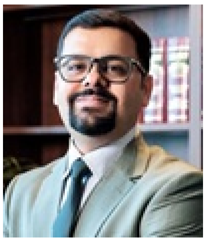
Difference between Assessment and Adjudication - Analysing the Gauhati High Court Judgement



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The judgment of the Hon'ble Gauhati High Court in *Tata Projects Ltd & Ors.* v. *Union of India and Ors.* [(2026) 43 Centax 473 (Gau.)] has already found its place in the running conversation on GST procedure, and for good reason. The headline question it decided whether a consolidated show cause notice can validly span multiple financial years is one that touches almost every large taxpayer currently sitting across the table from a proper officer with an omnibus notice covering multiple assessment years in one breath. The Court answered that question in the affirmative, and that finding alone would have made the judgment worth reading.

But tucked inside the reasoning is a quieter, more foundational discussion that deserves its own attention: the distinction between *assessment* and *adjudication* under the CGST Act, 2017, and how the two proceedings relate to, yet remain conceptually distinct from, one another. It is worth remembering that these two expressions did not always sit within the same statute. Assessment, historically, was the vocabulary of Sales Tax and VAT enactments, while adjudication belonged more naturally to the world of Central Excise and Service Tax. The GST Act inherits both lineages, and the Gauhati High Court's judgment is perhaps the most detailed judicial excavation yet of how these two inherited concepts now co-exist and where precisely they part ways within a single, unified statute. This piece attempts to walk through that excavation.

1. The Architecture of Chapter XII: Six Faces of "Assessment"

Chapter XII of the Act of 2017 carries the heading "Assessment" and spans Sections 59 to 64, setting out six distinct routes by which tax liability comes to be determined. Section 59 provides for self-assessment, where a registered person computes and furnishes his own return without departmental involvement. Section 60 deals with provisional assessment, invoked at the taxpayer's own request when value or rate cannot be determined with certainty, with the Proper Officer required to pass an order. Section 61 governs scrutiny of returns, an inquisitorial exercise where discrepancies are flagged to the registered person for explanation, failing which the matter may travel onward into proceedings under Section 65, 66, 67, 73, or 74. Sections 62 and 63 address non-filers and unregistered persons respectively, empowering the Proper Officer to assess to the best of his judgment subject to the assessment being deemed withdrawn if a valid return follows within sixty days. Section 64 rounds off the chapter with summary assessment, a unilateral power exercised with the prior permission of the senior officers where delay would prejudice revenue, and which the assessee may seek to have withdrawn within thirty days.

Read together, these six provisions describe a spectrum running from the entirely voluntary, as in self-assessment, to the entirely unilateral, as in summary assessment. What unites all six, as the Court would go on to hold, is what they conspicuously lack and that omission becomes the pivot on which the rest of the judgment turns.

2. Chapter XV and the Machinery of Sections 73 and 74

Chapter XV, headed "Demand and Recovery", runs from Section 73 to Section 84. The Court observed that the procedure under Sections 73 and 74 is largely parallel what differs is the trigger of fraud and non-fraud cases. Neither provision, however, ties the notice to a single financial year or requires a separate notice for each year. The jurisdiction to issue notice under Section 73(1) or Section 74(1) flows from the existence of material facts satisfying the Proper Officer, and Sub-section (1) of either provision imposes no restriction once that threshold is met.

On a conjoint reading of Sub-sections (1), (2), (9), and (10) of both provisions, the Court found no bar to a consolidated notice covering multiple periods, so long as each period falls within the time permitted under Section 73(2) or 74(2), and equally no bar to a consolidated order, so long as it is passed within the time permitted under Section 73(10) or 74(10). Neither counsel for the petitioners nor the text of the Act could point to any explicit prohibition to the contrary.

3. Assessment and Adjudication: Five Points of Departure

This is where the judgment earns its place beyond the consolidated-notice controversy. The petitioners' argument that Sections 73 and 74 are merely an extension of Chapter XII's assessment scheme was, in the Court's words, *plausible at first blush* but ultimately *misconceived*. The Court set out its reasons under five heads, and it is useful to take each in turn.

(A) Structural Separation Within the Statute Itself

The starting point is simply where Parliament chose to place these provisions. *"Assessment"* occupies Chapter XII while *"Demand and Recovery"* occupies Chapter XV. The Legislature, on the Court's reading, deliberately kept the two apart rather than folding Sections 73 and 74 into the assessment chapter, and that structural choice of placing the provisions under different chapters is itself a signal which cannot be ignored.

