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Demand of tax after voluntary ITC reversal, amounts to double taxation; no interest where sufficient balance exists in E-Credit Ledger

The Hon'ble Orissa High Court in the case of ***Manoja Kumar Nayak & Anr. v. Commissioner, GST & Central Excise & Ors. [W.P.(C) No. 12682 of 2025 & W.P.(C) No. 12686 of 2025, order dated April 08, 2026]*** held that raising demand of tax equivalent to input tax credit already voluntarily reversed prior to issuance of show cause notice amounts to double taxation and is without authority of law; further, no interest under Section 50 is payable where sufficient balance exists in the Electronic Credit Ledger, and penalty under Section 74 is unsustainable in absence of fraud or wilful misstatement.

Facts:

M/s. Manoja Kumar Nayak (**"the Petitioner"**), a registered taxpayer under the CGST and OGST Acts, engaged in transportation and execution of works contract, had availed input tax credit (ITC) during FY 2017–18 from M/s. Auxesia Traders.

The Commissioner, GST & Central Excise & Ors. (**"the Respondent"**) issued a letter dated 12.07.2024 alleging that the supplier was a non-existent and fictitious firm, issuing fake invoices and called upon the Petitioner to reverse ITC of Rs. 4,39,970/- along with interest and penalty. Thereafter, a Summary Show Cause Notice and Demand Show Cause Notice dated 26.07.2024 were issued under Section 74 alleging fraudulent availment of ITC and proposing recovery of tax, interest under Section 50, and penalty under Section 74.

The Petitioner contended that they had already voluntarily reversed the entire ITC of Rs. 4,39,970/- through GSTR-3B returns for April 2023 and June 2024, even prior to issuance of SCN. Further the Electronic Credit Ledger had sufficient surplus balance, and therefore liability of interest under Section 50, may not arise. They also argued that interest is chargeable only on ITC wrongly availed and utilised, not merely wrongly availed.

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The Respondent contended that it was unclear whether the ITC reversed corresponded to the alleged transactions and that the Petitioner had not produced documents to establish that the reversal matched the disputed ITC. Further they argued on the maintainability of the writ petition due to availability of alternative remedy under GST law.

Aggrieved by the Order-in-Original dated February 03, 2025 confirming demand of tax equivalent to ITC already reversed, along with interest and penalty under Section 74, the Petitioner approached the High Court by way of writ petition.

Issue:

Whether demand of tax, interest, and penalty under Section 74 is sustainable when the alleged wrongly availed ITC has already been voluntarily reversed prior to issuance of show cause notice?

Held:



The Hon'ble Orissa High Court in ***W.P.(C) No. 12682 of 2025 & W.P.(C) No. 12686 of 2025*** held as under:

- Observed that, the Petitioner had reversed the ITC through GSTR-3B returns prior to issuance of SCN and such fact was evident from record, and the finding of the Adjudicating Authority that no reversal was made was fallacious and cannot be countenanced.
- Noted that, the Adjudicating Authority blindly followed the Alert Notice of the DGGI, without undertaking any independent inquiry to ascertain credibility of such allegation qua the Petitioner.
- Observed that, input tax credit could be availed erroneously or on a mistaken interpretation of law and it would not be apposite to form an opinion that in each and

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every case where the supplier admits or defaults, it would lead to infer that the recipient fraudulently availed the input tax credit.

- Held that, Section 74 requires strong and tangible material to suggest that the petitioner had the conscious and active involvement in such dubious transactions, which was absent in the present case.
- Observed that, initiation of proceedings under Section 74 after lapse of limitation under Section 73 and based solely on DGGI alert does smack tinge of caprice of the Adjudicating Authority.
- Noted that, once ITC was reversed and no claim subsisted, insistence on further documents under Rule 36 was redundant, uncalled for and supported by no germane reason.
- Held that, in light of Section 50(3), Rule 88B, and Circular dated July 17, 2023, when the Electronic Credit Ledger has sufficient balance left, no interest is chargeable or payable.
- Observed that, the Petitioner had reversed ITC prior to SCN and thus there is no tax implication in the instant case.
- Held that, sustaining demand of the same amount of ITC already reversed would tantamount to double taxation which is prohibited under law and raising demand without giving due credit to such reversal is unethical and without authority of law.
- Observed that, imposition of penalty was unwholesome and unsustainable since net tax effect was zero and Section 74 conditions were not satisfied.
- Concluded that, the Adjudicating Authority has traversed his jurisdiction by acting at his whims and fancies and accordingly quashed the Order-in-Original and all consequential proceedings.

Our Comments:

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The judgment reinforces that invocation of Section 74 requires strict satisfaction of the element of fraud, wilful misstatement or suppression, and cannot be triggered mechanically based on third-party inputs like DGGI alerts. The Hon'ble Court has drawn support from settled jurisprudence to emphasise this threshold.

In the case of ***C.C., C.E. & S.T. v. Northern Operating Systems Pvt. Ltd. [(2022) 18 SCR 901]***, wherein it was held that invocation of extended limitation is not justified in absence of “wilful suppression”, and that mere non-payment of tax or a particular interpretation adopted by the assessee cannot automatically lead to an inference of intent to evade tax. The Court specifically noted that where the assessee’s conduct is not mala fide, the extended period cannot be invoked.

Further in the case of ***Cosmic Dye Chemical v. CCE [(1995) 6 SCC 117]*** reiterates that “misstatement or suppression of facts must be wilful” and accompanied by intent to evade tax, and that “mere non-payment of duties is not equivalent to suppression.” This principle was applied to conclude that Section 74 cannot be invoked merely because ITC was allegedly wrongly availed.

On the aspect of ITC utilisation and ledger mechanics, reliance was placed on ***Union of India v. Bharti Airtel Ltd. [(2021) 10 SCR 825]***, wherein it was held that utilisation of ITC is a matter of statutory mechanism reflected in returns and electronic ledger and cannot be presumed unless supported by entries in returns.

Further in the case of ***State of Karnataka v. Ecom Gill Coffee Trading Pvt. Ltd. [(2023) 2 SCR 647]***, where it was held that burden lies on the taxpayer to prove genuineness of ITC through cogent evidence such as movement of goods, transport documents, etc. However, the present case was distinguished on the ground that the Petitioner had already reversed ITC and was not asserting any entitlement, and therefore such evidentiary burden became redundant.

Relevant Provisions:

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Section 74(1) of the CGST Act

“74. Determination of tax, pertaining to the period up to 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.-

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause 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.”

Section 50(3) of the CGST Act, 2017

“50. Interest on delayed payment of tax.-

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council:

Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 or section 74A in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.

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(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.”

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