IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5336 of 2025

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M/s Moral Pharmaceuticals Private Limited a Private Limited Company having GSTIN- 10AAGCM8051Q1Z7, and Principal Place of Business at 1st, Ground Floor, Mohnikunj, Ramvilash Path, Sandalpur Road, Kumahrar, Patna, Bihar, 800006 through its Authorised Signatory Sachendra Kumar Maurya, Gender- Male, aged about 36 years, Son of Sri Raju Maurya, Resident of 307- 631, Fatehpur, Post- Fatehpur, District- Fatehpur, Uttar Pradesh- 212601.

... ... Petitioner

Versus

1. The Union of India through the Finance Secretary, Department of Revenue, Govt. of India, New Delhi.
2. The Government of India, Ministry of Finance (Department of Revenue), through the Director- CBIC, New Delhi.
3. The Superintendent (Adjn), CGST and CX (H), Central GST and Central Excise Department), Patna-1.
4. The Joint Commissioner, Central GST and Central Excise Department), Patna-1, (Central GST and Central Excise Department), Patna.
5. The State of Bihar through The Principal Secretary, State Tax, (Department of State Tax) Bihar, Patna having its office at Kar Bhawan, Beerchand Patel Path, Patna.
6. The Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.

... ... Respondents

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Appearance :

For the Petitioner	:	Mr. Bijay Kumar Gupta, Advocate Mr. Manish Kumar, Advocate
For the U.O.I.	:	Dr. K.N. Singh, A.S.G. Mr. Anshuman Singh, Sr. S.C., CGST & C
For the State	:	Mr. Alok Kumar Agarwal, (AAG-5)

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 18-09-2026

Heard learned counsel for the petitioner and learned Senior Standing Counsel for the Union of India and learned Additional Advocate General-5 for the State.

2. This writ petition has been preferred seeking following reliefs:-

"i). For issuing a writ of certiorari or any other appropriate writ quashing/ setting aside Circular No. - 3/3/2017-GST dated 05.07.2017, Circular No. 31/05/2018-GST dated 09.02.2018 and Circular No. 169/01/2022 GST dated 12.03.2022 which were issued by the Central Board of Indirect Taxes and Customs (Board) which had no powers to issue the same and based thereon to confer any power of assignment of functions of the 'proper officer' upon Central Tax Officers for issuing any kind of notices, show cause notices and orders under Section 73 and S 74 and thereby consequent notice, show cause notice and order of demand are not legally valid and without authority of law (Annex-P-1 & Annex- P-2). It is to be submitted that power of appointment of the Board cannot be equated with the power of assignment for qualifying as proper officer.

ii) For the Show cause Notice vide process No-3954 dated 12.07.2024 (as contained in Annexure-p1) without digitally signed and Summary of Show Cause Notice vide Reference No- ZD100724032789A dated 23.07.2024 unsigned (as contained in Annexure-P1A) issued by the Respondent No.-04 for demanding tax, interest and penalty Rs 2,55,00,073 under the CGST and 2,55,00,073 SGST Act, total amounting to Rs. 5,10,00,146 for the period July 2017 to March-2018 under S 74(1) BGST/CGST Act, 2017 be quashed as the Show Cause Notice was issued without fulfilment of the mandatory pre-conditions mentioned in the Section 74 itself and also without a digital signature as required by Rule 26(3) of the BGST/CGST Rules 2017 and in violation of Instruction No-04/2023 dated GST dated 23.11.2023 and Instruction No-05/2023 dated

GST dated 13.12.2023 be set aside and quashed.

iii) The demand order No-69/GST/J/C/2024-25 dated 13.11.2024 (as contained as Annexure-P-2) without digitally signed and Summary of demand order vide Reference No-ZD1012240008740, dated 03.12.2024 (as contained in Annexure-P-2A) in form of DRC-07 without any signature passed by the Respondent No-04 demanding tax, interest and penalty Rs. 2,91,39,160.00 under the CGST and 2,91,39,160.00 BGST Act, total amounting to Rs.5,82,78,320/- for the period July 2017 to March-2018 under Section 74(9) BGST/CGST Act, 2017 without fulfilment of the mandatory pre-conditions mentioned in the Section 74 itself and also without a digital signature as required by Rule 26 (3) of the BGST/CGST Rules 2017 and in violation of Instruction No-04/2023 dated GST dated 23.11.2023 and Instruction No-05/2023 dated GST dated 13.12.2023 be set aside and quashed.

