2026:DHC:8599-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 29.09.2026***

\+ W.P.(C) 583/2026 & CM APPL. 2873/2026

TRECO WIRE INDIA PRIVATE LIMITED .....Petitioner

Through: Mr. Abhishek Garg, Adv.

versus

ADDITIONAL COMMISSIONER CENTRAL TAX DELHI NORTH & ORS. ....Respondents

Through: Mr. Aditya Singla, SSC along with Ms. Arya, Mr. Dhananjay Gautam, Mr. Akhil Sharma, Ms. Sakshi Chandna and Ms. Nehaol, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MS. JUSTICE BHARAT PARASHAR

J U D G M E N T (ORAL)

ANIL KSHETARPAL, J.:

1. Through the present Petition, the Petitioner, *inter alia*, challenges the Order-in-Original No. 45/ADC/D.N./Bhavan Meena/2024 dated 15.01.2024 passed by Respondent No.1 under Section 74 of the Central Goods and Services Tax Act, 2017 ['CGST Act'], as well as the consequential summary in FORM GST DRC-07, whereby a demand of Rs.3,34,21,261/- towards input tax credit ['ITC'], along with interest and an equivalent amount of penalty, has been confirmed against the Petitioner. A further demand of Rs.50,30,256/- towards interest under Section 50 of the CGST Act has also been confirmed.





2. The Petitioner has also challenged the constitutional validity of Section 16(2)(c) of the CGST Act and has sought, *inter alia*, that the said provision be struck down or read down so as to exclude bona fide recipients who have undertaken genuine transactions with duly registered suppliers. A challenge has also been raised to the proviso to Section 16(2) of the CGST Act insofar as it relates to the liability to pay interest where payment to the supplier is made beyond the period of 180 days.

3. The Petitioner has further challenged the show-cause notice dated 22.09.2023 issued under Section 74 of the CGST Act and the consequential adjudication proceedings.

4. The principal controversy which arises in the present Petition, insofar as the impugned adjudication is concerned, is whether the order passed under Section 74 of the CGST Act discloses the necessary factual and statutory foundation for fastening upon the Petitioner the aforesaid tax, interest and penalty liabilities.

FACTUAL MATRIX

5. The Petitioner is a company engaged in the business of manufacturing copper wires and is registered under the CGST Act. An audit in respect of the period from 01.07.2017 to 31.03.2021 was undertaken by the Respondent authorities. During the course of the audit, certain objections were raised with respect to the ITC availed by the Petitioner.

6. An Audit Memo dated 23.07.2023 was issued, alleging, *inter*

alia, that the Petitioner had availed ITC amounting to Rs.3,34,21,261/- in respect of supplies received from suppliers whose GST registrations had allegedly been cancelled with retrospective effect. A further amount of Rs.50,30,256/- was proposed towards interest on account of alleged delayed payment to suppliers beyond the period of 180 days.

7. The Audit Report in FORM GST ADT-02 was thereafter issued on 27.07.2023. The Petitioner submitted its response disputing the allegations and contending, *inter alia*, that the transactions were genuine commercial transactions and that the suppliers concerned were registered and had active GST registrations at the relevant point of time.

8. Thereafter, a pre-show-cause intimation in FORM GST DRC-01A was thereafter issued, followed by the show-cause notice dated 22.09.2023 under Section 74 of the CGST Act.

9. The Petitioner submitted its reply to the show-cause notice, disputing the proposed demand and specifically contending that the ingredients necessary for invocation of Section 74 of the CGST Act were absent.

10. The proceedings culminated in the impugned Order-in-Original dated 15.01.2024. By the said order, the adjudicating authority confirmed the demand of Rs.3,34,21,261/- towards ITC under Section 74(1) of the CGST Act, together with interest and an equivalent amount of penalty. The adjudicating authority also confirmed a demand of Rs.50,30,256/- towards interest under Section 50 of the CGST Act.





