

passed by the Presiding Officer, Commercial Court, Varanasi in Original Suit No.10 of 2025 is **set aside in toto**. The matter is remitted back to the Commercial Court, Varanasi to decide the application under Section 12-A of the Act after granting opportunity of hearing to both the parties and deal with the matter as per its determination.

(2025) 5 ILRA 254

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 26.05.2025

BEFORE

THE HON'BLE ROHIT RANJAN AGARWAL, J.

Writ Tax No. 501 of 2023

Trendships Online Services Private Ltd.

...Petitioner

Versus

Commissioner Commercial Tax U.P. at Lucknow & Anr.

...Respondents

Counsel for the Petitioner:

Pooja Talwar

Counsel for the Respondents:

C.S.C.

(A) Taxation Law - GST - Input Tax Credit - U.P. Goods and Services Tax Act, 2017 /Central Goods and Services Tax Act, 2017 - Section 16(2)(c), 41,43A & 74 - eligibility and condition for input tax credit (ITC) – “Tax charged in respect of such supply has been actually paid to Government” – Burden of proof upon purchasing dealer – eligibility to ITC under Section 16(2)(c) is subject to actual deposit of tax by supplier – Mere production of tax invoice and payment through banking channel not sufficient – Burden lies on purchasing dealer to prove genuineness of transaction and actual movement of goods – Failure to prove deposit of tax

by supplier disentitles purchaser from claiming ITC – Section 74 mechanism operates to recover wrongly availed ITC – Preventive scheme under GST to curb bogus/fraudulent ITC claims emphasised – Compliance of Section 16(2)(c) mandatory – burden on dealer cannot shift to Revenue – ITC claim unsustainable where supplier fails to deposit tax and purchaser fails to prove actual transaction and deposit of tax as mandated under Section 16(2)(c). (Para 9, 11, 16, 19 to 21, 24, 28 to 31)

Petitioner, a registered dealer under U.P. GST Act - claimed ITC for 2017-18 on filter paper purchases from supplier Shree Radhey International - Supplier's registration was later cancelled - tax remained unpaid - Tax authorities demanded reversal via Section 74 notice - appellate authority upheld demand. (Para 1 to 3 ,27 to 31)

HELD: - Petitioner failed to establish that supplier deposited tax with Government as required by Section 16(2)(c). Mere production of tax invoice and payment through banking channel not sufficient. Burden of proof to establish actual transaction, physical movement of goods, and tax deposit lies on purchasing dealer. Authorities rightly reversed ITC under Section 74. No interference warranted. Interim order discharged. (Para - 19 to 21, 28 to 31, 33 to 36)

Petition dismissed. (E-7)

List of Cases cited:

1. M/s Solvi Enterprises Vs Additional Commissioner Grade II & anr., Writ Tax No. 1287 of 2024
2. Suncraft Energy Pvt. Ltd. & anr. Vs The Assistant Commissioner, St. Tax, MAT 1218 of 2023
3. Rimjhim Ispat Ltd. Vs U.O.I. & ors., Writ Tax No. 1611 of 2022
4. Ajnara Realtech Ltd. Vs St. of U.P. & ors., 2025 NTN (Vol. 87) 521

5. Commissioner of Central Excise, Customs & Service Tax Vs Juhi Alloys Ltd., 2014 (302) ELT 487
6. M/s D. Y. Beathel Enterprises Vs St. Tax Officer, W.P. (MD) Nos. 2127 of 2021
7. Pinstar Automotive India Pvt. Ltd. Vs Additional Commissioner, W.P. No. 8493 of 2023 & WMP No. 8686 of 2023
8. M/s LGW Industries Ltd. & ors. Vs U.O.I. & ors., WPA No. 23512 of 2019
9. M/s. Bright Star Plastic Industries Vs Additional Commissioner of Sales Tax, W.P.(C) No. 15265 of 2021
10. Bhagyanagar Copper Pvt. Ltd. Vs CBIC, 2022 UPTC (Vol. 110) 261
11. M/s Choksi Exports Vs U.O.I. , 2023 UPTC 428.
12. The St. of Karn. Vs M/s Ecom Gill Coffee Trading Pvt. Ltd., Civil Appeal No. 230 of 2023,
13. M/s Shiv Trading Vs St. of U.P. & ors., Writ Tax No. 1421 of 2022

(Delivered by Hon'ble Rohit Ranjan
Agarwal, J.)

