IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14955 of 2024

CNR No. BRHC010868352024

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Amit Agency, a Partnership firm having its Office at 598, Salempur, Lahbazar, Saran, Bihar-841301 through its Partner Amit Kumar (Male, aged about 41 Years) Son of Lakshmi Narayan Prasad Resident of Lah Bazar, Chapra, Saran, Chapra-841301, Bihar.

... ... Petitioner

Versus

1. Commissioner, CGST and CX, having its Office at Central Revenue Building (Annexe) Bir Chand Patel Path, Patna- 800001.
2. Asst. Commissioner, CGST and CX, Vaishali Division, Hajipur Having its Office at Dak Bunglow Road, Hajipur-844101, Bihar.
3. Asst. Commissioner (theme), Audit Commissionerate, Central Tax, Patna having its Office at 4th Floor, C.R. Building (Annexe), Birchand Patel Path, Patna, Bihar.
4. Superintendent, Central Tax Audit, Theme Audit Circle (Group-03), Patna, having its Office at 4th Floor, C.R. Building (Annexe), Birchand Patel Path, Patna, Bihar.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. D.V. Pathy, Sr. Advocate Mr. Sadashiv Tiwari, Advocate Mr. Hiresh Karan, Advocate Ms. Shivani Dewalla, Advocate
For the Respondent/s	:	Mr. K.N. Singh, ASG Mr. Anshuman Singh, Sr.SC CGST&CX Mr. Shivaditya Dhari Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 13-10-2026

The present writ application, as amended vide I.A. No. 1 of 2025, seeks the following reliefs:-

> "(i) The audit report dated 18.07.2023 (as contained in Annexure -P3 Series) issued by the respondent

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no.4 under Section 65 (6) of the Bihar Goods and Services Tax Act, 2017 (hereinafter called the Act) for the Period 2017-18, 2018-19 and 2019-20 after the expiry of the period of limitation of three months from the date of commencement of the audit being in contravention of Section 65 (4) of the Act be set-aside and quashed.

(ii) the show cause notice dated 30.08.2023 (as contained in Annexure – P4 series) issued by the respondent no. 4 for the Period 2017-18, 2018-19 and 2019-20 on the basis of an audit report submitted after the expiry of the period contemplated in Section 65 (4) of the Act by a one single notice under Section 74 of the Act without fulfilment of the mandatory pre-conditions for invocation mentioned therein; without uploading the same on the web portal contrary to the instructions issued by the Central Board of Indirect Taxes and also without a digital signature as mandated in Rule 26 (3) of the Rules be set aside and quashed.

(iii) the order dated 22.04.2024 (as contained in Annexure –P 6 series) for the Period 2017-18, 2018-19 and 2019-20 by a one single order of the even date under Section 74 of the Act without fulfilment of the mandatory pre-conditions for invocation mentioned therein on the basis of audit completed beyond expiry of the period of limitation in Section 65 (4) of the Act and without uploading the same on the web portal contrary to the statutory provision as contained in Rule 142 (5) and (6) of the Central Goods and Services Tax Rules, 2017 (hereinafter called the Rules) and also the instructions issued by the Central Board of Indirect Taxes and Customs, GST Policy Wing in Instruction No. 04/2023 – GST dated 23.11.2023 and Instruction No. 05/2023 –

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GST dated 13.12.2023 without a digital signature as mandated in Rule 26 (3) of the Rules be set aside and quashed.

(iv) the corrigendum dated 27.08.2024 (as contained in Annexure –P10) issued by the respondent no.2 seeking to impose penalty in excise of powers under section 161 of the Act being wholly without authority of law set-aside and quashed.

(v) the separate order dated 18.10.2024 passed by the respondent no. 2 under section 74 of the act for the Period 2017 – 18 and also the summary of order in Form GST DRC – 07 (as contained in Annexure P – 11 series) for the 2nd time being impermissible under the scheme of the Act and also without giving any reasons therefor being wholly without authority of law be set aside and quashed.

(vi) for granting any other relief (s) to which the petitioner is otherwise found entitled to."

Case of the petitioner

2. Petitioner is a partnership firm engaged in the business of cigarettes. It is registered vide GSTIN-10AALFA3053A IZD with the CGST and CX. The petitioner was served with a notice dated 13.12.2021 (Annexure 'P-1') for conducting audit. Petitioner was called upon to produce documents mentioned herein.

3. After conducting the audit, the respondent no. 4 issued an audit memo pointing out non-payment of interest, short payment of tax, non-payment of GST on vehicle hiring, non-payment of late fee, non-payment of GST and short payment

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during the period July 2017 to March 2018, 2018-19 and 2019-20. Copy of the audit memo dated 26.06.2023 is Annexure ‘P-2’.

