

2026:DHC:8603-DB

$~

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

% ***Judgment reserved on: 28.09.2026***

Judgment pronounced on: 05.10.2026

Judgment uploaded on: 05.10.2026

\# **CNR No. DLHC010100782026**

\+ W.P.(C) 3449/2026 & CM APPL. 16548/2026

M/S APARNA COLLECTION .....Petitioner

Through: Mr. Akhil Krishan Maggu, Mr. Vikas Sareen, Ms. Oshin Maggu, Mr. Aryan Nagpal, Mr Harish Pal & Ms. Palak Sarna, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Kushagra Kumar, SPC with Mr. Anmol Ghai, Adv. for R-1 UOI

Mr. Ruchesh Sinha, Sr. Standing Counsel with Ms. Upasna Vashistha, Advs.

Mr. Anurag Ojha, SSC alongwith Mr. Dipak Raj & Mr. Aditya Chaudhary, Advs.

\# **CNR No. DLHC010102212026**

\+ W.P.(C) 3501/2026 & CM APPL. 16882/2026

M/S APARNA COLLECTION .....Petitioner

Through: Mr. Akhil Krishan Maggu, Mr. Vikas Sareen, Ms. Oshin Maggu, Mr. Aryan Nagpal, Mr Harish Pal & Ms. Palak Sarna, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr.Kushagra Kumar, SPC with Mr. Anmol Ghai, Adv. for R-1 UOI.

Mr. Ruchesh Sinha, Sr. Standing Counsel with Ms.

2026:DHC:8603-DB

Upasna Vashistha, Advs.
Mr. Anurag Ojha, SSC alongwith Mr. Dipak Raj & Mr. Aditya Chaudhary, Advs.

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

J U D G M E N T

ANIL KSHETARPAL, J.:

1. The present batch of two (02) Writ Petitions, both instituted by the same Petitioner, arise out of proceedings under Section 74 of the Central Goods and Services Tax Act, 2017[1] and involve substantially identical questions concerning the effect of the dates appearing on Forms GST DRC-01 and DRC-07 upon the limitation prescribed under Sections 74(2)[2] and 74(10)[3] of the CGST Act. The petitions are, therefore, being disposed of by this common Judgment.

2. In W.P.(C) 3449/2026[4], the Petitioner assails Form GST DRC-01 dated 23.08.2024 and the consequential proceedings arising therefrom. During the pendency of the proceedings, the adjudication culminated in the passing of Order-in-Original dated 27.01.2025.

3. In W.P.(C) 3501/2026[5], the Petitioner assails Form GST DRC-01 dated 28.08.2024 as also Form GST DRC-07 dated 21.02.2025 and the consequential Order-in-Original dated 29.01.2025.

[1] Hereinafter referred to as 'CGST Act'
[2] Hereinafter referred to as 'Section 74(2)'
[3] Hereinafter referred to as 'Section 74(10)'
[4] Hereinafter referred to as 'First Petition'
[5] Hereinafter referred to as 'Second Petition'

4. Since the controversy in both the petitions substantially overlaps, the relevant facts of the two proceedings are noticed together, while the individual particulars of the respective proceedings are dealt with separately wherever necessary.

FACTUAL MATRIX:

5. The Petitioner is a proprietorship concern being run in the name and style of M/s Aparna Collection and is registered under the CGST Act. The proceedings against the Petitioner arise out of an investigation concerning alleged availment and passing on of inadmissible Input Tax Credit ('ITC') through entities which were alleged to be non-existent or involved in issuance of invoices without actual supply of goods.

6. In the First Petition, the investigation originated from an alert received from the Directorate General of Goods and Services Tax Intelligence, Gurugram Zonal Unit, concerning M/s Redmancy World. The investigation thereafter extended to several firms and recipients. According to the Respondents, the proceedings concerning the Petitioner formed part of the investigation relating to recipients falling within the jurisdiction of the concerned Commissionerate.

7. The Petitioner was alleged to have availed inadmissible ITC of Rs.23,06,264/- comprising CGST of Rs.11,53,132/- and SGST of Rs.11,53,132/-, on the strength of invoices allegedly issued by non-existent entities without actual receipt of goods.

