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Exoneration in Section 73 proceedings by State GST authorities would not ipso facto bar Central GST authorities from initiating proceedings under Section 74



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DELHI HIGH COURT:

EXONERATION IN SECTION 73 PROCEEDINGS BY STATE GST AUTHORITIES WOULD NOT IPSO FACTO BAR CENTRAL GST AUTHORITIES FROM INITIATING PROCEEDINGS UNDER SECTION 74

NOT BARRED

STATE GST VS CENTRAL GST

CENTRAL GST
STATE GST

LEGAL CLARITY JUDICIAL PRECEDENT GST COMPLIANCE TAX PROTECTION

The Hon'ble Delhi High Court in *PEI Industries v. Union of India & Ors. [W.P.(C) 7725/2026 & CM APPL. 37364/2026 dated May 29, 2026]* dismissed the writ petition challenging the Order-in-Original dated March 30, 2026 passed under Section 74 of the Central Goods and Services Tax Act, 2017 ("the CGST Act") and held that Section 73 and Section 74 of the CGST Act operate in altogether different arenas, and merely because the assessee was exonerated in proceedings under Section 73 by the State GST authorities, the same would not, by itself, preclude the Central GST authorities from proceeding against the assessee under Section 74 of the CGST Act. The Court further held that appreciation and re-appreciation of evidence squarely fall within the domain of the Appellate Authority and the availability of an effective statutory appellate remedy precluded exercise of writ jurisdiction under Article 226 of the Constitution of India.

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Facts:

M/s PEI Industries (“**the Petitioner**”) was issued a Show Cause Notice (“**SCN**”) by the Central GST Authorities under Section 74 of the CGST Act, culminating in the Order-in-Original dated March 30, 2026 (“**the Impugned Order**”) confirming demand of tax along with interest and penalty.

Prior to the issuance of the said SCN, the State GST Authorities had already initiated proceedings under Section 73 of the CGST Act on the very same set of documents and evidence and had closed the said proceedings in favour of the Petitioner.

Aggrieved by the Impugned Order, the Petitioner preferred a writ petition before the Hon’ble Delhi High Court contending that:

- The proceedings under Section 74 of the CGST Act were barred under Section 6(2)(b) of the CGST Act as proceedings on the very same subject matter had already been initiated and concluded by the State GST Authorities under Section 73 of the CGST Act;
- The Central GST Authorities had refused to accept the documents which formed the basis for closure of proceedings under Section 73 by the State GST Authorities;
- No notice was issued in respect of the additional documents that the Central GST Authorities intended to obtain from the Petitioner;
- Out of the four dates fixed for personal hearing as recorded in the Impugned Order, hearing was effectively granted only on two days, thereby violating the principles of natural justice;
- The Impugned Order was discriminatory and violative of Article 14 of the Constitution of India as the Petitioner was treated differently from similarly placed taxpayers;

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- The documents produced on record had been inappropriately appreciated by the Adjudicating Authority; and
- Relegation to the statutory appellate remedy would burden the Petitioner with payment of a mandatory pre-deposit.

Issue:

Whether exoneration of the assessee in proceedings initiated under Section 73 of the CGST Act by the State GST Authorities, on the basis of the very same set of documents and evidence, would by itself bar the Central GST Authorities from initiating and concluding proceedings against the assessee under Section 74 of the CGST Act, in light of the embargo contained in Section 6(2)(b) of the CGST Act, and whether such grievance warrants exercise of writ jurisdiction under Article 226 of the Constitution of India when an efficacious statutory remedy of appeal is available?

Held:

The Hon'ble Delhi High Court in ***W.P.(C) 7725/2026*** held as under:

- **Observed that** Section 73 and Section 74 of the CGST Act operate in altogether different arenas, and the language of the said sections and the recourse to be taken in regard thereto can very well be looked into by its face value.
- **Noted that** just because the Petitioner was exonerated in the proceedings under Section 73 of the CGST Act by the State GST Authorities, the same, by itself, cannot lead to a conclusion that the Petitioner cannot be proceeded against by the Central GST Authorities under Section 74 of the CGST Act, as both these provisions operate on altogether different considerations.

