



JUDGEMENT

SCN under Section 73 Cannot Be Issued Without Prior Scrutiny of Returns through Form ASMT-10

Issued By:	Gauhati High Court
In Case Of:	PepsiCo India Holdings Pvt. Ltd.
Order No:	WP (Civil) No. 6960 of 2023
Order Date:	19 th Sep 2025

FACTS & OBSERVATIONS

- The petitioner challenged a Show Cause Notice issued under Section 73 of the CGST Act, which alleged wrongful availment and utilization of ITC worth ₹19.51 crores.
- The basis was a supposed mismatch between the annual return (GSTR-9) and reconciliation statement (GSTR-9C). Specifically, the discrepancy arose due to non-furnishing of data in Table 14 of GSTR-9C, which reflects reconciliation between ITC claimed and expenses in financials.
- However, filing Table 14 was optional for FY 2017–18 and not a statutory requirement. The petitioner contended that the Revenue bypassed the mandatory pre-condition under Section 61 - scrutiny of returns - by directly issuing a notice under Section 73 without serving Form GST ASMT-10.
- It was argued that as per Rule 99 of the CGST Rules, any discrepancy noticed during scrutiny must be communicated through ASMT-10, failing which the very jurisdiction to proceed under Section 73 does not arise.

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- The Gauhati High Court held that Section 61 lays down a mandatory procedure for return scrutiny, requiring the proper officer to issue Form ASMT-10 if discrepancies are found. This process ensures the taxpayer is informed and given a chance to respond.
- The Revenue, in this case, failed to initiate the scrutiny procedure and did not issue ASMT-10 before launching action under Section 73. This omission was found to be in violation of the statutory mandate under the CGST framework.
- The Court referred to the Rajasthan High Court's decision in Goverdhandham Estate, which was affirmed by the Supreme Court, to support its finding that jurisdiction under Section 73 cannot be assumed unless Section 61 procedure is duly followed.
- Accordingly, the entire proceedings - including the SCN issued for alleged ITC mismatch - were declared unauthorized, having been initiated without legal authority, and therefore struck down as unsustainable in law.

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