8. Significantly, the substantive Show Cause Notice[6] in the first proceeding bears date 11.07.2024. The same was issued under Section 74(1) of the CGST Act. Form GST DRC-01, however, bears date 23.08.2024.

9. The Petitioner contends that since Form GST DRC-01 was dated 23.08.2024, the proceedings must be treated as having been initiated only on that date. According to the Petitioner, the last date for issuance of SCN under Section 74(2) was 04.08.2024, having regard to the extended due date for furnishing the annual return for Financial Year 2017-18.

10. The proceedings thereafter culminated in Order-in-Original dated 27.01.2025, whereby the demand of Rs.23,06,264/- was confirmed along with the applicable interest and equivalent penalty.

11. In the Second Petition, the investigation originated from an analytical report dated 26.05.2022 received from the Directorate General of Analytics and Risk Management and concerned 14 allegedly non-existent firms. The investigation was thereafter extended to various recipient entities.

12. The Respondents alleged that the said 14 entities had passed on inadmissible ITC to several beneficiary firms, including entities falling within the jurisdiction of the concerned Commissionerate. The Petitioner was arrayed as Noticee No.203.

13. The substantive SCN in the second proceeding bears date 09.07.2024. The SCN proposed a demand of Rs.2,68,320/- comprising

[6] Hereinafter referred to as 'SCN'

CGST of Rs.1,34,160/- and SGST of Rs.1,34,160/-, besides applicable interest and penalty. The Petitioner has placed the said SCN on record and states that it came to know of the same when Form GST DRC-01 dated 28.08.2024 was served upon it.

14. The adjudication proceedings thereafter culminated in Order-in-Original dated 29.01.2025. Form GST DRC-07 is dated 21.02.2025.

15. The Petitioner contends that the date of the DRC-01, namely 28.08.2024, renders the SCN time-barred under Section 74(2) and that the date of DRC-07, namely 21.02.2025, renders the adjudication order time-barred under Section 74(10).

16. The Petitioner has also challenged the invocation of Section 74 on the ground that the SCNs and the Impugned Orders do not disclose any material establishing fraud, wilful misstatement or suppression of facts with intent to evade tax. It is further contended that there is no material demonstrating that the Petitioner was aware of, or in connivance with, the alleged non-existent suppliers.

CONTENTIONS OF THE PARTIES:

17. Heard learned counsel representing the parties and, with their able assistance, perused the record.

18. Learned counsel representing the Petitioner, while submitting that the proceedings are without jurisdiction on account of limitation, has made the following submissions:

i. The statutory cut-off date under Section 74(2) was 04.08.2024, whereas the DRC-01 in the First Petition is dated

23.08.2024 and the DRC-01 in the Second Petition is dated 28.08.2024.

ii. Form GST DRC-01 constitutes the electronic summary of the SCN and that the SCN and DRC-01 having been served together, the effective date of issuance of the notice must be treated as the date appearing on the DRC-01.

iii. In the Second Petition, Form GST DRC-07 bears date 21.02.2025 and is, therefore, beyond the alleged limitation date of 04.02.2025 under Section 74(10).

19. Learned counsel further submits that the invocation of Section 74 is itself without jurisdiction since there is no material demonstrating that the Petitioner had knowledge of any alleged fraudulent activities of its suppliers or had colluded with them and that the extended period under Section 74 cannot be invoked in the absence of the foundational ingredients of fraud, wilful misstatement or suppression of facts.

20. Learned counsel has also contended that the existence of an alternative remedy under Section 107 of the CGST Act[7] does not bar the present petitions since the challenge is to the very jurisdiction of the Respondents and raises pure questions of law concerning limitation.

21. *Per contra*, learned counsel representing the Respondents submits that the substantive SCNs were issued well within the period

[7] Hereinafter referred to as 'Section 107'

prescribed under Section 74(2). The date appearing on Form GST DRC-01 cannot displace the date of the substantive SCN.

22. It is further submitted that the Orders-in-Original were also passed within the period prescribed under Section 74(10). The subsequent date appearing on Form GST DRC-07 does not render the orders time-barred since DRC-07 is merely a summary of the adjudication order.