11. The operative part of the Impugned Order reads as under:

> *"(i) I confirm the demand of ITC amounting to Rs.3,34,21,261/- (CGST: 1,67,10,630/- + SGST: 1,67,10,630/-) upon M/s Treco Wire (India) Pvt. Ltd. as detailed in para 2.1 above under Section 74(1) of CGST Act 2017 read with corresponding provisions of the SGST Act, 2017 and Section 20 of the IGST Act, 2017;*
>
> *(ii) I confirm the demand of Interest under Section 50 of the CGST Act, 2017 with the corresponding provisions of Delhi SGST Act, 2017 / IGST Act, 2017 on the amount specified in (i) above;*
>
> *(iii) I confirm the demand on interest amounting of Rs.50,30,256/- as detailed in para 2.4 above under Section 50 of the CGST Act 2017 with the corresponding provisions of Delhi SGST Act, 2017 / IGST Act, 2017;*
>
> *(iv) I impose Penalty of Rs.3,34,21,261/- ... under Section 74(1) of the CGST Act, 2017."*

CONTENTIONS OF THE PARTIES

12. Learned counsel for the Petitioner submits that the Impugned Order suffers from fundamental infirmities and cannot be sustained in law. It is submitted that the order does not disclose the names of the suppliers from whom the Petitioner allegedly received the supplies, the dates of the invoices in question, the dates from which the respective GST registrations were cancelled, or the material on the basis of which it was concluded that the ITC availed by the Petitioner was liable to be denied.

13. Learned counsel further submits that, notwithstanding the invocation of Section 74 of the CGST Act, neither the show-cause notice nor the Impugned Order discloses the specific particulars of fraud, wilful misstatement or suppression of facts attributable to the Petitioner. According to the Petitioner, the mere assertion that certain suppliers had subsequently had their registrations cancelled cannot, by itself, constitute satisfaction of the statutory ingredients of Section 74.

14. Learned counsel submits that the Petitioner had participated in the audit proceedings and had furnished the records sought by the Respondent authorities. The Petitioner had also disputed the audit objections and contended that the transactions were genuine and that the suppliers were duly registered at the relevant point of time.

15. Learned counsel for the Respondents, on the other hand, seeks to sustain the impugned proceedings on the basis of the audit objections and the material available on record. Reliance has also been placed upon the order dated 24.09.2025 passed by this Court in W.P.(C) 14428/2025, which had been filed by the Petitioner.

16. During the course of hearing, the Court called upon learned counsel appearing for the Respondents to clarify whether the case of the department in the present proceedings involved alleged availment of fraudulent ITC from a particular entity, namely, Balaji. Learned counsel was unable to confirm the same.

ANALYSIS & FINDINGS

17. At the outset, it is necessary to deal with the challenge raised to the constitutional validity of Section 16(2)(c) of the CGST Act.

18. The Petitioner seeks a declaration that Section 16(2)(c) of the CGST Act is unconstitutional or, in the alternative, seeks that the said provision be read down so as to protect bona fide recipients in cases where the supplier has failed to discharge its tax liability.

19. The aforesaid issue, however, no longer survives for consideration by this Court in view of the judgment of the Division

Bench of the Gujarat High Court in ***Maruti Enterprises v. Union of India***[1].

20. The aforesaid judgment of the Gujarat High Court has been considered by the Supreme Court in ***Bhandari Scraps Traders v. Union of India***, SLP (C) No.23931/2026, decided on 24.07.2026. The Supreme Court, after examining the distinction between the statutory scheme under the Delhi Value Added Tax Act, 2004 and the CGST Act, as also the scheme governing availment and re-availment of ITC under the CGST regime, declined to interfere with the judgment of the Gujarat High Court.

21. The Supreme Court, *inter alia*, noticed that the distinction between the two statutory schemes demonstrates that there is no parity between a purchasing dealer under the CGST Act and a purported bona fide purchasing dealer under the Delhi Value Added Tax Act where the supplier fails to pay the requisite tax. The Supreme Court also took note of the statutory scheme under Section 41 and Sections 73 and 74 of the CGST Act concerning re-availment of reversed ITC upon discharge of the tax liability by the supplier.

22. The Supreme Court consequently held that no grounds were made out for declaring Section 16(2)(c) of the CGST Act unconstitutional or for reading down the said provision and affirmed the judgment of the Gujarat High Court.

