Case Citation: (2026) taxcode.in 1666 HC

ORISSA HIGH COURT : CUTTACK

AFR

W.P.(C) No.12771 of 2026
CNR No. ODHC010304882026

In the matter of an Application under
Articles 226 and 227 of the Constitution of India, 1950

***

M/s. Chandan Patra
At: Plot No. 1137, Ratnakar Bagh-1
Tankapani Road, Bhubaneswar
Khordha, Odisha – 751 018
Represented by its
Proprietor Sri Chandan Patra
Son of Sri Sachidanaada Patra. ... Petitioner

-*VERSUS*-

1. Union of India
Represented by Secretary
Department of Revenue, North Block
New Delhi – 110 001.

2. The Chief Commissioner of
Goods and Services Tax and
Central Excise
Central Revenue Building, Rajaswa Vihar
Bhubaneswar – 751 007.

3. The Superintendent
Goods and Services Tax &
Central Excise, Range VII
Plot No. 258, 3rd floor
District Centre, Chandrasekharpur
Bhubaneswar – 751 016
Khordha, Odisha. ... Opposite parties.

www.taxcode.in

Counsel appeared for the parties:

For the Petitioner : M/s. Choudhury Satyajit Misra, Nihar Ranjan Mohanty, Amisha Das, Advocates

For the Opposite parties : Mr. Umesh Chandra Sahoo, Junior Standing Counsel (Central Goods and Services Tax, Central Excise and Customs Department)

P R E S E N T:

HONOURABLE
DR. JUSTICE SANJEEB K PANIGRAHI

AND

HONOURABLE
MR. JUSTICE MURAHARI SRI RAMAN

Date of Hearing : 30.09.2026 :: Date of Judgment : 07.10.2026

JUDGMENT

MURAHARI SRI RAMAN, J.—

Assailed in the present writ petition is the Order-in-Original, bearing No.02/CGST/BBSR Range-VII/2026, passed in exercise of power under Section 74 of the Central Goods and Services Tax Act, 2017/the Odisha Goods and Services Tax Act, 2017 (Collectively, "GST Act") by GST and Central Excise, Bhubaneswar-VII Range, Bhubaneswar-I Division (Annexure-2) along with

the Demand-*cum*-Show Cause Notice dated 04.09.2025 issued under Section 74 by the GST and Central Excise, Bhubaneswar Range-VII (Annexure-1).

The facts:

2. The petitioner, proprietor of M/s. Chandan Patra, being registered under the GST Act and assigned with GSTIN: 21BDDPP6208C1Z4 is engaged in the execution of works contracts having disclosed its place of business at Plot No.1137, Ratnakar Bagh-1, Tankapani Road, Bhubaneswar, Khordha, Odisha.

2.1. The petitioner during the year 2019-20 had executed works contract service under the Executive Engineer, Bhanjanagar Irrigation Division, Bhanjanagar for improvement to right flood bank of river Kokolaba from Village Gayananda to Baradanda under NABARD Assistance RIDF-XXII, and has received a total sum of Rs.26,36,189/-, which is reflected in Form 26AS (Annual Tax Statement under Section 203AA of the Income Tax Act, 1961).

2.2. The works executed during the year 2019-20 was tendered on the basis of schedule of goods prevailed under the erstwhile Value Added Tax regime, *i.e.*, based on Schedule of Rates, 2014. Therefore, while raising Running Account Bills to the Contractee, under the *bona*

fide belief that tax under the GST Act is not attracted on the "irrigation works", which are awarded on the basis of Schedule of Rates prevailed in 2014, the petitioner has not charged any GST.

2.3. On 10.07.2025, the petitioner received a notice dated 30.06.2025 styled as *"Investigation on non/short payment of appropriate GST liability on payment received against supply of works contract service to different Government Organisation for the Financial Year 2019-20"* issued by the Superintendent, being despatched on 05.07.2025, wherein it has been alleged that the petitioner during the relevant year has received an amount of Rs.73,58,507/- towards execution of works contract service rendered to different Government Organizations, but failed to pay the appropriate GST liability on the said transaction. Further the petitioner was directed to produce the copies of the audited balance sheet, profit & loss account, Form 26AS, Income Tax Return, GSTR-1, GSTR-3B, GSTR9/9C, Work Orders, bills/invoices, bank account statements and reconciliation of GST payable/paid relating to the financial year 2019-20. In response thereto, the petitioner handed over all the relevant documents as asked for to the Authorized Representative who looks after the taxation matter, for submission before the said Authority. Unfortunately, due to medical exigency, the

representative of the petitioner could not appear before the Superintendent on the scheduled date. On 14.07.2025 the petitioner filed a petition seeking grant of one month's accommodation to submit the required documents to which no communication was received from the Office of the Superintendent. Upon enquiry, the Authorized Representative was given to understand by the Office of the Superintendent that the next date would be communicated for submission of such documents. While matter stood thus, the petitioner was served with a Demand-*cum*-Show Cause Notice dated 04.09.2025 issued under Section 74 of the GST Act by the Superintendent directing him to show cause as to why GST amounting to Rs.8,83,021/- would not be recovered along with applicable interest under Section 50(1) of the said Act. A reminder was issued by Superintendent on 08.01.2026 directing the petitioner to file the documents along with reply by 26.01.2026 and fixed the date of personal hearing on 27.01.2026. Said reminder accompanied a copy of the Form GST DRC-01 dated 10.09.2025. In response to the above said reminder, the petitioner on 27.01.2026 has appeared and filed its detailed reply before the Superintendent which was received manually by the said Authority on the said date. In course of hearing the petitioner submitted that during the year 2019-20 the petitioner

received Rs.26,36,189/- on account of execution of the contract work and regarding liability under the GST Act it was pointed out that the work so executed squarely covered under Notification No.31/2017-Central Tax (Rates) issued by the Department of Revenue, Ministry of Finance, Government of India and the transaction attracts GST @ 5%.

2.4. During course of hearing on 27.01.2026, on the instruction of the Superintendent to produce the copies of Form 26AS (Annual Tax Statement under Section 203AA of the Income Tax Act, 1961) relating to the Financial Year 2019-20 and the Running Account Bill and the Final Bill dated 22.11.2019, the petitioner furnished said documents on the adjourned date of hearing on 13.02.2026.

2.5. Although the petitioner was allowed to furnish the documents on 13.02.2026, an Order-in-Original dated 04.02.2026 (Annexure-2) came to be served on the petitioner on 12.02.2026. Therefore, flagging flagrant violation of principles of natural justice, the petitioner, circumventing the alternative remedy available under the GST Act and Rules framed thereunder, has approached this Court by way of instant writ petition for protection against such arbitrary demand raised in the Order-in-Original which was passed without having

regard to the reply dated 27.01.2026 to the Demand-*cum*-Show Cause Notice dated 04.09.2025.

