



2025:AHC:226653

Reserved on 10.9.2025
Delivered on 17.12.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 3829 of 2025

M/S Raghuvansh Agro Farms Ltd.

.....Petitioner(s)

Versus

State of U.P. and 2 others

.....Respondent(s)

Counsel for Petitioner(s) : Aditya Pandey
Counsel for Respondent(s) : C.S.C.

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Mr. Aditya Pandey, learned counsel for the petitioner and Mr. Ravi Shanker Pandey, learned Additional Chief Standing Counsel for the State-respondent.

2. By means of present petition, the petitioner is challenging the order dated 10.1.2025 passed by respondent no. 2 and the order dated 31.5.2023 passed by respondent no. 3.

3. Learned counsel for the petitioner submits that the petitioner is a private limited company and engaged in the business of supply of agricultural goods and areca nuts having

GSTIN No. 09AABCR8407N1ZW. He submits that the petitioner is maintaining the books of account and paying due taxes as and when due. He submits that a survey was conducted on 22.1.2019, on the basis of which notice under Section 74 was issued by respondent no. 3 in Form GST DRC -01 dated 7.4.2021 to which reply was submitted on 7.5.2021 and on the basis of said reply another notice dated 13.5.2022 along with reminder no. 3 has been issued to which the petitioner has filed detailed reply along with relevant documents on 17.6.2021 but without providing any opportunity of personal hearing, the impugned order dated 31.5.2023 has been passed. He submits that aggrieved to the said order, the petitioner preferred an appeal , which has also been dismissed.

4. Learned counsel for the petitioner submits that the petitioner falls under the Central jurisdiction and not under the State jurisdiction, therefore, the entire proceeding initiated by the Deputy Commissioner, State Tax, Sector 10, NOIDA is wholly without jurisdiction as the petitioner comes under the jurisdiction of CGST Commissioner, Division III, Range XVI.

5. He further submits that there is no recommendation of GST council for issuing notification of cross empowerment, therefore, in the absence of any recommendation of GST council, the entire proceeding initiated under UP GST is without jurisdiction. He submits that till date only one notification for cross empowerment has been issued in relation to the refund i.e. under Section 54 of UPGST /CGST Act.

6. He submits that proceedings under Section 74 has been initiated without mentioning any ingredients with regard to fraud, willful misstatement, suppression of fact to avoid the payment of tax or availment of input tax credit wrongly. He

further submits that the authorities have initiated the present proceeding about the circular trading without there being any basis as the goods which have been purchased by four suppliers are duly supported by tax invoice, e-way bill, bilty etc. He submits that all payments have been made through banking channels, which are verifiable and the purchases are duly being reflected in the returns as well as GSTRs 1, 2 and 3 B, therefore, no adverse inference can be drawn against the petitioner. He submits that for levying the penalty, tax and interest, the onus is upon the State respondent to prove the intent of the petitioner to avoid the payment of tax.

7. He submits that goods purchased by M/s Sadguru Traders, Meerut on 13.10.2018 was the last transaction made by the petitioner and the proceedings on the basis of survey at M/s Sadguru Traders was found non existing and his registration was cancelled but same cannot be used against the petitioner as M/s Sadguru Traders was registered dealer and the provisions under Section 16 was duly complied with.

8. He submits that so far as the purchases made from M/s Sibri Traders, Gurugram is concerned, the supplies were covered by tax invoice, e-way bill and GSTR 1. He submits that the proceedings against M/s Sibri Traders were initiated by order dated 22.3.2021 and same was challenged before the Deputy Commissioner Anti-Evasion, CGST, Gurugram in Appeal No. 177 of 2022-23, in which the order dated 22.3.2021 was set aside by the order dated 2.6.2023 (copy of the order is annexed as Annexure no. 8 of this writ petition), therefore, the proceedings initiated against the petitioner on the basis of M/s Sibri Traders, is uncalled for.

9. He further submits that sales were made by the petitioner to M/s Kostub Multi Trade Company LLP, Nayaganj, Kanpur through tax invoice no. 045 dated 3.5.2018 and e-way bill was generated and thereafter the supplies were made through vehicle provided by the purchaser as the purchaser was situated in Nayaganj, Kanpur. He submits that the goods could not be sent through a bigger truck, therefore, small vehicle was used for taking the goods on multiple round. He submits that the said supply was duly declared in the return filed by the petitioner in GSTR -1 and all sales were duly disclosed.

