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Supreme Court to Settle the Three-Month Countdown for Section 73 Order

The Hon'ble Supreme Court in ***M/s Surya Business Private Limited v. The State of Assam & Ors. [SLP (C) No. 34476 of 2026 dated October 08, 2026]*** issued notice in the Special Leave Petition filed by the assessee against the judgment of the Hon'ble Gauhati High Court, which had upheld a show cause notice dated November 29, 2024 for FY 2020-21 as having been issued within the time prescribed under Section 73(2) of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) by reckoning "three months" as the three intervening calendar months before the Section 73(10) deadline rather than by the corresponding-date rule, and directed that the matter be listed along with SLP (C) No. 18994 of 2026, wherein an identical issue is pending consideration.

Facts:

- M/s Surya Business Private Limited (**"the Petitioner"**) is registered under the CGST Act and the Assam Goods and Services Tax Act, 2017 (**"the AGST Act"**) and is engaged in the wholesale distribution of cellular phones at Jorhat, Assam.

- For FY 2020-21, the due date for furnishing the annual return stood extended to February 28, 2022, and the Petitioner filed its GSTR-9 and GSTR-9C on February 27, 2022. Consequently, the three-year time limit under Section 73(10) of the CGST Act for issuance of the adjudication order expired on February 28, 2025.

- The Revenue Department (**"the Respondent"**) issued a show cause notice dated November 29, 2024 (**"the SCN"**) under Section 73(1) of the CGST/AGST Act proposing a demand of Rs. 33,03,968/- along with interest and penalty, alleging wrongful/excess availment of Input Tax Credit (**"ITC"**) from cancelled dealers, return defaulters and non-taxpayers.

- The Petitioner challenged the SCN before the Hon'ble Gauhati High Court in WP(C) No. 6666 of 2024 solely on the ground of limitation. During the pendency of the writ petition, an interim order dated February 12, 2025 restrained coercive action, while an ex-parte order dated February 28, 2025 came to be passed under Section 73(9) of the CGST/AGST Act.

- The Petitioner contended that Section 73(2) of the CGST Act mandates issuance of the notice "at least three months prior" to the time limit under Section 73(10); hence, counting three months backwards from February 28, 2025, the last date for issuance of the SCN was November 28, 2024, and the SCN dated November 29, 2024 was a day beyond limitation.

- The Respondent contended that, after excluding the date of issuance, three calendar months (December 2024, January 2025 and February 2025) expired only on February 28, 2025, and the SCN was therefore within time.

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- The learned Single Judge dismissed the writ petition vide judgment dated February 12, 2026, following which an amount of Rs. 10 lakh was recovered from the Petitioner. The Writ Appeal filed thereagainst was dismissed by the Division Bench vide judgment dated September 15, 2026. Aggrieved, the Petitioner filed the present Special Leave Petition before the Hon'ble Supreme Court.

Issues:

1. Whether a show cause notice for FY 2020-21 issued on November 29, 2024, when the time limit under Section 73(10) of the CGST Act for issuance of the order expired on February 28, 2025, was issued "at least three months prior" to such time limit as mandated by Section 73(2) of the CGST Act?

2. Whether the expression "three months" in Section 73(2) of the CGST Act is to be computed by applying the corresponding-date rule backwards from the terminal date under Section 73(10), or is satisfied if three full calendar months remain available after excluding the date of issuance of the notice?

The Hon'ble Gauhati High Court in ***M/s Surya Business Private Limited v. The State of Assam & Ors. [Writ Appeal No. 64 of 2026 dated September 15, 2026]***, which is impugned before the Hon'ble Supreme Court, had held as under:

- Observed that, Section 73 of the CGST Act sets out a single adjudicatory process in which the notice under Section 73(1) is merely the commencement of proceedings and Section 73(10) fixes their terminal point. Sections 75(1) and 75(10) of the CGST Act reinforce this link between the time prescribed for the notice and the time prescribed for the order.

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- Noted that, there was no dispute that "month" means a calendar month under Section 3(35) of the General Clauses Act, 1897 (**"the GC Act"**), and that the first day is ordinarily excluded under Section 9 of the GC Act.

- Observed that, the object of Section 73(2) of the CGST Act is to ensure that proceedings are not initiated so close to the deadline that adjudication becomes illusory, and it prescribes a minimum interval rather than an independent limitation period expiring on a corresponding date calculated backwards.

- Held that, upon excluding November 29, 2024, the Petitioner had the full calendar months of December 2024, January 2025 and February 2025 before the terminal date, thereby satisfying the three-month requirement, and the corresponding-date construction would import a rigidity which Section 73(2) does not contain.

- Held that, while the corresponding-date principle is one possible method of computation, the view of the learned Single Judge was a reasonable construction and did not warrant interference in an intra-court appeal. Accordingly, the Writ Appeal was dismissed.

- Directed that, the ex-parte order dated February 28, 2025 stood interfered with, the Petitioner may file a reply to the SCN within four weeks, and the proceedings be concluded within three months thereafter, failing which the order dated February 28, 2025 shall revive.

Held by Hon'ble SC:

The Hon'ble Supreme Court in ***SLP (C) No. 34476 of 2026*** held as under:

- Noted that, the counsel for the Petitioner submitted that an identical issue has arisen for consideration in SLP (C) No. 18994 of 2026.