Hearing:

3. Record reveals that on 05.05.2026 when the matter was taken up for consideration, Sri Satyanarayan Pattanaik, learned Central Government Counsel and Sri Avinash Kedia, learned Junior Standing Counsel represented the opposite parties and requested for an adjournment. Accordingly, the matter was listed subsequently on 14.05.2026, 25.06.2026, 02.07.2026, 09.07.2026 and 30.09.2026. Yet no response is filed by the opposite parties.

3.1. Since short point has been raised by the petitioner for consideration of this Court whether the Order-in-Original can be sustained for the same was passed in utter disregard of grundnorm of natural justice, and non-consideration of objection or explanation filed in course of adjudication proceeding under Section 74 of the GST Act, on the consent of counsel appearing for both the sides the matter is finally heard at the stage of "Fresh Admission", as keeping the matter pending would benefit none.

3.2. Sri Umesh Chandra Sahoo, learned Junior Standing Counsel having instructions appeared and accepted

notice on behalf of the opposite parties. Heard Sri Choudhury Satyajit Misra, learned Advocate being assisted by Ms. Amisha Das, learned Advocate appearing for the petitioner and Sri Umesh Chandra Sahoo, learned Junior Standing Counsel representing the opposite parties.

3.3. After conclusion of hearing, the matter stood reserved for preparation and delivery of judgment/order.

Arguments advanced by the counsel for the respective parties:

4. Sri Choudhury Satyajit Misra, learned Advocate contended that despite opportunity to furnish the required documents on a later date was granted till 13.02.2026 by the Superintendent of GST and Central Excise, Bhubaneswar Range-VII in course of hearing on 27.01.2026, no final decision could have been taken on 04.02.2026 by passing Order-in-Original. To buttress his argument, he referred to a document enclosed with the writ petition as Annexure-9, styled as "Hazira" dated 13.02.2026. He arduously submitted that the documents sought to be furnished at a later date in course of hearing on 27.01.2026 being received by the Superintendent, Bhubaneswar Range-VII on 13.02.2026, the Order-in-Original having been passed on 04.02.2026 cannot be held to be tenable in the eye of law.

4.1. In furtherance thereof, the learned counsel vociferously submitted that the Order-in-Original suffers from infirmity inasmuch as the authority has failed to consider the explanation proffered by the petitioner through the reply dated 27.01.2026 (Annexure-8).

4.2. Elaborating further Sri Choudhury Satyajit Misra, learned Advocate urged that the petitioner by way of said reply dated 27.01.2026 was critical with respect to the very initiation of the proceeding invoking power under Section 74 of the GST Act and questioned whether the case at hand falls within the purview of said provision. Having not addressed such issue which strikes at the root of the matter, the Order-in-Original cannot be sustained and is liable to be quashed.

4.3. This apart, he submitted that the Order-in-Original percolates a sense of understanding that the petitioner never participated in the proceeding under Section 74 nor did he file any reply to the Demand-*cum*-Show Cause Notice. Such incorrect perception would render the Order-in-Original invalid, inoperative and bad in law.

5. The Junior Standing Counsel, Sri Umesh Chandra Sahoo, representing the opposite parties would contend that the Order-in-Original cannot be faulted with, inasmuch as the procedure laid down by and under the statute has been strictly followed by the Superintendent-

opposite party No.3. Having afforded reasonable, sufficient and adequate opportunity to the petitioner to furnish documents and a reply, not only by way of the Demand-*cum*-Show Cause Notice but also by issuing a reminder, the principles of natural justice cannot be said to have been transgressed.

5.1. Explaining further he submitted that in addition to document(s) to be furnished as referred to above, the petitioner was afforded *audi alteram partem* in order to comply with a facet of rules of natural justice on 27.01.2026. Reference was made to paragraph 4.0 of the Order-in-Original, which is reproduced hereunder:

> *"4.0 Record of Personal Hearing & Written Defense; Reply of the Noticee:*
>
> *In order to meet the doctrine of natural justice, the adjudicating authority granted the noticee an opportunity to defend their case by way of appearing in personal hearing in person or through their authorized representative. However, the noticee failed to appear on any of the scheduled dates and also could not produce the reply against the Show Cause Notice in the GST Portal in the Form DRC-06. Hence in absence of any written submission and reply against the Show Cause Notice and appearance of Personal Hearing by the noticee, I have no option left but to decide the case on merits based on the records available."*

5.2. Strenuous attempt was made by Sri Umesh Chandra Sahoo, the learned Junior Standing Counsel to save the Order-in-Original from being quashed, and he submitted that the Appellate Authority being competent to examine the issue of principles of natural justice along with merit of the contentions of the petitioner on facts as also in law, the petitioner is required to be relegated to avail remedy provided under the GST Act and Rules framed thereunder.

Consideration of rival contentions and submissions:

6. At the outset, it is felt pertinent to analyse the facts having bearing on the issue raised in the present matter.

6.1. Referring to paragraph 4.0 of the Order-in-Original dated 04.02.2026, on which heavy reliance is placed by the learned Junior Standing Counsel, reveals that the Superintendent (Proper Officer) proceeded to adjudicate the matter as if the petitioner did not appear on any of the scheduled dates and did not produce the reply against the Demand-*cum*-Show Cause Notice in the GST Portal in the Form GST DRC-06.

6.2. To counter such a stance taken by the Superintendent to ignore the reply dated 27.01.2026, it is specific case of the petitioner that said reply was acknowledged to have been received by the Superintendent in course of

personal hearing on 27.01.2026 while proceeding under Section 74 of the GST Act was in progress.

6.3. Drawing attention of this Court to the provision contained in Rule 142(4)[1] of the Central Goods and Services Tax Rules, 2017/the Odisha Goods and Services Tax Rules, 2017 (Collectively, "GST Rules", for short) it is vehemently contended that the words "uploaded electronically" precede the expression "in Form GST DRC-01" in contradistinction to the said word being not employed before the words "in Form GST DRC-06". Since Section 74(9)[2] of the GST Act does not contemplate the furnishing of a representation, reply or explanation in connection with a Show Cause Notice issued under sub-section (1) of Section 74 in the "prescribed"[3] manner— explicitly omitting the word "electronically"— non-consideration of the reply dated 27.01.2026 can be construed as arbitrary exercise of power, thereby the whittling down of a valuable right of the petitioner to set up a defence. The aforementioned

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1 Sub-rule (4) of Rule 142 of the GST Rules stands thus:
"(4) The representation referred to in sub-section (9) of Section 73 or sub-section (9) of Section 74 or sub-section (3) of Section 76 or the reply to any Notice issued under any section whose summary has been uploaded electronically in Form GST DRC-01 under sub-rule (1) shall be furnished in Form GST DRC-06."

2 Sub-section (9) of Section 74 of the GST Act reads as follows:
"(9) 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."

3 Section 2(87) of the GST Act defines the term "Prescribed" to mean:
"PRESCRIBED means prescribed by Rules made under this Act on the recommendations of the Council."

provisions read harmoniously postulate that the Authority/Proper Officer is required to issue and upload the Demand-*cum*-Show Cause Notice in Form GST DRC-01 strictly in the portal through the electronic mode; nonetheless, the provisions do not create strict or mandatory requirement that the reply in Form GST DRC-06 must only be uploaded electronically. The Superintendent, being conscious that such restriction is absent or not envisaged in Section 74(9) of the GST Act read with Rule 142(4) of the GST Rules, received the reply to the Demand-*cum*-Show Cause Notice filed "manually" on 27.01.2026 (the date of the personal hearing) and affixed his signature thereto as a mark of acknowledgment (Annexure-8).

