IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Reserved on: 20.11.2025
Pronounced on: 27.11.2025
Uploaded on: 27.11.2025
Whether the operative part or full judgment is pronounced: FULL

1. **WP(C) 1938/2024**
   M/s New Gee Enn & Sons vs. Union of India & Ors.

2. **WP (C) No. 1959/2024,**
   M/s Mir Brothers & Co. vs. Union of India & Ors.

3. **WP(C) 1961/2024,**
   M/s J. B. Traders vs. Union of India & Ors.

4. **WP(C) 1962/2024,**
   M/s Bhat Trading Co. vs. Union of India & Ors.

5. **WP(C) 2003/2024,**
   M/s R.J. Trading vs. Union of India & Ors.

6. **WP(C) 2008/2024,**
   M/s R. J. M. Brothers vs. Union of India & Ors.

7. **WP(C) 2009/2024,**
   M/s Mir Muneer Trading Co. vs. Union of India & Ors.

8. **WP(C) 2010/2024,**
   M/s Shahzaib Enterprises vs. Union of India & Ors.

9. **WP(C) 2011/2024,**
   M/s Syco Trading Company vs. Ministry of Finance

10. **WP(C) 2071/2024,**
    M/s M. S. Z. Traders vs. Union of India & Ors.

11. **WP(C) 2072/2024,**
    M.s Fahad Traders vs. Union of India & Ors.

12. **WP(C) 2073/2024,**
    M/s New Goodwill Traders vs. Union of India & Ors.

13. **WP(C) 2074/2024,**
    M/s New Ismail Enterprises vs. Union of India & Ors.

14. **WP(C) 2075/2024,**
    M/s Original Kashmir vs. Union of India & Ors.

15. **WP(C) 2076/2024,**
    M/s M. M. Enterprises vs. Union of India & Ors.

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16. **WP(C) 2077/2024,**
M/s Shabir Ahmad vs. Union of India & Ors.

17. **WP(C) 2149/2024,**
M/s R.B. S. Traders vs. Union of India & Ors.

18. **WP(C) 2150/2024,**
M/s New Green Basket/
Khurshid Traders vs. Union of India & Ors.

19. **WP(C) 2151/2024,**
M/s Ali Jan Khan & Ors. vs. Union of India & Ors.

20. **WP(C) 2152/2024,**
M/s Lone & Company vs. Union of India & Ors.

21. **WP(C) 2156/2024,**
H. K. Traders vs. Union of India & Ors.

22. **WP(C) 2157/2024,**
M/s Khan General Traders vs. Union of India & Ors.

23. **WP(C) 2165/2024,**
M/s F.A. Enterprises vs. Union of India & Ors.

24. **WP(C) 2166/2024,**
M/s A.S. Traders vs. Union of India & Ors.

25. **WP(C) 475/2025,**
M/s R.J. Trading vs. Union of India & Ors.

26. **WP(C) 531/2025,**
M/s M. S. Z. Traders vs. Union of India & Ors.

27. **WP(C) 532/2025,**
M/s Original Kashmir vs. Union of India & Ors.

28. **WP(C) 533/2025,**
M/s R. J. M. Brothers vs. Union of India & Ors.

29. **WP(C) 617/2025,**
M/s Kuloo Fruit Company vs. Union of India & Ors.

30. **WP(C) 2087/2025,**
M/s New Ismail Enterprises vs. Union of India & Ors.

31. **WP(C) 2089/2025,**
M/s Khan General Traders vs. Union of India & Ors.

32. **WP(C) 2477/2025**
M/s New Good Will Traders vs. Union of India & Ors.

33. **WP(C) 2478/2025,**
M/s Lone & Company vs. Union of India & Ors.

34. **WP(C) 2479/2025**
M/s Shabir Ahmad vs. Union of India & Ors.

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35. WP(C) 2480/2025.
M/s New Green Basket/
Khurshid Traders vs. Union of India & Ors.

Through: Mr. S. F. Qadiri, Sr. Adv. with Mr. Numan Zargar, Adv.
Ms Snober Sameer, Adv. & Mr. Sikander Hayat Khan, Adv.

