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Section 74 demand on retrospectively cancelled suppliers cannot survive without naming the suppliers and proving fraud

The Hon'ble Delhi High Court in *Treco Wire India Private Limited v. Additional Commissioner Central Tax Delhi North & Ors. [W.P.(C) 583/2026 dated September 29, 2026]* set aside the Order-in-Original confirming a demand of Input Tax Credit ("ITC") of Rs. 3,34,21,261/- along with interest and an equal penalty under Section 74 of the Central Goods and Services Tax Act, 2017 ("the CGST Act"), raised on the ground that the registrations of the suppliers had been cancelled retrospectively, and held that an order under Section 74 must disclose the factual foundation of the demand, namely the identity of the suppliers, the invoices, the dates of cancellation and the ITC attributable to each supplier, and must record specific findings of fraud, wilful misstatement or suppression of facts, since mere reproduction of the audit objection and the statutory language does not demonstrate application of mind. The Hon'ble Court, however, rejected the challenge to the constitutional validity of Section 16(2)(c) of the CGST Act in view of the judgment of the Hon'ble Supreme Court and remanded the matter for fresh adjudication.

Facts:

- M/s. Treco Wire India Private Limited ("**the Petitioner**") is engaged in the manufacture of copper wires and is registered under the CGST Act. An audit was conducted by the Revenue Department ("**the Respondent**") for the period from July 01, 2017 to March 31, 2021.
- An Audit Memo dated July 23, 2023 alleged that the Petitioner had availed ITC of Rs. 3,34,21,261/- on supplies received from suppliers whose GST registrations had been cancelled with effect from a date prior to the date of the invoices. Interest of Rs. 50,30,256/- was also proposed for alleged delay in payment to suppliers beyond 180 days. The Audit Report in Form GST ADT-02 was issued on July 27, 2023.

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- The Petitioner disputed the objections and submitted that the transactions were genuine commercial transactions and that the suppliers held active registrations at the relevant time.
- An intimation in Form GST DRC-01A was issued, followed by a Show Cause Notice dated September 22, 2023 (**"the SCN"**) under Section 74 of the CGST Act. The Petitioner filed its reply specifically contending that the ingredients of Section 74 were absent.
- The Respondent passed Order-in-Original No. 45/ADC/D.N./Bhavan Meena/2024 dated January 15, 2024 (**"the Impugned Order"**) confirming the ITC demand of Rs. 3,34,21,261/- under Section 74(1) along with interest under Section 50 and an equal penalty, and the interest demand of Rs. 50,30,256/-.
- Aggrieved, the Petitioner filed a writ petition challenging the SCN and the Impugned Order, and also the constitutional validity of Section 16(2)(c) and the proviso to Section 16(2) of the CGST Act.
- The Petitioner contended that the Impugned Order does not disclose the names of the suppliers, the invoice dates, the dates of cancellation of registration or the material relied upon, and that neither the SCN nor the Impugned Order gives any particulars of fraud, wilful misstatement or suppression of facts. Subsequent cancellation of a supplier's registration cannot by itself satisfy Section 74.
- The Respondent sought to sustain the demand on the basis of the audit objections and relied upon an earlier order dated September 24, 2025 passed in W.P.(C) 14428/2025 filed by the Petitioner. On a query from the Court, the Respondent's counsel was unable to confirm whether the case involved fraudulent ITC from a particular entity.

Issues:

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1. Whether Section 16(2)(c) of the CGST Act is liable to be struck down or read down so as to protect bona fide recipients where the supplier has failed to discharge the tax liability?
2. Whether a demand of ITC confirmed under Section 74 of the CGST Act on the ground of retrospective cancellation of the suppliers' registrations can be sustained when the order neither identifies the suppliers and transactions nor records any specific finding of fraud, wilful misstatement or suppression of facts?

Held:

The Hon'ble Delhi High Court in **W.P.(C) 583/2026** held as under:

- Observed that, the challenge to the validity of Section 16(2)(c) of the CGST Act no longer survives, as the Hon'ble Supreme Court in **Bhandari Scraps Traders v. Union of India [SLP (C) No. 23931/2026 dated July 24, 2026]** has affirmed the judgment of the Hon'ble Gujarat High Court in **Maruti Enterprises v. Union of India [2026 SCC OnLine Gujarat 4013]** and held that there is no parity between a purchasing dealer under the CGST Act and a bona fide purchasing dealer under the Delhi Value Added Tax Act, 2004. The prayers for striking down or reading down the provision were accordingly rejected.
- Noted that, the question is not whether the Petitioner is ultimately entitled to the ITC, but whether the demand under Section 74 has been adjudicated in accordance with the statutory requirements and with sufficient factual findings.
- Noted that, the Impugned Order merely reproduces the audit objection. It does not set out the names or GSTINs of the suppliers, the invoice dates, the dates from which the registrations were cancelled, the ITC attributable to each supplier or the material from which the cancellation dates were ascertained. The Petitioner's defence that the suppliers were registered at the relevant time has also not been dealt with.

