Case Citation: (2026) taxcode.in 1329 HC

2026:AHC:120737-DB

**A.F.R.**

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**WRIT TAX No. - 2707 of 2026**

M/S World Phone Internet

.....Petitioner(s)

Versus

Superintendent, Range And Another

.....Respondent(s)

| | | |
|---|---|---|
| Counsel for Petitioner(s) | : | Harsh Vardhan Gupta |
| Counsel for Respondent(s) | : | Dhananjay Awasthi |

**Court No. - 4**

**HON'BLE SAUMITRA DAYAL SINGH, J.**
**HON'BLE VIVEK SARAN, J.**

1. Heard Sri Vivek Sarin along with Sri Harsh Vardhan Gupta, learned counsel for the petitioner and Sri Amit Mahajan, and Sri Parv Agrawal, learned counsel for the revenue.

2. Learned Standing Counsel for the revenue though objected to the relief claimed, he also states, since all facts are clear from a plain reading of the petition, and only legal issues are invloved, no Counter Affidavit is required to be filed. Accordingly, the matter has been heard, at the fresh stage itself.

3. Challenge has been raised to the Adjudication Order dated 12.2.2026 and Form DRC-07 dated 12.2.2026, for F.Y. 2019-2020.

4. Though, formal challenge has been raised to the Adjudication Order, at the very beginning learned counsel for the petitioner has confined the dispute to the rights of the petitioner-to claim benefit of Section 70 (5) of the GST Act, 2017 (hereinafter referred to as 'the Act'), read with Rule 142(1A) of the CGST Rules 2017 (hereinafter referred to as 'the Rules')

5. Thus, it has been submitted, no opportunity was granted to the petitioner, prior to the issuance of the Show Cause Notice, on DRC 01. Thereby, the petitioner was deprived of its statutory right to pay up the disputed demand together with interest, at reduced penalty. By virtue of

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the own force of law created by Section 74(5) of the Act, the petitioner was entitled to seek adjudication of the dispute against reduced penalty @15%, as against full penalty demand created under the impugned Adjudication Order.

6. On the other hand, Sri Amit Mahajan, learned counsel for the revenue would contend, Rule 142(1A) of the Rules is directory. It does not mandatorily require issuance of DRC-01A, prior to issuance of a show cause notice on DRC-01. Upon a holistic view taken by the Adjudicating Authority, it may choose to issue or to not issue notice on DRC-01A. Only if positive discretion is exercised and notice on DRC-01A is issued to a noticee, in those facts, benefit of Section 74(5) of the Act may be claimed, but not otherwise.

7. Sri Mahajan has relied upon Notification no.79 of 2020 dated 15.10.2020, to submit that the words earlier used "proper officer shall", have been replaced with the words "proper officer may". Thereby, the Central Government has clearly made the Rules directory, with effect from 15.10.2020. Therefore, the earlier decision of a coordinate bench in **Skyline Automation Industries vs. State of U.P. [2023] 148 taxmann.com 345 (All),** does not apply to the present case.

8. Non issuance of DRC 01 is an admitted fact, in the present case. That objection was raised by the petitioner before the Adjudicating Authority. It is duly recorded in paragraph 5.3 thereof. However, the Adjudicating Authority has rejected the same on the following reason:

*5.3 In terms of the above provisions it is clear that to avail the input tax credit, the taxpayer should have received the goods/services. However, in case of a non-existent supplier, a supply of goods/services cannot be made. Only invoices will be issued by the non-existent supplier without actual supply of goods/services with fraudulent motive to pass the inadmissible input tax credit. Thus, the taxpayer has not received the goods /services. Therefore, in terms of the above provisions the taxpayer is not eligible for the input tax credit aken/availed by them. The taxpayer raised contention in respect of the issuance of DRC-01A. The relevant statutory provision i.e. Rule 142(1A) of the CGST Rules, 2017.*

*RULE 142(1A) The proper officer may, before service of notice to the person chargeable*

*with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74 or sub-section (1) of section 74A, as the case may be. communicate the details of any tax, interest and penalty as ascertained by the sid officer, in Part A of FORM GST DRC-01A.*