1. Petitioner, before this Court, is a registered dealer under U.P. Goods and Services Tax Act, 2017 (*hereinafter referred as "U.P. GST, 2017"*). It is engaged in providing soil testing services for preparation of soil health guard to Government of U.P.

2. Petitioner made purchase of what-man filter paper required for soil testing from one Shree Radhey International, Delhi, who at the time when the sale was made was also a registered dealer. According to petitioner, payment for entire purchase so made was through the banking channel from March to April, 2018. The

goods purchased were against tax invoices and it was declared by petitioner in its GSTR-3B return for the period in question. Input tax credit on output tax liability was claimed and for input tax credit, credit was availed.

3. A show-cause notice dated 06.09.2021 was issued for financial year 2017-18 by Assistant Commissioner, State Tax, Block-3, Jhansi under Section 74(1) of the Act of 2017. A reply was submitted on 05.10.2021, thereafter, an order under Section 74(9) was passed demanding tax/interest and penalty on 17.12.2021. The order was subjected to appeal by petitioner before Additional Commissioner, Grade-II (Appeal) IInd, Commercial Tax, Jhansi who dismissed the same on 20.12.2022. Hence, this writ petition.

4. Ms. Pooja Talwar, counsel for petitioner submitted that when the transaction had taken place and the goods were purchased from the supplier firm Shree Radhey International, which was a registered firm under the Act, all the payments were made through RTGS and filter paper so purchased was brought in the car of petitioner itself and no help of outside transportation was taken up. The registration of Shree Radhey International was cancelled on 11.09.2019 while the transaction had taken place between March and April, 2018. According to her, necessary documents for claiming ITC were provided pursuant to which the benefit was accorded and there stood no occasion for reversing the ITC availed by the petitioner. It is the fault of the supplier firm who had not deposited the tax so calculated and not of the recipient firm.

5. She has relied upon a decision of co-ordinate Bench of this Court in case of

M/s Solvi Enterprises vs. Additional Commissioner Grade II and another, Writ Tax No. 1287 of 2024, decided on 24.03.2025 and judgment of Division Bench of Calcutta High Court rendered in case of **Suncraft Energy Private Limited and another vs. The Assistant Commissioner, State Tax, MAT 1218 of 2023**, decided on 02.08.2023. She has also relied upon an interim order granted by Division Bench of this Court in case of **Rimjhim Ispat Ltd. vs. Union of India and others, Writ Tax No. 1611 of 2022** on 30.01.2023, wherein a show-cause notice issued to assessee was stayed on the ground that vires of Section 16(2)(c) of Central Goods and Services Tax Act, 2017 (*hereinafter referred as "the Central Act, 2017"*) was under challenge.

6. Reliance has also been placed upon judgment of Division Bench of this Court in case of **Ajnara Realtech Limited vs. Sate of U.P. and 3 others, 2025 NTN (Vol. 87) 521 and Commissioner of Central Excise, Customs & Service Tax vs. Juhi Alloys Ltd., 2014 (302) ELT 487**; judgment of Madras High Court in case of **M/s D. Y. Beathel Enterprises vs. State Tax Officer, W.P. (MD) Nos. 2127 of 2021**, decided on 24.02.2021 and **Pinstar Automotive India Pvt. Ltd. vs. Additional Commissioner, W.P. No. 8493 of 2023 and WMP No. 8686 of 2023**, decided on 20.03.2023; judgment of Calcutta High Court in case of **M/s LGW Industries Limited & others vs. Union of India & others, WPA No. 23512 of 2019**, decided on 13.12.2021; judgment of Orissa High Court in case of **M/s. Bright Star Plastic Industries vs. Additional Commissioner of Sales Tax, W.P.(C) No. 15265 of 2021**, decided on 04.10.2021; judgment of Telangana High Court in case of **Bhayanagar Copper Pvt. Ltd. vs.**

CBIC, 2022 UPTC (Vol. 110) 261 and judgment of Gujarat High Court in case of **M/s Choksi Exports vs. Union of India 2023 UPTC 428**.