10. He further submits that purchases of goods from Bihari Ji Packing Product Pvt. Ltd. were also covered by tax invoice and e-way bill and onward supply was duly covered with GSTR -1, which is verifiable in GSTR 2 A. He submits that all transactions herein above are being duly disclosed in the books of account and payments have been made through banking channels, as well as all supporting documents have been brought on record but without verifying the same, the impugned orders have been passed.

11. He submits that under the provisions of GST Act, there is no specific provision prescribed that for movement of goods, toll plaza receipts are required to be submitted as a proof of movement of such goods. He submits that in the absence of any specific provision under the GST Act with regard to justification of movement of goods, the toll plaza receipts are not required to be produced, therefore, the authorities were not justified in drawing adverse inference against the petitioner that the petitioner was failed to bring on record the toll plaza receipts.

12. He submits that the petitioner is having a weighing machine at its business premises, and it is a matter of common knowledge that a standard weight of 70 kg per bag supari are being packed in the normal course of business, therefore, the applicant after weighing each bag of goods, loaded the same on the vehicle and hence, the vehicle was not sent to the weighbridge, therefore, in the absence of weight slip of weighbridge, the adverse view cannot be taken against the petitioner.

13. He further submits that payments were made to the transporter through banking channel and ledger of the payment was also made but the authorities have brushed aside the same.

14. He further submits that purchases made by M/s Mahavir Enterprises were also supported by e-way bill, tax invoice, bilty and the said supply was duly declared in GSTR -1 and GSTR 3 B and further IGST was also deposited which was duly reflected from GSTR 2 A of the petitioner.

15. He submits that the petitioner has produced all tax invoice, bilty, e-way bill, bank statement, GSTR -1, GSTR 2B, which specifically show the genuineness of the transaction for the period in question but still adverse inference has been drawn against the petitioner, therefore, the order is required to be set aside.

16. In support of his submission, learned counsel for the petitioner has relied upon the Division Bench decisions of this Court in the cases of **M/S Vadilal Enterprises Limited Vs. State of UP and others (Neutral Citation No. 2025:AHC:87915-DB, HCL Infotech Ltd. Vs. Commissioner, Commercial Tax and**

another (Neutral Citation NO. 2024:AHC:158274-DB and **M/s Ajnara Realtech Limited Vs. State of UP and others (Neutral Citation No. 2025:AHC:38761-DB.**

17. *Per contra,* learned Additional Chief Standing Counsel supports the impugned order and submits that the petitioner is engaged in circular trading. He submits that without any actual movement of goods, the input tax credit has been claimed. He submits that the petitioner has failed to bring on record the toll plaza receipts, which could not justify the actual physical movement of the goods. He further submits that the petitioner in certain cases has failed to bring on record cogent material for proving actual physical movement of the goods, therefore, the impugned orders are justified.

18. In support of his submission, learned ACSC has relied upon the judgement of Supreme Court in the case of **The State of Karnataka vs. M/s. Ecom Gill Coffee Trading Private Limited (2023) SCC Online SC 248.**

19. After hearing learned counsel for the parties, the Court has perused the records.

20. The record shows that proceedings have been initiated against the petitioner under Section **74** of SGST Act and for initiation of the proceedings under Section **74** of the Act, the authorities are duty bound to show the reason of fraud, willful misstatement, suppression of fact for availment of input tax credit wrongly or excessive claim of input tax credit. In other words, the adjudicating authority must have express the reason in the show cause notice that the assessee has wrongly availed or utilized input tax credit due to some fraud or willful misstatement or suppression of fact.

21. Once the aforesaid basic ingredient in the show cause notice under Section 74 of the Act is missing, the proceeding becomes without jurisdiction as the assessing authority derives jurisdiction to proceed under Section 74 of the Act only when basic ingredients to such proceeding under Section 74 of the Act, are present.

22. On the aforesaid facts, the facts of the present case is to be tested. The records shows that adjudicating authority neither in the show cause notice nor in the assessment order has recorded any such finding supported by due evidence, thereof. In the absence of specific categorical finding supported by the evidence, the entire proceeding against the petitioner is vitiated.

23. The Division Bench of this Court in the case of **HCL Infotech Ltd. (supra),** while entertaining the writ petition against show cause notice issued under Section 74 of the Act has quashed the show cause notice, which lacks the basic ingredients to the proceedings.

