HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.686 of 2024

SRI JAHAR SUR CHOWDHURY, Prop. of M/S JAHAR SUR CHOWDHURY, S/O. Kshetra Mohan Sur Chowdhury, Office Tilla, P.O.- Bishalgarh, P.S.- Bishalgarh, District- Sepahijala, Tripura, Pin-799102 having registration GSTIN-16ALHPS7555E2ZR, Represented by the dealer-petitioner, Sri Jahar Sur Chowdhury, aged about 62 years.

…… Petitioner(s).

V E R S U S

1. THE UNION OF INDIA, Represented by the Secretary, Ministry of Finance, Revenue Department, Government of India, North Block, Raisina Hill, New Delhi, P.O.- North Block Central Secretariat, P.S.-Raisina Hill, Pin Code-110001.

2. THE ASSISTANT COMMISSIONER (Adjudicating Authority), Ministry of Finance, Revenue Department, Government of India, Central Goods and Services Tax, Tripura Division-1, CGST Bhawan, Netaji Chowmuhani, Mantri Bari Road, P.O. Agartala, P.S.-West Agartala, West Tripura, Pin Code-799001.

3. THE COMMISSIONER OF STATE TAX, Government of Tripura, P. N. Complex, Gurkhabasti, P.O.-New Capital Complex (NCC), P.S.-New Capital Complex (NCC), Agartala, District-West Tripura, Pin Code-799010.

4. THE SUPERINTENDENT (ENFORCEMENT), Ministry of Finance, Revenue Department, Government of India, Central Goods and Services Tax, Tripura Division-1, Jackson Gate Building, 3rd Floor, Lenin Sarani, P.O. Agartala, P.S.-East Agartala, West Tripura, Pin Code-799001.

5. THE SUPERINTENDENT, DIV-I, Ministry of Finance, Revenue Department, Government of India, Central Goods and Services Tax, Tripura Division-1, CGST Bhawan, Netaji Chowmuhani, Mantri Bari Road, P.O. Agartala, P.S.-West Agartala, West Tripura, Pin Code-799001.

6. THE SUPERINTENDENT OF STATE TAX, GOVERNMENT OF TRIPURA, Charge-Bishalgarh, P.O.-Bishalgarh, P.S.-Bishalgarh, District-Sepahijala, Pin Code-799102.

……Respondent(s).

For Petitioner(s)	:	Mr. B.N. Majumder, Sr. Advocate, Mr. Samrat Sarkar, Advocate.
For Respondent(s)	:	Mr. Bidyut Majumder, Deputy S.G.I., Mr. Ratan Datta, Advocate.

HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE BISWAJIT PALIT

CAV reserved on : **02.09.2026**.

Judgment delivered on : **08.10.2026**.

Whether fit for reporting : **YES**.

JUDGMENT & ORDER

(M.S. Ramachandra Rao, C.J.)

1) The petitioner has a proprietorship business and engages in works contracts.

2) He is registered under the Tripura Goods and Services Tax Act, 2017 and also the Central Goods and Services Tax Act, 2017.

3) On 6.12.2019, the Asst. Commissioner, CGST, Tripura-I Division (Respondent No.1) issued an intimation to petitioner that he had availed Input Tax Credit in excess of the amount available as per GSTR-2A as under:

(i) Actual ITC available as per GSTR-2A for July, 2019 in the IGST Column is Rs.13,33,407/-.

(ii) ITC claimed for the month of July, 2019 as per GSTR-3B in the IGCT column is Rs.63,93,317/-.

(iii) So petitioner had availed excess ITC during July, 2019 of Rs.50,59,910/-.

4) According to petitioner there was accumulated ITC for previous period and the ITC availed in July, 2019 was only on the basis of system reconciliation statement which was showing unclaimed ITC and there was no *malafide* intention behind this. According to petitioner, once the matter came to his knowledge, he reconciled the purchase record on the basis of inward supply invoices and revered the excess claim of ITC on 23.1.2020 amounting to Rs.47,36,977/- with applicable interest and posted in the outward GST

liability in January,2020 and that was discharged utilizing available ITC in the ledger.

5) Notwithstanding the same, the Asst. Commissioner issued a summary show cause notice (DRC-01) to petitioner on 4.5.2020 invoking Section 74 of the CGST Act,2017 contending that petitioner consciously availed of Input Tax credit in excess to the available amount of ITC by a wrongful declaration in the GSTR-3B and utilized the same for discharging his tax liabilities. Petitioner was asked to show cause why Rs.47,36,977/- availed or utilised by way of wilful misstatement/suppression of facts shall not be recovered under Section 74 (1) along with interest and penalty.

6) Petitioner replied to the said show cause notice on 26.8.2020 stating that the claim of ITC in the table 'import of goods' is for claim of IGST paid on purchase of goods from other States which should be reflected in "all other ITC" table and it was only a mistaken entry and technical error and that he had not claimed excess/duplicate ITC. He also stated that he had reversed the excess ITC before issuance of notice by the Department and had cleared all the liabilities; and that the excess claim will be revered at the time of filing of annual return for the financial year after reconciling the full year data. He therefore requested the Asst. Commissioner to drop the proceedings under Section 74 of the Act.

7) However on 6.1.2021, the Asst. Commissioner passed summary and original adjudication order under GST DRC-07 (Annexure 9) rejecting the pleas of the petitioner.