....For the petitioners in all petitions

Through: Mr Tahir Majid Shamsi, DSGI with
Ms Rehana Qayoom, Adv. for R-1 to 3.
Mr. Waseem Gul, GA for R-4 with
Mr. Mohd Younus Hafiz, AC & Ms. Nowhabar Khan, AC

...For the respondents in all petitions

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

J U D G M E N T

Per Sanjeev Kumar, J

1. In this batch of petitions, the petitioners invoke the extraordinary writ jurisdiction vested in this Court under Article 226 of the Constitution of India to throw challenge to the show cause notices issued to them by the Superintendent, CGST and CX Range-I, Srinagar, under Section 74(1) of the Central Goods and Services Tax Act, 2017 ["CGST Act of 2017"], read with the J&K Goods and Services Act, 2017 ["J&K GST Act of 2017").

2. In some of the petitions, the competent authority of the respondents has confirmed the demand. Admittedly, the petitioners, having statutory remedies under both the legislations, have chosen to invoke the writ jurisdiction of this Court on the ground that the impugned notices are without jurisdiction and, therefore, availability of alternative statutory remedy is no bar to the entertaining of the writ petitions. It is in this background, the learned counsel for the petitioners has made his submissions

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to persuade us to hold that the show cause notices issued by the respondents are without jurisdiction and, therefore, not sustainable in law.

3. Before we advert to the rival contentions of the parties and the grounds of challenge to the impugned show cause notices urged by Mr. Faisal Qadri, learned Senior Counsel, we deem it appropriate to notice few background facts leading to the issuance of show cause notices and consequent filing of these petitions.

4. In the year 2008, with a view to improve relations through undertaking, various Confidence Building Measures, the Governments of two countries, i.e., the Union of India and Pakistan, took a decision to allow a free LoC cross trade between them on certain terms and conditions. This decision, so arrived at between the two countries, ultimately culminated into issuance of notification dated 20th October, 2008, by the Government of India.

5. From perusal of notification dated 20th October, 2008, it would transpire that the trade was only cross LoC trade on Srinagar-Muzaffarabad and Poonch-Rawalakote routes. The term "Cross-LoC trade" clearly conveyed that the trade was permitted only between divided parts of the State of Jammu and Kashmir and was one of the Confidence Building Measures aimed at benefiting the local economy on both sides of LoC. The trade was regulated by the Standard Operating Procedure (SOP) issued by the Government of India, Ministry of Home Affairs (J&K Division). Annexure-A of the SOP listed 21 items to be traded from Islamabad-Uri to Chakoti (PoK) and from Chakkan-da-Bagh (Poonch) to Rawalakote (PoK). Annexure-B of the SOP listed 21 items to be traded from Chakoti (PoK) to

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Islamabad-Uri and from Rawalakot (PoK) to Chakkan-da-Bagh (Poonch) as mutually agreed by India and Pakistan, it was a barter trade and there was no exchange of currency.

6. At the relevant point of time, when this cross-LoC trade commenced, the intra-state sales tax was governed by the Jammu and Kashmir Value Added Taxes Act, 2005 ["the VAT Act, 2005"]. Section 55 of the VAT Act, 2005, which came to be amended on 7th February, 2012 categorically provided that the cross-LoC trade would be considered as a zero-rated sale. The cross-LoC trade was thus carried by the petitioners and other traders without payment of any sale or purchase tax.

7. However, in the year 2017, the GST regime was rolled out by the Government, and CGST Act, 2017 and J&K GST Act, 2017 were promulgated. Both the legislations came into operation with effect from 8th July, 2017. Admittedly, there was no provision under these legislations akin to Section 5 of the J&K VAT Act, 2005. The petitioners, as they claim, treated cross-LoC trade as a zero-rated sale, attracting no sale tax, did not indicate their cross-LoC transactions in their return, nor did they pay any sales tax on this account. This happened in the financial years 2017-2018 and 2018-2019.

8. The respondent authorities, having received information from the Office of DGGI, JRU, Jammu, initiated investigations against the petitioners to probe as to whether the petitioners had paid GST on their outward supply of goods to PoK during cross-LoC trade and also on the inward supplies received from PoK upto 12th October, 2017. It seems that the Superintendent, CGST and CX Range Srinagar, called for trade-wise, item-wise details of goods traded out and the goods traded-in, in respect of each

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cross-LoC traders for the period with effect from 8th of July, 2017, to 7th of March, 2019.

