

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.161 of 2025

M/s Sheuli Rubber Estate, a Partnership Firm, registered under the Partnership Act, 1932, having its registered office at Ward No.10, Holding No.305.Z(4), Ramnagar South, Akaura Road, New Western Club, P.O. Agartala, P.S. West Agartala, Sub-Division- Agartala, District-Tripura;

Represented by its Authorized Representative Mr. Abu Taher Khan, son of Late Amir Uddin, resident of South Ramnagar, Akaura Road, New Western Club, P.O. Agartala, P.S. West Agartala, Sub-Division- Agartala, District- Tripura.

.....Petitioner(s);

Versus

1. The Union of India, represented by its Secretary, Department of Finance, Government of India, having his office at South Block, New Delhi.
2. The Secretary, Department of Finance, Government of India, having his office at South Block, New Delhi.
3. The Superintendent (Anti-Evasion) Central Goods & Service Tax, Government of India, Ministry of Finance, Department of Revenue, Office of the Central Goods & Service Tax, 3rd Floor, GST Bhavan, Mantri Bari Road, Netaji Chowmuhani, Agartala, West Tripura, PIN-799001.
4. M/S Maa Tara Trading, having its registered office at Dakshin Charganki Chakber Road, Sub Health Centre, West Ganki, Ganki Part, Khowai, Tripura, PIN-799201.

Notice upon this respondent may be served through respondent No.3 since this respondent is registered under the Central Goods & Service Tax Act, with Registration No.16ABX-FM584-4J1ZH.

.....Respondent(s).

For Petitioner(s) : Mr. Somik Deb, Sr. Advocate,
Mr. Panna Lal Debbarma, Advocate,
Ms. Janhavi Mahana, Advocate.

For Respondent(s) : Mr. Bidyut Majumder, Deputy SGI,
Mr. Paramartha Datta, Advocate,
Mr. Soumya Chaudhury, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Order

17/04/2025

Heard Mr. Somik Deb, learned senior counsel assisted by Mr.

Panna Lal Debbarma, learned counsel for the petitioner and Mr. Paramartha

Datta, learned counsel assisted by Mr. Soumya Chaudhury, learned counsel for the respondent-CGST authorities.

2. Mr. Somik Deb, learned senior counsel for the petitioner, submits that a notice for reversal of the Input Tax Credit (ITC) alleged to have been availed against fake ITC from a non-existent entity and passed on to the petitioner has been issued by the Superintendent (Anti-Evasion) CGST, Agartala vide digitally signed letter dated 11.03.2025 bearing No.GEXCOM/AE/INV/GST/168/2024-AE-O/o COMMR-CGST-AGARTALA /3262 [Annexure-5]. He submits that petitioner is a bone fide purchaser, having paid the taxes to respondent No.3-supplier against the invoices raised. He has duly filed his GSTR-3B returns for the said period. The payments have also been made through bank transactions to the supplier. Without any proceeding, such a notice has been issued for reversal of the ITC with applicable penalty and interest on or before 21.03.2025. Therefore, petitioner being aggrieved has approached this Court.

3. Mr. Paramartha Datta, learned counsel for the respondent-revenue, has at the outset submitted that the impugned letter is in the nature of an intimation under Section 74(5) of the Central Goods and Services Tax Act, 2017 [‘Act of 2017’, *for short*] to enable the assessee/registered taxpayer to deposit or reverse the ineligible ITC along with interest and penalty before any formal proceedings under Section 73(1) or 74(1) is initiated for fraudulently availing inadmissible ITC, as the case may be. The petitioner is supposed to either make payment of the amount or reverse the ineligible ITC with interest

and penalty or to make his submissions in Part B of the requisite Form GST DRC-01A in terms of Rule 142(2A) so that the assessing authority can examine whether the petitioner has voluntarily deposited the tax dues or reversed the ineligible ITC or his objection to such intimation is proper in the eye of law. After submission of such details of partial payment or objection in Part B of Form GST DRC-01A, proceedings under Section 73 or 74 as the case may be could be initiated if the assessing officer is not satisfied. Learned counsel for the respondent-revenue has relied upon a decision rendered by this Court in the case of the same petitioner concerning the period 01.09.2023 till 13.09.2023 in WP(C) No.227/2024. It is submitted that this Court vide order dated 20.03.2024 disposed of the matter with certain observations and directions since the impugned notice was only in the nature of an intimation in terms of Section 74(5) of the Act of 2017. This Court had also observed that petitioner would submit his reply to the intimation and may file any objection. Thereafter, the adjudicating officer would examine whether the objections are tenable on facts and in law before initiating a proceeding under Section 74(1) of the Act of 2017 taking into consideration the relevant documents relied upon by the petitioner. It is submitted that the case at hand is similar to the one earlier disposed of by this Court vide order dated 20.03.2024.