iv) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside show cause notices dated 12.07.2024 and order dated 13.11.2024 passed by the Respondent No-04 as the show cause notice and order are barred by the time limit specified under Section 73(10) to pass order under S 73(9) of the CGST/BGST Act, 2017 and extended period of limitation as available under S.74 CGST/BGST Act, 2017 is not applicable in this case as necessary pre-condition for application of the provision of S.74 is not available in this case.

v) The order vide Process No-69/GST/JC/2024-25 dated 13.11.2024 (as contained as Annexure-P-2) and Summary of demand order vide Reference No-ZD1012240008740 dated 03.12.2024 (as contained in Annexure-P-2A) in form of DRC-07 passed by the Respondent No-04 demanding tax, interest and penalty Rs. 2,91,39,160 under the CGST and 2,91,39,160 BGST Act, total amounting to Rs.5,82,78,320 for the period July 2017 to March-2018 in Form GST DRC-07 which were passed without providing "Personal Hearing" in violation of section 75(4) BGST/CGST Act, 2017 and that is evident from Annexure P-1A and so it is violative of Principle of natural justice.

vi) For issuing of a writ of certiorari or any other appropriate writ quashing/setting aside the Order vide Process No-69/GST/JC/2024-25 dated 13.11.2024 (as contained as Annexure-P-2) and Summary of demand order vide Reference No-ZD1012240008740 dated 03.12.2024 (as contained in Annexure-P-2A) in form of DRC-07 passed by the Respondent No-04 demanding tax, interest and penalty Rs. 2,91,39,160 under the CGST and 2,91,39,160 BGST Act, total amounting to Rs.5,82,78,320 for the period July 2017 to March-2018 in Form GST DRC-07 which were passed without issuing GST ASMT-10 under Rule 99 BGST/CGST Rule 2017 read with Section 61 BGST/CGST Act 2017 and this render the entire proceedings of the Respondent No-4 violative of principles of natural justice and thus liable to be set aside."

<u>Brief Facts of the Case</u>

2. The factual matrix of this case are not in dispute. The petitioner is a private limited company, having its principal place of business at Patna in the State of Bihar. It is engaged in business of supply of pharmaceutical goods. The petitioner was served with a show-cause notice (Annexure-'P1' and Annexure- 'P-1A'). The allegation against the petitioner was that it contravened the provisions of Section 9 and Section 59 of Central Goods and

Services Tax Act, 2017/Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST/BGST"). It was alleged that the petitioner (hereinafter called the "noticee" or "the petitioner") had made non/short payment of GST amounting to 5,10,00146/- (Rupees Five Crore Ten Lakhs One Hundred Forty Six only) (CGST Rs. 2,55,00,073/- and SGST Rs. 2,55,00,073/-) by way of declaring a false and incorrect value of taxable supply during the Financial Year 2017-18. The taxing authority took a view that the said non-payment of tax appears to be recoverable under the provisions of Section 74 (1) of the CGST/BGST along with applicable interest in terms of Section 50 of the CGST/BGST and penalty under Section 74(1) read with Section 122(2)(b) of the CGST/BGST.

3. A perusal of Annexure 'P1' would show that non-payment of the aforesaid amount of GST was detected on the basis of data received from the Assistant Audit Officer, DGA (Central), Lucknow at Patna. The data shared has been shown in the show-cause notice (Annexure 'P1').

4. It is an admitted position that after receipt of the show-cause notice, the petitioner submitted its response and also participated in the hearing of the matter. It is the case of the petitioner that the petitioner filed reply *vide* letter dated

07.08.2024 by which they explained reasons for discrepancy in GSTR-9C.

<u>Submissions on behalf of Petitioner</u>

5. It is contended before this Court that Circular No.-3/3/2017-GST dated 05.07.2017, Circular No. 31/05/2018-GST dated 09.02.2018 and Circular No. 169/01/2022-GST dated 12.03.2022 issued by the Central Board of Indirect Taxes and Customs (hereinafter referred to as the 'Board') were not within the competence and the powers conferred upon the said Board. It is submitted that the Board had no power to issue the circulars and thereby to confer any power of assignment of functions of the 'proper officer' upon Central Tax Officers for issuing any kind of notices, show-cause notices and orders under Section 73 and thereby consequent notice, show-cause notice and order of demand were not legally valid. It is submitted that these Circulars are liable to be quashed.