9. Upon collection of the relevant material, it was found that there were huge outward and inward supplies affected by the petitioners and that the GST on such supplies had not been accounted for in the returns filed by the petitioners. Accordingly, the impugned show cause notices upon the petitioners in terms of Section 74(1) of the CGST Act, 2017 was served. The petitioners chose not to reply to the show cause notices and decided to assail the same before this Court under Article 226 of the Constitution of India on the ground that the show cause notice was without jurisdiction and bad in the eyes of law.

10. The impugned notices have been called in question by the petitioners primarily on the following grounds:

1. that the cross-LoC trade regulated by SOP issued by the Government of India dated 20th October, 2008, is an intra-state trade between the two countries, therefore, not amenable to the provisions of CGST Act of 2017;
2. that impugned show cause notice issued by the respondents under Section 74(1) of the CGST Act, 2017 is barred by limitation, having been issued beyond the period prescribed under Section 74;
3. that even if it is assumed that the trade was intra-state, yet the demand of tax would not be permissible unless against the supplies made by the petitioners to the traders in PoK are paid in terms of the supplies of equivalent amount made by the traders of PoK to the petitioners, as the trade is a barter trade where no money would exchange hands;

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4. that even if it is assumed that the cross-LoC trade is an intra-state trade, yet Section 74 would not be attracted unless it is a case of wilful representation, fraud, or suppression of fact. The case would naturally fall under Section 73 for which a lesser period of limitation has been prescribed for reopening of the assessment; that the bunching of show cause notice in respect of two different financial years, i.e., 2017-2018 and 2018-2019 is not permissible under the GST Act, 2017.

11. Mr. Faisal Qadri, the learned Senior Counsel, has elaborated his arguments on all the four highlighted aspects of the dispute. Mr. Qadri was, however, quick to concede that the nature of cross-LoC between two parts of the State is clearly suggestive of the fact that the trade is intra-state and not a trade of import or export of goods between two countries. We appreciate the fair stand taken by learned Senior Counsel.

12. Mr. Qadri has placed reliance on a couple of judgments passed by various High Courts to hammer his point that bunching of notices for different financial years is not permissible in law. We will advert to these judgments later.

13. *Per contra,* Mr. Tahir Majid Shamsi, learned DSGI, appearing for respondents, supports the reasoning given by the Officer in the order confirming the demand and would submit that going by the provisions of CGST Act, 2017, the supplies to and from PoK in pursuance of cross-LoC trade conducted as per SOP 2008, are intra-state and taxable under CGST Act/SGST Act and that no exemption notification exists for cross-LoC barter trade. He would further submit that notice was issued under Section 74(1) of the CGST Act, 2017, for suppression of facts, the petitioners deliberately

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and wilfully suppressed the taxable supplies in GSTR-1, GSTR-3B and avoided payment of GST.

14. With regard to the limitation, Mr. Shamsi would submit that the due date for filing returns for the financial year 2018-2019 was till 31st December 2022 as is apparent from a notification dated 20th October, 2020, issued by the Government of India, Ministry of Finance (Department of Revenue) by notification number 80/2020-Central Tax, and the period for which the impugned show cause notices have been issued falls in the financial year 2018-2019. He would, therefore, argue that the impugned show cause notices issued by respondents were within the time prescribed and cannot be assailed on the ground that the same are beyond the period prescribed and, therefore, without jurisdiction.

15. To sum up his arguments, Mr. Tahir Shamsi would urge this Court to dismiss the petitions and relegate them to the statutory remedies under Section 107 of the CGST Act, 2017. He places reliance upon a couple of judgments to support his argument.

16. Having heard learned counsel for the parties and perused the material on record, we find that the following questions have arisen for determination in these petitions:-

(1) Whether the cross-LoC trade regulated by SOP issued by Ministry of Home Affairs (JK Division) Government of India dated 20th of October 2008 is not an intra-state trade between India and Pakistan and therefore not amenable to the provisions of CGST Act of 2010/JK GST Act of 2017 ?

(2) Whether the show cause notice issued by respondents is essentially a show cause notice under Section 73(1) or it

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is a notice issued under section 74(1) of the CGST Act of 2017 ?

(3) Whether the impugned show cause notice issued by the respondents purportedly under section 74(1) of CGST Act of 2017 is barred by limitation having been issued beyond the period prescribed under the said Section ?

(4) Whether the bunching of show cause notice in respect of two tax periods i.e., financial year 2017-2018 and 2018 - 2019 is permissible under GST Act of 2017 ?

