Supreme Court to examine whether the six-month time limit for issuance of show cause notice under Section 74(2) of the CGST Act is mandatory or directory

The Hon'ble Supreme Court in ***M/s. Bengal Cold Rollers Private Limited v. The Assistant Commissioner (ST), Basheerbagh-Nampally-1 Circle & Ors. [Writ Petition (Civil) No. 836 of 2026 with SLP (C) No. 23718 of 2026 dated July 21, 2026]*** issued notice in the challenge laid to the judgment of the Hon'ble Telangana High Court which had held that the time limit prescribed under Section 74(2) of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) for issuance of a show cause notice is merely directory and not mandatory, and stayed the operation of the impugned judgment dated June 25, 2026 as well as the Orders-in-Original dated April 22, 2026 relating to Financial Years 2021-2022, 2022-2023 and 2023-2024 till the next date of hearing, thereby leaving open for authoritative determination of the question as to whether the statutory timeline for initiation of adjudication proceedings goes to the root of jurisdiction.

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Facts:

- M/s. Bengal Cold Rollers Private Limited (**"the Petitioner"**) was subjected to adjudication proceedings under Section 74 of the Central Goods and Services Tax Act, 2017 ("the CGST Act") for the Financial Years 2021-2022, 2022-2023 and 2023-2024, culminating in Orders-in-Original dated April 22, 2026.

- By way of background, the proceedings against the Petitioner emanated from an investigation in the course of which the State Tax Department seized various documents belonging to the Petitioner, an inventory whereof was recorded in a Panchnama. On the strength of the material so gathered, show cause notices under Section 74 of the CGST Act came to be issued to the Petitioner for the Financial Years 2019-2020, 2020-2021, 2021-2022, 2022-2023 and 2023-2024 (up to December 2023), while the adjudication in respect of the Financial Year 2018-2019 was concluded by an Order-in-Original dated December

30, 2025, that being the year for which the outer limitation was to expire on December 31, 2025.

- In an earlier round of litigation, the Petitioner had approached the Hon'ble Telangana High Court in W.P. No. 35740 of 2025 seeking supply of the seized documents, which came to be disposed of on December 12, 2025. Thereafter, in ***W.P. No. 6668 of 2026***, decided on March 11, 2026, the Petitioner reiterated its grievance that the Department had failed to furnish copies of certain "missing" seized files. The Hon'ble High Court, recording the statement of the learned Special Government Pleader for State Tax that the files whose originals were not available with the Department would not be relied upon in the adjudication, held that the grievance stood duly addressed and permitted the adjudication proceedings for the Financial Years 2019-2020 to 2023-2024 to continue on the basis of the remaining available material, subject to due opportunity of reply and hearing in terms of the Telangana Goods and Services Tax Act, 2017.

- It was in the adjudication proceedings so permitted to continue that the Orders-in-Original dated April 22, 2026 in respect of the Financial Years 2021-2022, 2022-2023 and 2023-2024 came to be passed, and it was in the challenge laid to those proceedings on the ground of breach of the six-month timeline under Section 74(2) of the CGST Act that the Hon'ble Telangana High Court rendered its judgment dated June 25, 2026, now impugned before the Hon'ble Supreme Court.

- The grievance of the Petitioner was that **the show cause notices preceding the said Orders-in-Original were not issued at least six months prior to the outer time limit prescribed under Section 74(10) of the CGST Act for passing the adjudication order, as mandated by Section 74(2) of the CGST Act.**

- The Hon'ble Telangana High Court, by its judgment dated June 25, 2026, held that the timeline stipulated under Section 74(2) of the CGST Act is merely directory and not mandatory, principally on the reasoning that the statute does not prescribe any consequence for its breach.

- Aggrieved thereby, the Petitioner approached the Hon'ble Supreme Court by way of a Writ Petition as well as a Special Leave Petition, along with applications seeking ex-parte stay.

Contentions:

- The Petitioner contended that provisions of limitation contained in a taxing statute go to the very root of jurisdiction of the adjudicating authority and any notice issued in breach thereof is non est in the eye of law.
- It was submitted that such a limitation provision cannot be read down as directory merely because the statute is silent as to the consequence of non-compliance, more so when the legislature has consciously employed the expression "shall" and has designedly carved out a minimum period for the noticee to respond.
- Reliance was also placed upon the divergent views expressed by various High Courts on the identical controversy arising under the pari materia provisions of Section 73(2) of the CGST Act.

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Issue:

Whether the statutory timeline under Section 74(2) of the CGST Act, requiring issuance of a show cause notice at least six months prior to the time limit specified under Section 74(10) of the CGST Act for passing the adjudication order, is mandatory and jurisdictional in nature or is merely procedural and directory in the absence of an express consequence for its breach?

Held:

The Hon'ble Supreme Court in ***Writ Petition (Civil) No. 836 of 2026 with SLP (C) No. 23718 of 2026*** held as under:

- Noted that, the controversy centres on whether the statutory timeline under Section 74(2) of the CGST Act, which mandates issuance of the show cause notice at least six months prior to the time limit for passing the adjudication order, is jurisdictional in nature or merely procedural in the absence of an express consequence for its breach.

- Observed that, the submission of the Petitioner that provisions of limitation under a taxing statute go to the very root of jurisdiction and cannot be treated as directory merely because the statute does not prescribe the consequence of non-compliance, coupled with the divergent views of the High Courts on the issue, warrants consideration.

- Held that, notice be issued in the Writ Petition as well as in the Special Leave Petition, returnable on **September 28, 2026**, and that service shall be effected by all modes, including dasti.

