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Reserved On : 08/10/2026
Pronounced On : 14/10/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 7085 of 2025

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI Sd/-

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Approved for Reporting	Yes	No
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M/S GUJARAT CO-OPERATIVE MILK MARKETING FEDERATION LIMITED
Versus
UNION OF INDIA & ORS.

==========

Appearance:
MR AMAL PARESH DAVE(8961) for the Petitioner(s) No. 1
MR PARESH M DAVE(260) for the Petitioner(s) No. 1
MS HETVI H SANCHETI(5618) for the Respondent(s) No. 1,2,3

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. ***Rule***. Learned Senior Standing Counsel Ms.Hetvi H. Sancheti, waives service of notice of Rule on behalf of the respondent – authorities.

2. The present writ petition has been filed seeking the following relief : -

> *"16. (A) That Your Lordships may be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction, quashing and setting aside Order in Original No.74/CGST/(AhmedabadSouth)/ADC/PBM/24-25 dated 01.01.2025 (Annexure-"F") passed by the Additional Commissioner of CGST, Ahmedabad South Commissionerate (Respondent No.2 herein) with all consequential reliefs and benefits to the petitioner;"*

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BRIEF FACTS :-

3. The petitioner- Federation is a farmers' Co-operative Society engaged in marketing various dairy products manufactured by milk co-operatives in the State of Gujarat. The Federation comprises various milk co-operatives in the State of Gujarat and is popularly known as "Amul". Its objective is to ensure remunerative returns to farmers and agriculturists who are members of and constituents of the milk co-operatives. The Federation also aims to serve the interests of consumers by providing quality products for their consumption.

4. The petitioner Federation's Head Office (hereinafter referred to as the "HO") is situated at Anand. Since its formation and registration as an apex co-operative society, the HO of the Federation has been situated at Anand. All corporate activities of the Federation are undertaken, managed and supervised from its HO at Anand.

5. The Federation has a dairy known as "Amulfed Dairy" situated at Village Bhat in Gandhinagar District. Apart from Amulfed Dairy, there are 21 other District-level Co-operative Societies of farmers and agriculturists in the State of Gujarat, which operate milk plants i.e. dairies, in various districts of the State.

6. The petitioner Federation holds a Goods and Services Tax (GST) registration as an Input Service Distributor (ISD) for its HO at Anand. It also holds a common GST registration covering all its branches and depots in the State of Gujarat.

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7. Being the apex body responsible for the sale, supply and distribution of milk and milk products, the Federation incurs various corporate expenses through its HO at Anand. Such corporate expenses include advertisement and publicity expenses, IT infrastructure expenses, IBM annual maintenance service expenses, SAP annual maintenance and audit charges, legal fees, litigation expenses and other similar expenses. The Federation incurs these expenses for services utilised by the Federation itself as well as by its branches situated at various locations.

8. The dispute in the present writ petition pertains to the period from July 2017 to March 2019, during which the petitioner incurred the aforesaid corporate expenses without allocating the same to its branch offices and depots by adopting the method of cross-charging.

9. The details of the corporate expenditure incurred by the Federation are duly recorded in its books of account, including the relevant ledgers and balance sheets maintained at its HO at Anand.

10. It appears that the third respondent initiated an inquiry against the Federation in respect of the corporate expenditure incurred by it, on the ground that the petitioner Federation had not allocated the expenditure to its branches by way of cross-charges. The respondent authorities proceeded on the premise that the expenditure incurred and paid by the HO at Anand was liable to GST, inasmuch as the branch offices to which the

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HO provided such services were treated as distinct persons in terms of Section 25(4) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “CGST Act”).

11. The respondent authorities further alleged that the salaries paid to employees working at the HO were attributable to the supply of services by such employees to the distinct persons, namely, the branch offices of the Federation. Accordingly, the authorities contended that the salary expenditure incurred in respect of the employees at the HO was also liable to GST as consideration for services provided by the HO to its branches.

12. Consequently, a show-cause-cum-demand notice dated 31.08.2022 was issued by the respondent authorities, calling upon the petitioner to show cause as to why GST should not be demanded on common expenditure incurred towards services such as advertisement, publicity, insurance and other similar expenses, as well as on the salaries paid to employees at the HO, in proportion to the turnover of the branches situated within the State of Gujarat.

13. The respondent authorities invoked Section 74 of the CGST Act on the allegation that the petitioner had failed to disclose the common expenditure and had not undertaken cross-charging.