23. Learned counsel further submits that the Petitioner participated in the adjudication proceedings and had an opportunity to raise all its objections before the adjudicating authority. The challenge regarding the existence of fraud, wilful misstatement or suppression, the sufficiency of material and the alleged absence of knowledge or collusion are all matters which can be examined by the Appellate Authority under Section 107. It is, therefore, submitted that no exceptional circumstance exists warranting interference under Article 226 of the Constitution of India.

ANALYSIS AND FINDINGS:

24. This Court has carefully considered the submissions advanced on behalf of the learned counsel representing the parties and perused the material placed on record.

25. The principal question which arises for consideration is whether the dates appearing on Forms GST DRC-01 and DRC-07, in the facts of the present case, render the substantive SCNs or the adjudication orders barred by limitation under Sections 74(2) and 74(10).

26. Section 74(2) provides that the proper officer shall issue the notice under Section 74(1) at least six (06) months prior to the time limit specified in Section 74(10) for issuance of the order. Section 74(10), in turn, prescribes the outer period within which the order under Section 74(9) is required to be issued. Both these provisions are reproduced hereinbelow for ready reference:

> *"**Section 74. 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 utilised by reason of fraud or any willful-misstatement or suppression of facts.-***
>
> *...*
>
> *(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.*
>
> ***
>
> *(10) The proper officer shall issue the order under sub-section (9) within a period of five 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 five years from the date of erroneous refund."*

27. The distinction between the substantive SCN/Order and the electronic summaries in Forms GST DRC-01 and DRC-07 assumes significance in the present case.

28. In the First Petition, the substantive SCN is dated 11.07.2024. In the Second Petition, the substantive SCN is dated 09.07.2024. Both dates are prior to 04.08.2024, which is the date asserted by the Petitioner as the outer limit for issuance of notice under Section 74(2).

29. The mere fact that the corresponding Forms GST DRC-01 bear later dates, namely 23.08.2024 and 28.08.2024 respectively, cannot, by itself, render the substantive SCNs time-barred. The statutory requirement under Section 74(2) is with respect to issuance of the

notice under Section 74(1). The electronic summary in Form GST DRC-01 is consequential to the substantive SCN and cannot be treated as substituting the substantive SCN itself.

30. The aforesaid position is also consistent with the scheme of Rule 142 of the Central Goods and Services Tax Rules, 2017. The Rule contemplates the service of a summary of the notice electronically in Form GST DRC-01 and, thereafter, the uploading of a summary of the order electronically in Form GST DRC-07. The said Rule is extracted hereunder:

> *"**Rule 142. Notice and order for demand of amounts payable under the Act. -***
>
> *(1) The proper officer shall serve, along with the*
>
> *(a) Notice issued under section 52 or section 73 or section 74 2 [or section 74A] or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, **a summary thereof electronically in FORM GST DRC-01**,*
>
> *(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74 [or subsection (3) of section 74A], a summary thereof electronically in **FORM GST DRC-02**, specifying therein the details of the amount payable.*
>
> ***
>
> *(5) **A summary of the order issued** under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 [or section 74A] or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in **FORM GST DRC-07**, specifying therein the amount of [tax, interest and penalty, as the case may be, payable by the person concerned]."*
>
> **(Emphasis supplied.)**

31. The submission that the limitation under Section 74(2) is necessarily to be computed with reference to the date appearing on Form GST DRC-01, therefore, cannot be accepted.





32. The second limb of the challenge concerns Section 74(10) and, in particular, the contention that the DRC-07 dated 21.02.2025 in the Second Petition was beyond the period of limitation.

33. This issue is no longer *res integra* insofar as this Court is concerned. In ***Rishi Enterprises through its Proprietor Rajeev Kumar Goel v. Additional Commissioner Central Tax Delhi North & Anr.***, W.P.(C) 4374/2025, decided on 20.08.2025, this Court was confronted with an identical contention concerning the distinction between the date of the substantive adjudication order and the subsequent uploading of Form GST DRC-07.

