IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 20366 of 2026

Decided on: 17.11.2026

M/s Rama Krishna Industries .....Petitioner

Versus

State of Himachal Pradesh and others ... Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Hon'ble Mr. Justice Yogesh Jaswal, Judge

Whether approved for reporting?[1] ***Yes***

For the petitioners	:	Mr. Shivang Puri, Advocate through VC and Mr. Goverdhan Lal Sharma, Advocate.
For the respondents	:	Mr. Sushant Kaprate, Additional Advocate General.

Ajay Mohan Goel, Judge *(Oral)*

Notice. Mr. Sushant Kaprate, learned Additional Advocate General, accepts notice on behalf of the respondents.

2. With the consent of learned Counsel for the parties, we are disposing of this petition at this stage itself.

3. The petitioner is aggrieved by the show cause notice issued under Section 74 of the HPGST/IGST and CGST Act, 2017 (Annexure P-1), dated 22.08.2026.

4. Learned Counsel for the petitioner has taken the Court through the contents of the impugned notice as also the provisions

[1] *Whether reporters of the local papers may be allowed to see the judgment?*

2026:HHC:49499

of Section 74 of the CGST Act and submitted that the ingredients of Section 74 are nowhere borne out from the impugned notice. Therefore, as the show cause notice has been wrongly issued by invoking the provisions of Section 74, the same is liable to be quashed.

5. On the other hand, learned Additional Advocate General has submitted that the present writ petition is not maintainable as the petitioner has approached this Court against the show cause notice only and the grounds which the petitioner has taken in the writ petition against the show cause notice, can be raised by filing response to the show cause notice. He submitted that the intent of filing the petition is to evade the statutory remedy and therefore, the petition is not maintainable.

6. We have heard learned Counsel for the parties as also learned Additional Advocate General and have also carefully gone through the contents of the show cause notice.

7. The show cause notice has been issued under Section 74(1) of the HPGST/IGST and CGST Act, 2017. Perusal of the show cause notice issued to the petitioner under Section 74 of the HPGST/IGST and CGST Act, 2017, demonstrates that the

2026:HHC:49499

requirement of Section 74 have not been met therein in letter and spirit.

8. Section 74 provides that 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 utilized by reason of **(a) fraud, (b) any willful misstatement, (c) or suppression of facts**, to evade tax, he shall serve notice to the person chargeable with tax, which has not been so paid, or which has been so short paid, etc. Thus, the condition precedent for the invocation of the provision of Section 74, is that the officer concerned has to be satisfied that tax has not been paid or short paid, or erroneously refunded, or where input tax credit has been wrongly availed or utilized, on account of either a fraud that has been played by a party, or any willful misstatement made by a party, or suppression of facts which has been made by a party, to evade tax.

9. The statutory requirement of Section 74 has to be correlated with the allegations/averments made in the notice. Mere mentioning of allegations and then making a bald assertion that the same amounts to either fraud or willful misstatement or suppression

2026:HHC:49499

of facts, does not satisfy the mandate of Section 74.

10. Hon'ble Supreme Court in **M/s Tata Steel Limited** versus **Union of India through the Secretary, Ministry of Finance and others**, *SLP(C) No.16859/2026*, has held that in so far as a notice under Section 74 of the GST Act is concerned, the satisfaction should be not only of mismatch of Input Tax Credit (ITC) and short payment of tax having occurred, but the officer should be satisfied that either fraud or willful misrepresentation or suppression has led to such mismatch or short payment of tax. Hon'ble Supreme Court has further held in this judgment that it is not mere lip service to the provision that is intended when an extended limitation period is provided for recovering an excess benefit availed, etc. and the foundational facts which led to the inference arrived at of fraud, or willful misrepresentation, or suppression should be evident from the notice itself.

11. Similarly, the Hon'ble Supreme Court in **M/s G.R. Infra Projects Limited Ratlam** versus **The State of Madhya Pradesh and others**, *Special Leave Petition (C) No.33594 of 2025*, has been pleased to hold as under:

> *"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*

2026:HHC:49499

how fraud was inferred or concealment of facts were detected. In fact, the 'or' employed indicates that even the assessing officer was not sure that the assessment was proceeded by reason of fraud or on the ground of concealment of facts. 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."

12. The present show cause notice does not either allege or establish that the act of the petitioner, on account whereof, show cause notice has been issued to the petitioner, is due to **fraud or willful misstatement or suppression of facts**. In terms of the judgments of the Hon'ble Supreme Court referred to herein above, until and unless, the Assessing Officer is satisfied that the omission on the part of the Authority is because of a fraud or willful misstatement of facts or suppression of facts, the provisions of Section 74 of the Act, cannot be invoked.

13. In the present case, there is no such allegation in the impugned notice that the act of the petitioner herein was either

2026:HHC:49499

attributable to a fraud or was attributable to misstatement or suppression of facts. The impugned notice issued does not satisfy the provisions of Section 74. Hon'ble Supreme Court has been pleased to hold that the words of Section 74 are not to be mechanically recited in the notice to enable recovery officer to extend normal period of limitation and the foundation of the facts which led to inference arrived at of fraud or willful misstatement or suppression of facts should be evident from the notice itself. All these ingredients *prima facie* are missing in the impugned show cause notice dated 22.08.2026. In the light of the above observations, this petition is allowed to the extent that Show Cause Notice dated 22.08.2026 (Annexure P-1)is hereby quashed and set aside.

14. At this stage, learned Additional Advocate General submits that as the show cause suffers from technical flaw, the Authority may be given liberty to issue a fresh show cause notice. This is opposed to by learned Counsel for the petitioner on the ground that as the limitation for initiating proceedings against the petitioner has already expired, therefore, no such liberty can be granted to the Authority.

2026:HHC:49499

15. All that we are observing with regard to the request made by learned Additional Advocate General is that the passing of this judgment shall not come in the way of the Authority if it can proceed against the petitioner as per law, of course, subject to all just exceptions under law. Pending miscellaneous application(s), if any, also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

(Yogesh Jaswal)
Judge

November 17, 2026
(*narender*)