CNR No: PHHC010563102025
2026:PHHC:202074-DB

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-10191-2025 (O&M)

M/s JFE Steel India Private Limited ...Petitioner

Versus

Union of India and others ...Respondents

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Reserved on: 18.08.2026
Pronounced on: 17.11.2026
Judgment uploaded on: 18.11.2026

Whether only the operative part of the judgment is pronounced or the full judgment is pronounced : Full Judgment

Whether there is delay in uploading the judgment : NA

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CORAM: HON'BLE THECHIEF JUSTICE
HON'BLE MR. JUSTICE ROHIT KAPOOR

Present: Mr. V. Lakshmikumaran, Senior Advocate, assisted by
Mr. Amar Pratap Singh, Advocate,
Mr. Ankit Atwal, Advocate, and
Ms. Khushbu Sood, Advocate
for the petitioner.

Mr. Ajay Kalra, Senior Standing Counsel, CBIC,
for the respondents-Revenue.

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ROHIT KAPOOR , J.

1. The petitioner, a Company incorporated under the provisions of the Companies Act 1956, has invoked the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India seeking a writ in the nature of certiorari for quashing the Order-in-Original No. 53/GST-GGM/ADC/GD/2024-25 dated 09.01.2025 (Annexure P-1) passed by respondent No.2, the Additional Commissioner, Central Goods and Services Tax, Gurugram, together with the summaries thereof uploaded in Form GST DRC-07 dated 30.01.2025, and the proceedings initiated by the Show Cause Notice No. 476/2024-25 dated 30.07.2024 (Annexure P-13) from which that order arises.

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2. By the impugned order, a demand of Rs.13,08,57,858/- has been confirmed against the petitioner under Section 74(1) of the Central Goods and Services Tax Act, 2017 (for short, 'the CGST Act') read with Section 20 of the Integrated Goods and Services Tax Act, 2017 (for short, 'the IGST Act'), along with interest under Section 50 and a penalty of an equal amount of Rs.13,08,57,858/- under Section 74 read with Section 122(2)(b) of the CGST Act. The demand rests on the premise that the secondment of personnel by the petitioner's parent company, JFE Steel Corporation, Japan, constitutes an import of 'manpower supply' services by the petitioner from a related person, on which tax was payable by the petitioner on reverse charge basis.

FACTUAL BACKGROUND

3. The facts, to the extent they are necessary for the decision of this petition, are not in dispute and may be noticed from the pleadings and the documents on record.

4. The petitioner is a company incorporated in India and is a wholly owned subsidiary of JFE Steel Corporation, a company incorporated under the laws of Japan (hereinafter referred to as 'JFE Japan'). The petitioner renders market research and allied services relating to the steel sector to JFE Japan under a General Service Agreement dated 01.07.2008, which was restated with effect from 01.04.2013 (Annexure P-2) and was followed by a further General Service Agreement effective from 01.04.2017 (Annexure P-6).

5. For its operations in India, the petitioner engages certain personnel of JFE Japan. The arrangement is governed by three sets of documents: (i) a Dispatch Agreement executed between JFE Japan and the petitioner on 01.04.2013 (Annexure P-3); (ii) a Secondment Agreement dated 01.04.2014 (Annexure P-4), executed pursuant to the Dispatch Agreement, which records the names and identification particulars of the personnel dispatched; and (iii) individual Employment Contracts executed between the petitioner and each such person, a sample whereof is Annexure P-5.

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6. Since much turns on the manner in which the adjudicating authority has dealt with these documents, their salient terms may be set out:

(i) Under Article 1(a) of the Dispatch Agreement, JFE Japan is to dispatch its personnel on the terms and conditions of employment set forth in an employment agreement to be entered into between the petitioner and each of the dispatched personnel, and it is the petitioner who is to define the position, role, scope of work and other terms and conditions of such employment.

(ii) Under Article 1(b), the function and work of the dispatched personnel is to be decided solely by the petitioner, which is solely responsible for their work. JFE Japan is not to be responsible for such work nor to assume any risk for its results, and the dispatched personnel, while under employment with the petitioner, are not subject to any instruction, control, direction or supervision of JFE Japan and are to report to the management of the petitioner alone.

(iii) Under Article 1(d), the petitioner has the sole right to take punitive steps against the dispatched personnel and to terminate their employment, and any dispute between the petitioner and such personnel is to be resolved without recourse to JFE Japan.

(iv) Under Article 1(e), JFE Japan agrees to release and discharge the dispatched personnel from all obligations towards it while they are working as employees of the petitioner, and not to enforce any contractual obligation which they have or had as employees of JFE Japan during that period.

(v) Under Article 3(d), the dispatched personnel are not to carry on any commercial or business activity in India for or on behalf of JFE Japan, nor to conclude contracts or act as its agent.

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(vi) Under Article 5(a), the petitioner is solely responsible for the salary costs of the dispatched personnel and for the income tax thereon. The remuneration comprises a monthly salary in India, a monthly salary in Japan, a bonus in Japan and other allowances. In respect of the components payable in Japan, the petitioner may, at the request of the person concerned and for administrative convenience, ask JFE Japan to make the payment in Japan, which is then reimbursed by the petitioner on actual cost basis against a debit note or invoice; the clause records that this arrangement shall in no manner be considered as affecting the employer-employee status of the petitioner and the dispatched personnel. Article 5(c) records that such reimbursement is on cost-to-cost basis and without any mark-up.

(vii) Under Article 5(e), the social security expenses, such as provident fund, in accordance with the laws prevailing in India are borne by the petitioner.