8) Aggrieved thereby, the petitioner filed an Appeal to the Commissioner (Appeals).

9) The Commissioner (Appeals) too rejected the appeal by an order dt.7.4.2022 rejected the appeal.

10) Petitioner then filed WP(C) No.507 of 2022 in this Court challenging the order of the Commissioner (Appeals).

11) On 4.4.2023, the said Writ Petition was allowed by the Division Bench of the High Court. The High Court held that there was a contradiction between the order dt.6.1.2021 of the Asst. Commissioner and the order dt.7.4.2022/30.3.2022 of the Commissioner (Appeals). It concluded that Section 74 of the CGST Act, 2017 will not apply in this case since no case has been made out in the show cause notice as well as in the impugned orders which are under challenge and the same were liable to be set aside and quashed. It therefore set aside the order dt.6.1.2021 of the Asst. Commissioner and also the order dt.30.3.2022 of the Commissioner (Appeals), but remanded the matter back to the respondents to decide afresh in accordance with law.

12) Thereafter the Superintendent, Div-I, GCST, Agartala (Respondent no.5) issued another notice of personal hearing before the Asst. Commissioner on 10.4.2024 in connection with the Asst. Commissioner's earlier order dt.6.1.2021, which had been set aside by this Court.

13) A fresh order Annexure-6 dt.10.5.2024 /10.6.2024 was then passed confirming the demand of Rs.47,36,977/- , interest at 24% and penalty of Rs.47,36,977/-.

14) Strangely, on 18.12.2024, the Asst. Commissioner issued a "corrigendum" to the order dt.1.5.2024 adding several paragraphs to the said order dt.1.5.2024.

15) Assailing the Annexure-6 order dt.10.6.2024 passed by the Asst. Commissioner, CGST, Tripura-I Division and the consequent Form GST-DRC-07 dt.10.6.2024 demanding the GST, Interest and penalty and the corrigendum dt.18-12-2024 (Annexure-8) to the order dt.10.6.2024 , petitioner has filed the instant Writ Petition.

16) As regards the order dt.10.6.2024 passed by the Asst. Commissioner, petitioner contends that once this Court in W.P.No.507 of 2022 had held that Section 74 of the CGST Act,2017 will not apply to the petitioner (on the ground that no case under that provision has been made out in the show cause notice), merely because liberty was granted to the Asst. Commissioner to decide afresh in accordance with law, it was not open to the Asst. Commissioner to again pass the impugned order dt.10.6.2024 under Section 74 after issuing a notice of personal hearing through the Superintendent , Div-I, CGST, Agartala (Respondent no.5) stating that such a hearing is being held for "De-Novo Adjudication in connection with Order-in-Original No.05/GST/TR-1/AGT/2020-21 dt.6.1.2021 . This is because the said order dt.6.1.2021 had already been set aside in the order dt.4.4.2023 in WP(C) No.507 of 2022.

17) The respondents, in their counter affidavit have not explained how they could have passed a De-novo adjudication order under Section 74 of the CGST Act, 2017 on the basis of the earlier order dt.6.1.2021.

18) Once this Court has held that Section 74 of the CGST Act, 2017 is not applicable to petitioner in its order dt.4.4.2023 in WP(C) No.507 of 2022, the Asst. Commissioner cannot proceed to apply the said provision and make a de-novo adjudication of the matter w.r.t issue of availing of allegedly

inadmissible ITC for July, 2019 and again pass an order dt.10.6.2024. It would practically amount to contempt of the High Court order. Thus the order dt.10.6.2024 passed by the Asst. Commissioner is arbitrary, illegal, without jurisdiction and violative of Art.14 of the Constitution of India.

19) So the plea of respondents that the Writ Petition is not maintainable and that petitioner has to avail appellate remedy under Section 107 of the CGST Act, 2017 before the CGST Appellate Tribunal, cannot be countenanced.

20) Moreover the respondent no.1 could not have also passed a corrigendum order on 18.12.2024 correcting the order dt.10.6.2024, beyond the 6 month period from the date of the order dt.10.6. 2024 in view of First proviso to Section 161 which states:

> "*Provided that no such rectification shall be done after a period of 6 months from the date of issue of such decision or order or notice or certificate or any other document.*"

21) Consequently, the order dt.10.6.2024 and the order dt.18.12.2024 are illegal, arbitrary, without jurisdiction and violative of Art.14 of the Constitution of India.

22) At this point of time, liberty to initiate fresh proceedings under Section 73 cannot also be granted to respondents in view of sub-section (10) of Section 73 of the said Act which states:

> *"(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund."*

23) Since the due date of furnishing the said return for July,2019 ended on 31.12.2020 under Rule 80 of the CGST Rules,2017, and more than three years have elapsed from that date, no liberty can now be granted to respondents to initiate fresh proceedings under Section 73 of the CGST Act,2017.

24) For all the aforesaid reasons, the Writ Petition is allowed and the order dt.10.6.2024 and the order dt.18.12.2024 are both set aside as they are illegal, arbitrary, without jurisdiction and violative of Art.14 of the Constitution of India. No costs.

25) All pending applications stand disposed of.

(BISWAJIT PALIT, J) **(M.S. RAMACHANDRA RAO, CJ)**

HIGH COURT OF TRIPURA
सत्यमेव जयते