6. Learned counsel for the petitioner submits that the issue raised herein is illustrated by the Hon'ble Supreme Court in ***Canon India Pvt. Ltd. v. Commissioner of Customs*** reported in ***2021 SCC OnLine SC 200*** which constitutes the analogous provisions of the Customs Act, 1962. It is submitted that as per Section 2(91) of the CGST Act, 'Proper Officer' means the

'Commissioner' or the officer of the Central Tax who is assigned that function by the Commissioner in the Board. Thus, according to the petitioner, a person other than the Commissioner would not qualify as 'Proper Officer' under Section 2 (91) of the CGST Act.

7. It is submitted that pre-test needs to be satisfied. First; there has to be a valid appointment as Officer of the Central Tax, Second; there has to be a valid entrustment or assignment of the functions of the Proper Officer by the Board.

8. Learned counsel for the petitioner has further referred Section 3 and Section 4 of the CGST Act to strengthen his submissions.

9. In course of his arguments, learned counsel has taken this Court through the judgment of the Hon'ble Bombay High Court in the case of ***Fomento Resorts & Hotels Ltd. v. Union of India*** reported in ***(2024) 159 taxmann.Com 577 (Bombay).***

10. It is submitted that the identical issue had fallen for consideration before the Hon'ble Bombay High Court in the case of ***Fomento Resorts & Hotels Ltd. (supra)***. The Hon'ble Bombay High Court has held in favour of the Revenue but an appeal against the said judgment of the Hon'ble Bombay High Court has been taken to the Hon'ble Supreme Court where the matter is pending consideration. At the first instance, learned counsel for the

petitioner submitted that the matter may be adjourned for the present as the issue is under consideration before the Hon'ble Supreme Court, however, we called upon the learned counsel for the petitioner to produce the order of the Hon'ble Supreme Court saying that there is any direction/request to the High Courts not to entertain an identical plea for consideration, learned counsel has submitted that there is no such order of the Hon'ble Supreme Court. In this view of the matter, we proceeded to hear this writ application on its own merit.

11. So far as the issue with regard to the validity of the Circulars are concerned, we find that the Hon'ble Bombay High Court has taken note of the judgment of the Hon'ble Supreme Court in the case of ***M/S Canon India Private Limited (supra)*** and considered the distinction between the provisions of the Customs Act and those of the CGST Act. We would reproduce paragraphs '46' to '53' of the judgment of the Hon'ble Bombay High Court hereinbelow for a ready reference:-

> "46. Section 2(91) of the CGST Act inter alia provides that in relation to any functions to be performed under the CGST Act, means the Commissioner or the officer of the central tax who has assigned that function by the Commissioner in the Board. Thus, the only substantive difference between the definition of "proper officer" under the Customs Act, 1962 and the "proper officer" under the CGST Act is that the expression "officer of customs"

appearing in Section 2(34) of the Customs Act is replaced with the expression "officer of central tax" in Section 2(91) of the CGST Act.

47. In Canon India (P) Ltd. (supra) and Sayed Ali (supra), the notifications or the circulars impugned therein were struck down because an officer of DRI was not an "officer of customs" as provided under Section 2(34) of the Customs Act. In the present case, however, there is no dispute and no such dispute was ever raised about the officers of the Audit Commissionerate, which includes respondents no.4 and 5 as being the "officers of central tax". In paragraph 5 of the written submissions fled by Mr Sachdeva on behalf of the petitioner, it is clearly stated that "the petitioner is not disputing the appointment of Audit Commissionerate as Central Tax Officers. In fact, the petitioner is raising the challenge with regard to the source of power of the Board in assigning functions of proper officer to Audit Commissionerate. To reiterate, the core of the challenge in this petition is not of the manner of assignment rather the enabling provision for such assignment of function as Proper officer.

48. The above admission is more than sufficient to distinguish the decisions in Canon India (P.) Ltd. (supra) and Sayed Ali (supra). As noted above, the issue involved in both these decisions was whether an officer of DRI could be appointed as a "proper officer" in terms of Section 2(34) of the Customs Act without the Central Government designating officers of DRI as "customs officers". Since it is admitted that the officers of the Audit Commissionerate are central tax officers, based upon the decisions in Canon India (P.) Ltd. (supra) and Sayed Ali (supra), at least, the assignment of functions by the Board to the central tax officers vide the impugned circulars, cannot be faulted. Therefore, the

contention-based upon Canon India (P.) Ltd. (supra) and Sayed Ali (supra) cannot be accepted.

