27.8. 2026
Item No.20
n.b.
Ct. no. 10

WPA 16556 of 2025
with
IA No. CAN 1 of 2025

M/s. Cart Infralog Ltd. & Anr.
Vs.
The Additional Commissioner, HQ Anti-Evasion Unit, CGST & CX, Kolkata South Commissionerate & Ors.

Mr. Ankit Kanodia,
Ms. Megha Agarwal,
Ms. Tulika Roy,
Mr. Shovan Ojha,
....For the Petitioners.
Mr. Uday Sankar Bhattacharya,
Mr. Tapan Bhanja,
Mr. Gourab Karmakar,.
..... For the respondents/CGST Authority.

1. The present Writ Petition has been filed challenging inter alia the Show Cause Notice dated 11.06.2025 issued under Section 74 of the Central Goods & Services Tax Act, 2017 for the Financial Year 2018-19 to 2019-20 and 2023-24 and the consequential Order in Original dated 09.12.2025 passed during the pendency of the Writ Petition.

2. The Learned Counsel appearing for the petitioners submits that the impugned Show Cause-cum-Demand Notice issued under Section 74 of the CGST Act, 2017 has been issued on two grounds, i) availment and utilization of ineligible Input Tax Credit amounting to Rs. 88,57,040/- and (ii) availment of irregular excess Input Tax Credit amounting to Rs. 1,48,84,011/- in GSTR -3B as compared to Input Tax Credit available in

GSTR -2A for the period in question. Thus the total principal demand of Rs. 2,37,41,051/- with interest and penalty aggregating to Rs. 6.3 Crores.

3. It is further submitted that a report was already in circulation intimating the names of suppliers who had not filed GSTR -3B and the fact that the petitioners is one of the beneficiaries of one such supplier who did not file GSTR -3B was detected upon an enquiry conducted by the Department. The authority concerned had already initiated separate proceedings for recovery of inadmissible Input Tax Credit through one M/s. Aster Trading Company who had failed to file GSTR –3B for the Financial Year 2019-20 and had filed returns only for January 2018 and February 2018 and did not file returns for the subsequent period.

4. Thereafter the petitioners on various occasions intimated the Department with supporting documents regarding reversal amendment of inadmissible Input Tax Credit by the suppliers and requested inter alia, that inadmissible credit along with applicable interest and penalty be recovered from the defaulting suppliers and not from the petitioners. The Department, however, issued the Show Cause Notice dated 11.06.2025 for the period in question. After receiving the Show Cause Notice, the petitioner approached this Court by filing the instant Writ Petition. During the pendency of the Writ Petition, the petitioners without prejudice to their rights

and contentions, filed a detailed reply before the authority concerned on 10.11.2025, which was purportedly considered and the Order in Original was passed on 09.12.2025.

5. It is submitted that as per Section 59 of the CGST Act, 2017, the petitioners had already filed return on the basis of self-assessment. The issuance of notice and the consequential orders suffers from gross irregularities, perversity and are not sustainable in the eye of law. The documents annexed to the reply have not been considered by the adjudicating authority, who, without proper application of mind and in excess of jurisdiction had passed the order which is liable to be quashed and set aside.

6. The issue involved, in the present case, has already been decided by the Hon'ble Division Bench of this Court as held in the case of ***Suncraft Energy Pvt. Ltd. Vs. Assistant Commissioner, State Tax, Ballyguange Charge*** reported in ***(2023) 9 Centax 48(Cal)***. The relevant portions of the judgment is quoted below;

> "6. *The effect and purport of From GSTR-2A was explained by the Hon'ble Supreme Court in Bharti Airtel Ltd.(supra). It was held that Form GSTR-2A is only a facilitator for taking a confirm decision while doing such self-assessment. Non-performance or non-operability of Form GSTR-2A or for that matter, other forms will be of no avail because the dispensation stipulated at the relevant time obliged the registered persons to submit return on the basis of such self-assessment in From*