(5) Whether in case of barter trade where the goods are exchanged for goods of equal amount, the assessee can be taxed twice, once for outward supplies and second time for inward supplies ?

(6) Whether the availability of statutory remedy of appeal provided under Section 107 of the CGST Act of 2017 which is an equally efficacious remedy, bars the entertainability of writ petition under Article 226 of Constitution of India ?

Q. No. 1. Nature of LoC trade: Whether an intra-state trade?

17. The cross-LoC trade, as we have narrated hereinabove was one of the Confidence Building Measures agreed upon by the two countries i.e., India and Pakistan. With a view to regulating cross-LoC trade, the Ministry of Home Affairs, Government of India issued SOP on 20th October 2008. This cross-LoC trade was decided to commence on Srinagar-Muzaffarabad and Poonch-Rawalakote routes with effect from 21st October 2008. This was essentially a barter trade where there was no exchange of currency from either side. This cross-LoC trade was between the people living across LoC i.e., trade between two parts of the State of Jammu and Kashmir, one, the then 'State of Jammu and Kashmir' and the other 'Pak occupied Kashmir'.

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18. “Intra-state supply of goods” is defined in Section 2 (64) of the CGST Act of 2017 in the following manner :-

> (64) “intra-State supply of goods” shall have the same meaning as assigned to it in section 8 of the Integrated Goods and Services Tax Act;

19. Section 8 of the Integrated GST Act of 2017 reads as under:-

> (1) Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply:
>
> Provided that the following supply of goods shall not be treated as intra-State supply, namely:-
>
> (i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;
>
> (ii) goods imported into the territory of India till they cross the customs frontiers of India; or
>
> (iii) supplies made to a tourist referred to in section 15.
>
> (2) Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply:
>
> Provided that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.
>
> *Explanation* 1.- For the purposes of this Act, where a person has,
>
> (i) an establishment in India and any other establishment outside India;
>
> (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
>
> (iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory,
>
> then such establishments shall be treated as establishments of distinct persons.
>
> *Explanation* 2.- A person carrying on a business through a branch or an agency or a representational office in any

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territory shall be treated as having an establishment in that territory.

20. From reading of the intra-state supplies of goods and services, it is evident that where the location of supplier and the place of supplies of goods are in the same State or same Union Territory, that shall be treated as intra-state supply.

21. Section 2(56) of CGST Act of 2017 defines "India" as under:-

> (56) "India" means the territory of India as referred to in Article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (Central Act No. 80 of 1976), and the air space above its territory and territorial waters;

22. It is thus evident that India means Territory of India as referred to in Article 1 of the Constitution of India and, therefore, it would be appropriate to set out hereinbelow Article 1 of the Constitution as well which reads thus:-

> (1) **Name and territory of the Union:-** (1) India, that is Bharat, shall be a Union of States.
>
> (2) The States and the territories thereof shall be as specified in the First Schedule.
>
> (3) The territory of India shall comprise-
>
> (a) the territories of the States;
>
> (b) the Union territories specified in the First Schedule; and
>
> (c) such other territories as may be acquired.

23. To better understand, it would also be appropriate to refer to the definition of State as given in Section 2 (103) of the JK GST Act of 2017 which reads thus:

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> "Section 2 (103) "State" means the State of Jammu and Kashmir".

24. It is not disputed by learned counsel appearing on either side that the area of the State presently under de-facto control of Pakistan is part of territories of the State of Jammu & Kashmir. Therefore, in the instant case the location of the suppliers and the place of supply of goods were within the then State of Jammu Kashmir (now Union Territory) and, therefore, the cross-LoC trade affected by the petitioners during the tax period in question was nothing but an intra-state trade. We appreciate the fair stand taken by the learned senior counsel appearing for the petitioners despite their being contrary pleadings disputing the nature of cross LoC trade as intra-state trade.

Q. No. 2. The impugned show cause notice:

Whether it is essentially a notice issued under section 73(1) of the CGST Act of 2017 though it is purported to have been issued by the respondents under 74(1) of CGST Act of 2017 ?

25. With a view to appreciate the rival contentions of the learned counsel appearing for the parties, a quick look at Section 73 and 74 of the GST Act of 2017 would be necessary.

> **Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.-**
>
> (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or

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utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under subsection (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable

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and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

Section 74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful- misstatement or suppression of facts.