(viii) The sample Employment Contract (Annexure P-5) appoints the person concerned as a 'Director' of the petitioner for a period of four years, stipulates an annual gross salary of which a portion is, at the employee's request, to be paid in foreign currency in Japan, provides that the salary is net of income tax which the petitioner shall bear and deposit under the Income Tax Act, 1961, and requires, by clause 4, that the employee shall work under full time employment with the petitioner and shall not undertake any other business or work except with its prior written permission.

7. It is the petitioner's case, which is not controverted, that tax was deducted at source under Section 192 of the Income Tax Act, 1961 on the entire salary of the personnel so engaged, including the portion disbursed in Japan through JFE Japan, that Form 16 was issued to each of them, and that they filed their returns of income in India under the head 'salaries' (Annexures P-18 and P-20).

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8. The same arrangement had engaged the attention of the Department under the Finance Act, 1994. Pursuant to an audit of the petitioner's records for the period 2013-14 to June 2017, a Show Cause Notice No. 13/2019-20 dated 22.04.2019 was issued alleging that the petitioner had received 'manpower recruitment or supply agency' services from JFE Japan and was liable to service tax on reverse charge basis. That notice was adjudicated by the Principal Commissioner, CGST Audit Commissionerate, Panchkula, who, by Order-in-Original No. 02/CGST/Commr/PKL/AKG/2020-21 dated 24.02.2021 (Annexure P-7), examined the Dispatch Agreement and the Employment Contracts, held that the expatriates were employees of the petitioner during the period in question, and dropped the proceedings.

9. The Department has carried that order in appeal to the Customs, Excise and Service Tax Appellate Tribunal, Chandigarh, (for short 'CESTAT') being Appeal No. ST/60284/2021. It is common ground that the appeal is pending and that the operation of the order dated 24.02.2021 has not been stayed.

10. It transpires that on 19.05.2022, the Supreme Court delivered its judgment in **Commissioner of Customs, Central Excise and Service Tax, Bangalore v. Northern Operating Systems Private Limited, (2022) 17 SCC 90**. On the strength of that judgment, the office of the Commissioner, CGST, Gurugram, by letter dated 06.10.2022 followed by a reminder dated 14.10.2022 (Annexure P-9), called upon the petitioner to furnish the agreements relating to secondment and the details of reimbursements and payments made in respect of seconded employees from 01.07.2017 onwards.

11. The petitioner responded on 07.11.2022. It furnished the Dispatch Agreement, sample Employment Contracts and the Restated General Service Agreement. It pointed out the features which according to it, distinguished its case from **Northern Operating Systems** (supra). Further, it drew attention to the Order-in-Original dated 24.02.2021 and in answer to the requisition for 'letters of understanding' entered into with seconded employees, it stated that no letter of understanding had been executed and that it had

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directly executed employment contracts with the personnel concerned. Further particulars were sought by letters dated 24.11.2023 and 12.12.2023 (Annexure P-10), in response to which the petitioner, on 29.11.2023 and 19.01.2024, supplied its Forms 3CEB, the detailed working of Form 24Q, the reconciliation of Form 24Q with Form 16 and the details of salary, bonus and allowances reimbursed to JFE Japan.

12. In the meantime, on 13.12.2023, the Central Board of Indirect Taxes and Customs-respondent No.5 (hereinafter 'the Board') issued Instruction No. 05/2023-GST (Annexure P-11) on the subject of the judgment in **Northern Operating Systems**, to which reference shall be made in detail hereafter.

13. An intimation in Form GST DRC-01A was issued on 04.06.2024 under Section 74(5) of the CGST Act, to which the petitioner replied on 18.06.2024 (Annexure P-12). On 26.06.2024, the Board issued Circular No. 210/4/2024-GST (Annexure P-14) clarifying the valuation of import of services by a registered person from a related person where the recipient is eligible for full input tax credit.

14. The Show Cause Notice dated 30.07.2024 followed. It proposed the recovery of IGST of Rs.13,08,57,858/- under Section 74(1) of the CGST Act for the period July 2017 to March 2023, computed at 18% on Rs.75,31,34,267/-, being the aggregate of the salaries paid to the expatriates as reflected in Form 24Q and Form 16 for that period, together with interest and penalty.

15. The petitioner filed its reply in Form GST DRC-06 on 29.10.2024 and additional submissions on 19.12.2024 (Annexure P-15), the latter placing specific reliance on Circular No. 210/4/2024-GST and on the judgment of the Delhi High Court in **Metal One Corporation India Private Limited v. Union of India and others, 2024 SCC OnLine Del 7499**. A personal hearing was held on 19.12.2024. The impugned order came to be passed on 09.01.2025, and is stated to have been received by the petitioner on 21.01.2025.

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16. It is in this factual backdrop that the present petition was filed. The respondents have filed a reply by way of an affidavit of the Principal Commissioner, CGST, Gurugram, to which the petitioner has filed a rejoinder. Written submissions have also been placed on record on behalf of the petitioner.

SUBMISSIONS ON BEHALF OF THE PETITIONER

17. Learned senior counsel appearing on behalf of the petitioner has at the very outset assailed the impugned order on the ground that the jurisdictional pre-condition for the exercise of power under Section 74 of the CGST Act, namely non-payment of tax 'by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax', is wholly absent. It is argued that the only allegation in the show cause notice is that the petitioner filed its returns in Form GSTR-3B without paying IGST on the transaction. This arrangement, according to the learned senior counsel, was fully known to the Department, since the audit under the service tax regime, had been adjudicated in the petitioner's favour on 24.02.2021, and concerned a question which was the subject of extensive litigation resolved in favour of assessees until 19.05.2022. It is contended that the facts involved in **Northern Operating Systems** (supra),were quite distinct besides the fact that the Supreme Court in the said case had itself held the extended period of limitation to be unavailable. It is urged that the Board's Instruction No. 05/2023-GST forbids the mechanical invocation of Section 74 in secondment cases.