4. A final audit report was issued by respondent no.4 quantifying the amount of tax, interest, penalty and late fee, etc. The final audit report as approved in the Monitoring Committee Meeting (MCM), has been placed before this Court as Annexure ‘P-3’ series.

5. Based on the audit report submitted by respondent no.4, the respondent no.3 issued a notice under Section 74(1) of the Central Goods and Services Tax, 2017 (in short ‘CGST’) Act. The respondent no.3 reiterated the contents of the audit report, calculated tax, interest and penalty. The demand-cum-show cause notice issued by respondent no.3 is Annexure ‘P-4’. A summary of the Show Cause Notice (in short ‘SCN’) in Form GST DRC-01 dated 31.01.2024 issued by respondent no.3 showing the period 2017-18 is Annexure ‘P-5’. It is stated that the respondent no.2 passed an order quantifying the amount of tax, interest, penalty and late fee. The respondent no.2 also confirmed the demand of penalty equivalent to the amount of tax. The quantification of such amount are more or less the same as in the audit memo. The order-in-original dated 22.04.2024 passed by respondent no.2 for the period 2017-18, 2018-19 and 2019-20 is Annexure ‘P-6’.

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Submissions on behalf of the petitioner

6. Mr. D.V. Pathy, learned Senior counsel representing the petitioner, has placed before this Court the Instruction No. 05/2023-GST dated 13.12.2023 issued by the Central Board of Indirect Taxes and Customs, GST Policy Wing (Annexure 'P-8') and recent judgments of the Hon'ble Supreme Court in the case of **M/s G.R. Infra Projects Limited Ratlam vs. The State of Madhya Pradesh & Ors** in **Special Leave Petition (C) No. 33594 of 2025, Civil Appeal No. 11277 of 2026** and the judgment in the case of **M/s Tata Steel Limited vs. Union of India through the Secretary Ministry of Finance and Ors.** reported in **2026 INSC 920** to submit that Section 74(1) of the CGST Act may be invoked only in the cases where there is 'fraud' or 'willful misstatement' or 'suppression of facts' to evade tax on the part of the taxpayer. This provision cannot be invoked merely on account of non-payment of GST, without specific element of fraud or willful misstatement or suppression of facts to evade tax. It is his submission that the Board has specifically directed that these aspects shall be the main consideration while investigating such cases and issuing such notices.

7. It is submitted that in the present case, the respondent no.3 mechanically issued 'SCN' only on the basis of an audit

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report. The order issued by respondent no.2 do not contain any report of investigation of material facts nor does it make investigation as part of the order. Only non-payment or short payment of tax and late fee etc. cannot be a ground for issuance of show cause under Section 74(1). It is further submitted that the petitioner has got substantial input tax credit in it's electronic credit ledger and also in the auto populated data in form GSTR-2A, therefore on the face of the availability of such credit which neutralizes the amount of tax calculated as payable, the respondent could not have taken a view that the petitioner sought to evade the tax. It is, thus his submission that the summary of show cause notice and also the consequent final order passed by the respondent no.2 are contrary to the statutory provisions as contained in rule 142(5) of the rules and also against the instructions issued by the Board.

8. The petitioner has raised an issue of not uploading the summary of 'SCN' and the summary of order in the prescribed form GST DRC-01 and GST DRC-07 electronically on the web portal. In the writ application pleadings have been made with regard to violation of Rule 26(3) of the Central Goods and Services Tax Rules, 2017 (in short 'CGST Rules').

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9. Learned Senior counsel for the petitioner has submitted that the 'SCN' issued by respondent no.3 and also the final order passed by respondent no.2 are in respect of three years i.e. 2017-18, 2018-19 and 2019-20 by a single notice which is not in conformity with the statutory provisions as contained in the Act and the Rules made thereunder. It is his submission that each year is a different and distinct assessment year and that proceedings must be carried out for each of such year separately.

10. It is submitted that in the present case, the petitioner has already paid the taxes payable as per the audit report, therefore imposition of interest on the tax amount which was already paid prior to issuance of 'SCN' is not justified. It is his submission that the interest may be charged only at best up to the date of payment. He has relied on a judgment in the case of **Maya Rani Punj vs. Commissioner of Income Tax, Delhi** reported in **AIR 1986 SC 293.**

11. It has been also submitted that if the penalty was not proposed in the 'SCN', it cannot be done by a corrigendum, as has been done in the present case. Learned Senior counsel has relied upon Section 75(7) of the CGST Act. It is submitted that in this case the only issue which remains to be considered is with regard to payment of interest and penalty.

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Stand of the respondents

12. By filing a counter affidavit, the respondents have contested the writ application.

13. It is submitted that the petitioner has moved directly before this Court by filing the present writ application on or about 24.08.2024, which is after expiry of four months from the date of the impugned order as contained in Annexure 'P-6'. The statutory period of limitation for filing the statutory appeal is three months, thereafter, a period up to one month may be condoned on showing sufficient cause. The writ petition having been filed after expiry of the period of limitation and even after expiry of the extended period which may be condoned by the statutory authority, the writ application is fit to be dismissed on this ground alone.