6.4. To fortify the contention Sri Choudhury Satyajit Misra, learned Advocate cited a decision in the case of *Boldrocchi India Private Limited Vrs. State Tax Officer (ST), 2025 SCC OnLine Mad 15551,* wherein it has been observed as follows:

"It would be pertinent to mention here that ***whether the assessee files the reply by way of uploading the same through the Portal or manually, the Assessing Officer is duty bound to pass the assessment orders after taking into consideration of the reply filed by the assessee****. In the present case, admittedly, the petitioner has filed the reply manually, therefore, the first respondent ought not to have proceeded to confirm the*

proposals contained in the show cause notice, in a mechanical manner, on a wrong footing, as if, no reply was filed the petitioner and without even affording an opportunity of personal hearing to the petitioner. Therefore, this Court is of the view that the impugned orders suffer from violation of principles of natural justice and have to be set aside."

6.5. In the instant case, careful examination of document enclosed with writ petition as Annexure-8 depicts that the reply dated 27.01.2026 to the Show Cause Notice has been filed before the Authority concerned as at the foot of the said document as a token of receipt Superintendent of Bhubaneswar Range-VII has affixed his signature. Merely because the said document was not filed *via* electronic mode, the Proper Officer could not have shirked his responsibility to consider the same while taking a decision in the proceeding under Section 74 of the GST Act. The submission of Sri Choudhury Satyajit Misra, learned Advocate, is bolstered by the reliance placed on *Asia (Chennai) Engineering Company Private Limited Vrs. The Assistant Commissioner (ST), W.P.(C) No.13851 of 2022 & batch, decided on 22.08.2022*, wherein the observation of the Hon'ble Madras High Court (Madurai Bench) runs thus:

"5. Therefore, this Court not going into the merits contested by both the petitioner and the respondents, finds ***the petitioner had sent a detailed representation dated 07.01.2022***

which received by the respondents on 10.01.2022 which is not disputed. The only objection of the Department is that the postal/ physical reply not considered, since it was not sent through portal. *The petitioner deserves personal hearing so that his objections can be heard. This case is for erroneous refund. In such circumstances, it would be appropriate that personal hearing is given and the documents considered, thereafter the Department to proceed further. In view of the same, the Department to give opportunity of personal hearing to the petitioner, hear the objections, peruse the documents submitted and the explanations."*

6.6. The reminder dated 08.01.2026 accompanied with Form GST DRC-01, dated 10.09.2025 available at Annexure-7 of the writ petition evinces that date of personal hearing was scheduled on 15.10.2025. Considering the adjournment petition(s), the date was re-scheduled to 27.01.2026, on which date not only oral arguments were stated to have been advanced by the petitioner but a reply was also filed. However, on the said date further accommodation was sought for to furnish certain documents at a later date.

6.7. Under the aforesaid premise, the question whether failure to consider the documents furnished by the petitioner involves civil consequences and violates the principles of natural justice must be evaluated in light of the judgment in *Escorts Farms Ltd. Vrs. Commissioner,*

Kumaon Division, Nainital, U.P. (2004) 4 SCC 281, wherein the Hon'ble Supreme Court of India observed that "rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits." Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. Where valuable civil rights are taken away without any authority of law or by violation of principles of natural justice, this Court cannot fold its hands and look on as an helpless onlooker asking the party to approach the remedy available in the statute.

6.8. This Court is not oblivious about duty of the Court wherever it is perceived that the Authority has deviated from strict adherence to well-established natural justice norms. In *Nagarjuna Construction Company Limited Vrs. Government of Andhra Pradesh, (2008) 16 SCC 276* it is enunciated as follows:

"The rule of law demands that the power to determine questions affecting rights of citizens would impose the limitation that the power should be exercised in conformity with the principles of natural justice. ***Thus,***

whenever a man's rights are affected by decisions taken under statutory powers, the Court would presume the existence of a duty to observe the rules of natural justice. It is important to note in this context the normal rule that whenever it is necessary to ensure against the failure of justice, the principles of natural justice must be read into a provision. *Such a course is not permissible where the rule excludes expressly or by necessary intendment, the application of the principles of natural justice, but in that event, the validity of that rule may fall for consideration."*

6.9. In *Krishnadatt Awasthy Vrs. State of M.P., (2025) 7 SCC 545*, the Hon'ble Supreme Court of India illuminatingly discussed the necessity of compliance with the principles of natural justice, observing as under:

"Issue A

19. The first issue that falls for our consideration is whether the selection stands vitiated on the ground of violation of the rule against bias. It must be borne in mind that when a statute specifies the procedure for administrative decision-making, the principles of natural justice supplement but do not substitute the statutory procedure [A.K. Kraipak Vrs. Union of India, (1969) 2 SCC 262]. ***However, even if the statute does not provide for the administrative procedure, the authorities are bound to make decisions in adherence to the principles of natural justice****.*

***

26. *Having noted the relevant statutory provisions, a brief survey of the jurisprudence on the appropriate test for bias and the applicable standard of proof would now be in order before the statutory law and the common law principles are applied to the facts of the present case.*

27. *The principle of nemo judex causa sua found its origin in English law. In Dimes Vrs. Grand Junction Canal, (1852) 3 HLC 759 = 10 ER 301, the House of Lords in a case concerning pecuniary interest observed that the rule against bias extends not only to actual bias but also to the appearance of bias. This principle was later extended to other forms of interest in R Vrs. Sussex Justices, (1924) 1 KB 256 where it was held that "even a suspicion that there has been improper interference with the course of justice", would lead to the vitiation of proceedings. Lord Hewart noted that it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. Lord Denning in Metropolitan Properties Co. (FGC) Ltd. Vrs. Lannon, (1969) 1 QB 577 : (1968) 3 WLR 694 (CA) noted that, "if right-minded, in the circumstances, there was a real likelihood of bias on his part, he should not sit. And if he does sit, his decision does not stand". It was further held that: (Metropolitan Properties Co. (FGC) Ltd. Vrs. Lannon, (1969) 1 QB 577 = (1968) 3 WLR 694 (CA), QB p. 599)*

'... there must be circumstances from which a reasonable man would think it likely or probable that the Justice, or Chairman as the case may be,

would, or did, favour one side at the expense of the other.'