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- **Further noted that** the material placed on record by the Petitioner in response to the SCN was very much independently available for scrutiny and appreciation by the Adjudicating Authority, and merely because the State GST Authorities had found such material sufficient to drop proceedings under Section 73, the Central GST Authorities were not bound to adopt the same conclusion under Section 74.
- **Held that** appreciation and re-appreciation of evidence falls squarely within the domain of the competent appellate authorities, whose jurisdiction is wide enough to even permit production of additional evidence, if so required.
- **Held that** dissatisfaction with appreciation of evidence by the Adjudicating Authority or alleged insufficiency of opportunity to produce additional evidence cannot be equated with denial of personal hearing warranting interference under Article 226 of the Constitution of India.
- **Held that** the burden of having to satisfy the condition of statutory pre-deposit, by itself, cannot justify invocation of writ jurisdiction, particularly when an effective statutory remedy of appeal stands available to the Petitioner.
- **Accordingly,** declined to interfere with the Impugned Order, dismissed the writ petition and relegated the Petitioner to avail the statutory appellate remedy, leaving it open for the appeal, if any preferred, to be dealt with on its own merits.

Our Comments:

The ruling rendered by the Hon'ble Delhi High Court is a significant pronouncement on the issue of **interplay between Sections 73 and 74 of the CGST Act and the scope of Section 6(2)(b) of the CGST Act** which embodies the principle of cross-empowerment between Central and State GST Authorities.

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Section 6(2)(b) of the CGST Act provides that where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under the CGST Act on the *same subject matter*. The said provision is intended to prevent parallel proceedings and forum shopping by ensuring that an assessee is not vexed twice on the same cause of action by two different tax administrations.

Sections 73 and 74 of the CGST Act, on the other hand, deal with determination of tax not paid, short-paid, erroneously refunded or input tax credit wrongly availed or utilised. While **Section 73** applies in cases *not involving fraud, wilful misstatement or suppression of facts*, **Section 74** is invoked when such ingredients are alleged. The Hon'ble Delhi High Court has, in the present ruling, reaffirmed that these two provisions operate in distinct arenas with different jurisdictional pre-conditions, different limitation periods and different consequences in terms of penalty. Therefore, dropping of proceedings under Section 73 on factual considerations does not automatically bar the invocation of Section 74 where the ingredients of fraud, wilful misstatement or suppression of facts are alleged.

It is, however, pertinent to note that the Hon'ble Delhi High Court did not undertake a detailed examination of the merits of the bar under Section 6(2)(b) of the CGST Act and instead **relegated the Petitioner to the alternate statutory remedy** of appeal. The Court reiterated the settled principle that the existence of an efficacious alternate remedy is a strong factor against entertaining a writ petition under Article 226 of the Constitution of India, particularly in tax matters which involve disputed questions of fact requiring appreciation of evidence. The plea regarding the financial hardship of pre-deposit was specifically rejected as a ground for invocation of writ jurisdiction.

On the broader question of **simultaneous or parallel proceedings by Central and State GST Authorities**, reference may be made to the decision of the Hon'ble Delhi High Court in ***DLF Home Developers Limited v. Sales Tax Officer Class II AVATO Ward 107 Special Zone 12 Delhi***

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& Anr. [W.P.(C) 11052/2024 dated September 04, 2024], wherein it was held that where the period covered under the impugned order is also subsumed in a Show Cause Notice issued by the DGGI, *both proceedings cannot be carried on simultaneously*. Similarly, in ***Metalax Industries v. GST Officer Ward 66 & Ors. [W.P.(C) 4710/2024 dated November 26, 2024]***, the Hon'ble Delhi High Court reiterated that once one authority has commenced an investigation on a particular subject matter, it would be impermissible for the other authority to examine the said period or to pass any order of assessment in respect thereof, in view of Section 6(2)(b) of the CGST Act.