14. It is submitted that the impugned order (Annexure 'P-6') is an appelleable order and the remedy of appeal being a fully efficacious remedy, this writ petition is fit to be dismissed on in limine. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Chhabil Dass Agarwal** (supra).

15. It is submitted that from the statements made in the writ application itself, it is evident that the petitioner was served with notice dated 14.12.2023 by which requisite documents for

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conducting GST audit in accordance with Section 65 of the CGST Act 2017 was called for. The petitioner did not produce the required documents. A reminder ADT-01 vide Letter No. 2030 dated 12.10.2022 was issued to the petitioner but again the petitioner did not produce the documents. Further, a fresh ADT-01 vide Letter No. 207 dated 19.04.2023 was issued, whereby it was decided to commence the GST audit from 26.04.2023. In response to the same, the petitioner appeared before respondent no.4 and submitted the documents in respect of Financial Years 2017-18 and 2018-19 but the audit was for the year 2019-20 also.

16. It is stated that the petitioner had failed to produce the documents required for commencement of the GST audit. In this connection, the respondent has enclosed copy of letter No. 207 dated 19.04.2023 (Annexure 'C/R'). Another opportunity for submission of remaining required documents was given to the petitioner vide Letter No. 494 dated 09.05.2023 (Annexure 'D/R'). Thereafter, the audit memo vide Letter No. 1299 dated 26.06.2023 was communicated to the appellant (Annexure 'E/4').

17. It is stated that the discrepancies raised through the said audit memo dated 26.06.2023 were placed before the MCM held on 07.07.2023, whereby all the discrepancies were approved with directions as mentioned therein. The minutes of MCM dated

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07.07.2023 was communicated to the petitioner as final audit report in accordance with the provisions of Section 65(6) of the CGST Act 2017 vide Letter No. 1799 dated 18.07.2023 (Annexure 'F/R' series).

18. It is submitted that the GST audit was concluded within the stipulated timeline as prescribed under Section 65(4) of the CGST Act. The 'SCN' dated 30.08.2023 was issued by respondent no.3 and not by respondent no.4. It is submitted that the summary of the 'SCN' dated 30.08.2023 in DRC-01 was also made available to the petitioner on the GST portal. While uploading the DRC-01 on the GST portal, due to paucity of space, the summary of demand was made for the year July 2017 to March 2018 instead of July-2017 to March-2020 comprising the total demand as mentioned in the notice dated 30.08.2023. Remarks in this regard was mentioned on the GST portal as: "A total amount of Rs. 1,06,35,806/- (CGST Rs. 6,30,529/-, SGST Rs. 6,47,938/-, Cess Rs. 93,57,339/-) along with interest and penalty in respect of para 1, 2, 3, 4, 6, 8, 9 and 10 is still unpaid (please refer to the attached 'SCN' for para-wise details)….". It is stated that before the adjudicating authority (respondent no.2), opportunity of personal hearing was given to the petitioner on 12.12.2023, 10.01.2024, 18.01.2024 and 25.01.2024. Petitioner submitted his

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written submissions on 16.01.2024. According to the respondents, only after examining the allegations made in the demand notice dated 30.08.2024 and the reply dated 16.01.2024, the respondent no.2 decided the case on it's own merit vide order in original No. 07/AC/CGST&CX dated 22.04.2024 by confirming the demand. It is stated that the corrigendum dated 27.08.2024 has been issued with respect to the order mentioned as para (ix). The summary of order as prescribed under Rule 142(5) of the CGST Rules, 2017 has also been created by uploading the order in original dated 22.04.2024 along with the corrigendum dated 27.08.2024, on the portal.

19. It is specifically submitted in the counter affidavit that the demand notice as well as the order dated 22.04.2024 mention the reasons for invocation of Section 74 of the CGST Act, 2017. It is submitted that in the written submission dated 16.01.2024, the petitioner nowhere contested the issue of invoking Section 74 by respondent no.3. In this regard, learned ASG has relied upon paragraph '7' and '8' of the show cause notice to support his contention that the reasons behind the invocation of Section 74(1) of the CGST Act, 2017 have been duly furnished.

20. It is submitted that the petitioner is liable to pay interest under Section 50 and penalty as prescribed under Section

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74(5) read with Section 122(2)(b) of the CGST/SGST Act, 2017. A specific plea has been taken that since the appellant failed to produce any reply in their defence, even after issuance of the aforementioned final audit report, the plea of the petitioner as against the invocation of Section 74(1) would not be acceptable.

