Voluntary Tax Payment Does Not Bar Proceedings Under Section 74 Where Suppression Allegation Remains Uncontested

The Hon'ble Patna High Court in the case of ***Manju Devi Agarwal v. Central Board of Indirect Taxes and Customs & Ors. [Civil Writ Jurisdiction Case No. 862 of 2026, order dated April 27, 2026]*** held that where the taxpayer voluntarily discharged substantial tax liability after audit but failed to contest allegations of wilful suppression and also admitted liability towards interest and penalty during adjudication, such taxpayer is estopped from subsequently challenging invocation of Section 74 of the CGST Act in writ jurisdiction.

Facts:

Manju Devi Agarwal **("the Petitioner")** was engaged in the business of fertilizer, cement and pesticides and had filed statutory returns in Form GSTR-1 and Form GSTR-3B for the tax periods 2017-18 to 2022-23. During audit and scrutiny proceedings, discrepancies were noticed involving short payment of GST, excess availment of input tax credit and mismatch between Form 26AS and turnover disclosed in the Profit and Loss Account.

Central Board of Indirect Taxes and Customs & Ors. **("the Respondent")** issued show cause notices dated July 25, 2024 and July 31, 2024 under Section 74 of the CGST Act alleging wilful suppression and misstatement with intent to evade tax. The notices alleged:

- short payment of GST amounting to Rs. 10,59,756/-,
- excess ITC availment amounting to Rs. 29,35,892/- in violation of Section 16 read with Rule 36 of the CGST Rules, and
- non-payment of GST amounting to Rs. 3,43,864/- based on discrepancies between Form 26AS and the Profit and Loss Account. The Respondent further alleged that though the Petitioner had paid substantial tax amounts through DRC-03 prior to

issuance of SCN, liability towards interest under Section 50 and penalty under Section 74 remained unpaid.

The Petitioner contended that once the tax amounts had been voluntarily paid prior to issuance of the show cause notice, proceedings under Section 74 could not have been initiated and, at best, proceedings could only lie under Section 73 of the CGST Act. The Petitioner further contended that the show cause notice did not quantify penalty and therefore levy of penalty in the final adjudication order violated Section 75(7) of the CGST Act.

The Respondent contended that the show cause notice specifically alleged wilful suppression and invocation of the extended period under Section 74, which was never disputed by the Petitioner before the adjudicating authority. The Respondent further contended that during personal hearing, the Petitioner's authorised representative admitted liability towards tax, interest and penalty and undertook to deposit the balance amount. It was further argued that the Petitioner failed to avail statutory appellate remedy under Section 107 and approached the High Court after expiry of limitation, thereby disentitling itself from relief under Article 226.

Aggrieved by the adjudication orders dated February 04, 2025 and February 06, 2025, recovery proceedings and garnishee notice issued in Form GST DRC-13, the Petitioner approached the High Court by way of writ petition under Article 226 of the Constitution challenging the invocation of Section 74, levy of interest and penalty, and validity of the departmental circular dated September 16, 2025.

Issue:

Whether proceedings under Section 74 of the CGST Act can validly continue despite voluntary payment of tax prior to issuance of show cause notice, where allegations of wilful suppression remain uncontested and liability towards interest and penalty is admitted during adjudication proceedings?

Held:

The Hon'ble Patna High Court in ***Civil Writ Jurisdiction Case no. 862 of 2026*** held as under:

- Observed that, the show cause notice specifically alleged suppression/wilful-misstatement of the facts with an intention to evade payment of GST and expressly invoked Section 74 of the CGST Act along with extended limitation.
- Noted that, despite service of the show cause notice, the Petitioner did not file any response contesting the allegations of suppression before the adjudicating authority.
- Observed that, during personal hearing, the authorised representative of the Petitioner admitted liability towards tax, interest and penalty and further undertook to deposit the balance amount within two months.
- Noted that, the statement recorded in the adjudication order regarding admission of liability was never challenged by the Petitioner.
- Observed that, having taken one stand before the competent authority, the Petitioner was estopped from changing its stand before the High Court in writ proceedings.
- Noted that, payment of tax after audit detection and without protest could not invalidate proceedings initiated under Section 74 where allegations of wilful suppression were specifically made and remained uncontested.
- Observed that, the Petitioner failed to avail statutory appellate remedy under Section 107 of the CGST Act and approached the High Court after nearly ten months, when limitation for appeal had expired. The writ petition lacked merit and accordingly dismissed the writ petition.

Our Comments:

The Court's reasoning aligns with the statutory framework under Section 74(5) and Section 74(11) of the CGST Act. Section 74 contemplates voluntary payment even before issuance of show cause notice but does not extinguish proceedings automatically unless complete statutory conditions are fulfilled, including payment of tax, applicable interest and prescribed penalty. The Court effectively treated incomplete payment coupled with non-contestation of suppression allegations as sufficient justification for continuation of Section 74 proceedings.

Payment on Voluntary Basis is a facility given to tax payers to make payment u/s 73 or 74 of the CGST Act, 2017 within 30 days of issuance of Show Cause Notice (SCN). Payment could also be made by taxpayers before SCN is issued. To make voluntary payment against the liability (tax, interest & penalty) based on self-ascertainment of tax, navigate to Services > User Services > My Applications > Intimation of Voluntary Payment - DRC - 03 option.

<u>Relevant Provisions:</u>

Section 74 of the CGST Act, 2017

"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.

(2) 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.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under subsection (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

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