- Directed that, notice be issued in the Special Leave Petition.

- Directed that, the matter be listed along with SLP (C) No. 18994 of 2026.

Our Comments:

Section 73(2) of the CGST Act requires the proper officer to issue the notice under Section 73(1) at least three months prior to the time limit specified in Section 73(10) for issuance of the order, while Section 73(10) requires the order to be issued within three years from the due date for furnishing the annual return for the relevant financial year. The pari materia provision for fraud cases, Section 74(2), similarly requires the notice to be issued at least six months prior to the five-year limit under Section 74(10). Section 75(1) excludes the period of any court stay from both computations, and Section 75(10) deems the adjudication proceedings to be concluded if the order is not issued within the period under Section 73(10).

Since the CGST Act does not define "month", both sides draw on Section 3(35) of the GC Act, which defines a month as one reckoned according to the British calendar, and on the corresponding-date rule laid down by the Hon'ble Supreme Court in *State of Himachal Pradesh v. Himachal Techno Engineers* [(2010) 12 SCC 210] and by the House of Lords in *Dodds v. Walker* [(1981) 2 All ER 609], under which a period of three months expires on the corresponding date of the third month, or on the last day of that month where no corresponding date exists. The outcome turns on the direction of computation. Counted backwards from February 28, 2025, three months end on November 28, 2024. Counted forwards from a notice dated November 29 or 30, 2024, the corresponding date (February 29 or 30) does not exist in 2025, so the period ends on February 28, 2025. The Hon'ble Gauhati High Court effectively adopted the forward computation, read with the exclusion of the first day under Section 9 of the GC Act.

The assessee's argument carries real textual weight. Section 73(2) measures the interval backwards from a fixed terminal date ("prior to the time limit"), not forwards from the date of the notice, and Section 9 of the GC Act is framed for periods running "from" a date. The words "at least" also indicate a minimum to be strictly complied with. Notably, the Hon'ble Gauhati High Court itself accepted that the corresponding-date approach is one possible method of computation and declined interference largely within the limited scope of an intra-court appeal. Where two constructions of a provision restricting the Revenue's power to initiate proceedings are reasonably possible, the authoritative resolution by the Hon'ble Supreme Court is necessary.

The High Courts are divided on the issue:

- The Hon'ble Andhra Pradesh High Court in *M/s The Cotton Corporation of India v. Assistant Commissioner (ST) (Audit) (FAC)* [W.P. No. 1463 of 2025 dated February 05, 2025] quashed a show cause notice dated November 30, 2024 for FY 2020-21, holding that the corresponding date of the corresponding month is the cut-off, that the last date for issuing the notice was November 28, 2024, and that the time limit under

Section 73(2) of the CGST Act is mandatory, so that even a delay of two days cannot be condoned. The Court reasoned that the safeguards of personal hearing and adjournments under Section 75 of the CGST Act would be rendered otiose if notices were issued without the minimum waiting period.

- Contrarily, the Hon'ble Delhi High Court in *Tata Play Ltd. v. Sales Tax Officer Class II/Avato* [W.P.(C) No. 4781 of 2025 dated July 29, 2025] held that "three months" under Section 73(2) of the CGST Act means three calendar months, being December 2024, January 2025 and February 2025, and upheld a show cause notice dated November 30, 2024 for FY 2020-21, relegating the assessee to the appellate remedy under Section 107 of the CGST Act.

- The Hon'ble Gauhati High Court in the present case aligned with the Hon'ble Delhi High Court and declined to follow the view of the Hon'ble Andhra Pradesh High Court, while also relying on *Bibi Salma Khatoon v. State of Bihar* [(2001) 7 SCC 197], *Tarun Prasad Chatterjee v. Dinanath Sharma* [(2000) 8 SCC 649] and *Saketh India Ltd. v. India Securities Ltd.* [(1999) 3 SCC 1].

The divergence is not merely academic. It arises wherever the Section 73(10) deadline falls on the last day of a month that is shorter than the month three months earlier. For FY 2020-21 (deadline February 28, 2025), notices dated November 29 and 30, 2024 are affected. Similarly, for FY 2018-19, where the deadline stood extended to April 30, 2024 under Section 168A of the CGST Act, notices dated January 31, 2024 fall in the same grey zone. Where the deadline is December 31 (as for FY 2017-18 and FY 2021-22 to FY 2023-24), both methods lead to September 30, and the controversy does not arise. For FY 2024-25 onwards, Section 74A of the CGST Act prescribes a period of 42 months from the due date of the annual return for the notice and 12 months from the notice for the order, so the "prior to" construction will cease to be relevant.

Since the Hon'ble Supreme Court has only issued notice and has not stayed the impugned judgment, the remand directions of the Hon'ble Gauhati High Court continue to operate in the Petitioner's case. Taxpayers holding show cause notices or orders for FY 2020-21 based on notices dated November 29 or 30, 2024, or for FY 2018-19 based on notices dated January 31, 2024, should specifically plead the bar of limitation under Section 73(2) of the CGST Act in their replies, appeals under Section 107 and second appeals before the GSTAT, so that the ground is preserved and the benefit of the eventual ruling of the Hon'ble Supreme Court is not lost.

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