18. Reliance is placed on **Cosmic Dye Chemical v. Collector of Central Excise, Bombay, (1995) 6 SCC 117;M/s Padmini Products v. Collector of Central Excise, Bangalore, (1989) 4 SCC 275**;**Continental Foundation Joint Venture Holding v. Commissioner of Central Excise, Chandigarh-I**, (2007) 10 SCC 337;**Uniflex Cables Limited v. Commissioner, Central Excise, Surat-II, (2011) 14 SCC 568;** and **Raza Textiles Limited v. Income Tax Officer, Rampur, (1973) 1 SCC 633**, as also on the recent decisions of the Supreme Court in **M/s G.R. Infra Projects Limited v. State of**

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Madhya Pradesh and others, 2026 Law Finder (SC) 5091 and **M/s Tata Steel Limited v. Union of India and others, 2026 INSC 920 (Civil Appeal arising out of SLP (C) No. 16859 of 2026, decided on 25.08.2026)**.

19. It is further contended that the impugned order has been passed in the teeth of Circular No. 210/4/2024-GST dated 26.06.2024, which is binding on respondent No.2 under Section 168(1) of the CGST Act. The petitioner and JFE Japan are related persons. The petitioner is eligible for full input tax credit, and admittedly no invoice was raised by the petitioner in respect of the alleged import of service. In terms of paragraph 3.7 of the Circular read with the second proviso to Rule 28(1) of the Central Goods and Services Tax Rules, 2017 (for short, 'the CGST Rules'), the value of the supply is therefore deemed to be 'Nil'. The identical question stands concluded by **Metal One** and by the judgment of the Karnataka High Court in **Alstom Transport India Limited v. Commissioner of Commercial Taxes and others, 2025 SCC OnLine Kar 15572**. Reliance is also placed on **Commissioner of Central Excise, Bolpur v. Ratan Melting and Wire Industries, (2008)13 SCC 1,** on the binding nature of circulars upon the Department.

20. Submission is that the identical arrangement, in the petitioner's own case, having been held to be one of employment, the Department cannot take a contrary stand for a subsequent period without any change in facts. Reliance is placed on **M/s Radhasoami Satsang, Saomi Bagh, Agra v. Commissioner of Income Tax, (1992) 1 SCC 659** and **Bharat Sanchar Nigam Limited v. Union of India (2006) 3 SCC 1**.

21. It is submitted that the impugned order is non-speaking. It reproduces the allegations in the show cause notice as its findings and does not deal with the petitioner's detailed reply, the terms of the agreements, the order dated 24.02.2021 or the Board's Instruction. Reliance is placed on Section 75(6) of the CGST Act and on **Kranti Associates Private Limited v. Masood Ahmed Khan, (2010) 9 SCC 496**, **S.N.**

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Mukherjee v. Union of India(1990) 4 SCC 594, and **A.K. Kraipak and others vs. Union of India and others (1969) 2 SCC 262**.

22. It is submitted that without prejudice to the other arguments raised, on a true reading of the agreements, the expatriates are employees of the petitioner during the period of their engagement, and the services rendered by them are services by an employee to the employer in the course of employment, which, by virtue of Section 7(2)(a) read with paragraph 1 of Schedule III to the CGST Act, are neither a supply of goods nor a supply of services. **Northern Operating Systems (supra)** turned on its own facts and is distinguishable. In any event, the exercise is revenue neutral, the petitioner being entitled to credit of any tax paid on reverse charge basis, and neither interest nor penalty is leviable.

23. As regards the objection of alternative remedy, learned senior counsel relies upon **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai, (1998) 8 SCC 1**, **Godrej Sara Lee Limited v. Excise and Taxation Officer-cum-Assessing Authority, 2023 SCC OnLine SC 95**, **Embassy Property Developments Private Limited v. State of Karnataka, (2020) 13 SCC 308**, **Assistant Commissioner of State Tax v. Commercial Steel Limited, 2021 SCC OnLine SC 884** and **Magadh Sugar and Energy Limited v. State of Bihar, 2021 SCC OnLine SC 801**.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

24. Learned Senior Standing Counsel for the respondents has, at the threshold, objected to the petition being entertained. It is urged that the impugned order is appealable under Section 107 of the CGST Act and that the petitioner has approached this Court without availing that remedy. Reliance is placed on **State of Maharashtra and others v. Greatship (India) Limited, (2022) 17 SCC 332**, to contend that a writ petition against an order of assessment ought not to be entertained where the statute provides a remedy of appeal.

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25. On merits, the respondents support the impugned order for the reasons recorded in it. It is submitted that the adjudicating authority has examined the clauses of the agreements and has found the arrangement to be squarely covered by **Northern Operating Systems** (supra). The invocation of Section 74 has been justified in terms of the findings in paragraphs D-19 and D-20, wherein it was *inter alia* observed that the facts regarding the alleged contraventions were not reflected in the regular self-assessment returns filed by the petitioner, and greater responsibility casts under the said system. It was observed that the petitioner was obliged to declare all material facts necessary for correct assessment of tax and therefore it was held that it appeared to have wilfully suppressed such facts with intent to evade payment of GST liabilities. It was further recorded that had the investigation not been initiated by the department, the matter would have never come to its notice, and it was therefore concluded that the petitioner appears to have violated the provisions of the relevant Act/Rules and notifications. It is contended that the Circular dated 26.06.2024 and the judgment in **Metal One** (supra) have been duly considered by the competent authority while passing the order in original, and the same were found to be inapplicable because consideration is involved in the present case. It is further submitted that the order dated 24.02.2021 under the service tax regime is under appeal, and that the principles of natural justice were complied with, since the petitioner's reply and additional submissions having been considered and a personal hearing afforded.