GSTR-3B manually on electronic platform. In Arise India Ltd. v. Commissioner of Trade and Taxes, Delhi MANU/DE/3361/2017 = 2018 (10) G.S.T.L. 182 (Del.), the challenge was to the constitutional validity of section 9(2)(g) of the Delhi Value Added Tax Act, 2004 (DVAT Act) as being violative of Article 14 of 19(g) of the Constitution of India. Section 9(2) of the DVAT Act sets out the conditions under which tax credit or ITC would not be allowed. Sub-clauses (a) to (f) specify certain kinds of purchase which would not be eligible for the claim of ITC. Clause (g) of the section 9(2) of the DVAT Act states that to the dealers or class of dealers unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period, would not be eligible for claim of ITC. The question that arose for consideration was as to whether for the default committed by the selling dealer can the purchasing dealer be made to bear the consequences of the denying the ITC and whether it is the violation of Article 14 of the Constitution. After taking note of the language used in section 9(2)(g) of the DVAT Act where the expression "dealer or class of dealers" occurring in section 9(2)(g) of the DVAT Act should be interpreted as not including a purchasing dealer who has bona fide entered into purchase transaction with validly registered selling dealer who have issued tax invoices in accordance with section 15 of the said Act where there is no mismatch of transactions in Annexures 2A and 2B and unless the expression "dealer or class of dealers" in section 9(2)(g) is read down in the said manner, the entire provision would have to be held to be violative of Article 14 of the Constitution. It was further held that the result of such reading down would be that the department is precluded from invoking section 9(2)(g) of DVAT Act to deny the ITC to the purchasing dealer who had bona fide entered into a purchase transaction with the egistered selling dealer who had issued a tax invoice

reflecting the TIN number and in the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the department would be to proceed against a defaulting selling dealer to recover such tax and not denying the purchasing dealer the ITC. It was further held that where however, the department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the department can proceed under section 40A of the DVAT Act. With the above conclusion, the default assessment orders of tax interest and penalty were set aside. The decision in Arise India Lad. (supra) was challenged before the Hon'ble Supreme Court by the Government in Commissioner of Trade and Taxes, Delhi v. Arise India Ltd and the special leave petition was dismissed by judgment dated 10-1-2018, reported in MANU/SCOR/01183/2018=2022(60) G.S.T.L. 215 (SC). Though the above decision arose under the provisions of the Delhi Value Added Tax Act, the scheme of availment of Input Tax Credit continues to remain the same even under the GST regime though certain procedural modification and statutory forms have been made mandatory."

7. *7. In the show cause notice dated 6.12.2022, the allegation was that the appellant had submitted that the forth respondent has not shown the Bill in GSTR 1 and hence the appellant is not eligible to avail the credit of the imput tax as per section 16(2) of the WBGST Act, 2017 as the tax charged in respect of such supply has not been actually paid to the Government. The show cause notice does not allege that the appellant was not in possession of a tax invoice issued by the supplier registered under the Act. There is no denial of the fact that the appellant ahs received the goods or services or both."*

8. Subsequently the judgment and the Order passed by the Hon'ble Division Bench in Suncraft Energy Private Ltd. has been challenged by way of Special Leave

Petition which was dismissed by the Hon'ble Supreme Court on 14.12.2023, thereby attains finality.

9. It is submitted that the Show Cause Notice dated 06.12.2025, which is pari materia with the present Show Cause Notice dated 11.06.2025, the allegation was that the 4th respondents has not shown bill in GSTR-1 and hence the appellant is not eligible to avail credit of the input tax as per section 16(2) of the WBGST Act, 2017, as the tax charged in respect of such supply has not been actually paid to the Government.