21. It is lastly submitted that the views expressed by the Hon'ble Supreme Court in the case of **M/s G.R. Infra Projects Limited Ratlam** (supra) and **M/s Tata Steel Limited** (supra) would fully support the case of the respondents.

22. A supplementary counter affidavit has been filed in response to one I.A. No. 1 of 2025 filed on behalf of the petitioner.

23. In response to the counter affidavit and the supplementary counter affidavit, the petitioner has filed a rejoinder separately. It is submitted that invocation of jurisdiction under Section 161 of the CGST Act to issue a corrigendum, that too in respect of imposition of penalty which was not a subject matter of the 'SCN' issued by answering respondent based on the audit objection would be illegal. It is submitted that resort to power under Section 161 of the Act can be made only in cases where there is a mistake apparent on the face of the record and that in the present case, since there was only a case of non-payment or short

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payment of tax, the invocation of the power to levy the penalty was not justified.

24. It is submitted that the levy of penalty was not within the contemplation in the 'SCN' and that the same is imposed on the basis of a corrigendum on the ground of a typographical error. It is submitted that the plea taken by the respondent that it was a typographical error and resorting to Section 161 of the Act on the pretext of a corrigendum is wholly without authority of law and therefore, it is without jurisdiction. It is submitted that the answering respondent had initiated the proceedings for three financial years i.e. 2017-18, 2018-19 and 2019-20 on 03.08.2023, which was not permissible by extending the period of limitation and taking recourse to Section 74 of the CGST Act. The notice issued by the answering respondent would be barred by law of limitation.

Consideration

25. This Court has considered the rival submissions at the Bar. It is an admitted position that the impugned order as contained in Annexure 'P-6' is an appealable order under Section 107 of the CGST/BGST Act, 2017. The appellate remedy is equally efficacious. It is well settled that a rule of alternative remedy is a rule of convenience. In catena of judgments, the

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Hon'ble Supreme Court has emphasized that where there is an alternative statutory remedy, which is equally efficacious, it would not be appropriate to entertain a writ application and exercise the extraordinary writ jurisdiction of this Court to examine the original order unless the impugned order suffers from jurisdictional error. We refer judgment of the Hon'ble Supreme Court in case of **Commissioner of Income Tax and Others vs. Chhabil Dass Agarwal** reported in **(2014) 1 SCC 603 : (2013) 357 ITR 357**. Paragraphs '15', '16' and '17' are extracted hereunder for a ready reference:-

> "**15.** Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal case*[22], *Titaghur Paper Mills case*[3] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is

22 *Thansingh Nathmal v. Supt. Of Taxes*, [AIR 1964 SC 1419]
3 [*Titaghur Paper Mills Co. Ltd.* v. *State of Orissa*, (1983) 2 SCC 433 : 1983 SCC (Tax) 131]

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created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

16. In the instant case, the Act provides complete machinery for the assessment/reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In *Ram and Shyam Co.* v. *State of Haryana*[40] this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility.

17. In the instant case, neither has the writ petitioner assessee described the available alternate remedy under the Act as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of the instant case. In light of the same, we are of the considered opinion that the writ court ought not to have entertained the writ petition filed by the assessee, wherein he has only questioned the correctness or otherwise of the notices issued under Section 148 of the Act, the reassessment orders passed and the consequential demand notices issued thereon."

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40 (1985) 3 SCC 267

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26. In the case of **United Bank of India vs. Satyawati Tandon and others** reported in **(2010) 8 SCC 110**, the Hon'ble Supreme Court has reiterated this view. Paragraph '43' and '44' is reproduced hereinbelow:-

> "**43.** Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.
>
> **44.** While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part

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> III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution."

27. Keeping in view the aforesaid judicial pronouncements, we would have immediately relegated the petitioner to the alternative remedy of appeal but in view of the plea raised on behalf of the petitioner that the adjudicating authority who has issued the 'SCN' (Annexure 'P4') and passed the order in original (Annexure '6') has committed a jurisdictional error, we have proceeded to examine the plea. At first instance, we would examine as to whether the 'SCN' contains reasons as required under sub-section (1) of Section 74 of the CGST Act, 2017? It is for this reason, we have heard learned Senior counsel for the petitioner and learned ASG for the department of CGST and CX at length.

28. Facts of the case are not much in dispute. A notice dated 13.12.2021 for conducting an audit of the books of account and records of the petitioner firm for the Financial Year 2017-18, 2018-19 and 2019-20 was served in accordance with the provisions of Section 65 of the CGST Act, 2017. The petitioner was called upon to make available the required financial

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documents/records duly mentioned in the notice. He was informed that in case of his failure to comply with the notice, it would be presumed that he is not in possession of such books of account and the proceedings as deemed fit may be initiated as per the provisions of the Act and the rules made thereunder. The petitioner does not deny receipt of this notice but has maintained a silence in the writ application as to why he did not respond to the said notice.

