



HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 2097 of 2026

M/S Comfort Battery

.....Petitioner(s)

Versus

Additional Commissioner Central Goods And
Services Tax

.....Respondent(s)

Counsel for Petitioner(s) : Aditya Pandey, Himanshu Mishra
Counsel for Respondent(s) : Dhananjay Awasthi

Court No. - 3

**HON'BLE SAUMITRA DAYAL SINGH, J.
HON'BLE SWARUPAMA CHATURVEDI, J.**

1. Heard Sri Aditya Pandey, learned counsel for the petitioner and Ms. Priyanka Midha, learned counsel for the revenue.
2. Submission is, clear violation of Section 75(7) of the UPGST Act, 2017 has been made out. While no penalty was proposed in the show-cause notice, penalty in excess to Rs. 4.37 crores has been imposed by the impugned adjudication order.
3. Ms. Priyanka Midha, learned counsel for the revenue prays for accommodation to complete instructions.
4. Put up as fresh on 22.04.2026, showing the name of Ms. Priyanka Midha also as counsel for the respondent.
5. Till the next date of listing, no coercive measures be adopted against the petitioner.

(Swarupama Chaturvedi,J.) (Saumitra Dayal Singh,J.)

April 15, 2026

Abhilash



2026:AHC:89712-DB

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Court No. - 3

**HON'BLE SAUMITRA DAYAL SINGH, J.
HON'BLE SWARUPAMA CHATURVEDI, J.**

1. Heard Sri Aditya Pandey, learned counsel for the petitioner, Ms. Priyanka Midha, learned counsel for the revenue and perused the record.
2. Present petition has been filed for the following relief:

*"I. Issue a suitable writ, order or direction in the nature of certiorari for quashing the impugned order dated 15.12.2025 passed by the respondent under section 74 of the UPGST/CGST Act for the F.Y. 2018-19 to 2022-23 (Annexure-1 to the writ petition).
II. Issue a suitable writ, order or direction in the nature of certiorari for quashing the impugned notice dated 24.6.2025 was issued alongwith Form GST DRC-01 dated 26.6.2025 issued by the respondent (Annexure-2 to the writ petition)."*

3. Submission is, in the show cause notice-DRC-01 in the column meant for specification of demand of penalty proposed to be confirmed, the same was described '0'.
4. However, in the impugned order dated 15.12.2025, the said amount has been specified at Rs.4,36,18,072/-.
5. In such fact, it has been submitted, the order is in violation of Section 75 (7) of the CGST Act (hereinafter referred to as Act), to the extent, it confirms penalty, not proposed in the show cause notice.

6. Responding to the above, learned counsel for the revenue would contend, though no amount of penalty was mentioned in form DRC-01, there is a clear recital of that demand of penalty in clause 16 (3) of the detailed show cause notice dated 24.06.2025. For ready reference it reads as below:

"Show cause and demand

16. Now, **M/s Comfort Battery (GSTIN09BPMPA1010E1ZL)** having registered principal place of business at Village Dhakoli, Post Malagarh, Bulandshahr, Uttar Pradesh, 203001 is hereby called upon to show cause to the Additional Commissioner, Central GST Commissionerate, Gautam Buddha Nagar, having his office at 3rd Floor, WEGMANS Business Park, KP-III, Greater Noida, Gautam Buddha Nagar as to why:-

i. Eligible ITC of **Rs.4,36,18,072/-** (IGST Rs.3,91,53,790/- + CGST Rs.22,32,141/- + SGST Rs. 22,32,141/-) (**Four Crore Thirty Six Lacs Eighteen Thousand and Seventy Two Only**/-) for the Financial Years 2018-19 to 2023-24 so availed in contravention of provisions of Section 16 of the CGST Act, 2017, should not be disallowed, demanded and recovered from them, in terms of Section 74 (1) of the CGST Act, 2017 and IGST Act, 2017.

ii. Interest on the amount mentioned above should not be charged and recovered from them under Section 50 of the CGST Act, 2017 read with corresponding provisions of UPGST Act, 2017 and IGST Act, 2017.

iii. Penalty on the amount mentioned above at (i) equivalent to ITC so disallowed and demanded, should not be imposed upon them under Section 74 of CGST Act, 2017 read with corresponding provisions of UPGST Act, 2017 and IGST Act, 2017."