10. The mandate of the statute under Section 73(10) of the CGST Act is to issue a Show Cause Notice within three years from the due date of filing of the annual return whereas in the present case the period in question i.e. 2018-19 and 2019-20 was beyond three years. Therefore, the Department has invoked Section 74 of the CGST Act, 2017 of the CGST Act, 2017 to circumvent the period of limitation. Such invocation is a colorable exercise. The ingredients of Section 74 - fraud, willful mis-statement, suppression of facts- have not been demonstrated in the Show Cause Notice to the extent of willful mis-representation and suppression allegedly committed by the petitioners. Mere availment of Input Tax Credit based on tax invoices where the supplier has defaulted cannot be termed as willful mis-representation by the recipient. The willful mis-representation on the part of the petitioner is very

limited, does not form the basis and has not been demonstrated. In this context reliance is placed upon the judgment on G. R. Infra Projects Ltd. Ratlum (Supra). It is further submitted that such issuance of the Show Cause Notice is de hors the mandate of the provisions of the statute.

11. The petitioners also asserts that the Order in Original dated 09.12.2025 passed by the Adjudicating Authority during the pendency of the Writ Petition, without considering the reply dated 10.11.2025 and documents annexed thereto is not sustainable in the eye of law and is arbitrary, illegal and has been passed inhaste and only to save the period of limitation under Section 73(10) / 74(10). Such Order suffers from non-application of mind and violates principles of natural justice under Section 75(4) and 75(6) of the CGST Act which mandates a reasoned and speaking order.

12. The Learned Counsel appearing for the CGST authorities vehemently opposes the submissions made by the petitioners on the point of maintainability of the Writ Petition and submits that the Order dated 09.12.2025 passed by the authority concerned is appealable in nature under Section 107 of the CGST Act and the alternative statutory remedy is available to the petitioner to prefer an appeal against the Order passed by the Adjudicating Authority. Hence the Writ Petition is

not maintainable and should be dismissed on that score alone.

13. It is also submitted by the respondents that the petitioners have availed irregular Input Tax Credit from different suppliers whose registration was cancelled and who had filed GSTR-1 only for January 2018 and February 2018 and did not file returns for the subsequent periods.

14. In paragraph 3.5 and 3.6 of the Show Cause Notice, the reasons for issuance of the Show Cause Notice have been categorically mentioned, from which it is apparent that non-reflection of the invoices in GSTR - 2A of the recipients, being the petitioners herein implies that the tax so charged in those invoices have not been paid to the Government exchequer. It is further submitted that only on the basis of the departmental enquiry such wrongful availment of Input Tax Credit as discussed in paragraph Nos. 3.5 and 3.6 of the Show Cause Notice have been detected, otherwise the same would have remained unnoticed and the petitioners being the recipients would continue to enjoy the unlawful benefits. The petitioners were afforded ample opportunity of hearing to substantiate their claims in respect of the amendment of the Input Tax Credit. However, the petitioners failed to comply with the same.

15. Learned counsel appearing on behalf of the respondent authorities relied upon the judgment of

Fanmade11 Fantasy Sports Pvt. Ltd. Vs. Union of India (W.P.(c) No.174 of 2026), the relevant paragraphs are quoted below:-

> *"7. Dr. S. Muralidhar, the learned senior counsel appearing for the petitioner would submits that the despite there being an interim order passed by this Court that no coercive steps shall be taken against the petitioner, the Assessing Officer proceeded with the hearing of the impugned show cause notice and passed the final order of assessment determining the tax liability of the petitioner to the tune of Rs.6.3 Crore.*
> *8. We are of the view that since final order of assessment has already been passed, the petitioners may now prefer an appeal as provided under the Act.*
> *9. It shall also be open for the petitioners to raise all contentions available to them in law before the appellate authority including the issue of revaluation and pre-deposit. But contained that where final assessment order has been passed so as to interim protection against coercive action, since statutory remedy of appeal had become available, assessee was relegated to appellate authority with liberty to raise all contentions including revaluation for appropriate adjudication of the issue involved herein."*

16. The Learned Counsel appearing for the respondents places reliance on the above to contend that in the present case also the Order in Original dated 09.12.2025 has been passed during the pendency of the Writ Petition and the petitioners should be relegated to the appellate remedy under Section 107.