28. *The emphasis on* ***"likely or probable"*** *as noted by Lord Denning, was considered in R Vrs. Gough, 1993 AC 646 = (1993) 2 WLR 883 (HL) (for short "Gough") where the Court shifted the focus to the possibility of bias rather than its probability. The test articulated in R Vrs. Gough, 1993 AC 646 = (1993) 2 WLR 883 (HL), was whether there was a "real danger of bias" rather than a "real likelihood" of bias. It prioritised the court's assessment of bias over the perception of a fair-minded and informed observer emphasising that the court "personifies the reasonable man". This test was criticised in other common law jurisdictions for veering away from the public perception of bias. The House of Lords modified the said test in Porter Vrs. Magill, (2002) 2 AC 357 = (2002) 2 WLR 37 (HL) and pronounced as under: (Porter Vrs. Magill, (2002) 2 AC 357 = (2002) 2 WLR 37 (HL), AC p. 494, para 102)*

> *'102. …'85. … The Court must first ascertain all the circumstances which have a bearing on the suggestion that the Judge was biased, it must then ask whether those circumstances would lead to a fair-minded and informed observer to conclude that there was a real possibility … that the Tribunal was biased.' '*

29. ***Indian courts have consistently adopted the "real likelihood" test to determine bias*** *[Manak Lal Vrs. Prem Chand Singhvi, 1957 SCC OnLine SC 10; Ranjit Thakur Vrs. Union of India, (1987) 4 SCC 611; Rattan Lal Sharma Vrs. Dr Hari Ram (Co-*

Education) Higher Secondary School, (1993) 4 SCC 10; S. Parthasarathi Vrs. State of A.P., (1974) 3 SCC 459; S.K. Golap Vrs. Bhuban Chandra Panda, 1990 SCC OnLine Cal 264; G.N. Nayak Vrs. Goa University, (2002) 2 SCC 712]. In a recent decision in CORE Vrs. ECI SPIC SMO MCML (JV), (2025) 4 SCC 641, a Constitution Bench of this Court speaking through D.Y. Chandrachud, C.J. (of which one of us was a member), summarised the Indian position thus:

> *'107. Although there have been vacillations about the test in England, the Indian courts have been largely consistent in their approach by applying the test of real likelihood of bias or reasonable apprehension of bias. Recently, the court has used the real danger of bias test. However, the above discussion shows that there is no significant difference between the real danger of bias test and the real possibility of bias test if the question of bias is inferred from the perspective of a reasonable or fair-minded person.'*

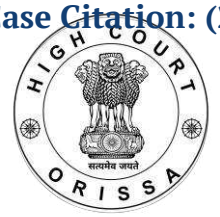
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32. It must also be emphasised that the nemo judex rule is subject to the rule of necessity and yields to it [Union of India Vrs. Tulsiram Patel, (1985) 3 SCC 398; Swadeshi Cotton Mills Vrs. Union of India, (1981) 1 SCC 664]. In J. Mohapatra & Co. Vrs. State of Orissa, (1984) 4 SCC 103, the Court recognised that ***the doctrine of necessity serves as an exception to the rule against bias.*** *In a matter like this, the doctrine of necessity would also be*

squarely attracted since the statute explicitly mandates the composition of the Selection Committee, as outlined in Schedule II to the Rules. ***The doctrine of necessity recognises that decision-making bodies need to function even in circumstances where potential conflicts of interests may arise.*** *Here as earlier noted, the members concerned recused and did not award any marks. It must however be borne in mind that the doctrine of necessity is an exception and must be applied bearing in mind the circumstances in a given case. The size of the jurisdiction must also be taken into account for the application of the doctrine of necessity. In this regard, Forsyth and Wade [H.W.R. Wade, Administrative Law (5th Edn.).] have noted that in small jurisdictions, qualified persons may be few in number and likely to be known to the parties making the "fair-minded and informed observer" test impractical. The doctrine of necessity is where such considerations of size should be considered rather than in the distortion of the test.*

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34. *Reliance has been placed on the landmark decision in A.K. Kraipak Vrs. Union of India, (1969) 2 SCC 262 that significantly expanded the scope of judicial review of administrative decisions. This ruling was cited in Javid Rasool Bhat Vrs. State of J&K, (1984) 2 SCC 631 where the Court distinguished A.K. Kraipak Vrs. Union of India, (1969) 2 SCC 262 as under: (Javid Rasool Bhat Vrs. State of J&K, (1984) 2 SCC 631:*



'14. Great reliance was placed by the learned counsel on A.K. Kraipak Vrs. Union of India, (1969) 2 SCC 262 on the question of natural justice. We do not think that the case is of any assistance to the petitioners. It was a case where one of the persons, who sat as member of the Selection Board, was himself one of the persons to be considered for selection. He participated in the deliberations of the Selection Board when the claims of his rivals were considered. He participated in the decisions relating to the orders of preference and seniority. He participated at every stage in the deliberations of the Selection Board and at every stage there was a conflict between his interest and duty. The court had no hesitation coming to the conclusion that there was a reasonable likelihood of bias and therefore, there was a violation of the principles of natural justice. In the case before us, the Principal of the Medical College, Srinagar, dissociated himself from the written test and did not participate in the proceedings when his daughter was interviewed. When the other candidates were interviewed, he did not know the marks obtained either by his daughter or by any of the candidates. There was no occasion to suspect his bona fides even remotely. There was not even a suspicion of bias, leave alone a reasonable likelihood of bias. There was no violation of the principals of natural justice.'

***.

Issue B

38. *This brings us to the second limb of* ***the principle of natural justice i.e. audi alteram partem and whether the demonstration of prejudice is mandatory for raising a claim of violation of right of hearing.*** *The principle of audi alteram partem lies at the very heart of procedural fairness, ensuring that no one is condemned or adversely affected, without being given an opportunity to present their case. The decision in Ridge v. Baldwin [Ridge v. Baldwin, 1964 AC 40 : (1963) 2 WLR 935 (HL)] is regarded as a significant landmark decision in British administrative law and is often referred to as a magna carta of natural justice. This decision has resonated deeply in the Indian legal context where natural justice principles are firmly entrenched with constitutional guarantees.*

39. *In Mohinder Singh Gill Vrs. Chief Election Commr., (1978) 1 SCC 405 (for short "Mohinder Gill" [Mohinder Singh Gill Vrs. Chief Election Commr., (1978) 1 SCC 405]), this Court observed that:*

> *'53. … Today in our jurisprudence, the advances made by natural justice far exceed old frontiers and if judicial creativity belights penumbral areas, it is only improving the quality of government by injecting fair play into its wheels.*
>
> ***
>
> *55. … Law lives not in a world of abstractions but in a cosmos of concreteness and to give up something good must be limited to extreme*

cases. If to condemn unheard is wrong, it is wrong except where it is overborne by dire social necessity.'