26. We have heard the learned counsels for the parties and have gone through the material available on record, with their able assistance.

QUESTIONS FOR DETERMINATION

27. Upon consideration of the rival contentions of the parties, the following questions arise for determination:-

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(A) Whether the petition ought not to be entertained on account of the remedy of appeal under Section 107 of the CGST Act?;

(B) Whether the proceedings could validly have been initiated and concluded under Section 74 of the CGST Act?;

(C) Whether the demand could have been confirmed notwithstanding Circular No. 210/4/2024-GST dated 26.06.2024?; and

(D) Whether the impugned order satisfies the requirement of a reasoned order?

ANALYSIS AND FINDINGS

(A) Alternative remedy

28. That the impugned order is appealable under Section 107 of the CGST Act is not in doubt. The question is whether that circumstance should lead this Court to decline to examine the petition.

29. The law on the subject is well settled. In ***Whirlpool Corporation*** (supra), the Supreme Court held:

> *"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. ..."*

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30. In **Godrej Sara Lee Limited** (supra), an appeal which arose from an order of this Court relegating the assessee to the statutory remedy, the Supreme Court reiterated that the rule requiring a party to pursue the alternative remedy is a rule of policy, convenience and discretion rather than a rule of law; that 'maintainability' and 'entertainability' of a writ petition are distinct concepts; and that the dismissal of a writ petition on the ground that the alternative remedy has not been availed, without examining whether an exceptional case for entertainment has been made out, would not be proper. The decisions in **Embassy Property Developments**, **Commercial Steel** and **Magadh Sugar and Energy** (supra) are to the same effect and recognise, as exceptions to the rule, cases of want of jurisdiction, of violation of the principles of natural justice and those which turn on a pure question of law on admitted facts.

31. **Greatship (India) Limited** (supra), on which the respondents rely, does not lay down anything to the contrary. That was a case where the High Court had entertained a writ petition against an order of assessment and had itself entered into its merits. The Supreme Court in the said case, held that the statute having provided a complete machinery of appeal, the assessee ought to have been relegated to it. The judgment applies the general rule, it does not purport to do away with the exceptions which have been part of the law since long before **Whirlpool Corporation** (supra) and which have been reaffirmed thereafter in **Godrej Sara Lee Limited** (supra).

32. The present petition falls within those exceptions on more than one count. First, the challenge to the invocation of Section 74 goes to the very foundation of the proceedings. The existence of fraud, wilful misstatement or suppression of facts to evade tax is the condition on which the power under that provision depends, and whether the show cause notice discloses that condition is to be answered on a reading of the notice itself. Secondly, the complaint is that a statutory authority has refused to follow a circular issued by the Board under Section 168(1) of the CGST Act, which the statute obliges it to observe and follow. That is a pure question of law on facts which are not in dispute.

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Thirdly, the grievance that the order does not deal with the petitioner's defence is one of breach of the principles of natural justice. No disputed question of fact requires to be resolved to decide any of these questions. It may be added that the petition has remained pending before this Court since April 2025, pleadings are complete, and the matter has been heard at length. To relegate the petitioner to an appeal at this stage, on questions which can be answered on the face of the record, would serve no purpose.

33. The preliminary objection is accordingly overruled.

(B) Invocation of Section 74 of the CGST Act

34. Section 73 of the CGST Act provides for the determination of tax not paid or short paid 'for any reason other than fraud or any wilful-misstatement or suppression of facts to evade tax'. Section 74 applies where the non-payment or short payment is 'by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax'. The consequences of the distinction are substantial. An order under Section 73 must be made within three years from the due date for furnishing the annual return for the relevant financial year, whereas Section 74 allows five years, and the penalty under Section 74 is equivalent to the tax. Section 74 is thus an exception to the ordinary rule, available only where its distinct pre-conditions exist.

35. The words used in Section 74(1) have a long legislative and judicial history. In **Cosmic Dye Chemical** (supra), a Bench of three Judges, construing the proviso to Section 11-A of the Central Excises and Salt Act, 1944, held that the intent to evade is built into the words 'fraud' and 'collusion'; that 'misstatement or suppression of facts' are qualified by the word 'wilful'; and that it is not correct to say that there can be a suppression or misstatement of fact which is not wilful and yet constitutes a permissible ground for invoking the extended period. That statement of the law was applied to Section 73 of the Finance Act, 1994 in **Northern Operating Systems** itself, where the Supreme Court also noticed the earlier view that the conclusion that mere non-payment

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of duties is equivalent to collusion or wilful misstatement or suppression of facts is untenable. In Section 74(1) of the CGST Act, Parliament has made the requirement express by the words 'to evade tax', which govern all three expressions.

36. The position under the CGST Act has now been stated by the Supreme Court in two decisions rendered in August 2026. In **G.R. Infra Projects Limited** (supra), the Court set aside a show cause notice issued under Section 74 and held:

> *"10. A bare reading of the notice would indicate that but for a bland statement of 'fraud or concealment of facts' nothing is stated as to how fraud was inferred or concealment of facts were detected. ... What is required for the extended time to be applied are the allegations, which lead to the inference of a fraud or the concealment as attempted by the assessee resulting in suppression of facts, should emanate from the notice itself. It cannot be a mechanical use of the words 'fraud, willful misstatement or suppression of facts' without listing out the aspects which persuades the assessing officer to conclude that there has been employed either of these surreptitious devices by the assessee."*

37. The Court further declined to look at the counter affidavit filed by the State to supply what the notice lacked, on the principle that the requirements which make a notice or order valid must be contained in the notice or order itself. In **Tata Steel Limited** (supra), the Court reiterated:

> *"14. It is not mere lip service to the provisions that is intended when an extended limitation period is provided ... The foundational facts which led to the inference arrived at of fraud/willful 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*