24. Similar view has been expressed by the Division Bench in the cases of **M/s Ajnara Realtech Limited (*Supra*)** and **M/s Vadilal Enterprises Limited (*Supra*).**

25. Further, the record shows that specific pleadings have been raised before this Court as well as before the authorities that State GST authority has no jurisdiction to initiate the proceeding in the absence of any cross empowerment notification being issued by the Central or State Government till date as the petitioner falls within the jurisdiction of Central GST department under the jurisdiction of CGST Commissioner, Division III, Range XVI. But neither in the

impugned orders nor in the counter affidavit any material was brought on record to justify acquiring jurisdiction of the State GST authorities, in turn had jurisdiction to pass impugned orders.

26. The record further shows that all purchases and sales made by the petitioner are duly reflected, not only in the books of accounts but also in the requisite GSTRs - 1, 2A and 3B, respectively. All transaction are duly made through banking channel and bank statements were also brought on record before the authority concerned. The transactions are duly declared on GST portal also but merely on the basis of survey, all evidence filed by the petitioner has been brushed aside.

27. The record further shows that proceedings initiated against the petitioner on the basis of purchases made from M/s Sibri traders, however, the same has been set aside by the Deputy Commissioner, Anti Evasion CGST, Gurgaon by the order dated 2.6.2023 passed in Appeal No. 177 of 2022-23 and the said order has neither been set aside nor modified by any competent court. Once the proceedings has been dropped against the supplier of the petitioner itself, no adverse inference can be drawn against the petitioner on that basis. The allegation made by the revenue that petitioner is engaged in the circular trading is of no aid to and without any material on record.

28. Further the record shows that purchases and sales are being duly reflected in the GST portal supported by tax invoices, e-way bill and bilty and all payments were made through banking channels. The supporting ledgers were also brought on record, which clearly shows that due purchases

have been made as well as actual physical movement of the goods has been taken place and no case of circular trading is made out in favour of the petitioner.

29. Further, an inference has been drawn against the petitioner that the petitioner has failed to submit the toll plaza receipts in order to justify the actual physical movement of the goods. The said finding is patently or apparently perverse and is without any basis. The revenue has failed to bring on record any provision or rule under the GST Act as well as Rules, which compel the assessee to file toll plaza receipts in support of actual physical movement of the goods. On the contrary, e-way bill, bilty and tax invoice was produced and payments made to the transporter through banking channel and due ledger of the transporter has also been brought on record but without pointing out any defect therein, the impugned order cannot be justified in the eyes of law.

30. The record shows that actual movement of goods as well as all transactions recorded in the books of accounts are reflected in Forms GSTR-1, 2A and 3 B respectively, therefore, the judgment of the Apex Court relied upon by learned ACSC in the case of **M/s Ecom Gill Coffee Trading Private Limited (supra)** is of no aid to him.

31. Further it is specifically averred by the counsel for the petitioner that not only the Form GSTR -1 is filed but also Form GSTR 3 B is there, which clearly shows that tax has duly been deposited and same has been reflected in GSTR 2 A, however, no specific denial has been made in the counter affidavit with regard to GSTR -1, 2 A and 3 B, by the State-respondents. Once all ingredients provided under the Act has

been complied with, the authorities are not justified in drawing adverse inference against the petitioner.

32. This Court in the case of **M/s Safecon Lifescience Pvt. Ltd. Vs. Additional Commissioner Grade 2 and another (Neutral Citation No. 2025:AHC:158800)** has held as under:

> *13. The order of the first appellate authority has been passed only on the basis of the information sent by office of the Pr. Chief Commissioner, Central Intelligence Unit, Central Excise & Central Tax Vadodara Zone with closed eyes. The information sent by the Central Intelligence Unit must be verified by the authority before using the same against the registered dealer.*
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> *14. The record shows that the allegations were made against M/s Unimax Pharma Chem from whom purchases were made, that its registration was cancelled earlier. However, no finding has been recorded that M/s Unimax Pharma Chem, who sold the goods in question to the petitioner was involved in any irregularity. The total quantity purchased by M/s Unimax Pharma Chem was sold to the petitioner and no finding has been recorded that the alleged parties which supplied goods to M/s Unimax was the only sale made to it. The record does not confirms that M/s Unimax Pharma Chem made sale only to the petitioner. It is the duty of the officers to verify facts with all angles before being used against the registered dealer. Record further shows that the report used against the petitioner has neither been provided to the petitioner nor material used against the petitioner was ever provided which ought to be provided to the petitioner.*
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> *15. GST regime has been brought by the Central Government for ease of business in the country but the revenue officers are bend upon to act against the very theme/ intend of it. When it was noticed by the Government that under the garb of Section 74 of the Act various dealers are being harassed, issued a circular dated 13.12.2023 where it has specifically been stated that proceedings under section 74 of the Act can be initiated if*

there is a fraud or willful mis-statement or suppression of fact to evade payment of tax and not otherwise.