- Directed that, the Orders-in-Original dated April 22, 2026 in relation to the Financial Years 2021-2022, 2022-2023 and 2023-2024 shall remain stayed till the next date of hearing.

- Directed that, the operation of the impugned judgment dated June 25, 2026 and the Order-in-Original challenged therein shall also remain stayed till the next date of hearing.

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Our Comments:

Section 74 of the CGST Act governs determination of tax not paid, short paid, erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud, wilful misstatement or suppression of facts. Section 74(10) of the CGST Act prescribes the outer limit of five years from the due date for furnishing the annual return for the relevant financial year for issuance of the adjudication order, while Section 74(2) of the CGST Act mandates that the proper officer *"shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order"*. The provision is in pari materia with Section 73(2) of the CGST Act, which similarly requires the notice under Section 73(1) to be issued at least three months prior to the three-year outer limit under Section 73(10) of the CGST Act. It may be noted that for Financial Year 2024-2025 and onwards, Sections 73 and 74 of the CGST Act stand substituted by Section 74A of the CGST Act, inserted by the Finance (No. 2) Act, 2024 with effect from November 01, 2024, which under Section 74A(2) requires the notice to be issued within forty-two months from the due date for furnishing the annual return, thereby restructuring, but not eliminating, the statutory gap available to the noticee.

The rationale underlying the minimum statutory gap has been consistently traced to the principles of natural justice. In ***Tata Play Limited v. Sales Tax Officer Class II/AVATO [W.P. (C) No. 4781 of 2025],*** the Hon'ble Delhi High Court held that while Section 73(10) of the CGST Act fixes the date by which the adjudication order must be issued, the object of Section 73(2) of the CGST Act is to ensure that at least three months are available to the taxable person for filing a reply to the show cause notice and for being heard in a proper manner. Following the said ratio, the Hon'ble Delhi High Court in ***C.H. Robinson Worldwide Freight India Private Limited v. Additional Commissioner, CGST-Delhi South & Ors. [W.P. (C) No. 15508 of 2024 with CM APPL. No. 65096 of 2024 dated October 29, 2025]*** quashed the show cause notice issued for Financial Year 2019-2020 raising a demand of INR 11,85,45,612/- on account of alleged wrongful availment of input tax credit, holding that the three months' period prescribed in Section 73(2) of the CGST Act is mandatory when read with Section 73(10) of the CGST Act, and further rejecting the Revenue's plea of a "technical glitch" in issuance of Form GST DRC-01. The Hon'ble Court recorded that although the show cause notice bore the date May 31, 2024, it was in fact issued only on August 12, 2024, that is, beyond the three-month anterior period reckoned from the extended outer limit of August 31, 2024 (as extended vide Notification No. 56/2023-Central Tax dated December 28, 2023).

A similar view was taken by the Hon'ble Andhra Pradesh High Court in ***M/s. The Cotton Corporation of India v. Assistant Commissioner (ST) (Audit) (FAC) and Ors. [W.P. No. 1463 of 2025 dated February 05, 2025],*** wherein a delay of merely two days in issuance of the show cause notice was held to be fatal. The Court held that the time permit set out under Section

73(2) of the Act is mandatory and any violation of that time period cannot be condoned, reasoning that the protections available to the taxpayer under Section 75 of the CGST Act, namely the right to a personal hearing and to seek adjournments, would be rendered otiose if a notice were permitted to be issued without a minimum waiting period. On the method of computation, the Court applied the corresponding date rule laid down in ***State of Himachal Pradesh and Another v. Himachal Techno Engineers and Another [(2010) 12 SCC 210] and Dodds v. Walker [1981 (2) W.L.R. 609 (HL)],*** holding that where a period available for a certain action is defined in terms of months, the corresponding date of the corresponding month would be the cut-off date. On facts, the outer limit for passing the order being February 28, 2025, the three-month anterior date fell on November 28, 2024, whereas the show cause notice came to be issued on November 30, 2024, being two days beyond the permissible period.

The issue is presently sub judice on multiple fronts. Apart from the present proceedings, the Hon'ble Telangana High Court in ***REXINE LAND v. Deputy Commissioner (GST) (ST)*** is examining whether the three-month gap between the show cause notice and the order under Section 73(2) of the CGST Act is mandatory in a case involving a delay of one day, wherein the Court prima facie observed that the legislative intent underlying the minimum three-month interval is to subserve the principles of natural justice by ensuring that the noticee is afforded an adequate and meaningful opportunity to respond, although interim stay was declined at the admission stage. The contrary line of reasoning is reflected in the judgment presently under challenge before the Hon'ble Supreme Court, wherein the statutory timeline was construed as directory for want of a prescribed consequence. In support, the assessee placed reliance on precedents of the Hon'ble Bombay High Court wherein show cause notices issued in derogation of the timeline under Section 73(2) of the CGST Act had been set aside as unsustainable in law.

Since the Hon'ble Supreme Court has stayed the operation of the impugned judgment as well as the Orders-in-Original, the field stands unsettled until the matter is taken up on September

28, 2026. Pending authoritative pronouncement, it would be advisable for taxpayers to verify, on a year-wise basis, whether the show cause notices received have been issued within the minimum statutory gap contemplated under Section 73(2) or Section 74(2) of the CGST Act, as the case may be, reckoned by applying the corresponding date rule, and to raise the plea of limitation at the earliest available opportunity before the adjudicating or appellate authority so that the ground is preserved and does not stand foreclosed on account of waiver or delay.

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

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