*In terms of the above the word may has been used in the above Rule in respect of compliance by the proper officer. Therefore, the issuance of the FORM GST DRC-01A is not a statutory or mandatory requirement. The taxpayer also alleged that they received the SCN for the first time, but as per the para 3 of the SCN the taxpayer was issued a letter on 19.02.2024(DIN 202402254YC0000621546), therefore in this contention of the taxpayer there is no force. The SCN uploaded by the department was alleged to be blurred by the taxpayer, in this regard the taxpayer was also served the copy of SCN dated 10.09.2025 through speed post also. Further, the taxpayer never asked for legible copies despite having repeated opportunities of personal hearing. The taxpayer has submitted nothing on the merits of the case, which means that they have nothing concrete material/defence to defend the allegation of irregular ITC as per the SCN. In view of the above the instant demand raised by the SCN dated 10.09.2025 is sustainable against them.*

(emphais supplied)

9. Second, it has been objected that the stage of DRC-01A has long passed. Not only Show Cause Notice on DRC-01 was issued but the petitioner also responded to the same. After hearing the petitioner, final Adjudication Order has been passed. Therefore, the stage of Section 74(5), of the Act does not survive.

10. Shri Parv Agarwal, learned counsel for the revenue, has further submitted that no real prejudice has been caused to the petitioner, inasmuch as, even at the stage of issuance of the Show Cause Notice on DRC-01, the petitioner could seek finalization of the demand against payment of demand of disputed tax together with interest and 25% of the penalty. By not availing that opportunity, the petitioner cannot be heard to complain any further.

11. Having heard learned counsel for the parties and having perused the

record, it is fundamental in our jurisprudence that a principal statute stands on a higher pedestal in law, and must therefore prevail over an inconsistent delegated legislation. Neither there can be any dispute to that principle nor that dispute has been raised, in the present case. Section 74(5) of the Act is reproduced hereinbelow:

*"74. Determination of tax [1][, pertaining to the period upto Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts*

*(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 by reason of fraud, or any wilful-mis statement or suppression of facts to evade tax, 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 equivalent to the tax specified in the notice.*

*(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.*

*(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 sub-section (1), on the person chargeable with tax.*

*(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-mis statement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.*

*(5) The person chargeable with tax may, 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."*

(emphasis supplied)

12. To the extent a person who may be issued notice on DRC-01, may never be aware from before, if such notice was about to be issued to him and in any case such person may never have any knowledge of the amount of tax etc. proposed to be demanded from him, for any tax period, there may not exist any situation where settlement of dispute may be claimed, without the demand being proposed by the Adjudicating Authority.

13. Prior to the amendment made to Rule 142 (1A) the words used "the proper officer shall" were read and interpreted to mean that no Show Cause Notice on Form DRC-01 may be issued unless prior notice on Form DRC-01A had been issued. That interpretation made, amongst others by this Court in Skyline (supra) may have led to the amendment made to Rule 142 (1A) of the Rules. Thus, in place of the words earlier used, Rule 142 (1A) now employs the words "the proper officer may".

14. Later Rule 142 (1A) of the Rules was amended vide Notification No.49 of 2019 Central Tax dated 9.10.2019, with effect from that date. For ready reference, the said Rules are reproduced as below:

> *"RULE 142(1A) The proper officer may, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74 or sub-section (1) of section 74A, as the case may be, communicate the details of any tax, interest and penalty as ascertained by the sid officer, in Part A of FORM GST DRC-01A."*

(emphasis supplied)

15. In view of law as stands today, the ratio in Skyline (supra), may not apply. To the extent we may not find ourselves in agreemnt with the line of reasoning in Skyline (supra) so as to reach a conclusion of jurisdictional defect in the notice issued on Form DRC-01, in view of changed statutory law, no need survives to refer the matter to a larger bench.