17. It is further submitted that the judgment relied upon by the petitioners namely Suncraft Energy Private Ltd., Arise India and G. R. Infra Projects (Supra) have been considered by the Adjudicating Authority. Therefore the Adjudicating Authority has rightly passed the said order and does not suffer from any arbitrariness, irregularity and is not perverse in nature

and all documents relied upon by the petitioners have been duly considered at the time adjudication.

18. After hearing the rival contentions of the parties and upon perusal of materials available on records this Court finds that the writ petitioners have been able to prima facie satisfy this Court warranting interference at this stage.

19. This court has taken judicial notice of all the documents annexed with the Writ Petition including the documents annexed to the application being CAN 1 of 2026 which includes Tax Invoices issued by suppliers including Aster Trading Company E-Waybills, G.R. Transport Receipts, proof of receipt of goods, bank statements showing payment through banking channels, GSTR-2A, GSTR -3B, Reply dated 10.11.2025 and proof of proceedings initiated against defaulting supplier M/s. Aster Trading Company for Financial Year 2019-20 for non-filing of GSTR -3B.

20. The core issued involved herein is as to whether Input Tax Credit can be denied to bonafide purchaser for default of supplier in depositing tax / non-filing of GSTR -3B / non-reflection in GSTR -2A in light of judgment of Suncraft Energy Private Ltd. (supra) affirmed by Supreme Court on 14.12.2023 and Arise India Ltd. affirmed by Supreme Court on 10.01.2018.

a. This Court observes that the Show Cause Notice does not allege that the petitioners were not in a

possession of a tax invoice issued by the supplier registered under the Act. There is no denial of the fact that the petitioners have received the goods or services or both. Therefore, conditions under Section 16(2)(a) and 16(2)(b) of the CGST Act are satisfied. The only dispute is under Section 16(2)(c) where tax charged actually has been actually paid to the Government.

b. The department itself admits that the proceedings have been initiated against a supplier namely, M/s. Aster Trading Company for non-filing of GSTR -3B for the Financial Year 2019-20. Having done so, the department cannot doubly recover, once from the supplier and again from the recipients. The department must first proceed for recovery against the defaulting supplier under Section 79 of the CGST Act. Mere non-reflection of invoices in GSTR -2A cannot by itself lead to automatic denial of Input Tax Credit to a bonafide purchaser. No allegation of collusion between the petitioners and M/s. Aster Trading Company has been alleged in the Show Cause Notice. No finding of the collusion under Section 40A has been recorded.

c. Hence the ratio laid down, by the Hon'ble Division Bench in **Suncraft Energy Private Ltd. (Supra)** squarely applies to the facts of the present case.

The law laid down in Suncraft Energy Private Ltd. is binding on this Court.

d. Secondly whether Section 74 can be invoked mechanically by using word fraud, willful mis-statement, suppression without materials particulars to cover up limitation under Section 73(10) in light of the judgment in G.R. Infra Projects Private Ltd. Ratlum.

e. This Court observes, that the Show Cause Notice dated 11.06.2025 for the period 2018-19 is ex facie time barred under Section 73(10) – three years from the due date of filing annual return. To get over the limitation, the department has mechanically invoked section 74 alleging fraud, willful mis-statement and suppression of facts.

f. A bare reading of the notice would indicate that apart from for a bland statement of fraud or concealment, nothing is stated as to how fraud was inferred or how concealment was detected. The Notice itself indicates that even the Assessing Officer was not sure whether the assessment was proceeded with by reason of fraud or on the ground of concealment as held by the Supreme Court in the case of G. R. Infra Projects Private Ltd. (Supra) in the paragraphs Nos. 10 and 11.