29. The petitioner was also served with audit memo (Annexure 'P-2'). The petitioner was informed about his liability to pay the taxable amount under cess, the due date of payment, the date on which tax paid and the delay in payment. The interest amount was calculated in paragraph '1' at Rs. 68,64,631/-. In paragraph '2', it was a case of short payment of tax amounting to Rs. 33,75,668/- during Financial Year 2018-19 and 2019-20 along with interest under Section 50 of the CGST Act. Paragraph '3' relates to non-payment of GST on vehicle hiring charges upon renting service amounting to Rs. 1,77,120/- during 2018-19 and 2019-20. Paragraph '4' talks of non-payment of late fee amounting to Rs. 1,10,950/- for delayed filing of GSTR-1 of Financial Year 2017-18, 2018-19 and 2019-20. In paragraph '5', the audit has pointed out on examination of the profit and loss account of the petitioner that there is a case of non-payment of GST amounting to

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Rs. 82,061/- under RCM in terms of Notification No. 13/2017 and Notification No. 22/2017 during 2018-19. Paragraph '6' provides information with regard to short payment of tax amounting to Rs. 67,280/- during the period July 2017 to March 2018. Paragraph '7' provides for non-payment of late fee amounting to Rs. 20,000 for delayed filing of GSTR-9C of financial year 2018-19. Paragraph '8' states that the petitioner had belatedly filed GSTR-3B of the several months, thus, he was liable to pay interest under Section 50(1) on the tax paid through cash ledger as per GSTR-3B. In paragraph '9', it is stated that during course of audit, scrutiny and expense head in profit and loss account for the period 2017-18 reveal that the petitioner had incurred and received services relating with traveling/generator/rent expenses etc. from 01.07.2017 to 12.10.2017. However, he had not paid GST under RCM on these expenses in terms of Section 9(4) of CGST Act. In paragraph '10', the petitioner was informed that in course of audit it was observed that there is an unreconciled turnover amounting to Rs. 9,688/- as per the GSTR-9C of 2017-18. The petitioner had not paid GST on the said unreconciled turnover, hence he was liable to pay GST on the unreconciled turnover.

30. By the audit memo, the petitioner was informed that all the documents provided by him during the audit were under

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process of reconciliation and if any discrepancy is noticed, it will be communicated for further compliance.

31. It appears from the materials on the record that a team of three auditors conducted the audit and recorded the summary of major audit objections. On perusal, it is found that with respect to the objections at serial no. 01 to 09, the taxpayer did not agree with the objections, however, in respect of serial no. 10, the taxpayer agreed and deposited the amount.

32. The auditors thereafter recorded their views and the MCM approved the same with a direction to recover the said amount within 15 days failing which 'SCN' to be issued. It is stated in the decision contained in Annexure 'P-3' that if the taxpayer would not deposit the amount within the period, then it will be recovered from the taxpayer by issuing 'SCN'.

33. With the writ application, the petitioner has not brought on record the objections, if any, filed by the petitioner before the auditors in response to the memo of audit, therefore, this Court is deprived of this privilege of having even a *prima facie* look at the stand of the petitioner. Even as, it is not the case of the petitioner that the final audit report and the approval of MCM on 07.07.2023 was not served on the petitioner, the petitioner has not made any statement that he had taken recourse to

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law against the final audit report and the decision of the MCM. In this regard, we would extract Section 65 of the CGST Act and its various sub-sections hereunder for a ready reference:-

> "[1]**65. Audit by tax authorities.-**
>
> (1) The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.
>
> (2) The officers referred to in sub-section (1) may conduct audit at the place of business of the registered person or in their office.
>
> (3) The registered person shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in such manneras may be prescribed.
>
> (4) The audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit:
>
> **Provided** that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.
>
> **Explanation**.- For the purposes of this sub-section, the expression "commencement of audit" shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.
>
> (5) During the course of audit, the authorised officer may require the registered person, -

1. Enforced w.e.f. 1-7-2017 vide Noti. No.9/2017-Central Tax, dt. 28-6-2017

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> (i) to afford him the necessary facility to verify the books of account or other documents as he may require;
>
> (ii) to furnish such information as he may require and render assistance for timely completion of the audit.
>
> (6) On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.
>
> (7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74 [1][or section 74A].”

34. On a bare reading of sub-section (7) of Section 65, it appears that where the audit results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilized, the proper officer has been conferred with power to initiate action under Section 73 or Section 74 or Section 74A. It is, thus, the proper officer who has to take a view that in the facts of the case, under which provision action be initiated.