4. Mr. Deb, learned senior counsel for the petitioner, submits that on every occasion the respondent-authority has been issuing notice for reversal of alleged ineligible ITC along with interest and penalty without conforming with the procedure laid down under the Act of 2017 and the manner in which such notices, if any under Section 74(5), is to be issued in Form GST DRC-01A.

5. We have heard learned counsel for the parties. We have taken note of the contentions raised by the petitioner and the stand of the respondents.

Though the respondents have not been asked to file Counter Affidavit, yet at the outset learned counsel for the respondent-revenue has taken a plea that the impugned letter is only in the nature of an intimation under Section 74(5) of the Act of 2017 and no proceeding as such has been initiated. According to them, the case of the petitioner stands on same footing as that in the earlier writ petition concerning a different tax period i.e. WP(C) No.227/2024. We have taken note of the order passed in the case of the same petitioner in WP(C) No.227/2024 where apparently a similar notice was served upon them to pay/reverse the ineligible ITC along with applicable interest and penalty by a due date, failing which action would be taken against him as per provisions of law. In similar circumstances as presented in the present case, the position as it stands today is that as per the scheme of the GST Act, a pre-adjudication notice in the nature of an intimation under Section 74(5) of the Act of 2017 has been issued vide impugned letter dated 11.03.2025 [Annexure-5]. It is to be issued in Form GST DRC-01A read with Rule 142(1A) upon the assessee/tax payer containing the communication of the details of any tax, interest and penalty chargeable upon the person under sub-Section (1) of Section 73 or sub-Section (1) of Section 74. The impugned letter is to be treated as in Part A of the prescribed Form GST DRC-01A. It is also evident that no notice for initiation of proceedings under Section 73(1) or 74(1) for wrongful availment of ITC has been issued by the proper officer alleging non-payment or short payment or erroneous refund or wrongly availed ITC or utilized by reason

of fraud, willful misstatement or suppression of facts to evade tax. In such circumstances, as per the scheme of Section 74(1) particularly provisions of Section 74(5) read with Rule 142(1A) and 142(2A), petitioner being the person referred to in the impugned notice is required to either make partial payment of the amount communicated to him or if he desires to file any submission or objection against the proposed liability, he may do so in Part B of Form GST DRC-01A.

6. As such, this Court is of the considered view that petitioner may either make the necessary deposit or reverse the ineligible ITC along with interest and penalty or file his objection(s) in Part B of Form GST DRC-01A. Needless to say, upon submission of such reply by the petitioner, the adjudicating officer would examine whether the objections are tenable on facts and in law before initiating any proceedings under Section 73(1) or 74(1) of the Act of 2017 taking into consideration the relevant documents relied upon by the petitioner.

7. Learned senior counsel for the petitioner has submitted that all the details of bank transactions, the invoices raised by the private respondent, the returns in Form GSTR-3B and the payments made are duly annexed to the writ petition which may be permitted to be submitted before the adjudicating officer along with his objection.

8. Petitioner is at liberty to do so.

9. In case the adjudicating officer is of the view that the issue can be resolved after due notice to the selling dealer i.e. respondent No.4., he may also issue such intimation to the selling dealer so that the dispute as to whether the petitioner has rightly availed eligible ITC after making payment of the tax dues to the selling dealer or whether the selling dealer has failed to deposit the tax paid by the petitioner with the government exchequer can be decided. Needless to say, if the adjudicating officer is dissatisfied with the objection raised by the petitioner after due consideration of the relevant documents submitted by him, it is open for him to initiate proceedings in accordance with law.

10. The instant petition is disposed of in the aforesaid manner. Let such objection/reply be submitted within a period of 2(two) weeks before the proper officer/respondent No.3.

11. Let it be made clear that this Court has not made any observations on the merits of the case of the parties.

(BISWAJIT PALIT), J

(APARESH KUMAR SINGH), CJ

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