34. In ***Rishi Enterprises*** *(supra)*, the Court noted that Section 74(10) requires the order to be issued within the prescribed period and does not prescribe that Form GST DRC-07 itself must be issued within that period. The Court further noticed Rule 142(5), which treats DRC-07 as a summary of the order. The relevant observations of the Court in the said decision are reproduced below:

> *"23. Coming to the issue of limitation, it is relevant to note that the Petitioner assails the impugned order on the ground of limitation on two sub-grounds namely:*
>
> *(i) The impugned order along with DRC-07 was uploaded on the portal only on 11th February, 2025 which was beyond the period of limitation.*
>
> *(ii)The email communication of the impugned order cannot constitute valid 'service' as the Petitioner allegedly had not received it and even otherwise email as a mode of communication would not fall into the scope of 'deemed service' under Section 169(2) of the Act.*
>
> *24. A perusal of Section 74(10) of the Act would show that the order issued under Subsection 74(9) has to be issued within a period of 5 years from the due date of filing of annual returns. The said provision reads as under:*

> *"**74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.**—*
> *(1)…..*
>
> *xxxxx*
>
> *(10) The proper officer shall **issue the order** under subsection (9) **within a period of five 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 five years from the date of erroneous refund."*

It is relevant to note that the above section only requires the order to be issued within a period of 5 years.

25. Rule 142 of the CGST Rules relied upon by the parties shall also be relevant which reads as under:

> *"**142. Notice and order for demand of amounts payable under the Act.-***
> *(1) …….*
>
> *xxxxxx*
>
> *(5) A **summary of the order** issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded **electronically** in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax."*

It is also essential to note that the summary order in FORM DRC-07 is required to be uploaded electronically.

*26. That being said, the question that has to be adjudicated, is what would constitute **'issue the order'** in the present case because the impugned order appears to have been –*

(i) signed on 31st January, 2025,

(ii) sent to the Petitioner via email on 4th February, 2025 and

(iii) uploaded along with DRC-07 on the portal on 11th February, 2025.

*27. A perusal of Section 74(10) of the Act reveals that it merely requires the **order** and not the **DRC-07** to be mandatorily issued within the period of limitation. In fact, Rule 142 of the CGST Rules, as pointed out above, makes it clear that DRC-07 is merely a summary of the **order issued**. After the issuance of the order, DRC-07 is to be uploaded electronically. Thus, the order is issued first and, thereafter, the DRC-07 which is the summary, is to be uploaded. The amount, which would be liable to be paid or demanded in any particular order, is already contained in the order itself. For example, in the present case, the same is contained in paragraph 2 of the impugned order, which reads as under:*

> *"**2) In respect of Noticee No.2 to 90 (except Noticee No. 34,75 & 76)**:*

(i) I confirm the demand and order to recover the 'Input Tax Credit' (ITC) amount(s) from Noticee No. 2 to 90 (except Noticee No. 34, 75 & 76), ***as mentioned against their names, Column (6) of Table-A****, wrongly availed and utilized by them, is disallowed under the provisions of Section 74(1) of CGST Act, 2017 read with the DGST Act, 2017 and IGST Act, 2017, by invoking the extended period of limitation;*

(ii) I also confirm the demand of Interest, at applicable rates, from Noticee No. 2 to 90 (except Noticee No.34, 75 & 76) against the amount of demand, as mentioned against their respective names, in Column (6) of Table-A, under Section 50 of CGST Act, 2017 read with the DGST Act, 2017 and IGST Act, 20l7;

(iii) I also impose Penalty, equivalent to tax liability, upon Noticee No. 2 to 90 (except Noticee No. 34,75 & 76) as mentioned in Column (6) of Table-A, under Section 74(1) of CGST Act, 2017 read with the DGST Act, 2017 and IGST Act, 2017;

(iv) I refrain from imposing Penalty under Section 122(1) (vii) & (xvii), Section 122(2)(b) and Section 122(3) (a) & (d) of the CGST Act, 2017 and the DGST Act, 2017 and IGST Act, 201 7, upon Noticee No. 2 to 90 (except Noticee No. 34,75 & 76).