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- Observed that, the validity of the eligibility condition in Section 16(2)(c) does not dispense with the requirement that the authority invoking Section 74 must satisfy itself that the ingredients of that provision are met in the facts of the case. The Impugned Order contains no specific finding as to how the Petitioner committed fraud, made a wilful misstatement or suppressed any fact to evade tax.
- Held that, where Section 74 is invoked, the order must disclose the factual basis on which its ingredients are satisfied, and mere reproduction of the statutory language does not show application of mind. The omission of supplier-wise particulars is not a technical defect, as these particulars are the factual foundation of the demand and their absence deprives the assessee of an effective opportunity to meet the case, more so when an equal penalty is imposed.
- Held that, the earlier order dated September 24, 2025 in W.P.(C) 14428/2025 is not determinative, and the adjudication must stand or fall on the SCN, the material relied upon in it and the Impugned Order.
- Directed that, the Impugned Order and the consequential proceedings are set aside and the matter is remanded for fresh adjudication. The adjudicating authority shall issue notice, grant an effective hearing, identify the suppliers and transactions concerned, deal with the Petitioner's reply and independently examine whether the requirements of Section 74 are satisfied. The Petitioner shall appear on October 08, 2026 and the authority shall endeavour to pass a fresh order within eight weeks thereafter.
- Clarified that, no opinion has been expressed on the merits of the ITC demand or on the Petitioner's entitlement to ITC under Section 16 of the CGST Act.

Hence, the matter was remanded back to the adjudicating authority.

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Our Comments:

Section 74(1) of the CGST Act permits recovery of tax not paid or short paid, or of ITC wrongly availed or utilised, only where this has happened “by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax”, and it carries a penalty equal to the tax and an extended limitation of five years. Explanation 2 to Section 74 defines “suppression” as non-declaration of facts which a taxable person is required to declare in a return, statement or report, or failure to furnish information when asked for in writing. Section 75(6) requires the proper officer to set out the relevant facts and the basis of the decision in the order. Section 16(2)(c), on the other hand, is only a condition of eligibility for ITC, namely that the tax charged on the supply has actually been paid to the Government. The judgment keeps these two questions apart. A recipient may fail the eligibility test of Section 16(2)(c) and still not be guilty of fraud or suppression.

This distinction is now the centre of the defence in supplier-default matters. With the Hon’ble Supreme Court in *Bhandari Scraps Traders (supra)* affirming *Maruti Enterprises (supra)*, the validity of Section 16(2)(c) stands settled for the GST regime. The earlier line under the VAT law, namely *On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi [W.P.(C) 6093/2017 dated October 26, 2017]*, against which the Special Leave Petition was dismissed in *Commissioner of Trade and Taxes, Delhi v. Arise India Limited [SLP (C) No. 36750/2017 dated January 10, 2018]*, and the recent decision in *Commissioner Trade and Tax Delhi v. Shanti Kiran India (P) Ltd. [Civil Appeal Nos. 2042-2047 of 2015 dated October 09, 2025]*, has been distinguished on the footing that the scheme of the CGST Act is different. The view taken by the Hon’ble Patna High Court in *Aastha Enterprises v. State of Bihar [CWJC No. 10395 of 2023 dated August 18, 2023]* and the Hon’ble Andhra Pradesh High Court in *Thirumalakonda Plywoods v. Assistant Commissioner [W.P. No. 24235 of 2022 dated July 18, 2023]*, upholding the provision, therefore prevails. Decisions which had read down Section 16(2)(c) for bona fide recipients, such as that of the Hon’ble Tripura High Court in *Sahil Enterprises v. Union of India [W.P.(C) No. 688 of 2022 dated January 06, 2026]*, will have to be read subject to the ruling of

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the Hon'ble Supreme Court. Most recently, the Hon'ble Punjab and Haryana High Court in *Shaurya Alloys Pvt. Ltd. v. State of Punjab and Another* [CWP-34296-2024 (O&M) and connected matters dated October 01, 2026], while disposing of a batch of 424 writ petitions, upheld the constitutional validity of Section 16(2)(c) read with Section 155 of the CGST Act in deference to *Bhandari Scraps Traders* (supra) and declined to read it down, but held that the provision cannot be invoked mechanically or in isolation merely because the supplier failed to deposit tax, filed nil or short returns, discharged its liability through inadmissible ITC or suffered retrospective cancellation of registration. A supplier's default may trigger an inquiry but cannot by itself establish the recipient's liability; the proper officer must examine the genuineness of the transaction, the recovery proceedings taken against the supplier and any direct connection between the recipient and the alleged fraud, and where Section 74 is invoked, the notice itself must contain facts connecting the recipient with fraud, wilful misstatement or suppression. The Hon'ble Court laid down fourteen guidelines for pending and future proceedings and remitted the matters for fresh consideration. The approach of the Hon'ble Delhi High Court in the present case is in line with this ruling.

