2026 INSC 920

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. of 2026
(Arising out of SLP (C) No.16859 of 2026)

M/s Tata Steel Limited

...Appellant(s)

Versus

Union of India through the
Secretary Ministry of Finance and Ors.

...Respondent(s)

JUDGMENT

K. VINOD CHANDRAN, J.

Leave granted.

2. The appellant is concerned with the Show Cause Notice (SCN) issued for three financial years, viz: 2018-2019 to 2020-2021, purportedly in pursuance of an objection raised on an audit by the office of the Comptroller and Auditor General of India. The SCN is termed to be one under Section 74 of the Central Goods and Services Tax Act, 2017 (the CGST Act). The appellant's contention is that there is no allegation of fraud, willful misstatement or suppression of facts, bereft of which there can be no invocation of Section 74, where there is an extended period of five years, as distinguished from a period of three years available under Section 73. It is also contended that the Assessing Officer itself was not convinced about the audit objection and he had kept it under 'call book', which as per the departmental parlance means 'keeping in abeyance'. However, again a notice was issued because the limitation period was coming to a close, purportedly as a protective measure, which concept is alien to the GST regime.

3. We heard Dr. A.M. Singhvi and Mr. Kavin Gulati, learned Senior Counsel appearing for the appellant-assessee and Mr. S. Dwarakanath, learned A.S.G. appearing for the Department.

4. It is the learned A.S.G.'s contention that the proceedings were commenced even before the limitation under Section 73 expired and in fact, the proceedings clearly indicate suppression of material facts and willful misrepresentation. The learned ASG also refers to Explanation 2 to Section 74[1] to assert suppression, which could even be a mere non-declaration of facts or information which an assessee is obliged to declare.

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[1] (omitted w.e.f. 01.11.2024)

5. Insofar as limitation is concerned, Section 73 of the CGST Act mandates that the Proper Officer shall issue notice under sub-section (1), at least three months prior to the time limit specified in sub-section (10); Section 73 being the provision enabling such notice, in cases where there is no allegation of fraud/willful misrepresentation/suppression of facts. Sub-section (10) provides that the Proper Officer shall issue the order under Section 9 within three years from the date of furnishing of the annual return. For the financial year relevant to such proceedings, it is Section 44 which provides for furnishing of annual return and sub-section (1) requires the annual return to be furnished within such time and in such form and in such manner as is prescribed. The Goods & Service Tax Rules, 2017 by Rule 80 prescribes the furnishing of an annual return for every financial year as specified under Section 44 electronically, on or before the 31^{st} of December, following the end of such financial year. Relevant in the above case are the financial years 2018-2019, 2019-2020 and 2020-2021. As per the provisions above noted, the annual returns have to be filed on or before 31.12.2018, 31.12.2020 and 31.12.2021 respectively.

6. The CGST Act having come into force on 01.07.2017 coupled with the introduction of electronic systems, there were teething problems reckoning which the last date for filing annual return was extended for the years commencing from 2017-2018 onwards. Such extensions were made by notifications issued under Section 44(1). Insofar as the assessment year 2018-2019, by virtue of successive notifications, the time to furnish the annual return eventually stood at 31.12.2020, after a number of short extensions. Insofar as the assessment years 2019-2020 and 2020-2021, the notifications issued under Section 44(1) extended the time limit for furnishing the returns and the last of such extensions enabled annual returns to be filed before 31.03.2021 & 28.02.2022 respectively for the said years. Consequently, the limitation for issuing a notice under Section 73 was pushed further, to expire on 31.12.2023 for assessment year 2018-2019 and respectively 31.03.2024 & 28.02.2025 for the assessment years 2019-2020 and 2020-2021.

7. While matters stood thus, the pandemic struck, paralyzing every activity, world over and this Court took *suo motu* cognizance of the difficulties of the litigants, due to the rigor of limitation and that of the statutory authorities, enjoined with timelines provided under the various enactments. *Suo Motu* Writ Petition (C) No.3 of 2020 registered as ***IN RE Cognizance for Extension of Limitation*** extended the period of limitation as provided in various statutes and eventually by order dated 01.01.2022, the Writ Petition was disposed of with directions, *inter alia* providing for exclusion of limitation for the period between 15.03.2020 to 28.02.2022. Hence, the said exclusory period coming within the limitation period of three years had to be excluded and the limitation pushed further to that extent. As noticed above the last date for furnishing the annual returns of 2018-2019, 2019-2020 and 2020-2021 as per the various notifications under Section 44 were respectively 31.12.2020, 31.03.2021 and 28.02.2022. The limitation ought to have expired at three years, respectively on 31.12.2023, 31.03.2024 and 28.02.2025. One year and two months within the period of limitation of 2018-2019 and eleven months within the period of three years limitation of 2019-2020 falls within the period relaxed by this Court. Thus, the limitation from the last date of furnishing of annual returns stands extended to 28.02.2025 for the above two years and for the year 2020-2021, it remains unchanged at 28.02.2025, since even as per the statute and notifications period of limitation only commenced on 28.02.2022, the extension granted by this Court being inapplicable. The SCN dated 13.06.2025 is past the extended limitation period.

