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SC stays Section 74 of the CGST Act proceedings Flagging Jurisdictional and Natural Justice Concerns, despite having Alternate Remedy

The Hon'ble Supreme Court of India in the case of ***Tata Steel Limited v. Union of India & Ors. [Special Leave Petition (C) No. 16859 of 2026 dated May 19, 2026]*** issued notice and stayed further proceedings arising out of the Order-in-Original dated December 26, 2025 passed under Section 74 of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**"), in a challenge to the Jharkhand High Court's judgment which had relegated the assessee to the statutory appellate remedy. The Hon'ble Apex Court, taking note of the petitioner's submission that an identical issue concerning the alternative remedy arising out of Section 74 of the CGST Act is already pending consideration before it in ***GR Infra Projects Limited v. State of Madhya Pradesh & Ors. [SLP (C) No. 33594 of 2025]***, directed that the interim order of stay shall be subject to the Court being satisfied that the issues in both matters are similar.

Facts:

M/s Tata Steel Limited ("**the Petitioner**"), a public limited company having its works in Jamshedpur, was issued a show-cause notice under Section 74 of the CGST Act based on an audit report of the Director General of Audit (Central). The matter was earlier referred to the Call Book and was subsequently recalled on the ground that the assessment would otherwise become time barred. The proper officer thereafter passed Order-in-Original dated December 26, 2025 confirming the demand under Section 74, holding that there was wrongful availment of Input Tax Credit ("**ITC**") on account of fraud, wilful misstatement and suppression of facts to evade tax.

Aggrieved, the Petitioner approached the Hon'ble Jharkhand High Court by way of writ petition under Article 226 of the Constitution of India, bypassing the statutory appellate remedy. The High Court, vide judgment dated *April 23, 2026, in W.P. (T) No. 2485 of 2026*, dismissed the writ petition and relegated the Petitioner to avail the statutory remedy of appeal. Aggrieved

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by the said dismissal, the Petitioner filed the present Special Leave Petition before the Hon'ble Supreme Court.

Contentions:

The Petitioner contended that the very invocation of Section 74 of the CGST Act was without jurisdiction inasmuch as the ingredients of fraud, wilful misstatement or suppression of facts to evade tax were not satisfied, and there was no proper record of satisfaction of the proper officer to that effect. It was further contended that the issuance of the show-cause notice on the strength of an audit report which had itself been contested by the Revenue, coupled with the summary recall of the matter from the Call Book on the plea of limitation, amounted to a patent violation of the principles of natural justice. The Petitioner placed reliance on the exceptions carved out by the Hon'ble Supreme Court in ***Whirlpool Corporation v. Registrar of Trademarks [(1998) 8 SCC 1]*** to submit that the writ petition deserved to be entertained despite the availability of an alternate remedy. It was also submitted that an identical issue concerning the alternative remedy arising out of Section 74 of the CGST Act is already pending consideration before the Hon'ble Supreme Court in ***GR Infra Projects Limited v. State of Madhya Pradesh & Ors. [SLP (C) No. 33594 of 2025]***.

Issue:

Whether the Order-in-Original passed under Section 74 of the CGST Act, in the absence of jurisdictional ingredients of fraud, wilful misstatement or suppression of facts and in alleged breach of the principles of natural justice, warrants interference by the Hon'ble Supreme Court despite the availability of a statutory appellate remedy, and whether further proceedings deserve to be stayed pending consideration of the identical issue already before the Apex Court?

Held:

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The Hon'ble Supreme Court of India in ***Special Leave Petition (C) No. 16859 of 2026*** held as under:

- **Observed that**, the learned senior counsel appearing for the Petitioner had submitted that an identical issue concerning the alternative remedy arising out of Section 74 of the CGST Act is already pending consideration before the Hon'ble Supreme Court in ***GR Infra Projects Limited v. State of Madhya Pradesh & Ors. [SLP (C) No. 33594 of 2025]***.
- **Noted that**, the Jharkhand High Court had relegated the Petitioner to the statutory appellate remedy after holding that neither the impugned Order-in-Original was wholly without jurisdiction nor was there a patent breach of the principles of natural justice such as to attract the exceptions carved out in *Whirlpool Corporation (supra)*.
- **Held that**, notice be issued to the Respondents and Dasti service was permitted in addition. The matter was directed to be listed along with ***SLP (C) No. 33594 of 2025***.
- **Directed that**, till the next date of hearing, further proceedings shall remain stayed, with the caveat that the interim order shall be subject to the Court hearing ***SLP (C) No. 33594 of 2025*** being satisfied that the issues in this case are similar to those in the said SLP.