23. In view of the aforesaid judgment of the Supreme Court, the challenge to the constitutional validity of Section 16(2)(c) of the

[1] 2026 SCC OnLine Gujarat 4013

CGST Act cannot be accepted. The reliefs seeking striking down or reading down of the said provision are, accordingly, declined.

24. Having dealt with the constitutional challenge, the Court now turns to the legality of the impugned adjudication order. The question at this stage is not whether the Petitioner is, ultimately, entitled to the ITC claimed by it. The question is whether the demand confirmed under Section 74 of the CGST Act has been adjudicated upon in accordance with the statutory requirements governing such proceedings and by recording sufficient factual findings to support the conclusions reached.

25. Section 74 of the CGST Act is attracted in specified circumstances where tax has not been paid or has been short paid, or where refund has been erroneously made or ITC has been wrongly availed or utilised, by reason of fraud, wilful misstatement or suppression of facts to evade tax.

26. Consequently, where an authority invokes Section 74, the adjudication order must disclose the factual basis on which the statutory ingredients of the provision are said to have been satisfied. The mere reproduction of the statutory language, without particulars supporting such satisfaction, would not, by itself, demonstrate the application of mind necessary to sustain an order under Section 74.

27. In the present case, paragraph 2.1 of the Impugned Order reproduces the audit objection which constitutes the principal basis for the demand. The relevant portion reads as under:

"2.1 Whereas, during the course of audit of records of the Noticee, on





scrutinizing the GSTR 2A, purchase register and ITC ledgers of the Noticee for. the period 2017- 18, 2019-20 & 2020-21, it was found that the Noticee had availed ITC (SGST+CGST) amounting to Rs.3,34,21,261/- on the supplies received from the suppliers whose OST registrations were cancelled with effect from a date which was earlier to the date of. issuance of invoices. However, under the Central Goods and Services Tax (CGST) Act, 2017, the availment of Input Tax Credit (ITC) is dependent on the validity of the supplier's registration at the time of issuance of the invoice. In the event that the supplier's registration was cancelled prior to the date of issuance of the invoice, the availment of ITC on such invoices would be considered as a wrong availment and would not be admissible. Further, Rule 36(4) of the CGST Rules, 2017 read with Section 37(1) of the Act, ibid emphasizes that a person can avail the benefit of ITC, only on the basis of the invoices issued by a registered person. Thus, as per the rule ibid, it is clear that the registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the date of cancellation of registration."

28. The aforesaid audit objection makes a general assertion that ITC was availed on supplies received from suppliers whose GST registrations had allegedly been cancelled with effect from dates preceding the dates of the invoices.

29. However, the Impugned Order does not disclose the particulars of the suppliers to whom the aforesaid finding relates. Neither the names of the suppliers nor their GSTINs have been set out in the body of the Impugned Order. The order also does not disclose, supplier-wise, the date of the relevant invoice, the date from which the registration was cancelled, the quantum of ITC attributable to each such supplier, or the material on the basis of which the cancellation dates were ascertained.

30. These particulars assume significance because the entire demand of Rs.3,34,21,261/- rests upon the allegation that the suppliers' registrations stood cancelled from dates preceding the

issuance of the invoices. In their absence, the finding remains at the level of a general assertion and does not disclose the factual foundation upon which the demand has been quantified.

31. This assumes particular significance because the proceedings have been initiated under Section 74 of the CGST Act. Invocation of Section 74 requires satisfaction of the statutory ingredients contemplated therein. The Impugned Order does not disclose any specific finding as to how the Petitioner committed fraud, made any wilful misstatement, or suppressed any material fact with intent to evade tax.

32. The distinction between the eligibility condition contained in Section 16(2)(c) and the requirements for invoking Section 74 is material. The constitutional challenge to Section 16(2)(c) stands concluded by the judgment of the Supreme Court referred to hereinabove. That conclusion, however, does not dispense with the requirement that an adjudicating authority invoking Section 74 must satisfy itself that the statutory conditions prescribed by Section 74 are met in the facts of the particular case.

33. The Petitioner had participated in the audit proceedings and had disputed the audit objections by contending that the transactions were genuine and that the suppliers were registered at the relevant point of time. The Impugned Order does not demonstrate that this defence was considered and dealt with by the adjudicating authority.

