A2Z Taxcorp LLP

Disparity between seigniorage fee paid and supply value declared in GSTR-1 justifies invocation of extended period of limitation under Section 74 of the CGST Act

The Hon'ble Madras High Court in ***KPR Enterprises v. State Tax Officer [W.P. Nos. 35453, 35458 and 35463 of 2024 dated June 12, 2026]*** dismissed the writ petitions challenging the assessment orders passed under Section 74 of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**)/ the Tamil Nadu Goods and Services Tax Act, 2017 (**"the TNGST Act"**) and held that where the assessee has paid a huge amount towards seigniorage fee but has under-declared the value of outward supply in Form GSTR-1, a *prima facie* case is made out for invocation of the extended period of limitation under Section 74 of the CGST Act, since the expression used in both Section 73 and Section 74 of the CGST Act is "where it appears". However, liberty was granted to the assessee to file a statutory appeal within a period of 30 days.

Facts:

KPR Enterprises (**"the Petitioner"**) was engaged in the business of quarrying. Since the Petitioner was unable to carry on the business, it entered into a contract with a contractor, who extracted the boulders from the Petitioner's site. The price was fixed on the basis of the professional advisor's consultations/ instructions, and the GST liability was duly discharged by the said contractor. The Petitioner contended that it sold only rock boulders which are not capable of being used or even followed by the measurements.

An inspection was conducted at the premises of the Petitioner during March 2024. Thereafter, Intimation Notices in Form GST DRC-01A dated March 20, 2024 were issued for the tax periods 2018-2019, 2019-2020 and 2020-2021, to which the Petitioner replied on March 23, 2024. Subsequently, Show Cause Notices in Form GST DRC-01 dated April 02, 2024 (**"the SCNs"**) were issued, to which the Petitioner replied on June 25, 2024. Thereafter, the State Tax Officer (**"the Respondent"**) passed the assessment orders dated July 15, 2024 (**"the Impugned Orders"**) confirming the demand under Section 74 of the CGST Act, based on the seigniorage fee paid by the Petitioner, the details of which are tabulated below:

Tax Period	**Seigniorage Fee Paid (Rs.)**	**Quantity of Boulders (Cubic Meters)**	**Tax Liability Determined (Rs.)**
2018-2019	7,08,000	12,000	10,17,750
2019-2020	24,78,000	42,000	14,09,568
2020-2021	28,32,000	48,000	16,38,650

As against the seigniorage fee aggregating to Rs. 60.18 lakhs paid for the aforesaid tax periods, the Petitioner had declared the value of supply in Form GSTR-1 only at Rs. 34,09,433/-. The Respondent, applying the National Standard Method, estimated the escaped turnover and inferred that there was suppression of the value of supply of boulders in Form GSTR-1, warranting invocation of the extended period of limitation under Section 74 of the CGST Act.

Being aggrieved, the Petitioner filed the present writ petitions contending that (i) there is no finding in the Impugned Orders with respect to “fraud”, “willful-misstatement” or “suppression of fact” so as to invoke the extended period of limitation under Section 74 of the CGST Act, (ii) no opportunity of personal hearing was granted before passing the Impugned Orders, and (iii) since the GST liability was discharged by the contractor who extracted and sold the boulders from the Petitioner’s site, there is no loss to the exchequer.

On the other hand, the Respondent submitted that the Impugned Orders are detailed and reasoned orders which do not merit any interference, and therefore, the writ petitions are liable to be dismissed.

Issue:

Whether the disparity between the seigniorage fee paid and the value of outward supply declared in Form GSTR-1 constitutes sufficient material for invocation of the extended period of limitation under Section 74 of the CGST Act?

Held:

The Hon'ble Madras High Court in ***W.P. Nos. 35453, 35458 and 35463 of 2024*** held as under:

- **Observed that,** insofar as the tax payable on the seigniorage fee *per se* is concerned, the matter is pending before the Hon'ble Supreme Court and has been kept in abeyance. However, insofar as the difference in the value of supply is concerned, the Respondent has arrived at the tax based on the inference that there was a suppression of the value of supply of boulders in Form GSTR-1, and has estimated the escaped turnover on the basis of the National Standard Method to arrive at the value of supply short-declared by the Petitioner in the returns.

- **Noted that,** it is highly improbable for the Petitioner to have paid higher amounts towards the seigniorage fee as compared to the lesser quantity of minerals extracted and supplied during the respective tax periods. Further, the SCNs clearly stated that the Petitioner suppressed the value of the output supply of goods in Form GSTR-1 based on the calculation given therein. Thus, there were sufficient materials/ foundational facts available for issuance of a notice under Section 74 of the CGST Act.