49. In Yasho Industries Ltd. (supra), a Division Bench of the Gujarat High Court comprising Bela M. Trivedi, J. (as Her Ladyship then was) and Ashokkumar C. Joshi, J. rejected a contention similar to what is now raised on behalf of the petitioner in the present petition. The Division Bench also distinguished Canon India (P.) Ltd.'s case (supra) and Sayed Ali (supra). The relevant observations in this regard are found in paragraph 14, which reads as follows:- "[14] The submission of Mr. Rastogi that the said assignment of function has to be by way of Notification and not by way of Circular in view of Section 167 of the CGST Act is thoroughly misplaced. Section 167 of the CGST Act pertains to the delegation of powers by the Commissioner exercisable by any authority or officer under the Act to be exercisable also by another authority or officer as may be specified in the Notification. So far as Section 2(91) is concerned, it pertains to the proper officer in relation to any function to be performed under the CGST Act to be the Commissioner or the officer of Central Tax, who is assigned that function by the Commissioner in the Board. Here the Board means the "Central Board of Indirect Taxes and Customs" as defined in Section 2(16) of the CGST Act. Vide the Circular dated 5.7.2017 the said Board namely the Central Board of Excise and Customs in exercise of the powers conferred by Section 2(91) of the CGST Act read with Section 20 of the IGST Act and subject to Section 5(2) of the CGST Act has assigned the officers the functions as that of proper officers in relation to the various Sections of the CGST Act and the Rules made thereunder, and as such the Superintendent of Central Tax has been assigned the function of Section

70(1) of the CGST Act. Thus, there being no delegation of powers by the Commissioner, the provisions contained in Section 167 of the CGST Act could not be said to have been attracted, nor was there any necessity to issue Notification as sought to be submitted by Mr. Rastogi. There could not be any disagreement to the proposition of law laid down by the Supreme Court in case of Canon India (P.) Ltd. (supra) relied upon by the learned Advocate Mr. Rastogi that when a statute directs that the things to be done in a certain way, it must be done in that way alone. However, in the instant case, the Board has assigned the officers to perform the function as proper officers in relation to various Sections of CGST Act and the Rules made thereunder by issuing the Circular in question, the question of issuing Notification for delegation of powers by the Commissioner as contemplated under Section 167 of the CGST Act does not arise. Mr. Rastogi appears to have misread the powers of the Board to assign the officers to perform the function as proper officers in relation to the various Sections of the CGST Act, as the delegation of powers by the Commissioner to the other authority or the officer as contemplated in Section 167 of the CGST Act. The Court, therefore, does not find any substance in the submission of Mr. Rastogi that the respondent No.3 was not the 'proper officer' as per the definition contained in Section 2(91) of the CGST Act, and therefore, had no powers to issue summons under Section 70 of the CGST Act."

50. The observation in Canon India (P.) Ltd. (supra) in the context of the Central Board's notification dated 02.05.2012 to the effect that Section 2(34) of the Customs Act does not confer any powers on any authority to entrust any functions to officers must be read in the context of the attempt to confer powers on

any authority to entrust any of the functions under the Customs Act to officers other than "officers of customs". This was because powers were purported to be assigned to the officers of DRI, who were admittedly not the officers of customs or who admittedly had not been entrusted with the functions of officers of customs.

51. Given the law in Union of India v/s. Dhanwanti Devi (1996) 6 SCC 44, this would be a proper manner of construing the precedent in Canon India (P.) Ltd. (supra) or Sayed Ali (supra). In such matters, it would not be proper to read a sentence or a word torn out of the context in which such sentence or word may have been employed. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be the exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, not be profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein.

52. Tough the impugned Circular dated 05.07.2017 does, inter alia, refer to Section 2(91) of the CGST Act, it is not as if this definition clause is the source of power under which the impugned circular is issued. Section 3 of the CGST Act, as noted earlier, empowers the Government, by notification, to appoint certain classes of officers for the purposes of the CGST Act. Accordingly, in the exercise of powers conferred by Section 3 r/w Section 5 of the CGST Act and Section 3 of the IGST Act, the Central Government, vide notification dated 19.06.2017, has already appointed certain central tax officers and

central tax officers subordinate to them for the purposes of the CGST Act and vested in them all powers under the CGST Act and IGST Act and Rules made thereunder with respect to the jurisdiction specified in the tables given below the said notifications.

53. Thus, in the present case, not even any dispute was raised about the officers referred to in the impugned circulars being central tax officers. Section 4 of the CGST Act provides that the Board may, in addition to the officers as may be notified by the Government under section 3, appoint such persons as it may think it to be the officers under the CGST Act. Without prejudice to the provisions of sub-section (1) of Section 4, the Board may, by order, authorise any officer referred to in clauses (a) to (h) of Section 3 to appoint officers of central tax below the rank of Assistant Commissioner of Central Tax for the administration of the CGST Act."

