Manoja Kumar Nayak vs Commissioner,

Validity of initiation of proceedings under Section 74 of the CGST Act, 2017 and levy of tax, interest under Section 50, and penalty — where ITC availed from an alleged non-existent supplier had already been voluntarily reversed by the taxpayer prior to

Date of Order: April 8, 2026
Case Law No: GIB-ORHC-2026-39
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

BACKGROUND

The petitioner, Manoja Kumar Nayak , engaged in transportation and works contract, availed Input Tax Credit (ITC) of Rs.4,39,970/- (IGST) during August–December 2017 on the strength of invoices issued by Auxesia Traders, Kolkata . The said supplier was subsequently found to be a non-existent/fictitious entity, based on an Alert Notice No.11/2023-24 dated 19.03.2024 issued by DGGI, Kolkata Zonal Unit, and on the statement of its proprietor Shri Tamoji Bose recorded in 2019. Upon receipt of a letter dated 12.07.2024 from the Superintendent (Anti-Evasion), CGST & Central Excise, Rourkela Commissionerate, requesting reversal of the ITC, the petitioner proactively reversed the entire ITC of Rs.4,39,970/- through GSTR-3B returns filed for April 2023 (Rs.2,64,342/-) and June 2024 (Rs.1,75,128/-), well before issuance of the Show Cause Notice. The petitioner intimated this reversal to the Superintendent vide letter dated 17.07.2024, also pointing out that the Electronic Credit Ledger had a surplus balance exceeding the reversed amount at all material times, and therefore no interest under Section 50 was payable. Despite this, a Summary Show Cause Notice and Demand Show Cause Notice both dated 26.07.2024 were issued under Section 74 of the CGST Act. The petitioner filed a reply dated 30.01.2025 reiterating the voluntary reversal and surplus ECL balance. Ignoring the reply, the Adjudicating Authority passed Order-in-Original dated 03.02.2025 confirming demand of Rs.4,39,970/- (IGST), interest under Section 50, and penalty of Rs.4,39,970/- under Section 74 — solely on the basis of the DGGI Alert Notice, without any independent inquiry. Both petitioners (the second being M/s. Babamani Roadways & Borewells, similarly situated) filed writ petitions before the Orissa High Court challenging these orders.

COURT OBSERVATIONS (Verbatim / Near-Verbatim)

On mechanical invocation of Section 74 without independent inquiry:

"*The Adjudicating Authority without independent application of mind merely based on Alert Notice dated 19.03.2024 received from the DGGI, Kolkata Zonal Unit traversed his authority under Section 74 of the GST Act.*"

"*Thus, it can be seen from the approach made by the Adjudicating Authority that he blindly followed the Alert Notice of the DGGI, without undertaking any independent inquiry to ascertain credibility of such allegation qua the petitioner... Hence, discrediting such inchoate material being utilised for the purpose of raising demand of tax, interest and penalty under Section 74 this Court thus finds the determination of liability null and invalid in absence of any independent inquiry being carried out to verify the allegation contained in the Alert Notice of the DGGI.*"

"*Allegation against supplier vide Alert Notice No.11/2023-24, dated 19.03.2024 would not ipso facto empower the Adjudicating Authority to initiate action against the recipient (petitioner) under Section 74. The language employed in Section 74 suggests that strong and tangible material must be available on record to suggest that the petitioner had the conscious and active involvement in such dubious transactions.*"

On supplier's default not ipso facto establishing recipient's fraud:

"*It may be highlighted that input tax credit could be availed erroneously or on a mistaken interpretation of law. Therefore, it would not be apposite to form an opinion that in each and every case where the supplier admits or defaults, it would lead to infer that the recipient fraudulently in order to evade tax has availed the input tax credit against fake/bogus invoices.*"

"*No inference or presumption or assumption can be deduced that mere availability of balance in the Electronic Credit Ledger would lead to suggest there was utilization.*"

On the period of limitation and abuse of Section 74:

"*It is emerged from the chronology of events obtained on record that after the period of limitation stipulated in Section 73 is lapsed, the Adjudicating Authority has sought to initiate proceeding under Section 74... pertaining to transactions during August, 2017 to December, 2017, the proceeding under Section 74 is drawn up by issue of Summary of Show Cause Notice and Demand Show Cause Notice, both dated 26.07.2024 conspicuously after 8 years of the alleged transactions.*"

On interest under Section 50:

"*The Clarification dated 17.07.2023 read juxtaposed with provisions of Rule 88B there is no ambiguity that when the Electronic Credit Ledger has sufficient balance left for adjustment of reversal of input tax credit no interest is chargeable or payable under Section 50.*"

On penalty and double taxation:

"*Since there is no tax implication in the instant case, as the matter related to wrong availment of input tax credit on account of fake/bogus invoices issued by the supplier and the petitioner has reversed the alleged amount of input tax credit prior to initiation of proceeding under Section 74, the imposition of penalty cannot be a mechanical exercise of power and, thus such order is unsustainable.*"

"*Once it is conceded by the Revenue that the amount of input tax credit for a sum of Rs.4,39,970/- has been reversed, raising demand to the same without giving due credit to such reversal is unethical and without authority of law. In such an event, since net tax effect would be 'zero', thereby no penalty would be imposable.*"

On bona fides of the petitioner:

"*Nonetheless, the petitioner has shown bona fide by reversing the amount of input tax credit the moment a letter from the Superintendent (Anti-Evasion) was issued bringing such conduct of the supplier to his notice.*"

FINAL VERDICT

Both writ petitions allowed. The Order-in-Original dated 03.02.2025 passed under Section 74 — confirming demand of Rs.4,39,970/-, interest under Section 50, and penalty of Rs.4,39,970/- — is **quashed**. No order as to costs.

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ADDITIONAL FOOTNOTES

CITATIONS REFERRED BY COURT

Case	Citation
C.C., C.E. & S.T., Bangalore (Adjudication) etc. v. Northern Operating Systems Pvt. Ltd.	(2022) 18 SCR 901
Commissioner of Central Excise, Mumbai v. M/s. Fiat India Ltd.	(2012) 12 SCR 975
State of Karnataka v. Ecom Gill Coffee Trading Private Limited	(2023) 2 SCR 647
Union of India v. Bharti Airtel Ltd.	(2021) 10 SCR 825

Case	Citation
Lipi Boilers Ltd. v. Commissioner of Central Excise	(2025) 11 SCR 578
Cosmic Dye Chemical v. Collector of Central Excise	(1995) 6 SCC 117
Uniworth Textiles v. Commissioner of Central Excise	(2013) 9 SCC 753

Circulars / Instructions relied upon:

- CBIC Instruction No.05/2023-GST, F.No. CBIC-20004/3/2023-GST, dated 13.12.2023 (GST Policy Wing)
- CBIC Circular No.192/04/2023-GST, F.No. CBIC-20001/5/2023-GST, dated 17.07.2023 (Interest under Section 50(3) on wrong availment of IGST credit)

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