7. Sri Arvind Kumar Mishra, learned Standing Counsel submitted that Section 16(2)(c) of the Central Act, 2017 clearly provides that subject to the provisions of Section 41, the tax charged in respect of such supply has been actually paid to the Government either in cash or through utilisation of input tax credit then only ITC can be availed. According to him, the petitioner could not place any prove before the authorities pursuant to issuance of notice under Section 74 that transaction was bona fide and tax invoice along with transportation of goods and tax deposited by supplier firm was placed. According to him, Assessing Authority had rightly repelled the contention of petitioner and ordered for payment of taxes along with interest and penalty. Reliance has been placed upon the decision of Apex Court rendered in case of **The State of Karnataka vs. M/s Ecom Gill Coffee Trading Private Limited, Civil Appeal No. 230 of 2023**, decided on 13.03.2023 as well as decision of co-ordinate Bench rendered in **M/s Shiv Trading vs. State of U.P. and 2 others, Writ Tax No. 1421 of 2022**, decided on 28.11.2023.

8. I have heard respective counsel for the parties and perused the material on record.

9. The short point for consideration is as to whether the petitioner is entitled for input tax credit for alleged transaction having been taken place between the supplier, Shree Radhey International, Delhi and petitioner in the year 2018.

10. Before delving into question of eligibility, condition and availment of input tax credit, a glance of Section 16 and unamended provisions of Section 41 are necessary for better appreciation of the case, which are extracted hereasunder:-

“16. Eligibility and conditions for taking input tax credit

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, –

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]

(b) he has received the goods or services or both.

[Explanation : For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services –

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or

otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.];

[(ba) the details of input tax credit in respect of the said supply communicated to such registered person under Section 38 has not been restricted;]

(c) subject to the provisions of [section 41 [***]], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

PROVIDED that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

PROVIDED FURTHER that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be [paid by him along with interest payable under section 50], in such manner as may be prescribed.:

PROVIDED ALSO that the recipient shall be entitled to avail of the credit of input tax on payment made by him 7[to the supplier] of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) *****

(4) *****

41. Claim of input tax credit and provisional acceptance thereof

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

(2) The credit referred to in sub-section (1) shall be utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section.”

11. Sub-section (2) of Section 16 is a *non obstante* clause stating that notwithstanding anything contained in Section 16, no registered dealer shall be entitled to credit of any input tax in respect of any supply of goods or services or both to them unless, – (a) he is in possession of a tax invoice or debit note issued by supplier registered under the Act, or such other tax paying documents as may be prescribed. Further, (b) he has received the goods or services or both and (c) subject to the provisions of section 41 or 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply. Lastly, (d) he has furnished the return under section 39.

12. Section 16(2) was amended and sub-section (2)(c) was amended to the extent that the words “or Section 43A” were omitted by Finance Act, 2022 w.e.f. 01.10.2022. Moreover, Section 41 which previously dealt with “claim of input tax credit and provisional acceptance thereof” was also substituted by Finance Act, 2022

w.e.f. 01.10.2022 with “availment of input tax credit”.

13. The amended provision of Section 41 and Section 43A which was omitted are extracted hereasunder:-

“41. Availment of input tax credit.—(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

PROVIDED that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.]

“43A. Procedure for furnishing return and availing input tax credit

(1) Notwithstanding anything contained in sub-section (2) of section 16, section 37 or section 38, every registered person shall in the returns furnished under sub-section (1) of section 39 verify, validate, modify or delete the details of supplies furnished by the suppliers.

(2) Notwithstanding anything contained in section 41, section 42 or section 43, the procedure for availing of input tax credit by the recipient and verification thereof shall be such as may be prescribed.

(3) *The procedure for furnishing the details of outward supplies by the supplier on the common portal, for the purposes of availing input tax credit by the recipient shall be such as may be prescribed.*

(4) *The procedure for availing input tax credit in respect of outward supplies not furnished under sub-section (3) shall be such as may be prescribed and such procedure may include the maximum amount of the input tax credit which can be so availed, not exceeding twenty per cent. of the input tax credit available, on the basis of details furnished by the suppliers under the said sub-section.*

(5) *The amount of tax specified in the outward supplies for which the details have been furnished by the supplier under sub-section (3) shall be deemed to be the tax payable by him under the provisions of the Act.*

(6) *The supplier and the recipient of a supply shall be jointly and severally liable to pay tax or to pay the input tax credit availed, as the case may be, in relation to outward supplies for which the details have been furnished under sub-section (3) or sub-section (4) but return thereof has not been furnished.*

(7) *For the purposes of sub-section (6), the recovery shall be made in such manner as may be prescribed and such procedure may provide for non-recovery of an amount of tax or input tax credit wrongly availed not exceeding one thousand rupees.*

(8) *The procedure, safeguards and threshold of the tax amount in relation to outward supplies, the details of which can be furnished under sub-section (3) by a registered person,-*

(i) *within six months of taking registration;*

(ii) *who has defaulted in payment of tax and where such default has continued for more than two months from the due date of payment of such defaulted amount, shall be such as may be prescribed."*

14. Though, in the instant case, the dispute relates to the transaction which had taken place in the year 2018 and only the provisions which were applicable at that time are relevant for consideration, but a brief glance of the post amended provisions are also necessary for better appreciation of the case.