40. *In Swadeshi Cotton Mills Vrs. Union of India, (1981) 1 SCC 664, this Court held:*

> *'44. … this rule of fair play "must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands". The Court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications.'*

41. *Bhagwati, J. in Maneka Gandhi Vrs. Union of India, (1978) 1 SCC 248, described natural justice as a profound "humanising principle" designed to imbue the law with fairness and ensure justice. This principle has garnered widespread recognition across democratic societies and has evolved into a universally accepted rule, influencing areas of administrative decision-making."*

42. *Wade and Forsyth [H.W.R. Wade and C.F. Forsyth, Administrative Law (Oxford University Press, 11th Edn., 2014).] discuss the essence of good and considerate administration as under:*

> *'Judges are naturally inclined to use their discretion when a plea of natural justice is used as the last refuge of a claimant with a bad case. But that should not be allowed to weaken the basic principle that fair procedure comes first, and that it is only after hearing both sides that merits can be properly considered. In the case of a tribunal which must decide according to, it may be justifiable to disregard*

a breach of natural justice where the demerits of the claim are such that it would in any case be hopeless. But in the case of a discretionary administrative decision, such as dismissal of a teacher or expulsion of a student, hearing their case will often soften the heart of the authority and alter their decision, even though it is clear from the outset that punitive action would be justified. This is the essence of a good and considerate administration, and the law should take care to preserve it.'

43. *The opportunity of hearing is considered so fundamental to any civilised legal system that the courts have read the principles of natural justice into an enactment to save it from being declared unconstitutional on procedural grounds [Olga Tellis Vrs. Bombay Municipal Corpn., (1985) 3 SCC 545].*

44. *It has been argued before us that if the failure to provide hearing does not cause prejudice, observing the principle of natural justice may not be necessary. In this context, a three-Judge Bench of this Court in S.L. Kapoor Vrs. Jagmohan, (1980) 4 SCC 379 speaking through Chinappa Reddy, J. considered such arguments to be "pernicious" and held that* ***"[t]he non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary"****. The Supreme Court, however, has drawn out an exception where "on the admitted or indisputable facts only one conclusion is possible, and under the law only one penalty is permissible, then the Court may not compel the observance of natural justice" [Swadeshi Cotton Mills Vrs. Union of India, (1981) 1 SCC 664; Aligarh*

Muslim University Vrs. Mansoor Ali Khan, (2000) 7 SCC 529].

45. *Professor I.P. Massey [I.P. Massey, Administrative Law (8th Edn., 2012)] has commented on this shift as under:*

> *'Before the decision of the highest Court in S.L. Kapoor Vrs. Jagmohan, (1980) 4 SCC 379, the rule was that* ***the principles of natural justice shall apply only when an administrative action has caused some prejudice to the person, meaning thereby that he must have suffered some "civil consequences". Therefore, the person had to show something extra in order to prove "prejudice" or civil consequences.*** *This approach had stultified the growth of administrative law within an area of highly practical significance. It is gratifying that in S.L. Kapoor Vrs. Jagmohan, (1980) 4 SCC 379, the Court took* ***a bold step in holding that a separate showing of prejudice is not necessary. The non-observance of natural justice is in itself prejudice caused. However, merely because facts are admitted or are undisputable it does not follow that the principles of natural justice need not be observed****.'*

46. *In State Bank of Patiala Vrs. S.K. Sharma, (1996) 3 SCC 364, the Supreme Court observed that where an enquiry is not convened by any statutory provision and the only obligation of the administrative authority is to observe the principles of natural justice, the court/tribunal should make a distinction between a total violation of the rule of fair*

hearing and violation of the facet of that rule. ***In other words, a distinction must be made between "no opportunity" or "no adequate opportunity".*** *In the case of the former, the order passed would undoubtedly be invalid and the authority may be asked to conduct proceedings afresh according to the rule of fair hearing. But in the latter case, the effect of violation of a facet of the rule of fair hearing has to be examined from the standpoint of prejudice.*

47. *In Dharampal Satyapal Ltd. Vrs. CCE, (2015) 8 SCC 519 = (2015) 33 GSTR 1, this Court dealt with the prejudice question as under: (SCC p. 540, para 42)*

> *'42. So far so good. However, an important question posed by Mr Sorabjee is as to whether it is open to the authority, which has to take a decision, to dispense with the requirement of the principles of natural justice on the ground that affording such an opportunity will not make any difference? To put it otherwise, can the administrative authority dispense with the requirement of issuing notice by itself deciding that no prejudice will be caused to the person against whom the action is contemplated? Answer has to be in the negative. It is not permissible for the authority to jump over the compliance of the principles of natural justice on the ground that even if hearing had been provided it would have served no useful purpose. The opportunity of hearing will serve the purpose or not has to be considered at a later stage and such things cannot be presumed by the authority. This was so held*

by the English Court way back in the year 1943 in General Medical Council Vrs. Spackman, 1943 AC 627 (HL). This Court also spoke in the same language in Board of High School & Intermediate Education, U.P. Vrs. Chitra Srivastava, (1970) 1 SCC 121 ...'

48. *In a more recent decision in State of U.P. Vrs. Sudhir Kumar Singh, (2021) 19 SCC 706, the position of law was summarised as under:*

*'42. ****

42.1. Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

42.2. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

42.3. No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts

that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

42.4. *In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.*

42.5. *The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.'*

49. ***The aforementioned principles on the "prejudice exception" must not however be understood as infringing upon the core of the principle of audi alteram partem.*** *In this regard, the constitutionalisation of administrative law and the doctrinal shifts spearheaded in Maneka Gandhi Vrs. Union of India, (1978) 1 SCC 248 were succinctly observed in a recent judgment in Madhyamam Broadcasting Ltd. Vrs. Union of India, (2023) 13 SCC 401, as under:*

*'55. ****

55.1. *Firstly, procedural fairness was no longer viewed merely as a means to secure a just*

outcome but a requirement that holds an inherent value in itself. In view of this shift, the courts are now precluded from solely assessing procedural infringements based on whether the procedure would have prejudiced the outcome of the case. [[S.L. Kapoor Vrs. Jagmohan, (1980) 4 SCC 379; "The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary"; also see Swadeshi Cotton Mills Vrs. Union of India, (1981) 1 SCC 664]]. Instead, the courts would have to decide if the procedure that was followed infringed upon the right to a fair and reasonable procedure, independent of the outcome. In compliance with this line of thought, the courts have read the principles of natural justice into an enactment to save it from being declared unconstitutional on procedural grounds. [Olga Tellis Vrs. Bombay Municipal Corpn., (1985) 3 SCC 545]; C.B. Gautam Vrs. Union of India, (1993) 1 SCC 78; Sahara India (Firm) (1) Vrs. CIT, (2008) 14 SCC 151; Kesar Enterprises Ltd. Vrs. State of U.P., (2011) 13 SCC 733 = (2011) 10 GSTR 279].

55.2. *Secondly, natural justice principles breathe reasonableness into the procedure. Responding to the argument that the principles of natural justice are not static but are capable of being moulded to the circumstances, it was held that the core of natural justice guarantees a reasonable procedure which is a constitutional requirement entrenched in Articles 14, 19 and*

21. The facet of audi alteram partem encompasses the components of notice, contents of the notice, reports of inquiry, and materials that are available for perusal. While situational modifications are permissible, the rules of natural justice cannot be modified to suit the needs of the situation to such an extent that the core of the principle is abrogated because it is the core that infuses procedural reasonableness. The burden is on the applicant to prove that the procedure that was followed (or not followed) by the adjudicating authority, in effect, infringes upon the core of the right to a fair and reasonable hearing. [See para 12 of Bhagwati, J.'s judgment in Maneka Gandhi Vrs. Union of India, (1978) 1 SCC 248.]"