16. The said Rule is wholly to the benefit of the parties, mainly the noticee-who may pay up without seeking to contest the adjudication proceedings. It is also to the benefit of the revenue that may collect short payment of revenue etc., without having to undertake an adjudication proceeding. Thus, the provision of Rule 142 (1A) of the Rules have to be read in conjunction with Section 74(5) of the Act. To the extent Section 74(5) of the Act leaves no manner of doubt that it is an integral part of the statutory scheme, providing for finalization of proposed demands, before issuance of a formal Show Cause Notice and a person may opt to seek finalization of the demand against full payment of short paid tax, interest and only 15% of the penalty, in face of that clear consequence prescribed under Section 74(5) of the Act, as against higher penalty 25% payable upon issuance of formal show cause notice on DRC-01, and payment of full penalty against an adjudication order (that may be passed in consequence of show cause notice on DRC-01), the provision of Section 74(5) of the Act is unambiguously mandatory, for reason of those consequences provided.

17. To the extent, statutory provision contained in the principal legislation is mandatory, the use of the word 'may' in Rule 142(1A) of the Rules must be given the same interpretation. To interpret Rule 142(1A), to be directory, would be to imagine a conflict between the principal legislation i.e. the Act and the delegated action i.e. the Rules. That may never be done. Presumption exists that the Rules are consistent to the Act and in case of any doubt the Rules must be read consistent to the Act. To the extent the Rules have been enforced to give effect to the Act that position must always be recognized in law. The submission to the contrary, advanced by learned counsel for the revenue-to read Rule 142(1A) as directory, is misconceived.

18. No reliance may be placed on the decision of the Delhi High Court in **Manpar Exim Inc vs. Additional Director DGGI and Ors. 2025:DHC:10737-DB**, inasmuch as, in that case for reason of DRC-01A not issued, challenge raised to DRC-01 was invalidated. While we may not differ from the view taken by the Delhi High Court in **Manpar Exim Inc (supra)**, we note that such challenge has not been raised in the present petition. As recorded above, learned counsel for the petitioner has

confined the present case to secure to the petitioner, its right to avail settlement against payment of 15% of the penalty amount.

19. In view of the above noted reasons, we hold that the provisions of Section 74(5) of the Act read with Rule 142(1A) of the Rules are mandatory to the extent-no demand of penalty-higher than 15% may be raised in the first place, and issuance of notice on DRC-01A is mandatory.

20. Consequently, the benefit flowing therefrom may never be denied to an assessee who raises that plea at the stage of reply to the show cause notice. Thus, the Show Cause Notice issued on DRC-01 may not lack inherent jurisdiction and for want of DRC-01A not issued, prior in time.

21. Yet whenever, a Show Cause Notice on Form DRC-01A is not issued, the noticee will remain entitled to claim benefits of Section 74(5) of the Act, up to the stage of filing his reply to the show cause notice on Form DRC-01.

22. Here, the assessee had chosen to avail that right. Thereafter, it was obligatory upon the Adjudicating Authority to have allowed the petitioner to pay up the disputed demand, in accordance with Section 74(5) of the Act, read with Rules 142(1A) of the Rules.

23. That right may be eclipsed only in such cases-where notwithstanding non-issuance of DRC-01A, the noticee chooses to enter appearance in response to the Show Cause Notice on DRC-01 and disputes its liability to pay the demand so raised, without claiming his right under Section 74(5) of the Act. In those cases the statutory right conferred under Section 74(5) of the Act would be deemed to have been waived, by such notices.

24. The submission of Shri Parv Agrawal also does not support the revenue. In fact, it indicates the statutory intent to give mandatory effect to provisions of Section 74(5) of the Act read with Rule 142(1A). It is so, because this penalty amount would increase from 15% to 25%, at the stage of notice on Form DRC-01.

25. Last, we may note, rules of procedure exist to give effect to the statutory scheme created by the principal legislature. Such statutory

Rules/pieces of delegated legislation may never be read to carve out a scheme different to that created by principal legislature.

26. In view of the above, this petition must succeed and is **allowed,** to the extent discussed above. Subject to the petitioner paying up the disputed demand alongwith interest and 15% penalty computed, strictly in terms of Section 74(5) of the Act with interest as computed on the date of issuance of the show cause notice issued on DRC-01, within a period of one month from today, treating the same to be a notice issued on DRC-01A (on that date), the Adjudication Order would stand satisfied. In that view, we leave it open to the Adjudicating Authority to pass a rectification order if so advised, for statistical purposes.

27. No orders as to costs.

**(Vivek Saran,J.)  (Saumitra Dayal Singh,J.)**

**May 25, 2026**
S.A.