15. Thus, the scheme for availing input tax credit under the Central Act & State Act, 2017 has been provided under Chapter V of the Act and Section 16 lays down the eligibility and condition for taking input tax credit. While sub-section (1) of Section 16 provides that every registered person subject to conditions and restrictions as may be prescribed be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business. The said amount shall be credited to the electronic credit ledger of such person.

16. However, sub-section (2) restricts the power and lays down the eligibility and condition for taking the input tax credit. Sub-section (2)(c) clearly lays down that subject to provisions of Section 41 or 43A (which was prior to amendment), the tax charged in respect of such supply has been actually paid to the Government by the supplier. This condition clearly restricts the power to take the benefit of input tax credit subject to deposit by supplier.

17. The scheme of Section 16 has to be read in consonance with Section 41 of the Act of 2017 which prior to amendment provided for claim of input tax credit and provisional acceptance thereof. It provided that subject to condition and restriction as may be prescribed every registered person was entitled to take credit of eligible input tax, meaning thereby that availment of input tax credit was subject to conditions and restrictions which were provided under Section 16.

18. Prior to Finance Act of 2022 whereby Section 43A was omitted provided for procedure for furnishing return and availing input tax credit. It also starts with a *non obstante* clause and provides that every registered person shall in the return furnished under sub-section (1) of section 39 verify, validate, modify or delete the details of supplies furnished by the supplier. Thus, the very requirement for availing the benefit of ITC has to be considered in the light of Section 16 read with unamended provision of Section 41 and the provisions of Section 43A before it stood omitted.

19. In the case in hand, petitioner is claiming ITC on the basis of supplies made by Shree Radhey International in the year 2018. Admittedly, only tax invoice was issued by the supplier. The alleged tax to have been charged was never deposited by the supplier and no compliance of Section 16(2)(c) was made. The eligibility and availment of ITC is subject to deposit of tax by supplier which is clear from the reading of sub-section (2)(c).

20. The provision is simple and clear, and there is no ambiguity as regards actual payment of tax by supplier to Government. Once the supplier has not deposited the tax

mandated under sub-section (2)(c) of Section 16, the petitioner purchaser cannot claim the benefit.

21. In **M/s Solvi Enterprises (supra)**, the co-ordinate Bench while dealing with Section 16 and 74 of the Act had not noticed the import of sub-section (2)(c) while granting the benefit of ITC on the ground that the registration of the seller dealer was cancelled on the subsequent date when the transaction had admittedly taken place.

22. From the reading of the judgment, it appears that provisions of sub-section (2)(c) of Section 16 was not brought to the notice of the Court by State Counsel appearing in the matter.

23. However, in **M/s Shiv Trading (supra)**, the co-ordinate Bench while dealing with similar issue had refused to grant the benefit of ITC and had relied upon the decision of Hon'ble Apex Court rendered in case of **M/s Ecom Gill Coffee Trading Private Limited (supra)** and held as under:-

“9. The authorities have categorically recorded the fact that the petitioner failed to show actual movement of goods and therefore, the judgements cited by the petitioner, as referred to hereinabove in the preceding paragraphs, are of no aid to the petitioner. The petitioner also could not distinguish the judgements of the Apex Court in M/s Ecom Gill Coffee Trading Private Limited (supra).

10. The Apex Court in M/s Ecom Gill Coffee Trading Private Limited (supra) has held as under:-

9.1 Thus, the provisions of Section 70, quoted hereinabove, in its plain

terms clearly stipulate that the burden of proving that the ITC claim is correct lies upon the purchasing dealer claiming such ITC. Burden of proof that the ITC claim is correct is squarely upon the assessee who has to discharge the said burden. Merely because the dealer claiming such ITC claims that he is a bona fide purchaser is not enough and sufficient. The burden of proving the correctness of ITC remains upon the dealer claiming such ITC. Such a burden of proof cannot get shifted on the revenue. Mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under section 70 of the KVAT Act, 2003. The dealer claiming ITC has to prove beyond doubt the actual transaction which can be proved by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. The aforesaid information would be in addition to tax invoices, particulars of payment etc. In fact, if a dealer claims Input Tax Credit on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods, genuineness of transactions by furnishing the details referred above and mere production of tax invoices would not be sufficient to claim ITC. In fact, the genuineness of the transaction has to be proved as the burden to prove the genuineness of transaction as per section 70 of the KVAT Act, 2003 would be upon the purchasing dealer. At the cost of repetition, it is observed and held that mere production of the invoices and/or payment by cheque is not sufficient and cannot be said to be proving the burden as per section 70 of the Act, 2003.