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> *are not to be mechanically recited in the notice to enable recovery outside the normal limitation provided under the statute"*

38. The Board has taken the same view of the provision in the specific context of secondment. Instruction No. 05/2023-GST dated 13.12.2023, after noticing representations that field formations were mechanically invoking Section 74(1) in secondment cases, states:

> *"3.3 From the perusal of wording of section 74(1) of CGST Act, it is evident that section 74(1) can be invoked only in cases where there is a fraud or wilful mis-statement or suppression of facts to evade tax on the part of the said taxpayer. Section 74(1) cannot be invoked merely on account of non-payment of GST, without specific element of fraud or wilful mis-statement or suppression of facts to evade tax. Therefore, only in the cases where the investigation indicates that there is material evidence of fraud or wilful mis-statement or suppression of fact to evade tax on the part of the taxpayer, provisions of section 74(1) of CGST Act may be invoked for issuance of show cause notice, and such evidence should also be made a part of the show cause notice."*

39. Tested on these principles, the show cause notice dated 30.07.2024 does not make out a case for Section 74. The entire justification is contained in two paragraphs. Paragraph 9.12 states that the tax appears recoverable under Section 74 'as it is apparent that M/s JFE India has resorted to willful-misstatement and suppression of facts as it had filed GSTR-3B without payment of IGST'. Paragraph 9.13 states that Section 74 is liable to be invoked 'in as much as that the judgement of Hon'ble Supreme Court in the matter of Northern Operating Systems is clarificatory in nature' and that the services were taxable since the advent of GST, and concludes that 'hence' the tax has not been paid 'by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax'.

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40. Neither paragraph discloses a single fact from which an intent to evade could be inferred. The first equates non-payment of tax in the return with wilful misstatement and suppression, which is the very proposition that has been held untenable and that the Board's own Instruction forbids. The second is a *non sequitur*. That a judgment of the Supreme Court declares the law as it always was, may have a bearing on whether tax was payable. It says nothing about the intent of an assessee who did not pay it. Indeed, the judgment relied upon points the other way. In **Northern Operating Systems (supra)**, the Supreme Court, having held the assessee liable on merits, went on to hold:

> *"71. The fact that CESTAT in the present case, relied upon two of its previous orders, which were pressed into service, and also that in the present case itself, the Revenue discharged the later two show-cause notices, evidences that the view held by the assessee about its liability was neither untenable, nor mala fide. This is sufficient to turn down the Revenue's contention about the existence of 'wilful suppression' of facts, or deliberate misstatement. For these reasons, the Revenue was not justified in invoking the extended period of limitation to fasten liability on the assessee."*

41. The petitioner's case stands on a firmer footing than that of the assessee before the Supreme Court in **Northern Operating Systems (supra)**. The arrangement under which personnel of JFE Japan work with the petitioner was examined in audit for the period 2013-14 to June 2017. The Dispatch Agreement and the Employment Contracts were before the Department. A show cause notice was issued on 22.04.2019 on the same allegation that is now made. On 24.02.2021, that is, during the period covered by the present demand, a Principal Commissioner of the Department adjudicated the notice and held that the expatriates were employees of the petitioner and that no service of manpower supply had been received. That order has not been stayed. It is not the respondents' case that the arrangement underwent any change after June 2017. An

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assessee who has in hand an adjudication order of the Department itself, holding that the very transaction is not taxable, cannot be said to have suppressed that transaction from the Department with intent to evade tax by not paying tax on it. Suppression pre-supposes that something was kept back. Here, nothing was.

42. The impugned order does not improve upon the notice. Paragraphs 4.18 and 4.19 of the order reproduce paragraphs 9.12 and 9.13 of the notice. The only findings of the adjudicating authority on the point are in paragraphs D-19 and D-20, which state that the contraventions came to the knowledge of the Department only when the investigation was initiated, that the facts were not reflected in the self-assessed returns, that 'all sorts of guidance' was available to the petitioner, and that had the investigation not been initiated the matter would never have come to the notice of the Department. These are generalities which could be recited in any case of non-payment. The statement that the facts came to light only on investigation is contrary to the record, for the reasons already noticed. The order does not advert to the petitioner's specific defence that the facts were within the knowledge of the Department, to the order dated 24.02.2021 in this context, to paragraph 71 of **Northern Operating Systems** (supra), or to the Board's Instruction No. 05/2023-GST, though each of these was pressed in the reply.

43. The reply filed in this Court does no more than extract paragraph D-20 of the impugned order. In any case, as held in **G.R. Infra Projects Limited** (supra), what the notice lacks cannot be supplied by an affidavit.

44. It was faintly suggested in the impugned order that the petitioner was working under a system of self-assessment and was obliged to declare all material facts in its returns. That an assessee who *bona fide* believes that a transaction is not a supply, and does not report it as one in its returns, is not making a suppression to evade tax. If it were, every case of non-payment would be a case under Section 74 and Section 73 would be rendered otiose. That is precisely what the Board has cautioned against in paragraph 3.3 of its Instruction.

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45. We accordingly hold that the pre-conditions for the exercise of power under Section 74 of the CGST Act did not exist, that the show cause notice did not disclose the foundational facts necessary for its invocation, and that the confirmation of the demand and the imposition of a penalty equal to the tax under that provision cannot be sustained.

46. We are conscious that Section 75(2) of the CGST Act provides that where a notice under Section 74(1) is held not to be sustainable for the reason that the charges of fraud, wilful misstatement or suppression are not established, the proper officer shall determine the tax payable deeming the notice to have been issued under Section 73(1). Whether any part of the demand could have survived on that basis would have required examination had the demand been otherwise sustainable. For the reasons which follow under question (C), it is not, and the occasion for such an exercise does not arise.