14. The petitioner accordingly filed its reply dated 13.09.2022, explaining the nature and functioning of the services provided by the HO to its branches and depots.

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15. During the adjudication proceedings, the Central Board of Indirect Taxes and Customs (CBIC) issued Circular No. 199/11/2023-GST dated 17.07.2023, clarifying the taxability of services provided by one office of an organisation to another office of the same organisation.

16. Thereafter, a further Circular No.210/4/2024-GST dated 26.06.2024 was issued by the CBIC, providing additional clarification regarding the valuation of services between related persons, including cases where the recipient is eligible for full input tax credit (ITC). The clarification provides that, in cases where the recipient is eligible for full ITC, the value of the supply may be deemed to be 'Nil' where the invoice has not been issued by the related entity.

17. During the adjudication proceedings, the petitioner relied upon the aforesaid circulars and brought them to the attention of the adjudicating authority. However, by the impugned Order-in-Original dated 01.01.2025, the Additional Commissioner of CGST confirmed a demand of IGST aggregating to Rs.43,43,12,441/- against the petitioner under Section 74 of the CGST Act, along with applicable interest and penalty.

SUBMISSIONS ON BEHALF OF THE PETITIONER : -

18. Learned advocate Mr.Dave, appearing for the petitioner, at the outset, has referred to the decision of the Delhi High Court in the case of *M/s. Metal One Corporation India Private Limited and others Vs. Union of India & Ors.*, 2024 (10) TMI 1534 (Delhi High Court). He has submitted that the Delhi High Court, while dealing with identical issue and considering the

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Circulars dated 17.07.2023 and 26.06.2024, has quashed and set aside the demand notices issued by the GST authorities. It is submitted that the aforesaid judgment of the Delhi High Court, rendered on similar issues, support the case of the petitioner and, accordingly, the impugned notices as well as the Order-in-Original are required to be quashed and set aside.

19. It is further submitted that the entire case of the Revenue is misconceived. The petitioner has been subjected to penalty proceedings by invoking Section 74 of the CGST Act on the premise that the HO of the Federation was required to undertake cross-charging. If the case of the Revenue is that the internally generated services were required to be supplied by the Head Office to its branch offices, the demand for tax ought to have been raised against the Head Office. It is submitted that the reverse charge mechanism is not applicable to such internally generated services provided by the Head Office to the branch offices. In the present case, the demand has not been confirmed under the reverse charge mechanism either.

20. It is further submitted that the respondent authorities have failed to appreciate that the proceedings have been initiated against the Ahmedabad branch office of the petitioner by treating it as the principal place of business, whereas the HO of the petitioner is admittedly situated at Anand. Since no corporate expenditure was incurred and paid by the Ahmedabad branch office, there was no question of the said branch office being required to undertake cross-charging.

21. It is submitted that the Revenue has proceeded on an erroneous understanding of the provision of Section 25(4) of

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the CGST Act by treating the HO and the branch offices as distinct persons. It is contended that no separate GST registration has been obtained by the branch offices in the State of Gujarat and, therefore, the demand of tax raised against the petitioner by treating the HO and the branch offices as distinct persons is misconceived.

22. It is further submitted that, in accounting practice, cross-charging is often adopted by an organization to ascertain the performance of its various profit centres. For this purpose, common expenses are proportionately allocated to different profit centres, namely, the branches and depots of the organisation, to facilitate an assessment of the performance of each business unit. However, cross-charging is not a mandatory requirement under any law for the time being in force and is followed by an organization primarily for its internal accounting purposes rather than to fulfil any statutory obligation. The petitioner has admittedly not allocated the common expenditure proportionately to its branches and depots for the period from July 2017 to March 2019. It is contended that no statutory provision mandates the petitioner to adopt a cross-charging mechanism in the facts of the present case.

23. It is further submitted that, in the present case, separate GST registrations have not been obtained for the branch offices of the petitioner. It is, therefore, contended that Section 25(4) of the CGST Act is not applicable in the manner sought to be invoked by the respondent authorities and that the Head Office and the branch offices cannot be treated as distinct persons for the purpose of the impugned demand.

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24. It is also submitted that the CBIC has clarified that, where the HO has not issued a tax invoice to a branch office in respect of services provided by the Head Office to such branch office, the value of such services may be deemed to be 'Nil'. In view of the said clarification, it is contended that the value of the internally generated services in the present case is also required to be treated as 'Nil', since the petitioner has not issued any tax invoice from its Head Office to its branches and depots. Accordingly, the tax liability in respect of such services would be 'Nil', as the value of the services, including their open market value under Rule 28 of the Central Goods and Services Tax Rules, 2017 (for short, "CGST Rules"), is deemed to be 'Nil'.