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those

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covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under subsection (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest

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payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1.- For the purposes of section 73 and this section,-

(i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under **[**sections 122, 125, 129 and 130**]** are deemed to be concluded.

Explanation 2.- For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

26. Both these Sections fall in Chapter XV dealing with the subject "DEMAND and RECOVERY". Section 73, as is evident from its plain reading, is invoked by the proper officer, when any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized for any reason "**other than the reason of fraud or any willful mis-statement or suppression of facts"** to evade tax. Whereas Section 74(1) can be invoked by the proper officer where any tax has been paid or short paid or erroneously refunded or their input tax credit has been wrongly availed or utilized **"by reason of fraud or any willful mis-statement or suppression of facts"** to evade tax.

27. From reading of the two provisions in juxtaposition, the difference in the two is clearly visible. If the evasion of tax has taken place because of

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fraud or any willful mis-statement or suppression of facts, Section 74 would be attracted and the proper officer shall serve a notice on the person chargeable with tax which has not been paid or which has been short paid or to whom the fund has been erroneously made or who has wrongly availed or utilized input tax credit requiring him to show cause as to why he should not pay the amount specified in the notice along with interest and penalty. This notice is required to be served by the proper officer at least six months prior to the time limit of five years from the due date of furnishing the annual return for the financial year in question. However, absent any fraud, willful mis-statement or suppression of facts, if there is evasion of tax for any other reason, Section 73 would be applicable and the time limit for passing order under said Section would be three years from the due date for furnishing the annual return for the relevant financial year.

28. Apart from the fact the two provisions operate on different grounds, the other difference between the two provisions is the period of limitation prescribed for passing an order, after issuing a show cause notice under the two sections, confirming the demand. With a view to finding out as to whether the impugned notice which is purportedly issued under section 74(1) of the CGST Act of 2017, actually falls within the ambit of the Section, we have carefully gone through the impugned show cause notice issued to each one of the petitioners in these petitions.

29. Para 6, 6(a) and 6(b) furnish grounds for issuance of show cause notice which for facility of reference are reproduced hereinbelow: -

> 6. Whereas, in view the fact that there is no specific notification or otherwise has been issued which exempts cross LoC Barter trade from payment of GST, the outward supply to PoK and inward supply from PoK

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[under RCM up to 12/10/2017 as per notification No. 08/2017-Central Tax (Rate) dated 28.06.2017 are intra-state supplies and are subject to GST in view of the provisions of Section 7 of CGST Act 2017.

6(a) As per Explanation 2 of Section 74 of CGST Act of 2017, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report, or any other documents furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer. The Noticee appears to have deliberately not cooperated/willfully not associated with the investigations and also, appears to have deliberately/willfully not supplied copies of invoices and requisite information. Further, under the self-assessment procedure prescribed under CGST Act 2017 and rules made thereunder, it was the responsibility of the Noticee to determine and discharge their GST liability and file GST returns properly, but the Noticee neither assessed their GST liability correctly, nor they discharged their due GST liability and suppressed the facts from the Department with sole intention to evade payment of GST.

6(b) Had the Department not initiated enquiry and investigation against the Noticee evidencing the Noticee's indulgence into evasion of the GST by short payment of GST, the evasion would have remained unearthed. In view of the discussion supra, it appears that the Noticee willfully contravened the provisions of the CGST Act and the J&K SGST Act, by not paying the due GST on cross LoC-barter trade during financial year 2018-19. As such, GST amount of Rs. 1,23,400/- appears to be recoverable from the party under Section 74 of the CGST Act 2017 and Section 74 of the J&K SGST Act 2017 along with interest payable thereon under Section 50 of the Acts and penalty equivalent to the tax.

30. From careful reading of the above paras of the impugned show cause notice, it clearly comes out that there was prima face suppression of material facts by the petitioners and that the petitioners were well aware that there was no specific notification issued by the Government under Section 11 of the CGST Act of 2017 exempting cross-LoC barter trade from payment of

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GST. They were also aware that these supplies whether inward or outward were intra-state supplies and subject to GST in terms of section 7 of the CGST Act 2017. It was the responsibility of the petitioners to self-assess and discharge their GST liability at the time of filing GST returns properly. The CGST Act of 2017 provides a self-assessment procedure which casts a statutory responsibility on the assessee to disclose all transactions whether taxable or exempted. It also comes forth from para 6(a) of the show cause notice that the petitioners deliberately did not cooperate and associate with the investigation nor did they supply the copy of invoices and requisite information. It is also coming out from the show cause notice that had the department not initiated inquiry and investigation, the evasion of GST by the petitioners by short payment of GST could not have been unearthed.