Sr. No.	*Noticee No.*	*GSTIN*	*Trade Name*	*Taxable Value*	*ITC Involved*
1	*Notice No.2*	*07AACPC3626L1ZW*	*Nanak Enterprises*	*7,03,82,426*	*1,26,68,837*
**********					
14	***Noticee No. 15***	***07AHTPG4076A1ZE***	***Rishi Enterprises***	***1,44,10,717***	***25,93,929***

***

29. Further, this issue has also been considered by this Court in ***Suresh Kumar (supra)*** *wherein it has been held clearly that especially in the case of hundreds of noticees, a reasonable period may be taken by the Department to actually generate the DRC-07 in order to clearly specify the demand against each of the noticees, so that there is no ambiguity whatsoever. However, there is no doubt that the DRC-07 ought to ideally accompany the order or should be uploaded within a reasonable time, as without the DRC-07, no appeal can be filed and no demand can be enforced. Relevant portion of the decision in* ***Suresh Kumar (supra)*** *is set out below:*

"13. When there are 650 noticees, obviously, the generation of DRC-07 for each of the noticees could take some reasonable time so long as the order has been communicated through e-mail or post or other modes as contained in Section 169 of the CGST Act. Accordingly, the delay in uploading Form DRC-07 or the order on the portal would not make the order barred by limitation.

14. Prima-facie this Court is of the opinion that email dated 4th February, 2025 is sufficient mode of service. However, the impugned order being an appealable order, the Petitioner is permitted to challenge the same by an appeal under Section 107 of the CGST Act. In the said appeal, the Petitioner is also permitted to raise the issue of limitation.

15. Let the appeals challenging the impugned orders be filed by 30th September, 2025 along with the requisite pre-deposit. If the same are filed by the said date, they shall not be dismissed on the ground of limitation and shall be adjudicated on merits."

*30. The decision of the Telangana High Court, which has been placed before this Court, in **Sahithi Marketers v. Superintendent of Central Tax, (2025) 29 Centax 129 (Telangana)** also deals with a similar situation where there is delay in uploading of the DRC-07, which the Court held would not be liable to be raised as a ground for filing of writ petition. In the said decision, the ld. Division Bench of the Telangana High Court has pithily captured this very position in the following words:*

> *" 3. The petitioner takes exception to the summary of the order in Form GST DRC-07, dated 03.05.2024, and the Order-in Original (O.I.O.) dated 24.04.2024 (Ex.P.2).*
>
> *4. **Learned counsel for the petitioner raised three fold submissions. Firstly, it is submitted that GST DRC-07, dated 03.05.2024, is barred by time. The time was extended by Notification No.56 of 2023 upto 30.04.2024 and DRC-07 is passed thereafter**. The second argument is that under the Goods and Services Tax Act, 2017 (for short "the GST Act"), there is no provision to pass the O.I.O. dated 24.04.2024. Thirdly, it is argued that DRC-07 dated 03.05.2024 does not have any physical or digital signature.*
>
> *5. **Learned Senior Standing Counsel for CBIC pointed out that the order dated 24.04.2024 does contain physical signature and it is passed on 24.04.2024 which is well within the time. The limitation was extended upto 30.04.2024. DRC-07, dated 03.05.2024, is only a summary of the O.I.O. and whether or not it is signed will not cause any prejudice to the petitioner**. He further submits that O.I.O. is passed in consonance with Section 73 of the GST Act. By placing reliance on the judgment of the Apex Court in **CCT v. GLAXO SMITH KLINE CONSUMER HEALTH CARE LIMITED**, it is submitted that the petitioner could have preferred an appeal within ninety (90) days extendable by thirty (30) days under the GST Act. The petitioner has not filed the petition within aforesaid time. This point is considered by the Apex Court to the aforesaid case and in view of principles laid down therein this petition may not be entertained.*
>
> *6. We have heard the parties at length.*
>
> *********
>
> *8. Admittedly, the petitioner had a remedy of appeal under the GST Act and did not avail such remedy. This petition is not filed within the statutory time limit prescribed under the GST Act. Thus, in view of the judgment of the Apex Court in GLAXO SMITH KLINE CONSUMER HEALTH CARE LIMITED (supra), we find substance in the argument of learned Senior Standing Counsel for CBIC that this petition is not liable to be entertained. Otherwise, it will be against the scheme and intention of the statutory provision. **The O.I.O. dated 24.04.2024 contained physical signature and it is issued within the limitation period which was extended upto 30.04.2024. DRC-07 is only a 'summary of order' and even if it did not contain any signature, it will not cause any prejudice to the petitioner**."""*

35. The above principle was also considered by this Court shortly prior thereto in ***Suresh Kumar v. Commissioner, CGST Delhi North***, W.P.(C) 12199/2025, decided on 13.08.2025.