25. Finally, it is contended that the invocation of Section 74 of the CGST Act is wholly illegal and without jurisdiction, as the petitioner has not committed any fraud, wilful misstatement or suppression of facts with the intent to evade payment of tax. All payments made towards common expenditure at the petitioner's HO, as well as the salaries paid to employees working at the HO, have been duly and fully accounted for in the books of account, ledgers and balance sheets maintained by the petitioner. There has been no suppression of facts or wilful misstatement in respect of the expenditure incurred and paid at the HO level. It is, therefore, contended that the invocation of Section 74 of the CGST Act in the present case is without jurisdiction.

SUBMISSIONS ON BEHALF OF THE REVENUE :-

26. Opposing the reliefs sought in the present writ petition, learned Senior Standing Counsel Ms.Sancheti has submitted

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that the writ petition may not be entertained, as the petitioner has deliberately refrained from allocating expenses to its branch offices by adopting the cross-charging mechanism, with a fraudulent intent to evade payment of GST.

27. It is submitted that the petitioner has itself accepted the legal position, as, with effect from 01.04.2019, it started allocating expenses to its branch offices, treating such allocation as a supply to a distinct person and discharging the applicable tax on the expenses or services shared with the branch offices.

28. It is further submitted that, under the erstwhile Central Excise and Service Tax regime, the concept of a “distinct person” and the mechanism of cross-charging were not recognized. However, with effect from 01.07.2017, the relevant provisions became applicable to all Head Offices providing common services to their branch offices or incurring expenditure at the Head Office for services utilized by such branch offices.

29. It is submitted that the judgment rendered by the Delhi High Court is not applicable to the facts of the present case. In this regard, learned Senior Standing Counsel has submitted that the adjudicating authority has already dealt with the CBIC Circulars dated 17.07.2023 and 26.06.2024 in paragraph No.20 of the impugned order. The adjudicating authority has categorically observed that the clarifications contained in the said circulars would apply only where the recipient branch office or depot is eligible for full input tax credit (ITC) in respect of the relevant supply.

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30. It is further submitted that the petitioner has raised a factually incorrect contention. The petitioner has applied for and obtained separate GST registrations for its branch offices situated outside the State of Gujarat. The supply of services between distinct persons has been treated as a taxable supply under Section 7 of the CGST Act and detailed reasons in support thereof have been recorded in the impugned order. It is submitted that the adjudicating authority has assigned valid reasons for holding that the aforesaid circulars are not applicable to the petitioner. The petitioner is, therefore, incorrect in contending that the reasons recorded by the adjudicating authority are merely jurisdictional in nature.

31. It is further submitted that the valuation of the services and the allocation of expenditure amongst the branch offices have been undertaken in accordance with the valuation rules prescribed under Rules 28, 30 and 31 of the CGST Rules. It is also submitted that the IGST paid by the petitioner on cross-charged expenses would be available as Input Tax Credit (ITC) to the recipient branch offices on the strength of tax invoices issued by the HO under Section 31 of the CGST Act. However, in the present case, the petitioner has retained the entire ITC at the HO level, even though the services procured have also been utilised by and have benefited the branch offices. The benefit of such ITC has not been passed on to the branch offices. It is contended that the petitioner appears to have deliberately adopted this course of action, as the tax liability at the HO level would be substantially higher than the corresponding tax liability at the branch-office level.

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32. Finally, it is submitted that the extended period of limitation under Section 74 of the CGST Act, has been precisely invoked against the petitioner. The petitioner did not inform the Department at any point of time that it was not discharging IGST on a cross-charge basis in respect of services utilized by its branch offices situated outside the State of Gujarat, which were treated as distinct persons under the provisions of the CGST Act, 2017.

ANALYSIS AND OPINION : -

33. Having heard the learned advocates appearing for the respective parties, the undisputed facts emerging from the pleadings and the record are as under:

34. The petitioner is a Marketing Federation comprising various milk co-operatives in the State of Gujarat and is popularly known as “Amul”. Its activities extend across the country. The petitioner Federation has its Head Office at Anand, from where all its corporate activities are undertaken, managed and supervised.

35. The petitioner Federation holds a GST registration as an Input Service Distributor (ISD) for its Head Office at Anand. It also holds a two GST registration within the State of Gujarat under Section 25 of the CGST Act, 2017. However, for outside the State it has distinct GST registration numbers across India.