(C) Circular No. 210/4/2024-GST dated 26.06.2024

47. Section 168(1) of the CGST Act empowers the Board, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of the Act, to issue such orders, instructions or directions to the central tax officers as it may deem fit, 'and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions'. That circulars issued by the Board are binding on the officers of the Department, and that it is not open to them to contend that a circular beneficial to the assessee is not to be followed, is settled [see **Ratan Melting and Wire Industries** (supra)].

48. The impugned order proceeds on the footing that the petitioner has imported a service from a related person located outside India. It invokes paragraph 4 of Schedule I to the CGST Act, under which such import in the course or furtherance of business is treated as a supply even if made without consideration, and it holds that the valuation of the service 'will be determined as per Rule 28 of CGST Rules, 2017'. Rule 28(1)(a) provides that the value of a supply between related persons shall be the open market

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value, failing which the value of supply of like kind and quality, failing which the value determined under Rule 30 or Rule 31. The second proviso to Rule 28(1) reads:

> *"Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services."*

49. Circular No. 210/4/2024-GST was issued by the Board in exercise of its powers under Section 168(1). Paragraph 3.5 records that the second proviso to Rule 28(1) 'is applicable in all the cases involving supply of goods or services or both between the distinct persons as well as the related persons, in cases where full ITC is available to the recipient', and that the clarification earlier issued by Circular No. 199/11/2023-GST dated 17.07.2023 in respect of supplies between distinct persons is equally applicable to import of services between related persons. Paragraph 3.6 of Circular No. 210/4/2024-GST notes that in the case of such import, the registered person in India is required to issue a self-invoice under Section 31(3)(f) and pay tax on reverse charge basis. The Board then clarifies:

> *"3.7 In view of the above, it is clarified that in cases where the foreign affiliate is providing certain services to the related domestic entity, and where full input tax credit is available to the said related domestic entity, the value of such supply of services declared in the invoice by the said related domestic entity may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules. Further, in cases where full input tax credit is available to the recipient, if the invoice is not issued by the related domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil, and may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules."*

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50. Two conditions thus attract the clarification: (i) that the recipient is eligible for full input tax credit, and (ii) that no invoice has been issued by the recipient in respect of the service. Both are satisfied. That the petitioner issued no self-invoice is not merely undisputed, it is the respondents' own case, the impugned order having repeatedly recorded the petitioner's failure to issue invoices under Section 31(3)(f) as a contravention. As to the first, the petitioner asserted before the adjudicating authority, in its additional submissions dated 19.12.2024, that it is eligible for full input tax credit, and has reiterated that assertion on affidavit before this Court. The impugned order does not record any finding to the contrary, and the reply filed in this Court does not dispute it.

51. The adjudicating authority has nonetheless held the Circular, and with it the judgment in **Metal One** (supra), to be inapplicable in paragraphs D-11 to D-17 of the impugned order. It is to the effect that the Circular applies 'in cases no consideration is involved', that in **Metal One** (supra), 'consideration is main point for the decision', and that in the petitioner's case consideration is involved, the value of the service being ascertainable from the remuneration paid to the seconded employees.

52. This reasoning cannot be accepted, for three reasons. First, it misreads the Circular. The words on which the adjudicating authority has fastened occur in paragraph 2, which narrates the representations received by the Board from trade and industry. The clarification itself is in paragraphs 3.5 to 3.7. Those paragraphs do not make the absence of consideration a condition. Paragraph 3.5 states that the second proviso applies in 'all the cases' of supply between related persons where full input tax credit is available to the recipient. Paragraph 3.7 applies 'in cases where the foreign affiliate is providing certain services to the related domestic entity, and where full input tax credit is available'. The second proviso to Rule 28(1), which the Circular explains, likewise draws no distinction between supplies made with and without consideration. It is engaged whenever a supply between related or distinct persons is to be valued and the recipient is eligible for full

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credit. An officer bound by a circular cannot read into its operative part a limitation which the Board has not placed there.

53. Secondly, it misreads **Metal One** (supra). That batch of petitions concerned the very controversy that arises here, i.e. show cause notices demanding IGST on reverse charge basis for July 2017 to March 2023 on the secondment of expatriates by overseas group companies, issued in the wake of **Northern Operating Systems** (supra). The Revenue's stand before the Delhi High Court, extracted in the judgment, was that the value of the service was the total consideration paid to the expatriates, including salary paid in foreign currency by the overseas company and charged to the Indian entity and salary paid in India. The Court was thus dealing with a case in which payments had admittedly been made. It held:

> *"12. Undisputedly, although payments, as asserted in the counter affidavit, were made, no invoices came to be raised by the writ petitioners entities in connection with the services provided by their related foreign. ... It would perhaps be impossible for any of the respondents to assert that once the value of such services were to be treated or accepted to be 'Nil', no further tax implication under the Act would arise."*
>
> *"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. ..."*

54. The ground on which the adjudicating authority sought to distinguish **Metal One**, namely that consideration was involved in the petitioner's case, was therefore equally present in **Metal One** and was expressly noticed by the Court. The distinction drawn is

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no distinction at all. The Karnataka High Court in **Alstom Transport India Limited** (supra), again a case of secondment where salaries were paid and the demand was for July 2017 to March 2023, has followed **Metal One** and held that, no invoices having been raised, the value of the service must be deemed to be 'Nil' in terms of paragraph 3.7 of the Circular and that no further tax liability can arise. No decision taking a contrary view has been brought to our notice, and we find ourselves in respectful agreement with the view so taken.

55. Thirdly, the reasoning defeats itself. The adjudicating authority holds that the value is to be determined under Rule 28, extracts the second proviso, and then determines the value at the remuneration paid to the expatriates without applying the proviso. If Rule 28 governs, as the authority rightly holds it does in the case of related persons, the second proviso is part of it and cannot be left out of the reckoning.