50. Pertinently on the issue, a five-Judge Bench of this Court in CORE Vrs. ECI SPIC SMO MCML (JV), (2025) 4 SCC 641 described the object of observing the principles of natural justice as under:

*'80. *** The object of observing the principles of natural justice is to ensure that 'every person whose rights are going to be affected by the proposed action gets a fair hearing.' The non-observance of natural justice is itself a prejudice to any person who has been denied justice depending upon the facts and circumstances of each case. The principle of procedural fairness is rooted in the principles of the rule of law and good governance. In Madhyamam Broadcasting Ltd. Vrs. Union of India, (2023) 13 SCC 401, this Court held that*

the requirement of procedural fairness "holds an inherent value in itself'.

***

54. *In a catena of cases, significantly a clear distinction has been crafted by this Court between the service of notice and the requirement of fair hearing [East India Commercial Co. Ltd. Vrs. Collector of Customs, AIR 1962 SC 1893; Uma Nath Pandey Vrs. State of U.P., (2009) 12 SCC 40]. The respondents rely on State Bank of Patiala Vrs. S.K. Sharma, (1996) 3 SCC 364 which highlights the circumstances when non-adherence to the principle of natural justice, will not be fatal. It must however be borne in mind that State Bank of Patiala Vrs. S.K. Sharma, (1996) 3 SCC 364 was not a case of total denial of opportunity unlike in the present case. In fact, as Viswanathan, J. rightly notes in State Bank of Patiala Vrs. S.K. Sharma, (1996) 3 SCC 364, after noticing the classic case of Ridge Vrs. Baldwin, 1964 AC 40 = (1963) 2 WLR 935 (HL), this Court expressly records that where there is a total violation of principles of natural justice, the violation would be of a fundamental nature. Therefore, State Bank of Patiala Vrs. S.K. Sharma, (1996) 3 SCC 364 did not deal with the violation of the first limb of audi alteram partem principles, a situation of non-service of notice.* ***The judgment in fact explicitly records that "a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such, and violation of a facet of the said principle. In other words, distinction between "no notice" "no hearing" and "no adequate hearing" or to put it in***

different words, "no opportunity" and "no adequate opportunity", was highlighted. *The judgment in State Bank of Patiala Vrs. S.K. Sharma, (1996) 3 SCC 364 is therefore inapplicable to the present matter which is a case of no notice whatsoever.*

***

56. *In the absence of notice, the breach strikes at the fundamental core of procedural fairness, rendering the decision invalid unless exceptional circumstances justify such deviation. The vitiation of selection was not only a breach of the principles of natural justice but also contrary to the express statutory provision that required for an opportunity to show cause and an opportunity to provide self-defence.* ***The prejudice theory must be understood as an exception to the general rule and cannot therefore be the norm.*** *In view of the foregoing, a gross violation of the principle of audi alteram partem is noticed in the present case."*

6.10. Understanding thus the principles of natural justice *vis-a-vis* opportunity of hearing, it may be relevant to have reference to *Viveka Nand Sethi Vrs. Chairman, J&K Bank Ltd., (2005) 5 SCC 337,* in which it has been held:

"22. *The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. [See Gurjeewan Garewal (Dr.) Vrs. Dr. Sumitra Dash, (2004) 5 SCC 263]. The principles of natural justice are required to be complied with*

having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case."

6.11. It is not permissible for the authority to jump over the compliance of the principles of natural justice on the ground that even if hearing had been provided it would have served no useful purpose. The opportunity of hearing will serve the purpose or not has to be considered at a later stage and such things cannot be presumed by the Authority. It is not open for the Authority to dispense with the requirement of principles of natural justice on the presumption that no prejudice is going to be caused to the party. At the same time, it cannot be denied that as far as courts are concerned, they are empowered to consider as to whether any purpose would be served in remanding the case keeping in mind whether any prejudice is caused to the person against whom the action is taken. [See, *State of U.P. Vrs. Sudhir Kumar Singh, (2020) 13 SCR 571*].

6.12. Coming back to the present case, it is evident from the material available on record that the petitioner submitted reply dated 27.01.2026 to the Demand-*cum*-Show Cause Notice dated 30.06.2025 in course of availing opportunity of personal hearing in pursuance of reminder dated 08.01.2026 and in the said reply though

jurisdictional issue was raised, the Adjudicating Authority did not deal with such question while passing Order-in-Original. This Court is reminded of following dicta of this Court as laid down in *B. P. Enterprises Vrs. State of Orissa, (2008) 18 VST 405 (Ori)*:

"Before parting with the case, we would like to point out that every day we are facing the assessment orders, in respect of the TIN dealers, passed by the assessing authority, circle, though such assessment orders are in violation of the statutory provisions as can be passed only by assessing authority, range. ***Even if the dealer does not take any objection in this regard, it becomes the duty of the assessing authority himself to keep the jurisdictional issue in mind."***

6.13. A glance at the Order-in-Original, along with the sequence of events elicited by the petitioner, demonstrates that although steps were taken to raise these issues before the Authority, the grievance has not been addressed. Furthermore, the learned Junior Standing Counsel could not assign any reason as to why the Superintendent acknowledged receipt of the documents, given that they were furnished subsequent to the date of the Order-in-Original (04.02.2026) in connection with the proceedings under Section 74. The fact of receipt of such documents on 13.02.2026 clearly emerges from the copy of the *Hazira* enclosed with the writ petition as Annexure-9. For appreciation of such

fact, the contents of such *Hazira* dated 13.02.2026 are reproduced hereunder:

"The advocate of the above said noticee is present today before your honour with the following documents:

1. *Copy of the Form 26AS (Annual Tax Statement under Section 203AA of the Income Tax Act, 1961) for the Financial Year 2019-20, relevant to the Assessment Year 2020-21.*

2. *Copy of the Running Account Bill No. 5 & Final dated 22.11.2019."*

6.14. To justify his claim that severe prejudice has been caused to the petitioner by the issuance of the Order-in-Original, Sri Choudhury Satyajit Misra, learned Advocate, placed reliance on the decision in *EMCO Cables (India) Private Ltd. Vrs. Union of India, 2024 SCC OnLine Del 1493*, wherein it was observed as follows

"6. Proper Officer had to at least consider the reply on merits and then form an opinion whether the explanation was sufficient or not. He merely held that no proper reply/explanation has been received which ex-facie shows that Proper Officer has not even looked at the reply submitted by the petitioner.

7. Further, if the Proper Officer was of the view that reply is incomplete and further details were required, the same could have been sought from the petitioner, however, the record does not reflect that any such opportunity was given to the petitioner to clarify its reply or furnish further documents/details.