11. Further, this Court in M/s Malik Traders (supra) has held as under:-

17. Patna High Court in the case of M/s Astha Enterprises (supra) has held as under :-

“9. It was held that the dealer who claims Input Tax Credit has to prove beyond doubt, the actual transaction by furnishing the name and address of selling dealer, details of the vehicle delivering the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. It was also held that to sustain a claim of Input Tax Credit on purchases, the purchasing dealer would have to prove and establish the actual physical movement of the goods and genuineness of transactions, by furnishing the details referred to above and mere production of tax invoices would not be sufficient to claim ITC.”

18. Similarly, this Court in the case of the Commissioner Commercial Tax Vs. M/s Ramway Foods Ltd. (supra) has held that the primary responsibility of claiming the benefit is upon the dealer to prove and establish the actual physical movement of goods, genuineness of transactions, etc. and if the dealer fails to prove the actual physical movement of goods, the benefit cannot be granted.

19. The judgement relied upon by the counsel for the petitioner of Calcutta High Court in the cases of M/s LGW Industries Limited and others (supra) and Sanchita Kundu and another (supra) is of no aid to the petitioner as recently Hon'ble the Apex Court in the case of M/s Ecom Gill Coffee Trading Private Limited (supra) has specifically held that onus is to be discharged by the petitioner to prove and establish beyond doubt the actual transaction and physical movement of goods. But in the case in hand, the petitioner has failed to prove and establish actual physical movement of goods and

genuineness of transaction as such the proceedings has rightly been initiated.

20. Further, the case law relied upon by the counsel for the petitioner of this Court in *Ashish Trading Company (supra)* is also of no aid to the petitioner as in that case in para 14, the Court has recorded a finding of fact that order of the first appellate authority is cryptic as no details were provided. But the facts of the present case is different as stated in previous paras and recent judgement of Apex Court in the case of *Ecom Gill Coffee Trading Pvt. Ltd. (supra)* is squarely applicable in the facts of the present case.

21. In view of the facts as stated above, no interference is called for by this Court in the impugned orders. The writ petition fails and is dismissed accordingly.

12. From the perusal of the record shows that the petitioner failed to discharge its onus to prove and establish beyond doubt the actual transaction, actual physical movement of goods as well as the genuineness of the transactions and as such, the proceedings have rightly been initiated against the petitioner under section 74 of the GST Act.”

24. Hon’ble Apex Court in **M/s Ecom Gill Coffee Trading Private Limited (supra)** while dealing with provisions of Section 70 of the Karnataka Value Added Tax Act, 2003 had the occasion to consider for passing the benefit of ITC and held as under:-

“9.1 Thus, the provisions of Section 70, quoted hereinabove, in its plain terms clearly stipulate that the burden of proving that the ITC claim is correct lies upon the purchasing dealer claiming such ITC. Burden of proof that the ITC claim is correct is squarely upon the assessee who has to discharge the said burden. Merely

because the dealer claiming such ITC claims that he is a bona fide purchaser is not enough and sufficient. The burden of proving the correctness of ITC remains upon the dealer claiming such ITC. Such a burden of proof cannot get shifted on the revenue. Mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under section 70 of the KVAT Act, 2003. The dealer claiming ITC has to prove beyond doubt the actual transaction which can be proved by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. The aforesaid information would be in addition to tax invoices, particulars of payment etc. In fact, if a dealer claims Input Tax Credit on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods, genuineness of transactions by furnishing the details referred above and mere production of tax invoices would not be sufficient to claim ITC. In fact, the genuineness of the transaction has to be proved as the burden to prove the genuineness of transaction as per section 70 of the KVAT Act, 2003 would be upon the purchasing dealer. At the cost of repetition, it is observed and held that mere production of the invoices and/or payment by cheque is not sufficient and cannot be said to be proving the burden as per section 70 of the Act, 2003.”