Submissions on behalf of Respondents

12. Learned senior standing counsel for the CGST and CX submits that the views expressed by the Hon'ble Bombay High Court are well reasoned and this Court may be persuaded to take the same view. We have considered this aspect of the matter. An analysis of the Notification dated 19.06.2017 and the other two Circulars would lead this Court to agree with the views expressed by the Hon'ble Bombay High Court. These Circulars have been issued by the Central Government and the Board had exercised their powers vested in them under Sections 3 and 5 of the CGST Act. The matter of assigning the functions of 'proper officer' upon

the Commissioner or the officers of the Central Tax, the Central Government has issued the Notification dated 19.06.2017 (Annexure-1), in exercise of powers conferred by Section 3 read with Section 5 of the CGST Act. In the other two circulars, functions have been assigned under Section 74 of the Sub-ordinate Officers of Central Tax by specifying the monetary limits. Based upon the monetary limits so prescribed, Respondent No. 4 has issued the impugned show cause notice. We fully agreed with the reasoning and rationale provided by the Hon'ble Bombay High Court in its judgment.

Consideration

13. Now, in our considered opinion, the pleas questioning three circulars have no basis to stand.

14. Now, coming to the impugned order, as contained in Annexure-'P2' in this writ application, this Court finds that Annexure-'P2' was passed by the competent authority after considering the defence reply and the documents which were brought to the notice of Respondent No. 4, those are duly recorded in paragraph '11' of the impugned order. The petitioner/ noticee was also given an opportunity of personal hearing in this matter. After considering the defence reply and the documents, Respondent No. 4 recorded his findings thereon. What has

prevailed upon Respondent No. 4 may be found in the discussions and findings recorded by the Respondent No. 4 (Annexure-'P2'). We extract the relevant paragraphs hereunder for a ready reference:-

> "It is explicit from discussions, findings and computation of tax as made herein above that the tax liability on the amounts of sales turnover, reported as 'consignment sales' in the submitted reconciliation worksheet, has not been discharged under any of the four GSTINs held by the noticee company. As the amount of 'consignment sale' has not been declared under any of the four annual returns in Form GSTR-9 and since such consignment sales are part of un-reconciled turnover of ₹ 18,21,43,381/- as also reported under Table-6 of GSTR-9C, hence, it is concluded that the noticee have suppressed a part of the turnover amounting to ₹ 10,40,68,429/-, which has been considered as taxable value under Section 15(1) of CGST/SGST Act, 2017, and have not discharged the tax liability thereon amount to ₹ 2,91,39,160/- (Rupees Two Crore Ninety One Lakh Thirty Nine Thousand One Hundred Sixty Only) for the period July 2017 to March 2018.
>
> 21. <u>Invoking extended period of limitation due to suppression of facts:-</u>
> I find that GST is a self-assessment tax as provided under Section 59 of the CGST/BGST Act, 2017. Hence, it is incumbent upon every taxable person to determine the taxability of every transaction, compute the applicable tax, discharge such ax applicable and report the same without any interjection of the revenue authorities. Further, in terms of the explanation 2 of Section 74 of CGST/BGST Act, 2017-'for the purpose of this act, the expression "suppression" shall mean non-declaration of facts or

information which a taxable person is required to declare in the returns, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing by the proper officer'. I find that the noticee have suppressed a part of the turnover including the turnover related to consignment sales as discussed under Para No. 20 above and have also misstated the figures of total turnover in the State and turnover related to VAT period of April' 2017-June'2017 in GSTR-9C, by reason of fraud, wilful-misstatement and suppression of facts. Moreover, it is also seen that noticee with intent to evade payment of tax had not furnished the documents/ information on being asked by the Range Superintendent. Hence, I concluded that extended period of limitation under Section 74 (1) of the Act has rightly been invoked in the instant case.

