND SERVICE TAX AND CENTRAL EXCISE  
COMMISSIONERATE  
GHY  
GST BHAWAN  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI- 781001

4:THE ADDITIONAL COMMISSIONER  
CENTRAL GOODS AND SERVICE TAX AND CENTRAL EXCISE  
COMMISSONERATE  
GHY

GST BHAWAN  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI-78100

**Advocate for the Petitioner** : MS. B S GOYAL, MS B CHAUHAN,MS. N RAJMEDHI,MR. A J HAZARIKA

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

**BEFORE**  
**HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

**ORDER**

**09.03.2026**

Heard Ms. BS Goyal, learned counsel for the petitioner, who has put to challenge an order dated 30.09.2025 passed under Section 74 of the CGST Act confirming a demand of Rs.7,59,52,817/- with interest and penalty on the allegation of wrongful availment of Input Tax Credit (ITC).

2. Also heard Shri K. Jain, learned counsel appearing on instruction of Shri S.C.Keyal, learned Senior Standing Counsel, CGST.

3. It is contended by Ms. Goyal, learned counsel for the petitioner that there is wrong invocation of Section 74 of the Act which essentially requires misstatement and suppression which is not there in the instant case. She has also submitted that though there is a provision for preferring appeal, the said provision is onerous inasmuch as, it requires pre-deposit of 10% of the amount involved.

4. Shri Jain, the learned counsel for the respondents has however submitted that the impugned order is a reasoned one wherein there is a specific finding on the aspect of misstatement and suppression of material facts which is in connection with submission of fake invoices.He has submitted that there is a

specific finding that there was no e-way bills from the records of the toll plaza enroute from Meghalaya to Bongaigaon (Assam).

5. A bare perusal of the impugned order dated 30.09.2025 would reveal that the same has cited reasons for coming to the conclusion. The order also appears to have taken into consideration the relevant factors. It is trite law that while exercising certiorari jurisdiction, this Court is not required to go to the adequacy and sufficiency of reasons, unless the reasons are absolutely perverse or accentuated by *mala fide*.

6. This Court has also noticed that there is a specific prayer for allowing the petitioner to prefer a statutory appeal without insisting on the mandatory pre-deposit. For ready reference, the relevant part of the relief prayed for is extracted hereinbelow:

*“In the premises aforesaid it is humbly prayed that this Hon'ble Court may be pleased to call for the records, issue notice calling upon the respondents to show cause as to why a Writ in the nature of Mandamus and/or Certiorari be not issued calling upon the respondents to show cause as to why the Writs/Directions prayed for shall not be issued and on cause or causes shown and after hearing the parties be pleased to-*

*a) ...*

*b) ...*

*c) Issue a Writ in the nature of Mandamus, directing Respondent No.3 to entertain the Petitioner's statutory appeal without insisting on mandatory pre-deposit or upon such reduced deposit/security as this Hon'ble Court deems fit;*

*d) ...*

***INTERIM RELIEF:***

*In the interim be pleased to:*

*i) ...*

*ii) Direct the respondents to allow the petitioner to file the appeal to save the limitation, Petitioner undertakes to furnish reasonable security / bond to protect revenue interest pending appeal.*

*iii) ...”*

7. In the considered opinion of this Court, such direction to wave the pre-deposit cannot be granted, more so when the requirement is a statutory one and no extraordinary circumstance has been able to be demonstrated in the instant case.

8. In view of the above facts and circumstances, the writ petition stands dismissed.

9. It is however made clear that the observations made in this order are tentative and will not cause any prejudice to the petitioner, if an appeal is filed and the same is to be adjudicated strictly on its merits.

**JUDGE**

**Comparing Assistant**