36. The Federation, being the apex body, incurs various corporate expenses, including advertisement and publicity expenses, IT infrastructure expenses, annual maintenance

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service expenses, legal fees, litigation expenses and salaries paid to its employees, amongst other expenses.

37. The respondent authority initiated an inquiry against the Federation on the ground that it had failed to discharge its tax liability by adopting the method of cross-charging in respect of the aforesaid corporate expenditure. It is not in dispute that the petitioner Federation has duly recorded the details of all such expenditure in its books of account, ledgers and balance sheets maintained at its Head Office at Anand.

38. The respondent authorities proceeded on the premise that the branch offices to which the HO provided such services were distinct persons by virtue of Section 25(4) of the CGST Act, and that the services in question were utilized by the branches and depots. Consequently, a show-cause-cum-demand notice dated 31.08.2022 was issued by the respondent authorities. By invoking Section 74 of the CGST Act, the authorities alleged that the petitioner had deliberately and fraudulently failed to disclose the common expenditure and had not undertaken cross-charging. Accordingly, the extended period of limitation was invoked for initiating proceedings under Section 74 of the CGST Act, 2017. The period of dispute is for the period from July,2017 to March, 2019.

39. The proceedings ultimately culminated in the impugned order-in-original dated 01.01.2025, whereby a demand of IGST aggregating to Rs.43,43,12,441/- was confirmed against the petitioner under Section 74 of the CGST Act, along with interest and penalty. The adjudicating authority held that the

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Federation operated its HO at Anand and incurred expenditure towards various common services for the functioning of its corporate office, the benefits of which also accrued to other distinct units of the Federation. It was further held that, under the GST law, the supply of such services by the corporate office to its distinct units was liable to tax at the value determined in accordance with the applicable valuation rules.

40. Thus, the respondents have passed the impugned order by alleging that the petitioner-Federation has not paid the GST by not adopting the methodology of allocating the expenses by way of cross-charging to their branches, depots.

FACET OF CROSS-CHARGING BETWEEN HO AND BO AS DISTINCT PERSONS AND GST LIABILITY :-

41. For examining the status of the petitioner-Federation and its branches and depots across the country as "distinct persons", the provisions of Section 25 of the CGST Act needs to be examined. The same reads as under:

> ***"SECTION 25 : Procedure for registration***
>
> *(1) Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed:*
>
> *(2) xxxxxxxxxx*
>
> *(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.*
>
> *(5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union*

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territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act."

42. Thus, the petitioner-Federation and its Branches/Depots having different GST registration across India will fall within the ambit of "distinct person", as envisaged under Section 25(4) & (5) of the CGST Act. The CGST Act consolidates the taxation of goods and services into a unified framework, designating the "supply of goods or services" between taxable persons as the core taxable event. While Section 7 of the CGST Act, establishes that a valid "supply" fundamentally requires consideration, the statute carves out critical exceptions to this rule. Schedule I to the CGST Act delineates specific transactions that fall within the ambit of supply even in the absence of consideration. Specifically, Entry 2 of Schedule I covers the "*Supply of goods or services or both between related persons or between distinct persons as specified in Section 25 of the CGST Act, when made in the course or furtherance of business.*" Rule 28 of the CGST Rules, further further prescribes valuation for supplies of goods and services between distinct persons. Thus, the taxability of transactions between a head office and its branches is governed by these provisions. In other words, by virtue of these provisions, transactions between "distinct persons" are pulled squarely into the net of GST. The CGST Act does not define 'Cross-Charge'. However, the working of Sections 25(4) and 24(5) of the CGST Act and Rule 28 of the CGST Rules read with Entry 2 of Schedule I, the invoicing of supply of goods and services on the transactions between HO and BO establishes the mechanism of "cross-charging", which is premised on its

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respective GST registration for different branches/depots. Hence, any services or support shared between these distinct persons will constitute a supply under Schedule I. However, if HO and its branches/depots operate under a single GST registration, they will remain outside the scope of "distinct person", and exempt from cross-charging.

ASPECT OF VALUATION OF SERVICES :-

43. During the course of adjudication process, the CBIC issued circular dated 17.07.2023 and 26.06.2024 clarifying the valuation of services between related persons, including cases where the recipient is eligible for full ITC. The petitioner relied upon such circulars before the adjudicating authority, but its impact was in vain. It is not in dispute that the petitioner has not issued any tax invoices from its Head Office to its branches and depots in respect of the services in question. The petitioner contends that, in such circumstances, the value of the services is required to be treated as 'Nil' and, consequently, no tax liability arises.