(B) The Statutory Definition of "Assessment" Does Not Extend to Sections 73 or 74

Section 2(11) defines *assessment* as the determination of tax liability and expressly enumerates its five forms : self-assessment, reassessment, provisional assessment, summary assessment, and best judgment assessment, each traceable to a specific provision within Chapter XII itself. The Court noted that these five forms share a common character: none of them, in the ordinary run, is *adversarial*. Self-assessment involves no departmental participation at all; scrutiny assessment under Section 61 is inquisitorial rather than adjudicatory, aimed at resolving discrepancies through explanation rather than contest; provisional assessment proceeds at the taxpayer's own request; and summary and best-judgment assessments, while unilateral, remain acts of estimation rather than adjudication on contested fact. Proceedings under Sections 73 and 74, by contrast, are adversarial and adjudicatory from the outset with a notice, an opportunity to reply, a hearing under Section 75, and a reasoned order at the end of it. The scheme, in the Court's assessment, draws a clean line between the two proceedings under the Act.

(C) Adjudication Follows Assessment, Rather Than Substituting For It

The Court also observed that proceedings under Sections 73 and 74 typically arise as an *aftermath* of the assessment process under Sections 59, 61, and 64 i.e., they are triggered once self-assessment, scrutiny, or summary assessment reveals a discrepancy that needs to be adjudicated. Equally, assessments carried out under Sections 62 and 63 are expressly stated to operate without prejudice to Sections 73 and 74, reinforcing that the two are sequential and complementary rather than interchangeable stages of the same proceeding.

(D) Only Adjudication Carries the Power to Impose Penalty

Perhaps the most consequential distinction the Court drew is that none of the assessment mechanisms in Chapter XII contemplate penalty. Self-assessment, provisional assessment, scrutiny, best-judgment assessment, and summary assessment are all, at their core, exercises in quantification they arrive at a figure the taxpayer owes, or is presumed to owe, and stop there. Not one of the six routes under Sections 59 to 64 carries with it the power to penalise the taxpayer for the shortfall so determined.

Whereas Sections 73 and 74 depart from that model altogether and beyond determining tax liability both provisions expressly empower the Proper Officer to levy interest and penalty on that determination. This additional power to impose penalty is what converts the exercise from a computational one into an adjudicatory one, since penalty presupposes a finding of default or culpability that a mere assessment is neither designed nor authorised to make. The Court therefore concluded that the capacity to punish, and not merely to compute the discrepancy is what places Sections 73 and 74 in a different category from every provision housed in Chapter XII dealing with assessments.

(E) Only Section 74 Permits a Finding of Fraud or Suppression

Finally, the element of fraud, wilful misstatement, or suppression of fact to evade tax i.e., the very ingredient that distinguishes Section 74 from Section 73 can never be examined or decided within an assessment proceeding under Chapter XII. That finding is the exclusive province of adjudication under Section 74, underscoring once more that assessment and adjudication, while related, are not the same exercise wearing different names.

4. Conclusion

The decision of the Hon'ble Gauhati High Court ultimately does much more than uphold the validity of a consolidated show cause notice spanning multiple financial years. Its lasting contribution lies in bringing conceptual clarity to an area of the GST law that has often been loosely understood. By drawing a clear distinction between assessment under Chapter XII and adjudication under Chapter XV, the Court reminds us that the two expressions are not interchangeable merely because both culminate in the determination of tax liability. They perform different statutory functions, operate at different stages, and are governed by different procedural safeguards.

The judgment is also a reminder that the architecture of the CGST Act has consciously borrowed concepts from both the erstwhile VAT and Central Excise regimes without collapsing them into one another. Assessment continues to remain an exercise of determination or quantification, whereas adjudication is the statutory mechanism through which disputed liability, interest and penalty are finally determined after following the principles of natural justice.

Before parting, it would be interesting to see how this jurisprudence further develops, particularly because there already exist authoritative judicial pronouncements recognising that an assessment is not merely a procedural exercise but one that creates vested rights in favour of the taxpayer. As future courts continue to delineate the boundaries between assessment and adjudication under the GST regime, the interaction between these two lines of authority is likely to assume considerable significance.

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