It is also pertinent to refer to the landmark judgment of the Hon'ble Supreme Court of India in ***M/s Armour Security (India) Ltd. v. Commissioner, CGST, Delhi East Commissionerate & Anr. [Special Leave Petition (C) No. 6092 of 2025, reported as 2025 INSC 982, dated August 14, 2025]***, which has now emerged as the authoritative pronouncement on the interface between Section 6(2)(b) of the CGST Act, parallel proceedings, and the concept of "same subject matter". The Hon'ble Supreme Court dismissed the Special Leave Petition filed against the Delhi High Court's order in ***W.P.(C) No. 1082 of 2025***, but went on to lay down comprehensive doctrinal principles and a nine-point procedural framework governing inter-authority jurisdictional conflicts in GST enforcement. The facts before the Court were that the petitioner, a Delhi-registered security services company, had received a Show Cause Notice under Section 73 of the CGST Act from the State GST Authorities for the tax period April 2020 to March 2021 in November 2024; subsequently, in January 2025, the Central GST Authorities conducted a search under Section 67(2), seized electronic records, and issued summons to the company's directors under Section 70 of the CGST Act. The petitioner challenged the summons on the ground that the State GST Authorities having already initiated proceedings on the same subject matter, the Central GST Authorities were barred under Section 6(2)(b) from initiating parallel proceedings. On the principal question of whether the issuance of summons under Section 70 of the CGST Act amounts to "initiation of proceedings" within the meaning of Section 6(2)(b), the Supreme Court held in the negative, observing that summons and searches are merely

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evidence-gathering or inquisitorial steps and do not constitute the formal commencement of adjudicatory proceedings; "proceedings" within Section 6(2)(b) are triggered only upon the issuance of a Show Cause Notice culminating in an assessment, demand or penalty under Sections 73, 74 or analogous provisions. The Court further elucidated a twin-test for determining "same subject matter" — first, whether both authorities are acting on an identical alleged liability or contravention on the same facts, and second, whether the demand or relief sought is identical or overlapping — and cautioned that this test cannot be applied mechanically merely on the basis of overlapping tax periods or similar factual allegations; where two authorities are examining distinct infractions, the bar under Section 6(2)(b) will not be attracted even in respect of the same financial year. Crucially, the Supreme Court affirmed the settled jurisprudence that once a Show Cause Notice is issued by one authority and the subject matter crystallises, no other tax authority may assume jurisdiction over the same subject matter, thereby ensuring that there can be no overlapping adjudication on the same proceedings for the same period irrespective of whether the invocation is under Section 73 or Section 74 — for to hold otherwise would give rise to an endless and vexed issue of jurisdictional overlap. To operationalise these principles, the Court issued a nine-point procedural framework directing, inter alia, mandatory disclosure by the assessee upon becoming aware of overlap, proactive communication and verification between authorities, withdrawal or quashing of the second Show Cause Notice where overlap is confirmed, transfer of records to the lead authority in cases of dispute, and the default rule that, failing agreement between authorities, the authority which first commenced the inquiry shall be empowered to carry it to its logical conclusion. The Armour Security judgment thus establishes, as a matter of settled law, that while parallel investigative actions at the inquiry stage are permissible under the cross-empowerment framework, duplicate adjudication on the same subject matter for the same period is impermissible under Section 6(2)(b) of the CGST Act.

It is, however, important to draw a distinction between the line of cases dealing with ***parallel or simultaneous proceedings on the same subject matter*** and the present ruling in ***PEI***

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Industries (supra), which dealt with a scenario where State GST proceedings under Section 73 had been concluded and the Central GST Authorities thereafter invoked Section 74 alleging fraud, wilful misstatement or suppression of facts. The Hon'ble Delhi High Court has, in such a fact-pattern, held that the language and considerations governing the two provisions being different, mere exoneration under Section 73 does not, *ipso facto*, bar the Central GST Authorities from invoking Section 74. The question whether such an interpretation effectively dilutes the bar under Section 6(2)(b) of the CGST Act, where the "subject matter" is otherwise identical, remains a live issue.

Taxpayers and tax practitioners would do well to note that the Hon'ble Delhi High Court has, through this ruling, reinforced the position that **disputed questions of fact and appreciation of evidence** are best examined by the appellate forum constituted under the statute, which possesses wider powers including the power to admit additional evidence. Recourse to writ jurisdiction in matters arising out of Section 74 adjudications is likely to succeed only where there is *ex facie* lack of jurisdiction, gross violation of principles of natural justice, or a pure question of law involving no disputed facts. Litigants challenging Section 74 adjudications on the strength of favourable Section 73 outcomes will, accordingly, need to carefully build their case on jurisdictional grounds, ingredients of fraud or suppression, and identity of "subject matter" within the meaning of Section 6(2)(b) of the CGST Act, rather than rely solely on the outcome of the State GST proceedings.

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