56. The manner in which this part of the order is drawn also deserves notice. Paragraph D-13 of the impugned order reads: '*I find that in present case, the petitioner has failed to issue invoices ... for the service of seconded employees received from its foreign entity i.e. Metal One Japan'.* The petitioner was the noticee before the adjudicating authority, not a 'petitioner', and its foreign affiliate is JFE Japan, not Metal One Japan. The paragraph has evidently been lifted from a pleading or order in another matter. It is repeated, in almost the same words but with the names corrected, in paragraph D-15. This is not a slip of the pen. It shows that the one contention on which the petitioner had the support of a binding circular and a judgment of a High Court directly in point was disposed of without the application of mind which it required.

57. We may deal with one aspect which, though not urged by the respondents, bears on the condition of eligibility for full input tax credit. Section 17(5)(i) of the CGST Act denies input tax credit in respect of tax paid in accordance with the provisions of Section 74. It may be suggested that tax demanded under Section 74 would not be creditable and that the recipient is therefore not eligible for full credit. Any such suggestion would be

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circular, since it would make the applicability of the valuation rule depend on the provision under which the Department chooses to raise the demand. In any event, we have held that Section 74 could not have been invoked, and the suggestion does not survive that finding.

58. The Delhi High Court in **Metal One** (supra) has observed that the correctness of the position taken in the Circular may be open to question. It is not necessary for us to enter upon that. The respondents have not questioned the Circular, which they could not, being bound by it. Their only contention is that it does not apply, and that contention we have rejected. So long as the Circular stands, the officers of the Department are obliged by Section 168(1) to follow it.

59. The result is that, even on the assumption on which the impugned order proceeds, namely that the arrangement amounts to an import of service by the petitioner from JFE Japan, the value of such supply is, in terms of the second proviso to Rule 28(1) of the CGST Rules read with paragraph 3.7 of Circular No. 210/4/2024-GST, to be taken as 'Nil'. No tax is then payable. Interest under Section 50, which is compensatory and is levied on tax which a person has failed to pay, and penalty, which is computed with reference to the tax evaded, fall with the demand. The impugned order, in so far as it confirms the demand of tax, interest and penalty, is contrary to Section 168(1) of the CGST Act and cannot be sustained for any part of the period from July 2017 to March 2023.

(D) Want of reasons

60. Section 75(6) of the CGST Act requires the proper officer to set out in his order the relevant facts and the basis of his decision. The requirement is a statutory expression of what the law in any case demands of an authority exercising quasi-judicial power. In **S.N. Mukherjee** and **Kranti Associates** (supra), it has been held that the recording of reasons is an indispensable component of the decision-making process, that reasons must

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disclose a consideration of the relevant factors, and that a pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision-making process.

61. The structure of the impugned order is as follows. Part A sets out the brief facts and the allegations in the show cause notice. Part B lists, by their headings alone, the submissions made in the petitioner's reply dated 29.10.2024, and summarises the additional submissions dated 19.12.2024. Part C records the personal hearing. Part D is titled 'Discussions and Findings', wherein the respondents reproduced the show cause notice, complete with the tentative language of a notice ('it appears that'). Further, it describes the general concept of supply under the CGST Act, secondment arrangements in generic terms, and extract observations from **Northern Operating Systems** (supra). Paragraph D-9, which purports to record the authority's observations on a perusal of the petitioner's agreements, is a verbatim repetition of sub-paragraph 4.8, that is, of the show cause notice. Moreover, it deals with the Circular and **Metal One** (supra), in the manner already noticed. Lastly, paragraphs D-18 to D-20 list the provisions contravened and deal with Section 74. The order follows.

62. What is absent is any consideration of the petitioner's defence on the central question of fact, namely the nature of the relationship between the petitioner and the expatriates under the agreements actually on record. The petitioner had relied, clause by clause, on Articles 1, 3, 5 and 9 of the Dispatch Agreement and on the Employment Contracts. None of these clauses is referred to in the findings. The 'observations' in paragraph D-9 are stated to be drawn from the agreements, but they do not cite any clause, and several of them cannot be reconciled with the documents. To illustrate: the order records that the terms of employment during secondment 'are in accord with the policy' of JFE Japan and that secondment is part of its 'global policy' with repatriation under a 'global repatriation policy', whereas Article 1(a) of the Dispatch Agreement leaves the terms of employment to be defined by the petitioner, and no document embodying any such global policy is identified. The order records that the 'letter of

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understanding' between the petitioner and the expatriates does not state that they would be treated as the petitioner's employees after the secondment period, whereas the petitioner had stated in writing on 07.11.2022 that no letter of understanding exists and that employment contracts had been executed directly. The expressions used, 'letter of understanding', 'global repatriation policy', 'temporarily loaned', are those which occur in paragraphs 56 to 62 of **Northern Operating Systems** in the description of the documents which were before the Supreme Court in that case. The features of that case have, in other words, been attributed to the petitioner without examining whether the petitioner's documents bear them out.

63. This is the very approach against which the Board had cautioned its officers. Instruction No. 05/2023-GST states:

> *"2.3 It may be relevant to note that there may be multiple types of arrangements in relation to secondment of employees of overseas group company in the Indian entity. In each arrangement, the tax implications may be different, depending upon the specific nature of the contract and other terms and conditions attached to it. Therefore, the decision of the Hon'ble Supreme Court in the NOS judgment should not be applied mechanically in all the cases. Investigation in each case requires a careful consideration of its distinct factual matrix, including the terms of contract between overseas company and Indian entity, to determine taxability or its extent under GST and applicability of the principles laid down by the Hon'ble Supreme Court's judgment in NOS case."*

64. The Supreme Court in **Northern Operating Systems** (supra) emphasised that there is no single determinative factor and that what is required is 'a close look at the terms of the contract, or the agreements'. The Instruction was specifically relied upon by the petitioner. It finds no mention in the findings. Nor does the order dated 24.02.2021 passed by a Principal Commissioner in the petitioner's own case on the same documents.