Our Comments:

Section 74 of the CGST Act empowers the proper officer to determine tax not paid, short paid, erroneously refunded or ITC wrongly availed or utilised by reason of *fraud, wilful misstatement or suppression of facts to evade tax*, and provides for an extended period of limitation of five years (now subsumed under Section 74A for the period from April 01, 2024 onwards) as against three years available under Section 73. The existence of these statutory ingredients is settled to be a "jurisdictional fact", the absence of which vitiates the very initiation of the extended-period proceedings. In ***Uniworth Textiles Ltd. v. Commissioner of Central Excise, Raipur***

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[(2013) 9 SCC 753], the Hon'ble Supreme Court has held that the burden of proving mala fide conduct under the proviso lies with the Revenue and that specific averments in the show-cause notice are a mandatory pre-condition to commencement of action under the extended period.

The present interim order of the Hon'ble Supreme Court in Tata Steel's case, read in conjunction with the earlier interim order dated November 21, 2025 in **GR Infra Projects Limited v. State of Madhya Pradesh & Ors. [SLP (C) No. 33594 of 2025]**, signals that the Apex Court is now seized of the larger question as to whether a writ court can examine, at the threshold itself, the existence of the jurisdictional foundation for invocation of Section 74 of the CGST Act, or whether the assessee must necessarily exhaust the statutory remedy of appeal. The eventual outcome would have a wide-ranging bearing on pending and future show-cause notices issued under Section 74 across the country, particularly those issued in the dying hours of the extended limitation period and based primarily on audit-driven mismatches.

Brief of Pari Materia and Contrary Judgments:

- The Hon'ble Supreme Court in **GR Infra Projects Limited v. State of Madhya Pradesh & Ors. [SLP (C) No. 33594 of 2025 dated November 21, 2025]**, while staying further proceedings, prima facie observed that the petitioner therein "seems to be justified in saying that the show cause notice is bereft of material particulars. Except figures, there is nothing else stated in the show cause notice", and issued notice to the Revenue returnable in four weeks. The said SLP arose out of the judgment of the Hon'ble Madhya Pradesh High Court in **GR Infra Projects Limited v. State of Madhya Pradesh & Ors. [Writ Petition No. 40749 of 2025 dated October 29, 2025]**, wherein the High Court had declined to interfere with the show-cause notice, holding that "once the show cause notice has been issued under Section 74, it cannot be examined by the writ court that the proper officer has erroneously issued the notice under Section 74 without there being any reason of fraud or willful misstatement of fact to evade the

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- tax”. The Tata Steel matter has now been tagged to be heard along with this lead matter.
- The Hon’ble Madras High Court in ***Neyamo Enterprise Solutions Private Limited v. Commercial Tax Officer [W.P.(MD) Nos. 30453 to 30458 of 2024 dated November 11, 2025]*** quashed a series of assessment orders issued under Section 74 of the CGST Act, holding that the presence of fraud, wilful misstatement or suppression to evade tax is a “jurisdictional fact” and that, in absence of such jurisdictional facts being clearly articulated in the show-cause notice and supported by material on record, the entire proceedings stand vitiated. The Court also placed reliance on CBIC Circular cautioning field officers against mechanically invoking Section 74 without evidence of fraud.
 - The Hon’ble Karnataka High Court in ***M/s NCS Pearson Inc. v. Union of India & Ors. [Writ Petition No. 7635 of 2024 dated July 16, 2025]*** quashed a show-cause notice issued under Section 74 of the CGST Act in the extended period, holding that the sine qua non for invocation of Section 74 is wilful suppression with intent to evade tax. The Court noted that the entire gamut of the transaction was already in the knowledge of the Revenue through prior AAR and AAAR proceedings, and accordingly the jurisdictional fact of wilful suppression was not satisfied. The notice was held to be illegal, arbitrary and violative of Article 265 of the Constitution of India.
 - Per contra, the Hon’ble Supreme Court in ***State of Maharashtra v. Greatship (India) Limited [(2022) 17 SCC 332]*** held that the High Court ought not to entertain a writ petition under Article 226 against an assessment order by bypassing the statutory remedy of appeal, save in exceptional cases. The said decision has been consistently followed by various High Courts, including the Hon’ble Jharkhand High Court in the Tata Steel matter (impugned in the present SLP), to relegate assessee’s challenging Order-in-Original passed under Section 74 to the statutory appellate forum.

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- The Hon'ble Bombay High Court in ***Oberoil Constructions Ltd. v. Union of India [2024 SCC OnLine Bom 3508]*** reiterated the rule of exhaustion of alternate remedies in revenue matters, and the said decision has been followed by various High Courts including the Hon'ble Jharkhand High Court in the impugned judgment.

Note: The forthcoming hearing of these tagged SLPs will be closely watched, as it has the potential to settle the law on the contours of writ jurisdiction qua jurisdictionally-defective Section 74 proceedings, and to bring much-needed certainty on whether a vague or boiler-plate show-cause notice merely reproducing the statutory language of "fraud, wilful misstatement or suppression", unsupported by material particulars, can sustain the rigours of the extended period of limitation.

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