



Reserved On:27.08.2025

Delivered On:29.08.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 743 of 2023

M/S Khurja Scrap
Trading Company

.....Petitioners(s)

Versus

Additional
Commissioner Grade-2
(Appeal) & Another

.....Respondents(s)

Counsel for Petitioners(s)	: Nitin Kumar Kesarwani, Suyash Agarwal
Counsel for Respondent(s)	: C.S.C.

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Shri Suyash Agarwal, learned counsel for the petitioner and Shri Ravi Shankar Pandey, learned ACSC for the State – respondents.
2. The instant writ petition has been filed challenging the impugned order dated 16.12.2022 passed by the Additional Commissioner, Grade – II (Appeals), State Tax, Bulandshahar for the Assessment Year 2021-22 as well as the impugned order dated 07.10.2022 in form GST DRC – 07 under Rule 142(5) passed by the Commercial Tax Officer, Sector – 2, Khurja, Bulandshahar.
3. Learned counsel for the petitioner submits that the petitioner is registered under the GST and is engaged in the business of plastic roofing sheet, etc. On 26.11.2021, the petitioner purchased roofing sheets from one M/s Unique Trading Company,

Ghaziabad, in which the petitioner claimed ITC on the basis of tax invoice issued by the supplier. Thereafter, on 20.07.2022, a show cause notice was issued under section 74 of the UP VAT Act on the basis of physical inspection of supplier, which was found to be non-existent. On 27.07.2022, the petitioner filed reply to the show cause notice. Thereafter, vide impugned order dated 07.10.2022, imposed penalty and interest. Aggrieved by the order dated 07.10.2022, the petitioner preferred an appeal, which has been dismissed vide impugned order dated 16.12.2022. Hence, this writ petition.

4. Learned counsel for the petitioner further submits that the proceedings under section 74 of the GST Act were initiated on the premise that the selling dealer was not found at the business place during inspection. Further, the registration of the selling dealer has been cancelled on 08.04.2022. He further submits that the two transactions in question were undertaken by the petitioner on 26.11.2021 and 30.11.2021 and all the payments were made through banking channel, but without considering the same the impugned orders have been passed. He further submits that information was sought by the respondent – authority from toll plaza with regard to movement of the goods from the disclosed truck and the same was found to be correct.
5. He further submits that once the seller was having a valid registration on the date of transaction, the cancellation of registration subsequently will not adversely affect the petitioner. He further submits that the petitioner disclosed the purchases in GSTR 2-A and the supplier has disclosed the same in its return in GSTR – 1 and 3-B, which were not adjudicated by the respondent no. 1. He further submits that once the returns have been filed and no material contrary to it has been brought on record, merely because at the time of inspection the selling dealer was not found at the place of business and the registration has been cancelled,

will not make the transactions sham and the benefit of ITC cannot legally be denied.

6. He further submits that the proceedings under section 74 of the GST Act can only be initiated if there is a fraud or mis-statement or suppression of fact with a view to evade tax, which is mentioned in the circular dated 13.12.2023. In support of his submissions, he has placed reliance on the judgement of the Apex Court in ***Suraj Impex (India) Private Limited Vs. Union of India*** [(2025) 30 Centax 362 (SC)] as well as the judgement of this Court in ***Commissioner of Sales Tax Vs. S/s Agrawal Rolling Mills*** [2003 UPTC 1248] and submits that though the said circular dated 13.12.2023 has been issued subsequently, but the benefit of circular has to be accorded to the petitioner.
7. He further submits that no finding has been recorded by either of the authorities below with regard to fraud, mis-statement or suppression of fact by the petitioner with an intent to evade payment of tax and therefore, in absence of such finding, the proceedings under section 74 of the GST Act are vitiated. He further submits that since at the time of transaction the registration of the selling dealer was not cancelled, but subsequent to the transaction, the ITC cannot be denied to the petitioner. In support of his submissions, he has placed reliance on the judgements of this Court in ***R.T. Infotech Vs. Additional Commissioner*** [Writ Tax No. 1330/2022, decided on 30.05.2025] and ***Solvi Enterprises Vs. Additional Commissioner*** [Writ Tax No. 1287/2024, decided on 24.03.2025].
8. Per contra, learned ACSC supports the impugned orders and submits that the petitioner has failed to bring on record the material to show that the payment has been made through banking channel. The petitioner has made only averment that the payments were made through banking channel, which will not make the transactions valid. Further, merely the assertion that the

goods have been actually moved without any material to show that the payments of loading and unloading and transporting have been made, the transactions cannot be said to be genuine. He further submits that at the time of inspection, the selling dealer was not found at the place of business and therefore, the proceedings were rightly initiated.

9. After hearing learned counsel for the parties, the Court has perused the records.
10. It is not in dispute that the transactions between the petitioner and the selling dealer, i.e., M/s Unique Trading Company, were held on 26.11.2021 and 30.11.2021. The registration of the selling dealer was cancelled on 08.04.2022. The record further shows that GSTR – 1/1FF and GSTR 3-B were also filed, which shows the returns and tax filed by the selling dealer. Once these facts have been brought on record, the State authorities ought to have verified the same, but instead, proceedings were initiated on the basis of subsequent inspection that the selling dealer was not found at the place of business and adverse view was drawn. This Court in ***Solvi Enterprises*** (supra) and ***R.T. Infotech*** (supra) has taken the view that when the registration of the selling dealer was cancelled subsequent to the transaction, the same can be verified on GST portal on GSTR – 2A.
11. Further, paragraph nos. 3.2 & 3.3 of the circular dated 13.12.2023 read as under:-

“3.2 In this regard, section 74 (1) of CGST Act reads as follows:

(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

utilized by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax.

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. ”

12. On perusal of the aforesaid paragraphs, it is apparent that proceedings under section 74 can only be invoked when there is a fraud, wilfull mis-statement or suppression of fact to evade tax on the part of the taxpayer. Since the benefit of this circular has been given in view of the judgement of the Apex Court in **Suraj Impex (India) Private Limited** (supra) and the judgement of this Court in **S/s Agrawal Rolling Mills** (supra), strict compliance of the circular is required by the State authorities. The record shows that no finding has been recorded at any stage that there is a fraud or willful mis-statement or suppression of fact to evade payment of tax.
13. The record further shows that at the time when the transaction took place, the selling dealer, i.e., M/s Unique Trading Company, was duly registered. The record further shows that the selling dealer has duly uploaded GSTR – 1/1FF and GSTR 3-B. Once, at the time of when transaction took place, the selling dealer was registered, no adverse view should have been taken against the

petitioner as held by this Court in ***Solvi Enterprises*** (supra) and ***R.T. Infotech*** (supra).

14. In view of the aforesaid facts & circumstances of the case as noted above, the impugned orders cannot be sustained in the eyes of law. The matters require reconsideration.
15. For the said purpose, the impugned orders passed by the authorities below are hereby quashed.
16. The writ petition is, accordingly, allowed.
17. The matter is remanded back to the Commercial Tax Officer, Sector – 2, Commercial Tax/State Tax, Bulandshahar, i.e., the respondent no. 2, for deciding the issue de novo after granting due opportunity of hearing to all the stake holders, expeditiously, preferably, within a period of two months from the date of production of a certified copy of this order.

(Piyush Agrawal,J.)

August 29, 2025

Amit Mishra