36. In ***Suresh Kumar*** *(supra)*, the Court was dealing with proceedings involving a large number of noticees. The substantive order had been passed and communicated, while the corresponding Form GST DRC-07 was uploaded subsequently. The Court held that such subsequent uploading would not, by itself, render the order barred by limitation. Paragraph Nos.11 to 14 of the said decision, insofar as relevant, read as under:

> *"11. In the present case, firstly, the order itself is dated 1st February, 2025. Secondly, the e-mail which has been handed over shows that the impugned order has been communicated either to the Petitioner or to his Chartered Accountant. The said email was also served through email on several other Noticees against whom the demands were raised.*
>
> *12. Thereafter, Form DRC-07 was uploaded on 19th February, 2025. Usually, there is a gap between the passing of the order and the uploading of the Form DRC-07 for each of the parties. In the present case, it is noticed that there are a total of 650 noticees and allegation pertains to fraudulent availment of Input Tax Credit (hereinafter, 'ITC') to the tune of Rs.173 crores.*
>
> ***13. When there are 650 noticees, obviously, the generation of DRC-07 for each of the noticees could take some reasonable time so long as the order has been communicated through e-mail or post or other modes as contained in Section 169 of the CGST Act. Accordingly, the delay in uploading Form DRC-07 or the order on the portal would not make the order barred by limitation.***
>
> ***14. Prima-facie this Court is of the opinion that e-mail dated 4th February, 2025 is sufficient mode of service. However, the impugned order being an appealable order, the Petitioner is permitted to challenge the same by an appeal under Section 107 of the CGST Act. In the said appeal, the Petitioner is also permitted to raise the issue of limitation****."*
>
> **(Emphasis supplied.)**

37. The principle emerging from the aforesaid decisions is clear. The statutory limitation under Section 74(10) attaches to the substantive adjudication order contemplated under Section 74(9). Form GST DRC-07 is the electronic summary of such order.

Consequently, the mere fact that DRC-07 is uploaded or bears a date subsequent to the expiry of the period prescribed under Section 74(10) would not, by itself, render the substantive adjudication order time-barred.

38. The present case stands on an even clearer footing. In the First Petition, the substantive Order-in-Original is dated 27.01.2025. In the Second Petition, the substantive Order-in-Original is dated 29.01.2025. Both orders precede 04.02.2025, which is the date asserted by the Petitioner as the expiry of the limitation under Section 74(10). Thus, the challenge based solely upon the dates appearing on Forms GST DRC-01 and DRC-07 cannot be sustained.

39. The fact that the Petitioner received the substantive SCN together with, or came to know of it through, the subsequently generated DRC-01 does not alter the date borne by the substantive SCN. In any event, the question of the precise mode and date of service, if disputed on facts, would require examination of the departmental record and the material concerning service. Such an exercise is not warranted in the present proceedings when the substantive SCNs themselves precede the alleged cut-off date.

40. The reliance placed by the Petitioner upon the decisions concerning the meaning of the expression ‘issue’ does not advance its case. Those decisions concern situations where the substantive notice itself was not issued within the prescribed period. The present case is materially different inasmuch as the substantive SCNs relied upon by the Petitioner itself bear dates prior to 04.08.2024.

41. The Petitioner has further challenged the invocation of Section 74 on the ground that the SCNs and the Orders-in-Original allegedly do not contain sufficient material to establish fraud, wilful misstatement or suppression of facts with intent to evade tax.

42. The Petitioner has also contended that there is no material demonstrating its knowledge of the alleged activities of the suppliers or any collusion on its part, and ITC cannot be denied to a *bona fide* purchasing dealer in the absence of material establishing collusion.