8. Now the question arises as to whether the SCN can be sustained based on the extended period of five years as available under Section 74 which can be availed by the Department only if there is an allegation of fraud/willful misrepresentation/ facts/suppression.

9. That allegation, if available, the Department can seek to sustain the notice under Section 74, which is what they attempted to do. The proceedings which led to the SCN commenced with Annexure P1 dated 27.05.2024; issued with respect to audit observations regarding mismatch of input tax credit (ITC) for the three financial years and for the short payment of tax for the financial year 2019-2020. Replies were submitted and on 27.06.2024 by Annexure P5, documents were sought in support of the explanations offered. Communications were exchanged between the assessee and the 7th respondent and eventually the

SCN was issued on 13.06.2025 produced as Annexure P11. Subsequently, the Additional Commissioner, respondent No.5 intimated, by Annexure P12 dated 27.06.2025, that the SCN has been transferred to 'call book' meaning thereby 'kept in abeyance'. It was also intimated that the Department has contested the issue raised as an audit objection, before the Public Accounts Committee.

10. Later, a fresh notice was issued on 01.07.2025, reviving the earlier notice and proposing a protective demand since the proceedings are time bound under the GST law, there being no such measure of protective assessment statutorily permitted under the GST Act.

11. At the outset we have to notice that the proceedings under Section 73/74 can be initiated only on the satisfaction of the Assessing Officer. Even if observations/objections are made on audit, the Assessing Officer should enter his satisfaction before a notice is issued. Insofar as a notice under Section 74, the satisfaction should be not only of mismatch of ITC and short payment of tax having occurred, as is alleged in this case, the Officer should be satisfied that either fraud/willful misrepresentation/suppression had led to such mismatch or short payment of tax.

12. We are unable to countenance the argument of the learned ASG that Explanation 2 to Section 74 applies, since even according to him it stood omitted with effect from 01.11.2024. Equally fallacious is the argument that the proceedings were initiated prior to the expiry of limitation under Section 73. The limitation under Section 73 (10) is also to issue the order under Section 73 (9) and not to issue a notice and sub-section (2) of Section 73 provides for a notice, at least three months before the time limit under Section 73 (10).

13. The fact that the Department had taken up the objections on audit with the Public Accounts Committee itself indicates that there was no satisfaction at the end of the Department, meaning the Assessing Officer; as to the mismatch or the short fall of payment of tax having occurred, not to say anything about the suppression alleged. Further, but for a bland statement of availing of ITC for the three years *'without documentary evidence and suppress the facts'* (sic), the SCN did not contain any foundational facts to validate such allegation of suppression.

14. It is not mere lip service to the provisions that is intended when an extended limitation period is provided for recovering an excess benefit availed, short payment or excess refund, from the assessee, especially when the allegation is of fraud/willful misrepresentation/suppression. 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 are not to be mechanically recited in the notice to enable recovery outside the normal limitation provided under the statute

15. In the facts of the above case, we do not find any such factual facts having been stated to make out a case of a deliberate device employed to evade tax or avail excess ITC, as coming out from the SCN. The bland statement made at some places of suppression of facts, merely to avail the extended period of limitation would barely suffice and puts to peril the notice under Section 74. The SCN on the above reasoning, cannot be sustained and the consequential Order-in-Original dated 26.12.2025 too is put in peril and both are set aside. However, the extended period of two years is not yet over, for all the three years since the three-year limitation expired only on 28.02.2025 for all the subject financial years. It would be open for the Department, if it is thought fit, to initiate an appropriate proceeding under Section 74, but with the foundational facts, coming out from the notice itself and an order being passed before 28.02.2027.

16. With the above reservation and liberty, the appeal stands allowed.

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

.... J.
(J. B. PARDIWALA)

.... J.
(K. VINOD CHANDRAN)

NEW DELHI;
AUGUST 25, 2026.