16. This Court had an occasion to consider such facts which is identical to the facts of the present case in M/s Khurja Scrap Trading Company (supra). Relevant paragraph nos. 11,12 and 13 of the said judgment is quoted below:

> *"11. Further, paragraph nos. 3.2 & 3.3 of the circular dated 13.12.2023 read as under:-*
>
> *?3.2 In this regard, section 74 (1) of CGST Act reads as follows:*
>
> *(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 utilized by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax.*
>
> *3.3. From the perusal of wording of section 74(1) of CGST Act, it is evident that section 74(1) can be invoked only in cases where there is a fraud or wilful mis- statement or suppression of facts to evade tax on the part of the said taxpayer. Section 74(1) cannot be invoked merely on account of non-payment of GST without specific element of fraud or wilful mis-statement or suppression of facts to evade tax. Therefore, only in the cases where the investigation indicates that there is material evidence of fraud or wilful mis-statement or suppression of fact to evade tax on the part of the taxpayer, provisions of section 74(1) of CGST Act may be invoked for issuance of show cause notice, and such evidence should also be made a part of the show cause notice. ?*
>
> *12. On perusal of the aforesaid paragraphs, it is apparent that proceedings under section 74 can only be invoked when there is a fraud, wilfull mis-statement or suppression of fact to evade tax on the part of the taxpayer. Since the benefit of this circular has been given in view of the judgement of the Apex Court in Suraj Impex (India) Private*

Limited (supra) and the judgement of this Court in S/s Agrawal Rolling Mills (supra), strict compliance of the circular is required by the State authorities. The record shows that no finding has been recorded at any stage that there is a fraud or willful mis-statement or suppression of fact to evade payment of tax.

13. The record further shows that at the time when the transaction took place, the selling dealer, i.e., M/s Unique Trading Company, was duly registered. The record further shows that the selling dealer has duly uploaded GSTR ? 1/1FF and GSTR 3-B. Once, at the time of when transaction took place, the selling dealer was registered, no adverse view should have been taken against the petitioner as held by this Court in Solvi Enterprises (supra) and R.T. Infotech (supra). "

17. Record shows that neither any finding with regard to fraud has been noticed nor mis-statement nor suppression of fact has been recorded at any stage.

18. Section 11-A of the of the Central Excise Act, 1944 is having analogous provision to Section 74 of the UPGST Act. The Apex Court in the case of Continental Foundation Joint Venture Holding, Nathpa, H.P. vs. Commissioner of Central Excise, Chandigarh-I [(2007) 10 SCC 337] had an occasion to consider the expression 'suppression', 'wilful misstatement' and has held as under:

11. We are not really concerned with the other issues as according to us on the challenge to the extended period of limitation ground alone the appellants are bound to succeed. Section 11A of the Act postulates suppression and, therefore, involves in essence mens rea.

12. The expression 'suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade

payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11-A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct.

13. Factual position goes to show the Revenue relied on the circular dated 23.5.1997 and dated 19.12.1997. The circular dated 6.1.1998 is the one on which appellant places reliance. Undisputedly, CEGAT in Continental Foundation Joint Venture case (supra) was held to be not correct in a subsequent larger Bench judgment. It is, therefore, clear that there was scope for entertaining doubt about the view to be taken. The Tribunal apparently has not considered these aspects correctly. Contrary to the factual position, the CEGAT has held that no plea was taken about there being no intention to evade payment of duty as the same was to be reimbursed by the buyer. In fact such a plea was clearly taken. The factual scenario clearly goes to show that there was scope for entertaining doubt, and taking a particular stand which rules out application of Section 11A of the Act.

14. As far as fraud and collusion are concerned, it is evident that the intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word 'wilful', preceding the words "mis-statement or suppression of facts" which means with intent to evade duty. The next set of words 'contravention of any of the provisions of this Act or Rules' are again qualified by the immediately following words 'with intent to evade payment of duty.' Therefore, there cannot be suppression or mis-statement of fact, which is not wilful and yet constitute a permissible ground for

the purpose of the proviso to Section 11A. Mis-statement of fact must be wilful.