- **Held that,** since the Petitioner has paid a huge amount towards the seigniorage fee but has under-declared the value of the outward supply, it is evident that a *prima facie* case was made out for the invocation of the extended period of limitation under Section 74 of the CGST Act, as the expression used in both Section 73 and Section 74 of the CGST Act is "where it appears". Hence, the challenge to the Impugned Orders on the ground that there is no basis for invoking the extended period of limitation cannot be countenanced, and no procedural irregularity was committed by the Respondent while passing the Impugned Orders.

- **Directed that,** the writ petitions are dismissed with liberty to the Petitioner to file a statutory appeal before the Appellate Authority within a period of 30 days from the date of receipt of a copy of the order. If such an appeal is filed within the specified time, the Appellate Authority shall take up the appeal and dispose of the same on merits without reference to limitation, after affording an opportunity of being heard to the Petitioner.

Our Comments:

Section 74 of the CGST Act empowers the proper officer to determine tax not paid, short paid, erroneously refunded, or input tax credit wrongly availed or utilised, "by reason of fraud, or any willful-misstatement or suppression of facts to evade tax", within an extended period of 5 years from the due date of furnishing the annual return, as against the normal period of 3 years prescribed under Section 73 of the CGST Act, where such ingredients are absent. Notably, both Section 73(1) and Section 74(1) of the CGST Act commence with the expression "Where it appears to the proper officer", and it is on this statutory language that the Hon'ble Madras High Court anchored its conclusion that, at the stage of issuance of notice, the existence of foundational facts giving rise to a *prima facie* inference of suppression is sufficient, and the correctness of such inference is a matter to be tested in adjudication and appeal, and not in writ jurisdiction under Article 226 of the Constitution of India.

The settled jurisprudence on the invocation of the extended period of limitation, evolved under the erstwhile Central Excise regime and equally applicable to Section 74 of the CGST Act, mandates that suppression must be deliberate and with intent to evade tax. The Hon'ble Supreme Court in ***Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay [1995 Supp (3) SCC 462]*** held that the expression "suppression of facts", being used in the company of strong words such as fraud and collusion, must be construed strictly and refers only to deliberate non-disclosure with intent to evade duty. Similarly, in ***Collector of Central***

Excise, Hyderabad v. Chemphar Drugs and Liniments [(1989) 2 SCC 127] and ***Uniworth Textiles Ltd. v. Commissioner of Central Excise, Raipur [(2013) 9 SCC 753]*****,** the Hon'ble Supreme Court held that something positive, other than mere inaction or failure on the part of the assessee, is required to invoke the extended period, and mere non-payment of duty is not equivalent to suppression. Applying these principles, various High Courts have quashed proceedings under Section 74 of the CGST Act where the notice was a mechanical reproduction of the statutory language without disclosing the foundational facts constituting fraud or suppression.

The present ruling, however, falls on the other side of the line. The Hon'ble Madras High Court found that the wide and unexplained disparity between the seigniorage fee paid to the Government (Rs. 60.18 lakhs) and the value of outward supply declared in Form GSTR-1 (Rs. 34.09 lakhs) itself constituted the foundational fact from which suppression of turnover could reasonably be inferred, thereby justifying issuance of notice under Section 74 of the CGST Act. In other words, where quantifiable third-party or governmental data (such as statutory levies paid, mining permits, e-way bill data, or Form 26AS/ AIS information) is irreconcilable with the declared turnover, the threshold of "where it appears" stands satisfied, and the writ court would relegate the assessee to the alternate statutory remedy.

It is also pertinent to note that the levy of GST on seigniorage fee/ royalty itself is *sub judice* before the Hon'ble Supreme Court, and the Hon'ble Madras High Court consciously kept that issue in abeyance, confining the present decision only to the under-declaration of the value of outward supply. A nine-Judge Constitution Bench of the Hon'ble Supreme Court in ***Mineral Area Development Authority v. Steel Authority of India [2024 INSC 554 dated July 25, 2024***] has held that royalty is not in the nature of a tax; however, the question of leviability of GST on royalty/ seigniorage fee under reverse charge is pending adjudication before the Hon'ble Supreme Court, wherein payment of GST on royalty has been stayed. Taxpayers in the mining and quarrying sector should therefore keep such demands alive by way of appropriate replies and appeals, while separately ensuring that the quantum of statutory levies paid, quantities extracted and turnover declared in the GST returns are duly reconciled, as any unexplained mismatch may now invite estimation of escaped turnover and invocation of the extended period of limitation under Section 74 of the CGST Act.

CLICK HERE FOR OFFICIAL JUDGMENT COPY

(Author can be reached at info@a2ztaxcorp.com)