13.7.2026
ct no. 10
Sl. 11
AGM

WPA 23312 of 2025

Dinesh Kumar Goyal
-Versus-
Deputy Commissioner of State Tax, Fairley Place Charge and Ors.

Ms. Sutapa Roy Choudhury. Sr. Adv.
Mr. Abhijit Das.,
Ms. Aratrika Roy.
...for the petitioner.

Mrs. Manju Agarwal. Ld. A.G.P.
Mr. Bijitesh Mukherjee.
Ms. Manasi Mukherjee.
... For the State.

1. The petitioner in the instant case challenges inter alia the legality, validity and the sustainability of the intimation issued in the Form GST DRC-01A dated 22.7.2025 and the show cause notice dated 4.9.2025 and the consequential order dated 25.3.2026 raising a demand of Rs.3,91,402 for Financial Year 2019-20.
2. The core issue involved herein for determination are as follows:
    I. Whether an authority subordinate to the Officer who issued DRC 01A can issue a show cause notice and pass an adjudication order Section 74 CGST Act, 2017(hereinafter referred to as the said Act).
    II. Whether mis-quoting a Section 74 of Section 1 in the show cause notice, while

referring to Section 73(1) in the body, renders the proceedings void.

III. Whether fresh proceedings can be initiated when the DRC 01A has been pending without being considered, as per SSB Petro Products v. Asst. Commissioner reported at (2023) 150 taxmann.com 381 (Cal) which is reproduced below:

> **“2**. The crucial issue would be as to whether the second respondent could have initiated fresh proceedings when the first respondent was seized of the matter and intimation in Form (GST DRC-01A) dated 05.03.2021 was issued to which the appellants had submitted their reply dated 08.03.2021 and the said reply was neither considered nor rejected and the matter was kept pending. The option which was available to the first respondent was to consider the representation/reply and if not satisfied, could have proceeded to issue show cause notice under section 74(1) of the Act which option the first respondent did not exercise and the matter was left to linger. Thus, the preliminary proceedings could not have been initiated by the second respondent when proceeding initiated by the first respondent for the very same amount on the very same allegation was not taken to the logical end. When the statutory appeal was pending before the appellate authority, the first respondent had dropped the proceedings. It is very crucial to note that from the final report of the first respondent it is seen that the proceedings was closed by the first respondent only on 24.01.2023. Thus, for all purposes, it is deemed that the first proceedings initiated by the first respondent pursuant to intimation dated 05.03.2021 had attained only on 24.01.2023 and on the said date, the appeal as against the second proceedings initiated by the second respondent was already pending before the appellate authority.**”**

3. The petitioner in the present case is a sole proprietor engaged in trading of ferrous and non-ferrous items under the name and style of M/s. Bengal Steel Sales and Industries. He is a registered taxpayer under the Goods and Service Tax act both under the Central and State GST and have been regularly filing his returns by paying admitted tax thereupon.
4. Respondent No.1 issued Form GST DRC 01A on 22.7.25 alleging wrongful availment of input tax credit on transactions with a supplier found to be non-existent/fictitious and directed reversal by 29.7.25 failing which show cause notice should follow.
5. The petitioner filed a reply on 28.7.25 seeking document and personal hearing
6. Instead the respondent no. 2 issued a show cause notice dated 4.9.25 and passed a final order dated 25.3.26. Since the said order dated 25.3.26 has been passed during the pendency of the writ petition the same has been brought on record by way of a supplementary affidavit, which is kept on record.
7. It is submitted that respondent no.1 being superior to respondent no.2 issued DRC 01A. A subordinate officer cannot take over and adjudicate the same subject matter. This is

contrary to the scheme of the said Act, and delegated powers.

8. The show cause notice has been issued under Section 74 (1) of the said Act but the body refers to section 73(1). Section 74 involves fraud/suppression with a five year period and 100% penalty whereas Section 73 is for non fraud with a 3 year period. This confusion deprived the petitioner of a proper defense and vitiates the order.

9. It is also further submitted by placing reliance of the Hon'ble Apex Court in the cases of **GR Infra Projects Milited Ratlam –versus- State of Madhya Pradesh & Ors**. and **Ms. Tata Steel Limited –Versus- Union of India through the Secretary Ministry of Finance & Ors**. that the show cause notice issued by the authority concerned de hors the mandate of the provision laid down under Section 74(1) of the said Act.

10. The petitioner demonstrates from the judgments relied upon to show that the show cause notices issued under Section 74 (1) and all other further proceedings have been stayed by the Hon'ble Apex Court.

11. The learned senior counsel submits that the ratio in the cases of GR Infra Projects Ltd. (supra), Tata Steel Ltd (supra), and specifically SSB Petro Products (supra) is that, when DRC 01A is

pending with one officer, a second officer cannot initiate fresh proceedings on the same amount and allegations. The First officer must either consider the reply or issue show cause notice. The petitioner thus prays for quashing of the show cause notice and the order of adjudication, since the order of adjudication and the issuance of the show cause notice suffers from an infirmity, cannot be sustained in the eye of law.

12. The learned counsel appearing for the respondent vehemently opposes the submission of the petitioner and submits that respondent no.2 is a duly authorized adjudicating authority having jurisdiction to issue show cause notice and pass orders accordingly. DRC 01 A is merely an intimation and does not oust jurisdiction.

13. The reference to section 73(1) is a clerical error. The entire show cause notice and order proceed on the basis of suppression under Section 74(1). Such a defect is curable and does not vitiate. It is further submitted that the case of SSB petro products (supra) is distinguishable on facts. DRC 01A does not create bar against another competent officer to proceed with, accordingly.

14. Having heard the parties and upon perusing the available records, this court is of the view, that the issues of competence and Section mismatched raises a serious question of

jurisdiction. If an officer below the rank is competent to adjudicate under section 74 proceeds, the entire order is without authority of law. The judgment in SSB petro Products (supra) is squarely applicable in the present case. It holds that when proceedings on DRC 01A are kept pending by one officer, another officer cannot start afresh on the cause of action. To permit this would be contrary to principles of natural justice and administrative finality. The demand of Rs. 3,91402/- if recovered would cause irreparable lose to the petitioner during the pendency of this writ. Thus the respondents are restrained from taking any coercive action and/or giving effect to the order dated 25.3.26 till the next date of hearing.

15. Learned Additional Govt. Pleader is granted time to obtain specific instructions and file a report accordingly.

16. Let the matter be listed on 8th September, 2026 for further hearing.

(Smita Das De, J.)