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## Section 74 of the CGST Act cannot be invoked without granting opportunity to establish genuine supply of goods

The Hon'ble Madras High Court in *P. Baskaran v. Deputy State Tax Officer [W.P No. 18015 of 2026 dated June 04, 2026]* set aside the order imposing interest and penalty under Section 74 of the Central Goods and Services Tax Act, 2017 (“the CGST Act”) and remanded the matter for fresh consideration on the applicability of Section 74, holding that the possibility of the Assessee establishing genuine supply of goods and that Section 74 was incorrectly invoked cannot be ruled out without affording the Assessee a reasonable opportunity to place material documents on record.

### Facts:

M/s. P. Baskaran (“the Petitioner”), a proprietary concern based in Salem, Tamil Nadu, was issued an order dated August 30, 2024 in FORM GST DRC-07 (Order Reference No. ZD330824291608Z) by the Deputy State Tax Officer (“the Respondent”) for the Financial Year 2018-19, imposing interest and penalty under Section 74 of the applicable GST enactments.

The Petitioner had availed Input Tax Credit (“ITC”) on inward supplies which was subsequently reversed; however, the Petitioner asserted that there was a genuine supply of goods and that the essential ingredients of Section 74 – namely fraud, wilful misstatement or suppression of facts – were not made out on the facts of the case.

Aggrieved by the impugned order on the ground of breach of principles of natural justice and erroneous invocation of Section 74, the Petitioner filed a writ petition under Article 226 of the Constitution of India before the Hon'ble Madras High Court praying for a writ of certiorari to quash the impugned order.

### Issue:

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Whether the order imposing interest and penalty under Section 74 of the CGST Act, 2017 can be sustained when the Assessee has not been afforded a reasonable opportunity to place on record material documents to establish genuine supply of goods and to demonstrate that the ingredients of Section 74 are not made out?

## Held:

The Hon'ble Madras High Court in ***W.P No. 18015 of 2026 and WMP. Nos. 19364 & 19367 of 2026*** held as under:

- **Observed that**, the Input Tax Credit availed by the Petitioner has already stood reversed, and to that extent the interest of the Revenue is protected.
- **Noted that**, the Petitioner had contended that there was a genuine supply of goods and that the ingredients of Section 74 were not made out, whereas the Revenue submitted that since a reply to the show cause notice had been filed, no interference was warranted.
- **Held that**, the possibility of the Petitioner establishing that there was a genuine supply of goods and that Section 74 was incorrectly invoked cannot be ruled out without providing the Petitioner an opportunity to place material documents on record.
- **Directed that**, the impugned order is set aside to the limited extent of reconsideration of the invocation of Section 74, and a fresh order shall be passed within three months from the date of receipt of a copy of the order after granting a reasonable opportunity to the Petitioner.

Hence, **the matter was remanded back to the assessing officer for fresh consideration.**

## Our Comments:

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Section 74 of the CGST Act, 2017 governs the determination of tax not paid, short paid, erroneously refunded, or input tax credit wrongly availed or utilised **by reason of fraud, or any wilful misstatement, or suppression of facts to evade tax**. The provision is jurisdictional in character and can be invoked by the Proper Officer only where any one or more of these aggravating ingredients is positively established. Where these ingredients are absent, the appropriate machinery is Section 73 of the CGST Act, which deals with cases not involving fraud, wilful misstatement, or suppression. The distinction is significant because Section 74 carries a longer limitation period of five years and attracts a higher quantum of penalty (equal to the tax) as compared to Section 73.

The present ruling reinforces a well-settled position that the adjudication process under the GST law is required to comply with the principles of natural justice. Where the Assessee contests not merely the quantum of demand but the very jurisdiction to invoke Section 74, it is incumbent upon the Proper Officer to permit the Assessee to lead documentary evidence – such as tax invoices, e-way bills, lorry receipts, weighment slips, bank statements, ledger extracts, and proof of receipt of goods – in support of the contention of genuine supply, before fastening enhanced liability and penalty.

The ruling is also significant in that the Hon'ble Court was conscious of safeguarding the Revenue's interest. Since the disputed ITC already stood reversed, the Court restricted its interference only to the limited aspect of reconsidering the invocation of Section 74, thereby balancing the rights of the Assessee with the protection of public revenue.

**Pari materia** rulings on the requirement of opportunity and on the ingredients of Section 74:

- The Hon'ble Calcutta High Court in ***Suncraft Energy Private Limited v. Assistant Commissioner of State Tax [MAT 1218 of 2023 dated August 02, 2023]***, held that ITC cannot be denied to the bona fide recipient on the sole ground of mismatch with GSTR-2A or default by the supplier, without first conducting due enquiry against the

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supplier; the order was upheld by the Hon'ble Supreme Court in SLP (Civil) Diary No. 39332 of 2023.

- The Hon'ble Supreme Court in ***Commissioner of Central Excise v. HMM Limited [(1995) 76 ELT 497 (SC)]***, in the context of the pari materia provision of Section 11A of the Central Excise Act, held that the extended period of limitation and the attendant penalty cannot be invoked unless a positive finding of fraud, collusion, or wilful misstatement is recorded – a principle that has been consistently followed under GST jurisprudence.
- The Hon'ble Madras High Court in ***Tvl. Diamond Shipping Agencies Pvt. Ltd. v. Assistant Commissioner (ST)*** and a series of similar writ petitions has repeatedly set aside ex parte and non-speaking orders under Section 74 and remanded the matters for fresh adjudication, holding that where the Assessee credibly asserts genuine supply, an opportunity to place documentary evidence cannot be denied.
- The Hon'ble Karnataka High Court in ***LC Infra Projects Pvt. Ltd. v. Union of India and other*** similar rulings have emphasised that recourse to Section 74 must be supported by specific allegations and material disclosing fraud, wilful misstatement or suppression – a mechanical invocation without such material is liable to be quashed.

On the contrary, in cases where the Assessee has been afforded multiple opportunities and has failed to substantiate its claim, Courts have declined to interfere. For instance, the Hon'ble Madras High Court in numerous decisions has held that where the show cause notice clearly sets out the allegations, the Assessee has filed a reply, and a personal hearing has been afforded, the writ jurisdiction will not be exercised merely to grant another round of adjudication – the Assessee would have to pursue the statutory appellate remedy under Section 107 of the CGST Act.

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The takeaway for the trade and industry is twofold. **First**, where invocation of Section 74 is contested, the Assessee must promptly file a comprehensive reply to the show cause notice supported by documentary evidence demonstrating the genuineness of inward supplies, receipt of goods, and payment of consideration through banking channels. **Second**, a writ remedy may be sustainable where the adjudicating authority has not permitted the Assessee to lead such evidence and has mechanically invoked Section 74 by treating mere reversal of ITC as conclusive proof of fraud or suppression – the two are conceptually distinct, and the latter requires an independent finding supported by material on record.

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