35. Section 74 of the CGST Act provides for determination of tax (pertaining to the period upto Financial Year 2023-24) not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts. Sub-section (1) of

1. Inserted by Finance (No.2) Act, 2024 (15 of 2024), dt. 16-8-2024, w.e.f. 1-11-2024 vide SO 4253(E), dt. 27-9-2024

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Section 74 provides for service of a notice upon the person chargeable with tax. The 'SCN' as to why he should not pay the amount specified in the notice along with interest payable thereon under Section 50 and a penalty equivalent to the tax specified in the notice shall be issued under sub-section (1). Sub-section (2) provides for a time limit of at least six months prior to the time limit prescribed in sub-section (10) for issuance of the order. Sub-section (9) provides that the proper officer shall, after considering the representations, 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. Sub-section (10) states that "the proper officer shall issue the order under sub-section (9) within a period of 5 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 utilized relates to or within 5 years from the date of erroneous refund." It is important to take note of sub-section (5) of Section 74 which reads as under:-

> "(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform

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> the proper officer in writing of such payment."

36. On a complete reading of the scheme of Section 74, in the facts of the present case, it is evident that after the final audit report was approved by the MCM and the same was communicated to the petitioner, the petitioner was liable to deposit the tax, interest and penalty as the case may be as per the final audit within the given period of 15 days or as per sub-section (5) before service of the notice under sub-section (1), in such circumstance, his case would have been covered under sub-section (5) of Section 74. In this case, since the case of the petitioner was not covered by sub-section (5) of Section 74, the respondent no.3 proceeded to issue notice under sub-section (1) of Section 74. As regards the reasons behind invocation of sub-section (1) of Section 74 of the CGST Act, 2017, the respondents have made statements in paragraph '7' onwards in the 'SCN'. From paragraph '7' onwards, in the 'SCN', it has been pointed out that had the audit not been conducted of the records/registers of the noticee, this non-payment/short payment of GST, late fee for delayed filing of GSTR-1, delayed payment of tax by way of delayed payment of GSTR-3B, GST under RCM, etc. as given in detail would not have been noticed.

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37. It is stated that under Section 155 of the CGST/SGST Act, 2017, where any person claims that he is eligible for input tax credit under the CGST/SGST Act, 2017, the burden of proving such claim shall be on such person. The government has placed full trust on the taxpayers from the very beginning and accordingly a measure like self-assessment etc. have been provided. All these operate on the basis of honesty of the taxpayers, therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust by the taxpayers. To this Court, thus it appears that the principle behind issuance of 'SCN' under Section 74(1) of the CGST/BGST Act, 2017 is the breach of the principle of 'utmost good faith'.

38. This Court finds that the respondents have shown in paragraph '8' that how in this case there is a non-payment/short payment of GST, non-payment/short payment of late fee for delayed filing of GSTR-1, non-payment of GST under RCM in terms of Section 9(4) and non-payment of the late fee for delayed filing. The 'SCN' called upon the petitioner to submit his response with all evidences and proposed to recover the non-paid/short-paid amounts on various heads, applicable interest on the amount mentioned in (i), (ii), (iv) to (vii) under Section 50 of the

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CGST/BGST Act and penalty on the amount mentioned at (ii), (iv), (v), (vi) and (vii). This is in consonance with the principle of natural justice. The proposed demand are fully enumerated under paragraph '9' of the 'SCN'. At this stage, we find that a summary of the 'SCN' in GST DRC-01 dated 31.01.2024 uploaded on the GST portal is enclosed and regarding this the respondents have given an explanation. The plea taken with regard to non-compliance with sub-rule (3) of Rule 26 of the GST Rules has been duly addressed in the counter affidavit and in supplementary counter affidavit. It is evident on perusal of the 'SCN' (Annexure 'P-5') that under paragraph '9(ix)', there was a proposed demand for recovery of penalty, therefore, the contention of learned Senior counsel that there was no proposal for recovery of the penalty is not a correct submission.

39. At this stage, we take note of the judgment of the Hon'ble Supreme Court in the case of **M/s G.R. Infra Projects Limited Ratlam** (supra). In the said case, the 'SCN' dated 13.06.2025 was issued under Section 74 of the CGST Act, 2017. On going through the said 'SCN', the Hon'ble Supreme Court observed in paragraph '10' of the judgment 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

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> '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."

40. It is important to take note that in case of **M/s G.R. Infra Projects Limited Ratlam** (supra), the Hon'ble Supreme Court categorically held that whether a notice or order is valid is to be judged from the notice or order itself. Paragraph '5' of the judgment is extracted hereunder for a ready reference:-

> "5. We refused to look at the counter affidavit on the trite principle that when an authority has issued a notice or an order, the requirements to make the notice or order valid should be contained in such notice or order and cannot be supplanted by a counter affidavit in Court, where the notice or order is alleged to be invalid for reason to non-application of mind, the requirements having not met and so on and so forth."