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We do not suggest that the adjudicating authority was bound by that order for a different period under a different enactment, or that it could not, for reasons stated, have differed from it. But an adjudication by a senior officer of the same Department on the same agreements was a relevant consideration which, having been pressed, had to be dealt with. To pass it over in silence is not to deal with it.

65. There is a further infirmity on the face of the order. The show cause notice proposed a demand of Rs.13,08,57,858/- for the period July 2017 to March 2023, and that figure is the aggregate for six financial years ending with 2022-23. The operative part of the impugned order confirms the same amount 'for the period July-17 to March-22', while a summary in Form GST DRC-07 has been issued for the financial year 2022-23 as well. The order thus does not, even in its operative part, correctly state the period for which the liability is fastened.

66. It is of some significance that the Board itself, by Circular No. 258/04/2026-GST dated 26.10.2026, has since issued detailed guidelines to its officers on adjudication under the CGST Act. The Circular records that instances of orders which fail to consider the submissions of the noticee, have come to the notice of the Board. The circular therefore requires the adjudicating authority to independently examine the submissions and evidence of the taxpayer and to record findings on each material issue. It states that mere reference to documents or reproduction of their contents is not sufficient. It requires that judgments cited by the noticee be considered and, if found inapplicable, the reasons be recorded, and with reference to **G.R. Infra Projects Limited** (supra), it reiterates that Section 74 may be invoked only where the investigation discloses material evidence of fraud, wilful misstatement or suppression with intent to evade tax, which must be set out in the notice. The Circular post-dates the impugned order and has been issued after the hearing of the present petition had concluded, and therefore, we do not test the impugned order against it. We refer to it only because it states, in the Board's own words, standards which the law already required and which the impugned order does not meet.

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67. We accordingly hold that the impugned order does not satisfy the requirement of Section 75(6) of the CGST Act and has been passed in breach of the principles of natural justice. Ordinarily, an order found wanting in reasons is set aside and the matter remitted for a fresh decision. That course is not warranted here. A remand is directed so that a lawful order may be passed. It would serve no purpose in the instant case, where on the findings recorded under questions (B) and (C), no demand can lawfully result from the show cause notice. The Delhi High Court in **Metal One** (supra), on the same reasoning, found the continuance of the proceedings to be futile and quashed the show cause notices themselves.

Questions not decided

68. Elaborate submissions were addressed on behalf of the petitioner on whether, on a true construction of the Dispatch Agreement and the Employment Contracts, the expatriates are employees of the petitioner so as to attract entry 1 of Schedule III to the CGST Act, and on whether **Northern Operating Systems** (supra) is distinguishable on facts. In view of the conclusions reached above, it is not necessary to decide that question, and we refrain from doing so for an additional reason. The characterisation of the same arrangement under the Finance Act, 1994 is the subject of the Department's appeal pending before the Customs, Excise and Service Tax Appellate Tribunal against the order dated 24.02.2021. It would not be appropriate for this Court, in a petition which can be disposed of on other grounds, to pronounce upon a question which the Tribunal is seized of. The question is left open. Nothing in this judgment shall be construed as an expression of opinion on it, and the Tribunal shall decide the appeal before it on its own merits.

69. For the same reason, the submissions founded on the principle of consistency, on revenue neutrality, and on the independent sustainability of the levy of interest and of penalty under Section 122(2)(b) do not call for separate consideration.

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CONCLUSION

70. The questions framed are answered as follows:

(A) The availability of an appeal under Section 107 of the CGST Act does not, in the facts of this case, disentitle the petitioner to relief under Article 226 of the Constitution.

(B) The pre-conditions for the invocation of Section 74 of the CGST Act were not disclosed in the show cause notice and did not exist; the proceedings under that provision, and the penalty imposed thereunder, are unsustainable.

(C) The petitioner being a recipient eligible for full input tax credit which has not issued any invoice in respect of the alleged import of service from its related person, the value of such supply is, in terms of the second proviso to Rule 28(1) of the CGST Rules read with paragraph 3.7 of Circular No. 210/4/2024-GST dated 26.06.2024, to be deemed to be 'Nil'; the demand of tax, interest and penalty confirmed in disregard of the Circular is contrary to Section 168(1) of the CGST Act.

(D) The impugned order is not a reasoned order as required by Section 75(6) of the CGST Act.

71. As a sequel to the aforementioned discussions and findings, the instant writ petition is **allowed** in the following terms:-

(i) The Order-in-Original dated 09.01.2025 (Annexure P-1) passed by respondent No.2, and the summaries thereof in Form GST DRC-07 dated 30.01.2025 for the financial years 2017-18 to 2022-23, are quashed.

(ii) The Show Cause Notice dated 30.07.2024 (Annexure P-13), along with the summary thereof in Form GST DRC-01, is quashed.

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(iii) Any amount deposited by or recovered from the petitioner pursuant to the impugned order shall be refunded to it, in accordance with law within a period of **eight weeks** from the date of receipt of a certified copy of this judgment.

72. There shall be no order as to costs.

73. Pending miscellaneous application(s), if any, shall stand disposed of.

(ASHWANI KUMAR MISHRA)
CHIEF JUSTICE

(ROHIT KAPOOR)
JUDGE

17.11.2026
Mohit Goyal

Whether speaking/reasoned : *Yes/No*
Whether Reportable : *Yes/No*

SAG blog

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