19. The Apex Court has clearly stated that incorrect statement, unless made with the knowledge that it was not correct, would will not be a ground of wilful misstatement or suppressionand no inference can be drawn if full information has been disclosed without intent to evade payment of tax.

20. In the case in hand the authorities have neither recorded any findings of fraud nor wilful misstatement nor suppression of fact to evade payment of tax, therefore, the proceedings under section 74 of the Act out not to have been initiated against the petitioner.

21. In view of the above discussions as well as judgment of the Apex Court and this Court, the impugned order dated 20.12.2022 passed by the Additional Commissioner, Grade-2 (Appeal)- II State Tax, Agra, respondent no.1 as well as the order dated 12.1.2022 passed by the Deputy Commissioner, Commercial Tax, Agra, respondent no.2 cannot be sustained and are hereby quashed.

33. Again this Court in the case of **M/s Khurja Scrap Trading Company Vs. Additional Commissioner Grade 2 (Appeal) and Another (Neutral Citation No. 2025:AHC:151793)** has held as under:

10. It is not in dispute that the transactions between the petitioner and the selling dealer, i.e., M/s Unique Trading Company, were held on 26.11.2021 and 30.11.2021. The registration of the selling dealer was cancelled on 08.04.2022. The record further shows that GSTR – 1/1FF and GSTR 3-B were also filed, which shows the returns and tax filed by the selling dealer. Once these facts have been brought on record, the State authorities ought to have verified the same, but instead, proceedings were initiated on the basis of subsequent inspection that the selling dealer was not found at the place of business and adverse view was drawn. This Court in Solvi Enterprises (supra) and R.T. Infotech (supra) has taken the view that when the registration of the selling dealer was cancelled subsequent to

the transaction, the same can be verified on GST portal on GSTR – 2A.

11. Further, paragraph nos. 3.2 & 3.3 of the circular dated 13.12.2023 read as under:-

> *"3.2 In this regard, section 74 (1) of CGST Act reads as follows:*
>
> *(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 utilized by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax.*
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> *3.3. From the perusal of wording of section 74(1) of CGST Act, it is evident that section 74(1) can be invoked only in cases where there is a fraud or wilful mis- statement or suppression of facts to evade tax on the part of the said taxpayer. Section 74(1) cannot be invoked merely on account of non-payment of GST without specific element of fraud or wilful mis-statement or suppression of facts to evade tax. Therefore, only in the cases where the investigation indicates that there is material evidence of fraud or wilful mis-statement or suppression of fact to evade tax on the part of the taxpayer, provisions of section 74(1) of CGST Act may be invoked for issuance of show cause notice, and such evidence should also be made a part of the show cause notice. "*

12. On perusal of the aforesaid paragraphs, it is apparent that proceedings under section 74 can only be invoked when there is a fraud, wilfull mis-statement or suppression of fact to evade tax on the part of the taxpayer. Since the benefit of this circular has been given in view of the judgement of the Apex Court in Suraj Impex (India) Private Limited (supra) and the judgement of this Court in S/s Agrawal Rolling Mills (supra), strict compliance of the circular is required by the State authorities. The record shows that no finding has been recorded at any stage that there is a fraud or willful mis-statement or suppression of fact to evade payment of tax.

13. The record further shows that at the time when the transaction took place, the selling dealer, i.e., M/s Unique Trading Company, was duly registered. The record further shows that the selling dealer has duly uploaded GSTR – 1/1FF and GSTR 3-B. Once, at the time of when transaction took place, the selling dealer was registered, no adverse view should have been taken against the petitioner as held by this Court in Solvi Enterprises (supra) and R.T. Infotech (supra).

14. In view of the aforesaid facts & circumstances of the case as noted above, the impugned orders cannot be sustained in the eyes of law. The matters require reconsideration.

34. In view of the facts and circumstances of the case as well as law laid down by this Court as referred herein above, the impugned orders cannot be sustained in the eyes of law and same are hereby quashed.

35. The writ petition succeeds and is **allowed.**

36. Any amount deposited by the petitioner shall be refunded to him in accordance with law within a period of one month from the date of producing a certified copy of this order.

(Piyush Agrawal,J.)

December 17, 2025
Rahul Dwivedi/-