25. Section 74 of the Act of 2017 provides for determination of tax [pertaining to the period upto 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 wilful misstatement or suppression of fact. Relevant provision is extracted hereasunder:-

“74. Determination of tax [pertaining to the period upto 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 wilful-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-mis statement 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 sub-section (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.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within

a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

[(12) The provisions of this section shall be applicable for determination of tax pertaining to the period upto Financial Year 2023-24.]

Explanation 1 : For the purposes of section 73 and this section, –

(i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under [sections 122 and 125] are deemed to be concluded.

*[***]"*

26. Thus, from the reading of Section 74, it is clear that where the authorities find that any tax has not been paid or erroneously refunded or input tax credit has been wrongly availed or utilised by reason or fraud or wilful misstatement, proceedings are initiated.

27. In the instant case, notice under Section 74(1) was issued by taxing

authorities after it was found that registration of the supplier Shree Radhey International was cancelled and no tax was deposited by him while ITC was claimed on the alleged transaction between the supplier and the purchaser.

28. The petitioner apart from the tax invoice could not bring any document before the taxing authorities in pursuance to the show-cause notice to demonstrate that supplier had supplied the goods and had deposited the tax with the Government as mandated under Section 16(2)(c).

29. Proceedings initiated under Section 74 has to be read in consonance with Section 16(2) of the Act. The entire scheme for the eligibility and condition for input tax credit is provided under Section 16 by Legislature. However, various checks and balances have been put and also the procedure has been laid for the availment of ITC which are under Section 41 and previously omitted Section 43A. Section 74 is a mechanism where any input tax credit which has wrongly been availed can be taken back by Government along with interest and penalty.

30. The scheme under the Act has been provided to prevent fraudulent transactions and bogus claims of ITC. Safeguards have been put in place through various provisions to match transactions which have taken place between the parties before ITC is availed. Despite these safeguards in place, there are cases where the ITC is fraudulently obtained by misstatement or suppression of facts.

31. This is one of the case where registration of supplier firm was cancelled and on inquiry, it was found that no tax was deposited by supplier with the Government

as was required under sub-section (2)(c) of Section 16 before ITC is claimed. Petitioner could not demonstrate before the taxing authorities or before this Court that tax was in fact deposited by supplier pursuant to issuance of tax invoice.

32. Reliance place upon the various judgments by petitioner's counsel does not help her case as no consideration of mandatory provision of Section 16(2)(c) of the Act has been considered. Moreover, in many of the cases placed before the Court, the matter has been remanded back to authorities for consideration afresh. In **Rimjhim Ispat Ltd. (supra)**, the show-cause notice issued to petitioner therein was only stayed though challenge is to the vires of Section 16(2)(c) which still holds the field.

33. Finding of fact has been recorded by both taxing authorities which needs no interference of this Court.

34. Considering the facts and circumstances of the case, I find that no interference is required in the orders impugned.

35. Writ petition fails and is hereby dismissed.

36. Interim order, granted earlier, stands discharged.

(2025) 5 ILRA 265

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 01.05.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.

Writ Tax No. 1828 of 2025

M/s Saini Zarda Store **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Counsel for the Petitioner:

Sri Shubham Agrawal

Counsel for the Respondents:

C.S.C.

Petitioner, a proprietorship engaged in the business of trading under the Goods and Services Tax Act, 2017- order of assessing officer – u/s 74 of the GST Act- absolutely ex parte- neither alleged show cause notice was ever brought to the knowledge -nor service was physically ever effected upon petitioner- party under liability of tax in an ex parte order needs at-least an opportunity to put up his defense- order passed by the assessing officer shall be taken to be notice within the meaning of Section 74 of the GST Act, 2017 to enable the petitioner to file his objection.

W.P. disposed. (E-9)

List of Cases cited:

1. Shyam Roshan Transport Vs St. of U.P. & ors. -Writ Tax No. 1756 of 2024 decided on 21.10.2024
2. Atul Agrwal Vs St. of U.P. & ors. -Writ Tax No. 1585 of 2024 decided 18.10.2024
3. M/s Akriti Food Industry LLP Vs St. of U.P. & ors., Writ Tax No. 2070 of 2024 decided on 3.12.2024
4. M/s Sai Dham Residency Vs St. of U.P. & anr. in Writ Tax No.- 1175 of 2024 decided on 28th August, 2024

(Delivered by Hon'ble Ajit Kumar, J.)

1. Heard learned counsel for the petitioner and learned Standing Counsel.

2. Invoking extra ordinary jurisdiction of this Court under Article 226 of the