(emphasis supplied)

7. Also, reference has been made to the provisions of Section 74 (5) read with 74 (8) of the Act.

8. Having heard learned counsel for the parties and perused the record, Section 74 (1) of the Act reads as below:

"74. Determination of tax ¹[,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."

(emphasis supplied)

9. Then, Section 74(5) of the Act reads as below:

"(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. "

10. Also, Section 74(8) of the Act reads as below:

"(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."

11. Rule 142 of the Rules CGST, 2017 reads as below:

**"CHAPTER-XVIII
DEMANDS AND RECOVERY**

²[142. Notice and order for demand of amounts payable under the Act

(1) The proper officer shall serve, along with the-

(a) notice issued under section 52 or section 73 or section 74 3 [or section 74A] or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01,

(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74 for sub-section (3) of section 74A1, a summary thereon electronically in FORM GST DRC-02, specifying therein the details of the amount payable."

12. The show cause notice on prescribed form DRC-01 requires the adjudicating authority to issue a notice specifying the amount in Rupees-whether by way of turn over or tax or interest or penalty or fee or other amount proposed to be confirmed. The table in which disclosure is to be made, is prescribed. It reads as below:

“

[Sr. No.	Tax Rate	Turnover	Tax Period		Act	POS (place of Supply)	Tax	Interest	Penalty	Fee	Others	Total
			From	To								
1	2	3	4	5	6	7	8	9	10	11	12	13
Total												

”

13. To the extent, DRC-01 is a statutory form, whereas the detailed notice is an Annexure thereto, for which no form is prescribed, it would be dangerous to allow the revenue authorities to pursue confirmation of demand solely on the strength of disclosure made in such Annexure though it may not find mention in the statutory form. That ambiguity may not be lightly overlooked.

14. To that extent, the statutory Rules prescribe form DRC-01 for full disclosure of the proposed demand of tax, penalty etc., that disclosure must be made therein, before the demand may be confirmed. Hence, the demand may either be confirmed by following that statutory prescription, or not at all.

15. Also, by virtue of and on the own force of Section 74(8) of the Act, opportunity has to be given to the noticee to pay up 25% of the proposed demand of penalty, mentioned in the show cause notice on form DRC-01. Subject to that payment, the proceedings must drop, without exception. To allow the practice to avail that right, the amount of tax, penalty etc., must be clearly specified in the show cause notice on form DRC-01, as may not allow any ambiguity to arise.

16. Therefore, it appears that there is no warrant to allow the revenue authorities any margin to not specify the amount of tax or penalty or other dues sought to be confirmed, in the statutory form DRC-01, or to seek its confirmation on the strength of disclosure that may be made otherwise, i.e., in the Annexure to the statutory form.

17. To that extent, defect exists. Since the amount of penalty confirmed was not specified on the statutory form DRC-01, we find a procedural error has crept in the proceedings, as may not allow the demand to be confirmed, in face of ambiguity, noted above.

18. In the present facts, we allow the adjudicating authority to rectify the show cause notice dated 24.06.2025 and issue such rectified notice to the petitioner within a period of one week from today, proposing the exact demand of tax, penalty and interest, if any. The petitioner shall have two weeks' time to file its final reply. The proceeding may be conducted, thereafter.

19. Accordingly, the present writ petition stands **disposed of** on the following terms:

- (i) The impugned adjudication order dated 15.12.2025 is set aside.
- (ii) The petitioner may file its final reply to the show-cause notice dated 24.06.2025, within a period of two weeks from today.
- (iii) Thereafter, the adjudicating authority may fix and communicate to the petitioner, the date for personal hearing with at least 15 days advance notice.

(iv) The adjudicating authority may then pass appropriate reasoned order within a further period of one month such that the proceedings may be concluded on or before 30.06.2026.

(Swarupama Chaturvedi,J.) (Saumitra Dayal Singh,J.)

April 22, 2026

Anurag/-