44. At this stage, we may refer to Circular No. 199/11/2023-GST dated 17.07.2023 issued by the Central Board of Indirect Taxes and Customs (CBIC), which clarifies as under:

> *"The value of supply of services made ay by a registered person to a distinct is person needs to be determined as per to rule 28 of CGST Rules, read with sub-section (4) of section 15 of CGST Act. As per clause (a) of rule 28, the value of supply of goods or services or both between distinct persons shall be the open market value of such supply. The second proviso to rule 28 of CGST Rules provides that where the recipient is eligible for full input tax credit, the of value declared in the invoice shall be in deemed to be the open market value of the goods or services. Accordingly, in respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be open*

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market on value of such services, if the recipient BO is eligible for full input tax credit. Accordingly, in cases where full input all tax credit is available to a BO, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the open market value of such services, of irrespective of the fact whether cost of to any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice.

Further, in such cases where full input tax credit is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as 'Nil' by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules."

45. The CBIC issued further clarificatory Circular No.210/4/2024-GST dated 26.06.2024, stating that if no invoice was issued to the BO by the HO then the value of service may be deemed to be declared as 'Nil' by HO to BO, and may be deemed as open market value in terms of second proviso to Rule 28(1) of CGST Rules.

46. The Delhi High Court in the case of ***Metal One Corporation India Pvt. Ltd. (supra)***, while considering the aforesaid Circular and the provisions of Rule 28 of the CGST Rules, has held thus:

" 14. In the facts of the present writ petitions, it is conceded that no invoices were generated. In view of the above and in light of the explicit terms of the Circular, the value of the service rendered would have to be treated as 'Nil'. This would lead one to the inescapable conclusion of no perceivable or plausible tax liability possibly being created. Consequently, we are of the considered opinion that the proceedings initiated in terms of the impugned SCNs' and their continuance would be futile and impractical. The impugned SCNs are essentially rendered impotent and would serve no practical purpose."

47. Thus, the recitals of the Circular dated 17.07.2023 and 26.06.2024, are self-explanatory, which is considered by Delhi High Court. Since it is not disputed by the Respondents that

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the HO of the petitioner has not issued any tax invoices to its branches and depots in respect of the services in question, the value of such services is required to be treated as 'Nil' in terms of Rule 28 of the CGST Rules, and consequently, no tax liability arises in the present case. Albeit the adjudicating authority has cursorily referred to the Circulars, but has not dealt with the issue of taxable value of services in context of non-issuance of tax invoices to its branches and depots, and the clarification issued by the CBIC vide Circulars has been brushed aside by recording that " the tax payer has not made out a case that 100% ITC involved on the invoice was to be passed on to only one branch office or depot as the fill services mentioned in that particular invoice was supplied to that particular branch office or depot." Hence, the impugned order suffers non-application of mind on the effect of payment of GST taking the taxable value of service as 'Nil', since no invoice has been issued by the Federation.

48. The respondent authorities, therefore, cannot determine the value of the services on a proportionate basis merely on the ground that the petitioner did not adopt the cross-charging mechanism to determine the value of the common expenditure by allocating the same in proportion to the turnover of its various branches and depots.

49. The adjudicating authority has also failed to appreciate that the services rendered by the HO to its branches constitute input services and that the credit of the tax paid on such services would be admissible under Section 16(1) of the CGST Act. Any tax paid by the petitioner's HO on such internally generated services would be available as ITC to the respective

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branches and depots, in accordance with the clarification contained in the circular dated 17.07.2023.

INVOCATION OF SECTION 74 OF THE CGST ACT :-

50. We may now consider the impugned order passed under Section 74 of the CGST Act. The extended period of five years is invoked as envisaged under Section 74 by the respondents on the basis of DGGI investigation. It is alleged that without such investigation, the facts relating to tax evasion would not have been known, hence it can be said that the petitioner-Federation has deliberately suppressed the facts with the intent to evade payment of GST. Except these observations, there is nothing recorded by the respondents either in the show cause notice or in the order in original, in order to satisfy the ingredients of Section 74 of the CGST Act against a tax payer as the intent to evade of tax must involve fraud, wilful misstatement or suppression of facts. The Supreme Court in a recent decision in a case of *Tata Steel Ltd. Vs. Union of India*, 2026 (189) taxmann.com 520 (SC) has held thus:

> *"11. At the outset we have to notice that the proceedings under Section 73/74 can be initiated only on the satisfaction of the Assessing Officer. Even if observations/objections are made on audit, the Assessing Officer should enter his satisfaction before a notice is issued. Insofar as a notice under Section 74, the satisfaction should be not only of mismatch of ITC and short payment of tax having occurred, as is alleged in this case, the Officer should be satisfied that either fraud/wilful misrepresentation/suppression had led to such mismatch or short payment of tax.*
>
> *12. We are unable to countenance the argument of the learned ASG that Explanation 2 to Section 74 applies, since even according to him it stood omitted with effect from 01.11.2024. Equally fallacious is the argument that the proceedings were initiated prior to the expiry of limitation under Section 73. The limitation under Section 73 (10) is also to issue the order under Section 73 (9) and not to issue a notice and sub-section (2) of Section 73 provides for a notice, at least three months before the time limit under Section 73 (10).*

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13. The fact that the Department had taken up the objections on audit with the Public Accounts Committee itself indicates that there was no satisfaction at the end of the Department, meaning the Assessing Officer; as to the mismatch or the short fall of payment of tax having occurred, not to say anything about the suppression alleged. Further, but for a bland statement of availing of ITC for the three years 'without documentary evidence and suppress the facts' (sic), the SCN did not contain any foundational facts to validate such allegation of suppression.

14. It is not mere lip service to the provisions that is intended when an extended limitation period is provided for recovering an excess benefit availed, short payment or excess refund, from the assessee, especially when the allegation is of fraud/wilful misrepresentation/suppression. The foundational facts which led to the inference arrived at of fraud/wilful misrepresentation/ suppression should be evident from the notice itself. The mere employment of such words will not indicate an application of mind, upon which alone the satisfaction can be arrived at. The words are not to be mechanically recited in the notice to enable recovery outside the normal limitation provided under the statute."

51. Thus, the Supreme Court has asserted that when Section 74 of the CGST Act provides an extended limitation period to recover short payments, excess benefits, or erroneous refunds based on allegations of fraud, wilful misrepresentation, or suppression, it demands more than mere lip service. The foundational facts supporting these serious inferences must be clearly demarcated within the notice itself. Mere recitals of these statutory terms mechanically do not demonstrate a genuine application of mind which is a strict prerequisite for invoking the extended period. The tax authority cannot use these words as a routine formula just to bypass the normal limitation period. In the present case, the adjudicating authority has mechanically invoked Section 74 of the CGST Act without recording any specific finding establishing that the petitioner resorted to fraud, wilful misstatement or suppression of facts with the intent to evade payment of tax by avoiding

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the cross-charging methodology. The mere exhuming of information by DGGI, without forming any opinion establishing the core vices on such information cannot attract the rigors of Section 74 of the CGST Act.

52. Before invoking the stringent provisions of Section 74 of the CGST Act, the adjudicating authority ought to have appreciated that even if the petitioner had adopted the method of cross-charging, the tax liability on such services could have been discharged by utilising the ITC of the tax paid to the actual service providers at the petitioner's Head Office, The tax so paid on the cross-charged services would, in turn, have been available as ITC to the respective branches and depots, which also hold GST registrations. The situation would, therefore, have been revenue-neutral. In such circumstances, the question of suppression of facts, wilful misstatement or fraud with the intent to evade payment of tax does not arise merely because the petitioner did not adopt the cross-charging mechanism. It is also pertinent to note that the jurisdictional GST authorities were aware of the functioning of the Federation, as the expenditure in question was duly recorded in the books of account, ledgers and balance sheets maintained at the petitioner's Head Office at Anand.

53. Thus, mere allegation that the petitioner failed to adopt cross-charging in respect of internally generated services provided by the Head Office to its branch offices cannot *ipso facto* lead to the conclusion that the petitioner wilfully or fraudulently evaded payment of tax or suppressed material facts with such intent. The adjudicating authority has,

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therefore, failed to establish the essential ingredients for invoking Section 74 of the CGST Act, reflecting a clear non-application of mind.

54. In view of the foregoing discussion, the writ petition succeeds and is accordingly ***allowed***. The Order-in-Original No.74/CGST/ (Ahmedabad South)/ADC/PBM/24-25 dated 01.01.2025 passed by the Additional Commissioner of CGST, Ahmedabad, is hereby quashed and set aside. Rule is made absolute accordingly.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(VAIBHAVI D. NANAVATI,J)

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