2026:HHC:42146

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**CWP No. 3962 of 2026**
**Date of decision: 29.09.2026**

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**M/s Aditya Industries** **.....Petitioner**

**Versus**

**State of H.P. and others** **.....Respondents**

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***Coram***

**The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.**
**The Hon'ble Mr. Justice Yogesh Jaswal, Judge.**

***Whether approved for reporting?[1] Yes***

**For the Petitioner :** Mr. Ajay Vaidya, Advocate.

**For the Respondents :** Mr. Anup Rattan, Advocate General with Mr. Sushant Keprate, Additional Advocate General.

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**Ajay Mohan Goel, Judge (Oral)**

By way of this writ petition, the petitioner has, inter alia, prayed for the following reliefs:-

> "i) To hold that the Section 16(2)(c) of the CGST Act, second proviso to Section 16(2)(d) and proviso to Section 16(4) of the CGST Act are ultra virus of the constitution;
> ii) For issuance of a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ or direction calling for the records pertaining to the Petitioners' case and after going into the validity and legality thereof to quash and set-aside notices dated 02.07.2024, Annexure P-2, dated 03.07.2024 (Annexure P-3) issued without jurisdiction and for denying the Input Tax Credit to the petitioner;
> iii) This Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Order or direction, directing the respondents, its servants, subordinates, agents and successors in office to forthwith withdraw and/or cancel the impugned notice Annexure P-2 and Annexure P3, issued by the respondent No.3 under Section 74 of the Act for denying the ITC as the show cause notice is time barred, issued without issuing ASMT-10 beside this show cause notice was issued without appreciating the factual and legal position as

[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?Yes***

> petitioner has already paid the tax to the sellers and in his possession all the documents required for claiming the ITC and the petitioner cannot be forced to do the impossible act that seller has discharged its tax liability or not."

**2.** Perusal of the show cause notice issued to the petitioner under Section 74 of the Himachal Pradesh Goods and Services Tax (HP GST) Act/Central Goods and Services Tax (CG ST) Act, 2017, demonstrates that the requirement of Section 74 of HP GST Act are not met therein in letter and spirit.

**3.** Section 74 of the HP GST Act, 2017 provides that 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 **(a) fraud, (b) any willful misstatement, (c) or suppression of facts**, to evade tax, he shall serve notice to the person chargeable with tax, which has not been so paid, or which has been so short paid, etc. Thus, the condition precedent for the invocation of the provision of Section 74, is that the officer concerned has to be satisfied that tax has not been paid or short paid, or erroneously refunded, or where input tax credit has been wrongly availed or utilized, on account of either a fraud that has been played by a party, or any willful misstatement made by a party, or suppression of facts which has been made by a party, to evade tax.

**4.** The statutory requirement of Section 74 of HP GST Act has to be correlated with the allegations/averments made in the notice. Mere mentioning of allegations and then making a bald

assertion that the same amounts to either fraud or willful misstatement or suppression of facts, does not satisfy the mandate of Section 74.

**5.** Hon'ble Supreme Court in ***M/s Tata Steel Limited versus Union of India through the Secretary, Ministry of Finance and others, SLP(C) No.16859/2026***, has held that in so far as a notice under Section 74 of the GST Act is concerned, the satisfaction should be not only of mismatch of Input Tax Credit (ITC) and short payment of tax having occurred, but the officer should be satisfied that either fraud or willful misrepresentation or suppression has led to such mismatch or short payment of tax. Hon'ble Supreme Court has further held in this judgment that it is not mere lip service to the provision that is intended when an extended limitation period is provided for recovering an excess benefit availed, etc. and the foundational facts which led to the inference arrived at of fraud, or willful misrepresentation, or suppression should be evident from the notice itself.

**6.** Similarly, the Hon'ble Supreme Court in ***M/s G.R. Infra Projects Limited Ratlam versus The State of Madhya Pradesh and others, Special Leave Petition (C) No.33594 of 2025***, has been pleased to hold as under:-

> "10. A bare reading of the notice would indicate that but for a bland statement of 'fraud or concealment of facts' nothing is stated as to how fraud was inferred or concealment of facts were detected. In fact, the 'or' employed indicates that even the assessing officer was not sure that the assessment was proceeded by reason of fraud or on the ground of

> concealment of facts. What is required for the extended time to be applied are the allegations, which lead to the inference of a fraud or the concealment as attempted by the assessee resulting in suppression of facts, should emanate from the notice itself. It cannot be a mechanical use of the words 'fraud, willful misstatement or suppression of facts' without listing out the aspects which persuades the assessing officer to conclude that there has been employed either of these surreptitious devices by the assessee."

**7.** In the notice in hand that has been issued under Section 74 HP GST Act, after mentioning the facts of the acts of omission attributed to the petitioner, thereafter, what is mentioned is as under:-

> "It is evident as per Table-I above that the registrations of the inward suppliers were cancelled by the jurisdictional authority due to non-existent and other reasons for which input tax credit u/s 16 of the HPGST/CGST Act, 2017 cannot be allowed. Therefore the tax payer has wrongly availed input tax credit or utilized by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, requiring him to show cause u/s 74 of the HPGSTG/CGST Act, 2017 as to why he should not pay the amount specified in the notice alongwith interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice."

**8.** In terms of this para of the notice, what is mentioned by the Authority is that the taxpayer i.e. the petitioner herein, has wrongly availed Input Tax Credit **or** utilized by reason of fraud, **or** any willful misstatement, or suppression of facts to evade tax. This, according to us, is not what is mandated by law.

**9.** From the above, what can be inferred is that the authority itself was not clear as to whether the act of the petitioner was an act of fraud or willful misstatement or suppression of facts. The Authority has to be very very clear and categoric as to whether the act of the incumbent amounts to fraud or willful misstatement or

suppression of facts. Same has to be correlated with the allegations as are contained in the notice. The provisions of Section 74 of HP GST Act cannot be used just as a lip service as has been observed by the Hon'ble Supreme Court of India so as to bring the notice under the ambit of Section 74 of the Act.

**10.** In this background, as we are of the considered view that correlation is lacking in the present case, as agreed, this petition is disposed of by setting- aside Annexure P-3, i.e. the show cause notice issued to the petitioner under Section 74 of the HP GST Act and liberty is granted to the Authority that if advised, it may issue a fresh notice to the petitioner. In case any notice is issued within a period of 60 days from today, then the issue of limitation shall not come in the way of issuance of such notice.

**11.** At this stage, learned counsel for the petitioner submits that the issue raised by the petitioner with regard to the legality of Section 16(2)(c), second proviso to Section 16(2)(d) and Section 16(4) of the CGST Act, 2017, be kept open. Ordered accordingly.

Pending miscellaneous application(s), if any, also stand disposed of accordingly.

**(Ajay Mohan Goel)**
**Judge**

**(Yogesh Jaswal)**
**Judge**

**29th September, 2026.**
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