g. The mechanical use of words fraud, willful mis-statement and suppression of facts without listing

out the reasons persuaded the Assessing Officer to arrive at a conclusion that the assessee does not satisfy the ingredients of Section 74. Extended limitation under Section 74 cannot be invoked merely to cover up delay. Therefore, invocation of Section 74 is without jurisdiction, de hors the statute and is a colourable exercise of power and abuse of process.

h. The third issue is whether the Writ is maintainable despite alternative remedy of appeal under Section 107.

i. This Court has carefully perused the case of Fanmade 11 Fantasies sports Private Ltd. (Supra) is distinguishable in facts. It is a settled proposition of law that when an order suffers from violation of principles of natural justice and is a non-speaking order without dealing the documents annexed to reply dated 10.11.2025, the writ is maintainable as held in the case of Whirlpool Corporation Vs. Registrar of Trademarks reported in 1998(8) SCC.

21. In view of the above discussions made herein and in view of the law laid down in **Suncraft Energy Private Limited (supra)** which has been affirmed by the Supreme Court on 14.12.2023, this Court is of the view that the impugned Order in Original suffers from non-application of mind, violation of

principles of natural justice and is without jurisdiction to the extent it invokes section 74 CGST Act, 2017 for the period 2018-19 and accordingly the Writ Petition is disposed of the with the following directions:-

I. The Order in Original dated 09.12.2025 passed by the respondent authorities along with the consequential recovery notice dated 12.06.2026 is hereby quashed and set aside.

II. The respondent No. 1is directed to revisit the issue involved herein in the present Writ Petition by reconsidering the reply dated 10.11.2025 filed by the petitioner, along with all documents, in the light of the judgments relied upon by the petitioners namely **Suncraft Energy Private Ltd. (supra)** and G.R. Infra Projects Private Ltd. Ratlum passed by the Hon'ble Supreme Court.

III. The respondent No. 1 shall consider and pass a reasoned and speaking order in accordance with law upon affording an opportunity of personal hearing to the petitioners within a period of four weeks from the date of communication of this order.

IV. It is however, made clear that the petitioners shall not pray for any unnecessary adjournments.

V. The respondent No. 1 is also at liberty to take an independent decision and shall not be influenced by the observations made in this order except to the extent of considering binding precedents as mentioned above.

VI. Accordingly, the petitioners are directed to produce all relevant documents pertaining to paragraphs 3.5 and 3.6 of the Show Cause Notice i.e. Tax Invoices issued by the suppliers including M/s. Aster Trading Company, E-Waybills, G. R. Transport Receipts, proof of receipt of goods in godown, bank statements, evidencing payment through banking channel, GSTR -2A / 2B, GSTR -3B correspond with the GSTR -2A/2B and GSTR -3B correspondence with suppliers regarding non-filing of GSTR -3B and proof of proceedings initiated against defaulting supplier in order to substantiate their case so as to enable the respondent No. 1 to arrive at a conclusion at the time of hearing before the respondent No. 1.

22. It is made however, made clear that as a condition for remand and as prima facie proof of bonafide the petitioners shall deposit a sum of Rs. 10,00,000/- in Form GST DRC03 under protest, within a period of four weeks from the date of communication of this order. Such deposits shall be subject to final outcome of fresh adjudication to be conducted by respondent No. 1 in terms of the directions above and shall be adjusted against final liability, if any or refunded if petitioners succeed.

23. If petitioners fail to deposit Rs. 10,00,000/- within four weeks, benefit of this order shall stand automatically vacated and department shall be at liberty to proceed for recovery of Rs. 6.3 Crores in accordance with law.

24. With the above observations and directions the Writ Petition is allowed and disposed of along with the CAN 1 of 2026.

25. Since the affidavits have not been filed the allegations made in the Writ Petition are deemed to have been denied and not admitted.

[Smita Das De, J.]