8. *In view of the above, the order cannot be sustained and the matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly, the impugned order dated 29.12.2023 is set aside. The matter is remitted to the Proper Officer for re-adjudication."*

6.15. In *JMD News & Advertisers Vrs. State of Uttarakhand, Writ Petition (M/B) No.54 of 2025 decided on 23.07.2026* by the Hon'ble High Court of Uttarakhand at Nainital *[2026:UHC:6285-DB]* it has been observed thus:

"5) As it is not disputed before us that the reply was submitted by the petitioner well within time and, therefore, we are not inclined to accept the technical objection that the reply should have been submitted electronically only and then only it was liable to be considered.

6) The other contention that since the petitioner did not appear on the date fixed therefore reply was not considered is also not sustainable in law. ***In case the reply was submitted by the petitioner it becomes the duty of the adjudicating authority to consider the same while passing the adjudication order even though if the petitioner was not present at the time of hearing.*** *Thus, we find gross violation of the principles of natural justice in passing the impugned order.*

7) As the non-consideration of reply goes to the root of the matter, therefore, we feel inclined to interfere in

the present matter even though the appeal was filed beyond the limitation prescribed."

6.16. On analysis of facts as disclosed hereinabove, this Court is thus persuaded to believe that there has been gross violation of principles of natural justice. In view of the decisions of different Courts as discussed in the foregoing paragraphs dealing with the core aspect of violation of principles of natural justice, the Order-in-Original impugned in the writ petition warrants intervention and is liable to be set aside.

7. In consideration of objection raised by the learned Junior Standing Counsel Sri Umesh Chandra Sahoo, suffice it to say that even after termination of proceeding under Section 74 by passing Order-in-Original dated 04.02.2026 (Annexure-2), the Superintendent has received the documents filed along with *Hazira* on 13.02.2026 (Annexure-9) knowing fully well that he has become *functus officio* after finally disposing of the proceeding. Nonetheless, when there is no dispute— and in fact, the learned Junior Standing Counsel could not dispute the position— the reply of the petitioner was received by the Superintendent in the course of the personal hearing on 27.01.2026, and the same ought to have been considered.

7.1. It is necessary to highlight that merely mentioning that a representation was submitted is insufficient; rather, the Proper Officer must demonstrate in writing the manner in which he has dealt with each point raised by the petitioner/assessee and explicitly discuss assigning reason for acceptance or rejection of any point of defense. Passing an order that ignores a validly submitted reply in Form GST DRC-06, electronically or otherwise, renders the order procedurally defective and vulnerable on ground of infraction of principles of natural justice.

7.2. This Court, on a consideration of the provisions of Section 74 of the GST Act read with Rule 142 of the GST Rules, has, in the foregoing paragraphs, held that the non-consideration of the reply, explanation, and/or objection as to the jurisdiction to initiate the proceeding under Section 74 of the GST Act strikes at the root of the matter, thereby deserving the exercise of power under Articles 226 and 227 of the Constitution of India.

7.3. In order to appreciate whether the Superintendent had material on record to issue Demand-*cum*-Show Cause Notice under Section 74 of the GST Act the authority should have examined the evidence available with him *vis-a-vis* provisions of the statute. In this regard reference can be had to *GR Infra Projects Limited Ratlam*

Vrs. State of Madhya Pradesh, Civil Appeal No.11277 of 2026, decided on 19.08.2026 by the Hon'ble Supreme Court of India [2026 TAXSCAN (SC) 236] wherein it has been observed as follows:

> *"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, wilful misstatement or suppression of facts' without listing out the aspects which persuades the assessing o5cer to conclude that there has been employed either of these surreptitious devices by the assessee****.*
>
> *11. We find absolutely no reason to sustain the SCN issued and find the High Court to have erroneously upheld the same. We set aside the impugned order as also the SCN and direct the respondent-State to desist from taking any further proceedings in pursuance of the SCN challenged before the High Court, which is set aside by this order."*

7.4. Another decision of the Hon'ble Supreme Court of India in the case of *Tata Steel Limited Vrs. Union of India, 2026 SCC OnLine SC 1702* may be significant to be taken note of, wherein it has been observed as follows:

> *"11. At the outset we have to notice that the proceedings under Section 73/74 can be initiated only on the satisfaction of the Assessing Officer. Even if observations/objections are made on audit, the Assessing Officer should enter his satisfaction before a notice is issued.* ***Insofar as a notice under Section 74, the satisfaction should be not only of mismatch of ITC and short payment of tax having occurred, as is alleged in this case, the Officer should be satisfied that either fraud/wilful misrepresentation/suppression had led to such mismatch or short payment of tax****.*
>
> *12. We are unable to countenance the argument of the learned ASG that Explanation 2 to Section 74 applies, since even according to him it stood omitted with effect from 01.11.2024. Equally fallacious is the argument that the proceedings were initiated prior to the expiry of limitation under Section 73. The limitation under Section 73(10) is also to issue the order under Section 73(9) and not to issue a notice and sub-section (2) of Section 73 provides for a notice, at least three months before the time limit under Section 73(10).*
>
> *13. The fact that the Department had taken up the objections on audit with the Public Accounts Committee itself indicates that there was no*

satisfaction at the end of the Department, meaning the Assessing Officer; as to the mismatch or the short fall of payment of tax having occurred, not to say anything about the suppression alleged. Further, but for a bland statement of availing of ITC for the three years 'without documentary evidence and suppress the facts' (sic), the SCN did not contain any foundational facts to validate such allegation of suppression.

14. *It is not mere lip service to the provisions that is intended when an extended limitation period is provided for recovering an excess benefit availed, short payment or excess refund, from the assessee, especially when the allegation is of fraud/wilful misrepresentation/suppression.* ***The foundational facts which led to the inference arrived at of fraud/wilful misrepresentation/suppression should be evident from the notice itself. The mere employment of such words will not indicate an application of mind, upon which alone the satisfaction can be arrived at.*** *The words are not to be mechanically recited in the notice to enable recovery outside the normal limitation provided under the statute."*

7.5. In the light of the above, it is not forthcoming from bare perusal of Order-in-Original assailed in the present writ petition that the Superintendent (Proper Officer) has examined on facts the requirements for initiation of proceeding under Section 74.

7.6. The justification for entertaining the present writ petition is supported by the following observations of the Hon'ble Supreme Court of India rendered in the case of *Karnataka Power Transmission Corporation Limited Vrs. Rekha, (2026) 8 SCR 489*:

> *"6. The question of maintainability of the writ petition is no longer res integra. Numerous judgments of this Court have delineated on this question. We may refer to one such judgment where the principles regarding maintainability have been culled out. In Radha Krishan Industries Vrs. State of H.P., (2021) 6 SCC 771, it has been observed:*
>
> *'27. The principles of law which emerge are that:*
>
> *27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.*
>
> *27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.*
>
> *27.3.* ***Exceptions to the rule of alternate remedy arise where****:*
>
> *(a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;*

(b) *there has been a violation of the principles of natural justice;*

(c) *the order or proceedings are wholly without jurisdiction; or*

(d) *the vires of a legislation is challenged.*

27.4. ***An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law****.*

27.5. *When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.*

27.6. *In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.'*

These principles have been referred to with approval by a bench of three judges in T.N. Cements Corpn.