43. These submissions, however, concern the substantive merits of the adjudication. Whether the material collected by the Department is sufficient to establish the ingredients of Section 74, whether the suppliers were in fact non-existent, whether the invoices represented transactions without actual supply of goods, whether the Petitioner had knowledge of such circumstances, whether the ITC was wrongly availed or utilized, and whether the findings recorded in the Orders-in-Original are sustainable on the material placed before the adjudicating authority, are all matters which require examination of the record and appreciation of evidence.

44. The Orders-in-Original are appealable under Section 107. The Appellate Authority is competent to examine both questions of law and fact, including the validity of the invocation of Section 74, the material relied upon by the Department, the computation of tax and penalty and the documents and explanations relied upon by the Petitioner. It is, therefore, necessary to consider whether the aforesaid grounds justify bypassing the statutory appellate remedy.

45. It is well settled that the existence of an alternative remedy does not constitute an absolute bar to the exercise of jurisdiction under Article 226 of the Constitution. At the same time, where the statute provides a complete and efficacious appellate mechanism, the High Court ordinarily exercises self-imposed restraint, particularly where the challenge involves examination of disputed facts, appreciation of material or correctness of the findings returned by the adjudicating authority.

46. In ***Assistant Commissioner of State Tax and Others v. Commercial Steel Limited***[8], the Supreme Court has reiterated that the recognised exceptions to the rule of alternative remedy include cases involving breach of fundamental rights, violation of principles of natural justice, proceedings wholly without jurisdiction, or a challenge to the *vires* of legislation or delegated legislation. The mere assertion of one of these grounds, however, does not by itself require the High Court to entertain the writ petition.

47. In the present case, no case of denial of opportunity of hearing has been demonstrated. The Petitioner participated in the adjudication proceedings and the grievances raised in the petitions concern principally the alleged insufficiency of material, the invocation of Section 74 and the correctness of the findings returned by the adjudicating authority.

48. The challenge to limitation, which forms the principal basis for invoking the extraordinary jurisdiction of this Court, also does not disclose a patent jurisdictional defect. As noticed hereinabove, the

[8] (2022) 16 SCC 447

substantive SCNs were issued prior to the date asserted by the Petitioner as the expiry of limitation under Section 74(2), and the substantive adjudication orders were passed prior to the date asserted as the expiry of limitation under Section 74(10).

49. The subsequent dates appearing on Forms GST DRC-01 and DRC-07 cannot, in view of the statutory scheme and the decisions of this Court in ***Suresh Kumar*** *(supra)* and ***Rishi Enterprises*** *(supra)*, by themselves render the substantive proceedings time-barred.

50. The remaining grounds raised by the Petitioner essentially invite this Court to undertake an examination of the material forming the basis of the adjudication and to substitute its own assessment for that of the statutory authority. Such an exercise would, in the facts of the present case, amount to converting the writ jurisdiction into appellate jurisdiction.

51. The Petitioner shall, therefore, have the liberty to urge all such grounds, including the contention regarding the applicability of Section 74, the sufficiency of the allegations of fraud, wilful misstatement or suppression, the absence of alleged knowledge or collusion, the admissibility of the ITC in question, the material relied upon by the Department, the computation of liability and the validity of the penalty, before the Appellate Authority under Section 107.

CONCLUSION:

52. Accordingly, the present Writ Petitions, along with the pending applications, are disposed of.





53. The Petitioner shall, however, be at liberty to avail the statutory remedy of appeal under Section 107, if so advised. All contentions available to the Petitioner in law are left open to be urged before the Appellate Authority.

54. It is clarified that this Court has not expressed any opinion on the merits of the aforesaid contentions in Paragraph No.51. In the event the Petitioner prefers an appeal under Section 107, the Appellate Authority shall consider the same in accordance with law and on its own merits.

55. In the event the Petitioner seeks exclusion of the period spent in prosecuting the present proceedings before this Court for the purposes of computation of limitation for filing the statutory appeal, the Appellate Authority shall consider such request in accordance with law, without being influenced by any observation contained in the present Judgment.

ANIL KSHETARPAL, J.

BHARAT PARASHAR, J.

OCTOBER 05, 2026
s.godara/shah