34. Where a demand is sought to be sustained on the basis of retrospective cancellation of supplier registrations, the adjudication

must disclose the factual material demonstrating the connection between the alleged cancellation and the particular ITC transactions forming the subject matter of the demand. The Impugned Order does not undertake this exercise.

35. The omission to disclose the aforesaid particulars is not a mere technical defect. The identity of the suppliers, the relevant invoices, the dates of cancellation of registration and the quantum of ITC attributable to each supplier constitute the factual foundation of the demand. In their absence, the Petitioner is also deprived of an effective opportunity to meet the case against it.

36. The requirement of a reasoned order assumes further significance where the adjudication results not merely in confirmation of a tax liability along with interest but also in imposition of an equivalent penalty under Section 74 of the CGST Act.

37. The Impugned Order also contains apparent inconsistencies in relation to its dates. While the order bears the date 15.01.2024, the concluding portion bears the date 10.01.2024. The record also contains a DRC-07 bearing a different date. It is, however, unnecessary to finally adjudicate upon the effect of these discrepancies, since the Impugned Order is liable to be set aside on the more fundamental ground that the factual and statutory foundation necessary to sustain the demand under Section 74 has not been disclosed.

38. The reliance placed on the order dated 24.09.2025 passed in W.P.(C) 14428/2025 also does not assist the Respondents. The

controversy in the present Petition has to be examined with reference to the show-cause notice, the material relied upon therein and the impugned adjudication order under challenge in the present proceedings.

39. In the facts of the present case, the aforesaid order cannot be treated as determinative of the controversy arising herein. The present adjudication has to stand or fall on the basis of the material forming part of the proceedings impugned before this Court.

40. The deficiencies noticed herein go to the root of the adjudication. The Impugned Order does not set out the factual particulars necessary to ascertain the transactions forming the basis of the demand, nor does it record the specific findings necessary to sustain the invocation of Section 74 against the Petitioner.

41. This Court is, therefore, of the view that the impugned Order-in-Original dated 15.01.2024 cannot be sustained in its present form.

CONCLUSION

42. The impugned Order-in-Original No. 45/ADC/D.N./Bhavan Meena/2024 dated 15.01.2024, along with the consequential proceedings arising therefrom, is accordingly set aside.

43. The matter is remanded to the adjudicating authority for fresh adjudication in accordance with law. The adjudicating authority shall issue appropriate notice to the Petitioner and afford it a reasonable and effective opportunity of hearing.

44. While undertaking the fresh adjudication, the adjudicating authority shall consider the reply and material furnished by the Petitioner and shall record specific findings on the factual basis of the proposed demand. In particular, if the demand is sought to be sustained on the ground of retrospective cancellation of the GST registrations of the suppliers, the adjudicating authority shall identify the concerned suppliers and the relevant transactions and shall deal with the material relied upon in support of the proposed liability.

45. The adjudicating authority shall also independently examine whether the statutory requirements for invoking Section 74 of the CGST Act are satisfied in the facts of the case and shall record appropriate findings thereon.

46. It is clarified that this Court has not expressed any opinion on the merits of the proposed ITC demand or on the Petitioner's entitlement to ITC under Section 16 of the CGST Act. The observations contained in the present judgment are confined to the deficiencies in the impugned adjudication order which necessitate its setting aside and fresh adjudication.

47. The adjudicating authority shall endeavour to pass a fresh order within a period of eight (08) weeks from the date on which the Petitioner appears before it.

48. The Petitioner, through learned counsel, shall appear before the adjudicating authority on 08.10.2026 at 02:30 P.M.

49. The challenge to the constitutional validity of Section 16(2)(c)





of the CGST Act having been rendered untenable in view of the judgment of the Supreme Court referred to hereinabove, the prayers seeking striking down or reading down of the said provision are rejected.

50. In view of the setting aside of the impugned adjudication order and the direction for fresh adjudication, no further orders are called for in respect of the consequential reliefs at this stage.

51. The Petition is disposed of in the aforesaid terms. Pending application also stands disposed of.

ANIL KSHETARPAL, J.

BHARAT PARASHAR, J.

SEPTEMBER 29, 2026
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