Ltd. Vrs. Unicon Engineers, (2025) 4 SCC 1 where it further stood clarified that:

'55. It has been well-settled through a legion of judicial pronouncements of this Court that the writ courts, despite the availability of alternative remedies, may exercise writ jurisdiction at least in three contingencies—

(i) where there is a violation of principles of natural justice or fundamental rights;

(ii) where an order in a proceeding is wholly without jurisdiction; or

(iii) where the vires of an Act is challenged.'

****"*

7.7. It is clear and unambiguous from the provisions of Section 74(9) of the GST Act, read in juxtaposition with Rule 142(4) of the GST Rules, that there is no restriction against considering a reply, explanation, written objection, or representation merely because it is submitted manually. Consequently, the non-consideration of the same amounts to an arbitrary exercise of power vested in the Authority. This arbitrariness is further compounded by the fact that the Order-in-Original was passed prematurely on 04.02.2026, despite time having been explicitly granted until 13.02.2026 for the production of documents sought by the Superintendent during the hearing on

27.01.2026. Form DRC-06 prescribed under Rule 142(4) is a procedural tool designed to facilitate the Authority to consider the explanation rendered and/or the objection raised by the assessee; nonetheless, it cannot be used as an absolute bar to deprive a taxpayer's statutory right to defend. If a reply filed manually is available on record, it is incumbent upon the Proper Officer to take cognizance of the same and the said Officer ought not to adopt a hyper-technical approach to discard such a document, treating it as if "no reply was filed" merely because it was not available on the online portal.

7.8. In this regard the following legal principle as found in *Kesari Nandan Mobile Vrs. Office of Assistant Commissioner of State Tax (2), Enforcement Division-5, (2025) 8 SCR 936* may be germane to the present context:

> *"22. State of Odisha Vrs. Satish Kumar Ishwardas Gajbhiye, (2021) 17 SCC 90 is not a decision relatable to powers of taxation but to holding of a preliminary inquiry, prior to initiation of disciplinary proceedings. However, we refer to this decision because it has approvingly quoted the dictum of the High Court at Calcutta of ancient vintage in Maniruddin Bepari Vrs. Chairman of the Municipal Commissioners, 1935 SCC OnLine Cal 296. We prefer to quote the relevant passage from this Court's decision hereunder:*

> *'12. ... **A statutory authority can do only such acts which are permissible under the statute and the authority cannot be permitted to do something which is not provided in law.** This principle was formulated by the Calcutta High Court nine decades ago in Maniruddin Bepari Vrs. Chairman of the Municipal Commissioners, in which it was inter alia held:*
>
> ***'It is a fundamental principle of law that a natural person has the capacity to do all lawful things unless his capacity has been curtailed by some rule of law. It is equally a fundamental principle that in the case of a statutory corporation it is just the other way. The corporation has no power to do anything unless those powers are conferred on it by the statute which creates it.'***
>
> *23. The principle of yesteryears, considered to be of immense substance and worth that a statutory authority, without statutorily conferred power, has no power to act in a particular manner, however, has to be read, in the present context, in light of what the Constitution of India ordains. Ever since the Constitution was enacted and with the march of administrative law, we feel that the age-old principle may not hold good in all circumstances."*

7.9. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. It is no

doubt true that powers of judicial review can always be exercised by a writ Court under Article 226 of the Constitution of India but wherever there are disputed questions of facts that need adjudication, it is best left to the competent forum to adjudicate the same by examining the evidence brought on record before any findings can be returned.

Conclusion:

8. With the aforesaid backdrop of facts and perspicuity of legal position, the fact-situation of the instant case as borne on record when tested it compels this Court to hold that there was a glaring erroneous approach on the part of the Superintendent in not adhering to the norms of natural justice. Notwithstanding the fact that an official acknowledgment of receipt appears on the face of the reply dated 27.01.2026 (Annexure-8)— a position that has not been, and cannot be, disputed by the learned Junior Standing Counsel— the Superintendent completely failed to take the objections into account while passing the impugned Order-in-Original on 04.02.2026. The document creates an undeniable record that the Superintendent was in possession of explanation/objection of the petitioner before passing the Order-in-Original. Ignoring the physically acknowledged receipt of a reply amounts to a patent

violation of the principles of natural justice. Therefore, the Order-in-Original cannot be sustained and, therefore, it is liable to be set aside.

8.1. So far as the point as to jurisdiction of the Superintendent (Proper Officer) in initiating proceeding under Section 74, either on the ground of limitation or on the plea of absence of ingredients for exercise of power, it is left open for the petitioner to raise before the Authority(ies) concerned in the light of observations rendered in *Commissioner of Central Excise Vrs. Krishna Wax Private Limited, (2020) 12 SCC 572*.

8.2. In the wake of above, the Superintendent, GST and Central Excise, Bhubaneswar VII Range, Bhubaneswar-1 Division having failed to consider the "Show cause reply/synopsis of submission in the personal hearing" filed on 27.01.2026 (Annexure-8), the Order-in-Original dated 04.02.2026 (Annexure-2), is exceptionable on the ground of violation of tenets of natural justice, which deserves intervention by setting aside the said Order dated 04.02.2026 and this Court does so.

8.3. This Court, therefore, issues the following directions:

i. The matter is remitted to the Superintendent, GST and Central Excise, Bhubaneswar VII Range, Bhubaneswar-1 Division for fresh consideration of

the objection as to jurisdiction and reply to Demand-*cum*-Show Cause Notice dated 04.09.2025;

ii. Liberty is reserved to the petitioner to raise all such objections/pleas as are available to him in accordance with law and submit documents/ evidence to substantiate his claim;

iii. The petitioner in order to avail opportunity shall appear before the Superintendent, GST and Central Excise, Bhubaneswar VII Range, Bhubaneswar-1 Division within a period of fifteen days from the date of receipt of certified copy of this judgment/ order;

iv. Said Authority shall fix up a date of hearing and take on record all the material particulars made or to be made available to him by the petitioner;

v. The petitioner shall cooperate with the Authority to conclude the entire proceeding within a period of eight weeks from date of appearance of petitioner as directed above;

vi. No unnecessary adjournments shall be granted to the petitioner.

8.4. Needless to say that this Court has expressed no opinion either on the aspect of jurisdiction of the Superintendent, GST and Central Excise, Bhubaneswar VII Range, Bubaneswar-1 Division or touching upon merit of the matter. The said Authority is at liberty to take independent decision addressing the issues raised by the petitioner in course of subject proceeding under Section 74 of the GST Act without being influenced by any of the observations made hitherto, as the facts discussed above are for the purpose of discerning violation of principles of natural justice.

9. In the result, with the above observations and directions the writ petition stands disposed of and pending interlocutory application(s) shall also be disposed of; but in the circumstances, there shall be no order as to costs.

(MURAHARI SRI RAMAN)
JUDGE

DR. SANJEEB K PANIGRAHI, J.—

I agree.

(SANJEEB K PANIGRAHI)
JUDGE

High Court of Orissa, Cuttack
The 07th October, 2026//Aswini/Bichi