41. It is evident that in case of **M/s G.R. Infra Projects Limited Ratlam** (supra), the Hon'ble Supreme Court was concerned as to whether the notice under Section 74 in the said

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case can be one deemed to have been issued under Section 74 of the CGST Act, 2017 read with Madhya Pradesh Goods and Services Tax, 2017 (MPGST Act).

42. In the case of **M/s Tata Steel Limited** (supra), the Hon'ble Supreme Court was concerned with the 'SCN' issued for three financial years 2018-19 to 2020-21, purportedly in pursuance of an objection raised on an audit by the office of the Comptroller and Auditor General of India. The 'SCN' was termed to be one under Section 74 of the CGST Act. It was contended before the Hon'ble Supreme Court that there was no allegation of fraud, willful misstatement or suppression of facts, bereft of which there can be no invocation of Section 74, where there is an extended period of five years, as distinguished from a period of three years available under Section 73.

43. While giving a consideration to the submissions with regard to invocation of Section 74 and the essential conditions of the said provision, the Hon'ble Supreme Court in **M/s Tata Steel Limited** (supra) took notice of the facts of the case and dealt with this issue from paragraph '9' to '15' of the judgment which we reproduce hereunder:-

> "9. That allegation, if available, the Department can seek to sustain the notice under Section 74, which is what they attempted to do. The

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proceedings which led to the SCN commenced with Annexure P1 dated 27.05.2024; issued with respect to audit observations regarding mismatch of input tax credit (ITC) for the three financial years and for the short payment of tax for the financial year 2019-2020. Replies were submitted and on 27.06.2024 by Annexure P5, documents were sought in support of the explanations offered. Communications were exchanged between the assessee and the 7th respondent and eventually the SCN was issued on 13.06.2025 produced as Annexure P11. Subsequently, the Additional Commissioner, respondent No.5 intimated, by Annexure P12 dated 27.06.2025, that the SCN has been transferred to 'call book' meaning thereby 'kept in abeyance'. It was also intimated that the Department has contested the issue raised as an audit objection, before the Public Accounts Committee.

10. Later, a fresh notice was issued on 01.07.2025, reviving the earlier notice and proposing a protective demand since the proceedings are time bound under the GST law, there being no such measure of protective assessment statutorily permitted under the GST Act.

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

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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/willful 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

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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/willful misrepresentation/suppression. The foundational facts which led to the inference arrived at of fraud/willful 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

15. In the facts of the above case, we do not find any such factual facts having been stated to make out a case of a deliberate device employed to evade tax or avail excess ITC, as coming out from the SCN. The bland statement made at some places of suppression of facts, merely to avail the extended period of limitation would barely suffice and puts to peril the notice under Section 74. The SCN on the above reasoning, cannot be sustained and the consequential Order-in-Original dated 26.12.2025 too is put in peril and both are set aside. However, the extended period of two years is not yet over, for all the three years since the three- year

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> limitation expired only on 28.02.2025 for all the subject financial years. It would be open for the Department, if it is thought fit, to initiate an appropriate proceeding under Section 74, but with the foundational facts, coming out from the notice itself and an order being passed before 28.02.2027."

44. A bare reading of paragraph '9' of the judgment in **M/s Tata Steel Limited** (supra) would show that in the said case, the 'SCN' was issued with respect to audit observations regarding mismatch of input tax credit (ITC) for three financial years and for the short payment of tax for the Financial Year 2019-20. The appellant before the Hon'ble Supreme Court had filed replies vide Annexure 'P-5' whereafter documents were sought in support of the explanations offered and communications were exchanged between the assessee and the seventh respondent. In the said case, the facts would reveal that after the 'SCN' was issued on 13.06.2025 (Annexure 'P-11'), subsequently the Additional Commissioner (Respondent No.5) intimated by Annexure 'P-12' dated 27.06.2025 that the 'SCN' has been transferred to 'call book', thus it was kept in abeyance. It was intimated to the appellant that the department has contested the issue raised as an audit objection, before the Public Accounts Committee. It is in this background of the fact the Hon'ble Supreme Court observed in paragraph '11' that even if observations/objections are made on

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audit, the assessing officer should enter his satisfaction before a notice is issued. The officers should be satisfied that either fraud/willful misrepresentation/suppression had led to the mismatch of ITC or short payment of tax. In paragraph '13', the Hon'ble Supreme Court has taken note of the fact that the department had taken up the objections on audit with the Public Accounts Committee and that itself indicates that there was no satisfaction at the end of the department meaning the assessing officer; as to the mismatch or the shortfall of payment of tax having occurred, not to say anything about the suppression alleged. It is in this background, the judgment of the Hon'ble Supreme Court came in case of **M/s Tata Steel Limited** (supra). The Hon'ble Supreme Court did not find any factual facts having been stated to make out a case of a deliberate device employed to evade tax or avail excess ITC, as coming out from the 'SCN'.