31. The reading of show cause notice particularly the paras which we have reproduced above do make it a *prima facie* case of suppression of facts tracing the impugned show cause notice to Section 74(1) of the CGST Act of 2017. We have deliberately used the expression "*prima facie*" as we would leave it open to the proper officer to adjudicate this aspect independently on the basis of material placed before it and the reply, if any, submitted by the petitioners to the show cause notice.

32. It is in view of the above, it is concluded that the impugned notice is *prima facie* issued on the ground of suppression of facts and information and, therefore, falls within the purview of Section 74(1) of the CGST Act of 2017.

Q. No. 3. Whether the impugned notice is barred by limitation prescribed under Section 74 (2) read with Section 74(10).

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33. Before we proceed to determine the question, we deem it appropriate to set out Section 74(2) and 74(10) herein:-

> "74(2). The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.
>
> 74(10). The proper officer shall issue the order under sub section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to or within five years from the date of erroneous refund."

34. From reading of Section 74(2), it clearly transpires that a notice under sub-section (1) of Section 74 is required to be issued by the proper officer within six months prior to the time limit specified in sub-section (10) for issue of order. Sub-section (10), however fixes a period of five years for passing an order under sub-section (9) from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid etc. relates. As we have discussed hereinabove and is also a clear stand taken by respondents that the notice impugned was issued to the petitioners at least six months prior to the expiry of five years from the date due for furnishing the annual return for the financial years in question.

35. In the instant case, the due date for furnishing the annual return for the financial year 2017-2018 was extended upto 5th February 2020, whereas it was so extended for 2018-2019 upto 31st December 2020. In all these cases, the impugned show cause notices have been issued on 4th August 2024, i.e., well six months prior to the expiry of five years from the due date for furnishing annual returns. For the financial year 2017-2018, the order confirming the demand in terms of sub-section 9 of Section 74 could have been passed by the proper officer upto 5th February 2020 and the impugned

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show cause notice was issued on 4th August 2025 i.e., six months prior to the expiry of the time limit. Similarly for financial year 2018-2019, order in terms of sub-section 9 of Section 74 could have been passed by the proper officer on or before 31st December 2025 and the show cause notice was issued on 4th August 2024, i.e., well prior to six months of the due date.

36. Viewed from any angle, the show cause notices issued under Section 74(1) of the CGST Act of 2017 cannot be said to be barred by limitation prescribed under the Section.

Q. No. 4. Whether the bunching of two show cause notices pertaining to tax period with effect from July 2017 to April 2019 which falls in two financial years i.e., 2017-2018 and 2018-2019 is permissible under the provisions of CGST Act 2017/JKGST Act of 2017 ?

37. From the reading of entire CGST/JKGST Act, one would not find any prohibition for issuing one composite show cause notice for multiple financial years. Sections 73 and 74 would only require that:

(1) the period of demand must be specified;
(2) show cause notice must be issued within limitation;
(3) the notice must contain clear grounds, specific allegations and year wise quantification;

38. If the aforesaid requirements are met, there would be no bar in bunching of financial years, more particularly, when the requirement of principles of natural justice is adequately met.

39. We are thus of considered opinion that the composite show cause notice cannot be held invalid if there is year-wise breakup of tax, interest and penalty; the allegations are not vague; each period is within limitation and the notice is speaking and detailed one.

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40. It is only in the cases where the show cause notice suffers from vagueness or non specificity, that bunching may be impermissible. The show cause notice can be found fault with on the ground of bunching only in the following circumstance:-

(1) Where there is no year wise quantification;

(2) Where there are general and vague allegations like "tax evaded for several years";

(3) where there is no specific evidence for each period;

(4) Where the limitation has expired for any part of the notice;

(5) Where the court finds that clubbing of notices for two or more financial years has caused prejudice to the assessee and is in violation of principles of natural justice.