22. In view of the discussions made in paras above, I conclude that the noticee has violated the provisions of Section 9 and Section 59 of the CGST Act, 2017 read with Rule 59 of the Rules, 2017. Therefore, the noticee is liable to pay ₹ 2,91,39,160/- (Rupees Two Crore Ninety One Lakh Thirty Nine Thousand One Hundred Sixty only) [CGST ₹ 1,45,69,580/-+ SGST ₹ 1,45,69,580/-] out of the total demand of ₹ 5,10,00,146/- (CGST ₹ 2,55,00,073/- + SGST ₹ 2,55,00,073/-) proposed in the impugned SCN under Section 74(1) of the CGST Act, 2017 and the balance amount of demand of ₹ 2,18,60,986/- (Rupees Two Crore Eighteen Lakh Sixty Thousand Nine Hundred Eighty Six only) is liable to be paid under Section 50 of CGST/BGST Acts. I also find that the noticee has not correctly assessed and discharged the due tax on the part of un-reconciled turnover, as determined above, for the period July 2017 to March 2018 and thus have contravened the provision of Section-9 and Section-59 by

suppressing the material facts from the Department and therefore the noticee is liable for penalty under Section 122(2) (b) read with Section 74(1) of the CGST/BGST Acts for the contraventions of the provisions of the Acts, as cited supra.

23. In the light of the discussions and findings made herein above and the statutory definition of suppression as provided under explanation 2 to Section 74 of CGST/BGST Act, 2017, I find and hold that tax of ₹ 2,91,39,160/- (Rupees Two Crore Ninety One Lakh Thirty Nine Thousand One Hundred Sixty only) [CGST ₹ 1,45,69,580/- + SGST ₹ 1,45,69,580/-] along with applicable interest under Section 50(1) of the Acts read with Rule 88B of CGST/BGST Rules, 2017, for the period from July 2017 to March 2018, is liable to be demanded and recovered by invoking the extended period of limitation under Section 74(1) of the said Acts for contraventions of the provisions of Sections 9 and 59 of CGST/BGST Act, 2017. I drop the balance amount of demand of ₹ 2,18,60,986/- (Rupees Two Crore Eighteen Lakh Sixty Thousand Nine Hundred Eighty Six only) out of the total demand of ₹ 5,10,00,146/- (CGST ₹ 2,55,00,073/- + SGST ₹ 2,55,00,073/-) as proposed in the impugned SCN. I further find that Section 74 of the CGST Act, 2017 prescribes imposition of penalty in case of fraud, wilful-misstatement and suppression of facts. In the instant case, I find that the noticee have suppressed the material facts as discussed in the foregoing paras and also willfully misstated the facts in their GST returns with intend to evade tax. Hence, I find and hold that the noticee is liable for imposition of penalty of ₹ 2,91,39,160/- (Rupees Two Crore Ninety One Lakh Thirty Nine Thousand One Hundred Sixty only) [CGST ₹ 1,45,69,580/- + SGST ₹ 1,45,69,580/-], equivalent to the tax demanded,

> under Section 74(1) of the CGST/BGST Acts read with Section 122(2)(b) of the Acts for contravention of the provisions of Acts as cited supra."

15. The impugned order (Annexure-'P2') is an appealable order.

16. Having heard learned counsel for the petitioner and the learned senior standing counsel for the department, we have found that the petitioner has got a statutory remedy against the impugned order. We keep in mind that the availability of an alternative statutory remedy alone would not be a ground to oust the petitioner from a writ remedy in this Court. We are aware of the limitations and circumstances under which a writ petition may be entertained despite there being an alternative remedy. In the case of **CIT v. Chhabil Dass Agarwal** reported in **(2014) 1 SCC 603**, the Hon'ble Supreme Court has held in paragraphs '15' and '16' as follows:-

> "**15.** Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal case*[22], *Titaghur Paper Mills*

22. AIR 1964 SC 1419

case[3] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

16. In the instant case, the Act provides complete machinery for the assessment/reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In *Ram and Shyam Co.* v. *State of Haryana*[40] this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility."

17. We find that none of the above grounds is available to avoid the alternative statutory remedy. Sitting in our writ jurisdiction, we would not act as a fact finding body by re-appreciating the documents filed by the petitioner before Respondent No. 4. It is the First Appellate Authority who will be

3. Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131
40. (1985) 3 SCC 267

in a position to re-appreciate the same and consider the contents of the documents.

18. While declining to entertain the writ application against the impugned order, we grant liberty to the petitioner to seek statutory remedy of appeal, if so advised, in accordance with law within a period of 30 days from today.

19. This writ application was preferred before this Court on 07.03.2025. The writ application remained pending before this Court till date. Thus, the writ application has been preferred within a period of 30 days after expiry of three months prescribed period for filing appeal under Section 107(4) of the CGST/BGST Act. We are of the opinion that the appellate authority would not oust the petitioner on the ground of limitation.

20. This writ petition stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

(Sunil Dutta Mishra, J)

Rakhi/ Koustav/

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	21.09.2026
Transmission Date	