45. In the facts of the present case, we have noticed that the final audit report together with copy of the decision of the MCM (Annexure 'P-4') was served upon the petitioner. There is no statement that the petitioner ever contested this final audit report. In this background, we find that the 'SCN' (Annexure 'P5') was issued, it categorically states about non-payment of GST amount, non-payment of late fee, short payment of tax and

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interest. It further provides in paragraph '7' had the audit not been conducted of the records/registers of the noticee, the fact that these were an outright act in defiance of the law, made by the noticee, would have gone unnoticed. It is a case where it has been detected that there is a non-payment/short payment of GST in Rs.32,75,632/- and these facts have been revealed from the records in possession of the petitioner. The allegation in the 'SCN' is of blatant violation and defiance of the law by the petitioner in not paying the GST.

46. To this Court, it appears that where the audit report has found huge amounts of non-payment/short payment in contravention of law where the assessee is aware of delayed filing of GSTR-1, but does not pay the late fee and where he is unable to satisfy the proper officer with his bonafides in not making payment of such huge amount, the proper officer would be fully competent within the scope of sub-section (1) of Section 74 in issuing 'SCN' to the assessee. While it is true that in a simple case of non-payment/short payment of the GST for the bonafide reasons, a case cannot be brought within the purview of the extended period of limitation by invoking sub-section (1) of Section 74 read with sub-section (10) of Section 74, every case has to be looked into in its own facts. Where the proper officer has

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categorically stated about the communications made in this regard to the noticee/assessee, but the assessee does not comply with the final audit report within the prescribed period, the proper officer, being satisfied that it is a case of willful suppression and concealment, would be competent to take recourse to sub-section 1 of Section 74.

47. This Court is of the considered opinion that sitting in its extraordinary writ jurisdiction, this Court is not supposed to go into the sufficiency of the reasons for forming an opinion by the proper officer that any tax has not been paid or short paid or erroneously refunded or the ITC has been wrongly availed or utilized by reason of fraud or any willful statement or suppression of facts to evade tax. The opening line of sub-section (1) of Section 74 states “where it appears to the proper officer …..”. Dealing with the cases of reopening of an assessment under Section 147 read with Section 148 of the Income Tax Act, 1961 (in short ‘IT Act’), the Hon’ble Supreme Court had occasion to consider the scope and ambit of interference by the High Court in the notice issued under Section 148 of the IT Act. The Hon’ble Supreme Court held in the case of **Sanand Properties Private Limited vs. Joint Commissioner of Income Tax and Ors.** reported in **(2026) 488 ITR 337 : 2026 SCC OnLine SC 851**

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inter alia that "… Since the belief is that of the Income-tax Officer, the sufficiency of reasons for forming the belief, is not for the court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the court may look into the conclusion arrived at by the Income-tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income-tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief. It would be immaterial whether the Income-tax Officer at the time of making the original assessment, could or, could not have found by further enquiry or investigation, whether the transaction was genuine or not…."

48. In our opinion, in the facts of the present case, no fault may be found in the matter of issuance of 'SCN' under subsection (1) of Section 74 of the CGST Act.

49. To this Court, it appears that the 'SCN' (Annexure 'P-4') does not suffer from the vice of non-application of mind, much less any jurisdictional error.

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50. Having reached to the aforesaid conclusion, this Court is of the considered opinion that the order in original (Annexure ‘P-6’), being an appealable order, this Court would not exercise its discretionary jurisdiction under Article 226 of the Constitution of India to entertain a challenge to the order in original (Annexure ‘P-6’). The petitioner may seek his remedy in accordance with law before the appellate authority or as may be advised to him in accordance with law.

51. At this stage, we place on record that learned ASG has informed this Court and it is also evident from the records that copy of the writ application was served upon his office on 21.08.2024. In such circumstance, the impugned order (Annexure ‘P-6’) being dated 22.04.2024, the service of copy took place well within a period of four months from the date of the order in original (Annexure ‘P-6’). Section 107 of the CGST Act provides a period of limitation of three months for filing an appeal. It further provides a window of one month for presenting an appeal and for this purpose, the appellate authority would be competent to allow the petitioner to present the appeal within a further period of one month. We, therefore, observe that if the petitioner prefers an appeal within a period of one month from today, the appellate authority shall consider the same on its own merit.

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52. This writ application stands disposed of with liberty as aforesaid.

53. All questions are left open to the parties.

54. The observations made hereinabove are only for purpose of consideration of the pleas on behalf of the petitioner with regard to the challenge thrown to the SCN. The impugned order, as contained in Annexure '6', would be liable to be considered on its own merits.

(Rajeev Ranjan Prasad, J)

(Sunil Dutta Mishra, J)

Rishi/-

AFR/NAFR	
CAV DATE	09.10.2026
Uploading Date	13.10.2026
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