41. When we examine the show cause notices issued to the petitioners in the instant cases, we find that there is year-wise quantification of the liability and the allegations are *prima facie*, cogent and detailed one, giving fair opportunity to the assesses to respond and defend themselves. We have also found that the show cause notices in respect of both the periods, i.e., Financial Years 2017-2018 and Financial Year 2018-2019, are not hit by the limitation prescribed under Section 74(2) read with Section 74(10) of the CGST Act, 2017.

42. Viewed thus, it cannot be said that in the instant case, the bunching of composite show cause notice issued in respect of tax periods falling in mentioned year 2017-2018 and mentioned year 2018-2019 is impermissible and liable to be interfered with.

Q. No. 6. Availability of statutory remedy of appeal under Section 107 of the CGST Act of 2017.

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43. Having found that the show cause notices issued to the petitioners are not *prima facie* assailable on the ground of want of jurisdiction of the proper officer, the objection taken by the respondents to the entertainability of the writ petition in the face of availability of equally efficacious statutory remedy of appeal must succeed.

44. It is trite law that "entertainability" and "maintainability" of writ petition under Article 226 of Constitution of India are two different concepts. Availability of an alternative remedy does not operate as an absolute bar to the maintainability of a writ petition and the rule which requires a party to pursue the alternative remedy provided by a statute is a rule of policy, convenience and discretion rather than a rule of law. Where the controversy is purely a legal one, involving only question of law and where a jurisdictional issue is raised by the assessee, nothing bars this Court to entertain the petition and decide the said questions, the availability of equally efficacious statutory remedy notwithstanding. The availability of alternative remedy under the statute cannot thus operate as a bar to the maintainability of the petition, yet a Constitutional Court may decline to entertain the petition and relegate the justice seeker to the remedy provided under the statute.

45. In **Whirlpool Corporation vs. Registrar of Trade Marks [1998 (8) SCC 1],** a two Judge Bench of the Hon'ble Supreme Court, after surveying the case law on the subject, held in paragraph 15 thus:

> 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

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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**. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

46. The position of law is reaffirmed in a recent judgment of the Hon'ble Supreme Court in the case of **M/s. Radha Krishan Industries vs. State of Himachal Pradesh and Ors [AIR 2021 Supreme Court 2114].** The Hon'ble Supreme Court once again revisited the entire case law on the point and culled-out in para 27 thereof the following principles:-

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule

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of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

47. In view of the settled legal position, we are of the considered opinion that in respect of impugned show cause notices, the petitioners have a remedy to file their reply, submit requisite material and contest these on merits, and, if, after considering the representation/reply to the show cause notice tendered by the petitioners, the proper officer passes an order confirming the demand in terms of sub-section (9) of Section 74 of CGST Act of 2017, the petitioners shall have a remedy of appeal before the Appellate Authority under Section 107 of the CGST Act of 2017.

48. In the face of availability of equally efficacious remedy provided under the statute, we are not inclined to entertain these petitions and rather would relegate the petitioners to the statutory remedies available under the CGST Act of 2017.

49. The writ petitions challenging the show cause notices simplicitor are otherwise premature and liable to be dismissed and others where the demand has been confirmed and an order in terms of sub-section (9) of Section 74 of the CGST Act of 2017 has been passed, the petitioners have a remedy of appeal provided under Section 107.

50. Question No. 5 is, however, left open to be determined by authorities under the CGST Act, 2017.

51. In view of the aforesaid discussion and the answers given to the questions framed, we find no merit in all these petitions, same are accordingly **dismissed**.

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52. Since we are dismissing the petitions either on the ground that these petitions are premature or that petitioners have equally efficacious alternative remedy under the statute, we issue following directions:

1. That where the petitioners have not filed reply to the show cause notices issued to them under Section 74(1) of the CGST Act of 2017, they shall do so within a period of four weeks from today and the proceedings initiated in terms of Section 74(1) shall be taken to logical end by the proper officer within a period of three months after the receipt of reply to the show cause notice, if any.

2. That where the final order in terms of sub-section (9) of Section 74 confirming the demand has already been passed, the petitioners shall have three months' time from today to avail the remedy of appeal under Section 107 of the CGST Act of 2017.

53. We further clarify that anything said by us in the judgment hereinabove in respect of merits of the controversy shall not be taken as an expression of final opinion on the matter and the proper authority or the appellate authority, as the case may be, shall be free to adjudicate the matter on its merits independently of the *prima facie* view we have taken on the merits of the case. The legal questions determined, however, shall be binding on the parties.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
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Whether approved for reporting? Yes

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