142 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-12924-2026
Date of decision: 29.04.2026

M/S SUVIDA TRADERS ...Petitioner

Vs.

STATE OF PUNJAB AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MR. JUSTICE ROHIT KAPOOR

Present: Mr. Chetan Jain, Advocate and
Mr. Porush Jain, Advocate
for the petitioner.

Mr. Saurabh Kapoor, Addl. A. G., Punjab.

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DEEPAK SIBAL, J. (Oral)

1. Through this petition the petitioner challenges the order dated 14.01.2026, passed under Section 74-A(1) read with Section 74-A (5) (ii) of the Central Goods and Services Tax Act, 2017 (for short-the Act), pertaining to the financial year 2025-26 for tax period June 2025 to August 2025, through which a demand for payment of GST dues has been made from the petitioner. Also under challenge is the procedure adopted by the respondent-State to recover GST dues, in pursuance to the aforesaid order dated 14.01.2026.

2. Learned counsel for the petitioner submits that before raising the impugned demand through the order dated 14.01.2026, in terms of Section 75-A(1) of the Act, no prior notice was issued by the respondent authorities which renders the impugned order unsustainable in law and that; even the procedure adopted by the respondent to recover the dues demanded through the impugned order dated 14.01.2026 is illegal because the said recovery was

made on 14.01.2026, that is, on the very day of the passing of the impugned order by debiting the input tax credit (for short-ITC) lying in the petitioner's Electronic Cash Ledger, which is in violation of Section 78 of the Act, as per which provision, no recovery can be made within a period of three months from the date of raising of the demand without recording of reasons in writing by the concerned proper officer, which, in the case in hand, was not done.

3. Learned State counsel submits that prior to raising the demand through order dated 14.01.2026, the petitioner was duly served a notice by way of affixation which is a valid mode of service as per Section 169 of the Act but he fairly concedes that before effecting recovery from the petitioner, within the period of three months from the date of passing of the impugned demand order, in terms of Section 78 of the Act, no reasons were recorded by the proper officer.

4. Learned counsel for the parties have been heard and with their able assistance the record of the case has also been perused.

5. Sections 74A, 78 and 169 of the Act are relevant and each of these provisions are reproduced below for ready reference :-

> **"Section 74A. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onwards**.
>
> (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, 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:

Provided that no notice shall be issued, if the tax which has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised in a financial year is less than one thousand rupees.

(2) The proper officer shall issue the notice under sub-section (1) within forty-two months 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 forty-two months from the date of erroneous refund.

(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 subsection (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 penalty in case where any tax which has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised,—

(i) for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, shall be equivalent to ten percent of tax due from such person or ten thousand rupees, whichever is higher;

(ii) for the reason of fraud or any wilful-misstatement or suppression of facts to evade tax shall be equivalent to the tax due from such person.

(6) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(7) The proper officer shall issue the order under sub-section (6) within twelve months from the date of issuance of notice specified in sub-section (2):

Provided that where the proper officer is not able to issue the order within the specified period, the Commissioner, or an officer authorised by the Commissioner senior in rank to the proper officer but not below the rank of Joint Commissioner of Central Tax, may, having regard to the reasons for delay in issuance of the order under sub-section (6), to be recorded in writing, before the expiry of the specified period, extend the said period further by a maximum of six months.

(8) The person chargeable with tax where 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, may, —

(i) before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 of such tax 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, and the proper officer, on receipt of such information shall not serve any notice under sub-section (1) or the statement under sub-section (3), as the case may be, in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder;

(ii) pay the said tax along with interest payable under section 50 within sixty days of issue of show cause notice, and on doing so, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The person chargeable with tax, where any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, may,—

(i) before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax 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, and the proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder;

(ii) pay the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within sixty days of issue of the notice and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded;

(iii) pay the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within sixty days of

communication of the order, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded.

(10) Where the proper officer is of the opinion that the amount paid under clause (i) of sub-section (8) or clause (i) of sub-section (9) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in subsection (1) in respect of such amount which falls short of the amount actually payable.

(11) Notwithstanding anything contained in clause (i) or clause (ii) of sub-section (8), penalty under clause (i) of subsection (5) 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.

(12) The provisions of this section shall be applicable for determination of tax pertaining to the Financial Year 2024- 25 onwards.

Explanation 1.—For the purposes of this section,—

(i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under this section, the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded.

Explanation 2.— For the purposes of this Act, the expression "suppression" shall mean nondeclaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer."

"Section 78. Initiation of recovery proceedings. –

Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated:

Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him."

"<u>Section 169. Service of notice in certain circumstances. –</u>

(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely: -

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved."

6. Section 74A of the Act provides that before any demand can be raised against an assessee, he is required to be served with a show cause notice, which procedure is also in line with the principles of natural justice.

7. As per Section 78 of the Act, an assessee is granted three months time to deposit the demanded tax and if such tax is not deposited within such period of three months then proceedings for recovery of the demanded tax are to be initiated. However, as per the proviso to Section 78, if the proper officer considers it to be in the interest of the revenue, he may, for reasons to be recorded in writing, require the assessee to make payment of the demanded tax before the expiry of the period of three months.

8. Section 169 of the Act provides the mode and manner in which service of any decision, order, summons, notice or any other communication under the Act or the Rules is required to be made which includes service by physical mode or by registered/speed post/courier with acknowledgement due or through e-mail or making available the decision, order, summons, notice or any other communication under the Act on the common GST portal or through publication in a newspaper which has circulation in the locality in which the assessee or the person to whom the communication is to be served is known to be residing or has carried on business or personally worked for gain and that service by way of affixation is to be resorted to only if none of the afore referred modes of service are found to be practicable.

9. In the case in hand, the impugned order of demand dated 14.01.2026 was preceded by a show cause notice dated 10.12.2025, service of which notice was resorted to through the mode of affixation but it is not denied by learned counsel for the respondent that prior thereto, the other modes of service, provided under Section 169 of the Act, were not declared to be impracticable. Therefore, show cause notice dated 10.12.2025 is held not to

have been validly served upon the petitioner and as a consequence, the demand order dated 14.01.2026 is declared to be illegal.

10. Even the recovery made on 14.01.2026, in pursuance to the demand order dated 14.01.2026, by way of debiting of ITC lying in the petitioner's Electronic Cash Ledger is found to be illegal as the same was made on the very same day of the passing of the demand order as against the period of three months granted to the assessee under Section 78 of the Act for depositing the demanded payment especially when it is not disputed that prior to such recovery no reasons were recorded by the proper officer as required to be passed in terms of the proviso to Section 78 of the Act

11. In the light of the above discussion, the impugned demand order dated 14.01.2026 and the recovery made from the petitioner in pursuance to the demand on 14.01.2026 are both held to be illegal. Resultantly, the order dated 14.01.2026 is set aside with a direction to the State to refund the recovery made from the petitioner within a period of two weeks from the date of receipt of a copy of this order.

12. It is clarified that passing of this order shall not preclude the State to proceed afresh against the petitioner, in accordance with law.

(DEEPAK SIBAL)
JUDGE

(ROHIT KAPOOR)
JUDGE

29.04.2026

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Whether speaking/reasoned : Yes No

Whether Reportable : Yes No