On the Section 74 limb, the judgment is in line with settled law that the extended period and the equal penalty cannot be invoked mechanically. The Hon'ble Supreme Court in ***Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay* [1995 Supp (3) SCC 462]**, ***Continental Foundation Jt. Venture v. Commissioner of Central Excise, Chandigarh-I* [2007 (216) E.L.T. 177 (S.C.)]** and ***Uniworth Textiles Ltd. v. Commissioner of Central Excise, Raipur* [2013 (288) E.L.T. 161 (S.C.)]** held that suppression means a deliberate act to evade duty and that the burden of proving it lies on the Revenue. The position now stands affirmed under the GST regime itself. The Hon'ble Supreme Court in *G.R. Infra Projects Limited, Ratlam v. State of Madhya Pradesh & Ors.* [Civil Appeal No. 11277 of 2026 dated August 19, 2026] held that the extended period under Section 74 can be invoked only where the allegations leading to the inference of fraud, wilful misstatement or suppression of facts emanate from the show cause notice itself, that a mechanical use of the statutory expressions without listing the facts is not

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sufficient, and that the Revenue cannot supply the missing reasoning through a counter affidavit. This was reiterated in *Tata Steel Limited v. Union of India* [2026 INSC 920 dated August 25, 2026], where the Hon'ble Supreme Court held that proceedings under Sections 73 and 74 can be initiated only on the independent satisfaction of the proper officer, that an ITC mismatch or short payment pointed out in an audit objection cannot by itself be treated as such satisfaction, and that a mere recital of the words of Section 74 is lip service which does not indicate application of mind. The show cause notice and the Order-in-Original were accordingly set aside. Under GST, the Hon'ble Allahabad High Court in ***HCL Infotech Ltd. v. Commissioner, Commercial Tax [Writ Tax No. 1396 of 2024 dated September 19, 2024]*** quashed proceedings under Section 74 where the notice contained no allegation of fraud, wilful misstatement or suppression. The CBIC has also directed, vide Instruction No. 05/2023-GST dated December 13, 2023, that Section 74 may be invoked only where there is material evidence of fraud, wilful misstatement or suppression and that such evidence must form part of the show cause notice.

On retrospective cancellation of the supplier's registration, several High Courts have held that ITC cannot be denied to the recipient only for this reason where the supplier was registered on the date of the transaction and the recipient has paid the consideration with tax. Reference may be made to ***LGW Industries Limited v. Union of India [W.P.A. No. 23512 of 2019 dated December 13, 2021]***, ***Gargo Traders v. Joint Commissioner, Commercial Taxes (State Tax) [W.P.A. No. 1009 of 2022 dated June 12, 2023]*** and ***Balaji Exim v. Commissioner, CGST [W.P. (C) 10407/2022 dated March 10, 2023]***. Similarly, in ***Suncraft Energy Private Limited v. Assistant Commissioner, State Tax [MAT 1218 of 2023 dated August 02, 2023]***, it was held that the department must first proceed against the defaulting supplier, and the Special Leave Petition of the Revenue was dismissed on December 14, 2023. As a contrary view, the Hon'ble Supreme Court in ***State of Karnataka v. Ecom Gill Coffee Trading Private Limited [Civil Appeal No. 230 of 2023 dated March 13, 2023]*** held that the burden of proving the genuineness of the transaction, including actual movement of goods, lies on the purchasing dealer and that invoices and payment by cheque are not enough. After *Bhandari Scraps Traders (supra)*, these

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recipient-friendly rulings can no longer be pressed as a protection against Section 16(2)(c) itself, but they remain relevant on the question of whether the recipient acted with any intent to evade.

The judgment is also notable for the exercise of writ jurisdiction. The Hon'ble Delhi High Court has generally declined to entertain writ petitions in cases of alleged fraudulent ITC and has relegated assesseees to the appellate remedy, as in ***Mukesh Kumar Garg v. Union of India*** [W.P.(C) 5737/2025 dated May 09, 2025]. The present case shows that this approach does not apply where the order itself does not disclose the transactions on which the demand rests. The defect here was in the adjudication, not in the assessee's conduct.

From a practical standpoint, three points deserve attention in the remand proceedings and in similar matters. First, the assessee should insist on supplier-wise details, i.e., GSTIN, invoice number and date, effective date and order of cancellation and ITC involved, and should place on record evidence of receipt of goods, payment through banking channels, e-way bills and the status of the supplier's registration on the date of each invoice. Second, under Section 75(2) of the CGST Act, where the charge of fraud, wilful misstatement or suppression is not sustained, the tax is to be determined as if the notice had been issued under Section 73. In that event the equal penalty goes, and the demand for each financial year has to be tested against the limitation applicable to Section 73. For a period beginning from 2017-18, this may decide the fate of a large part of the demand. Third, the audit objection relies on Rule 36(4) of the Central Goods and Services Tax Rules, 2017 read with Section 37(1) of the CGST Act for the proposition that ITC is available only on invoices of a registered person. Rule 36(4), which was inserted with effect from October 09, 2019, dealt with restriction of ITC by reference to details furnished by suppliers, and its relevance to an allegation of cancelled registration is open to question.

For periods from Financial Year 2024-25 onwards, demands are governed by Section 74A of the CGST Act, which provides a common limitation period but retains a higher penalty where fraud, wilful misstatement or suppression is established. The requirement laid down in this judgment,

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that the order must contain specific findings on these ingredients supported by particulars, would apply equally to proceedings under Section 74A.

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