IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	29.08.2025
Pronounced on	28.11.2025

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.20449 of 2024
& W.M.P.Noss.22405 & 22407 of 2024

Apollo Tyres Limited
B-25, SIPCOT Industrial Growth Center,
Oragadam, Sriperumbudur 602 105,
Tamil Nadu,
Represented by its Head- Taxation
Mr. Rajiv Kumar Gupta

...Petitioner

Vs.

1. Union Of India
Through the Secretary, Ministry of Finance
Department of Revenue North Block,
Central Secretariat
New Delhi-110 001 India
E-mail uoidhe@gmail.com

2. Central Board Of Indirect Taxes And Customs
Through the Chairman
Ministry of Finance
Departmental of Revenue
North Block, Central Secretariat

New Delhi-110 011 India
E-mail Bhatnagarsonu@gmail.com

3. The Additional Director
Director General of GST Intelligence
Delhi Zonal Unit
West Block-8, Wing-3,
1st Floor, Sector-I, R.K. Puram
New delhi-110 011
Email satishlaw@yahoo.com

4. The Additional Commissioner of GST
AND Central Excise
Chennai South Commissionerate
692, M.H.U Complex, Nandanam
Chennai-600 035

5. The Commissioner of GST AND Central
Excise (Appeals-II)
Newry Towers, 2nd Floor,
No. 2054-I, II Avenue, 12th Main Road,
Anna Nagar, Chennai-600 040

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the Show Cause Notice Ref. F. No. DZU/INV/GST/H/45/2019/10454 dated 20.04.2022 issued by the 3rd Respondent and Order-in-Original No. 55/2023 (DGGI) dated 27.04.2023 passed by the 4th Respondent and the further Order-in-Appeal Nos.27-54/2024 dated 18.03.2024 passed by the

5th Respondent and quash the same

For Petitioner : Mr.Joseph Kodianthana, Sr.counsel
for Mr.Vikram Veerasamy

For Respondent : Mr.AR.L.Sundaresan, ASG,
Asst. by Mr.Rajinish Pathiyil, SPC
for R1 to R3
Mr.K.Mohanamurali, SPC for R4 & R5

ORDER

This writ petition has been filed against the impugned show cause notice dated 20.04.2022 issued by the 3rd respondent and the impugned orders dated 27.04.2023 and 18.03.2024 passed by the 4th & 5th respondents.

2. Petitioner's submission:

2.1 The learned Senior counsel appearing for the petitioner would submit that in this case, the challenge was made with regard to the issuance of show cause notice and passing of original order dated 27.04.2023 and appeal order dated 18.03.2024 under Section 74 of the Goods and Services Tax Act, 2017 (hereinafter called as “the Act”).

2.2 The petitioner is a limited company, incorporated under the Companies Act, 1956, and engaged in manufacturing and trading automotive tyres, tubes and flaps. Initially, the impugned show cause notice dated 20.04.2022 was issued by the respondents against the petitioner with regard to the validity of earlier tax payment method and proposing penalties. Upon receipt of the said notice, a reply was filed by the petitioner on 28.04.2022. However, without considering the said reply, the original order dated 27.04.2023 was passed by the 4th respondent. Aggrieved over the said original order, an appeal was preferred by the petitioner, however, without proper consideration, the said appeal was also rejected by the 5th respondent vide impugned order dated 18.03.2024. Hence, this petition.

2.3 He would submit that in this case, the petitioner made a supply of tyres, tubes and flaps (TTF) in a carry strapping form. As on the date of introduction of GST, i.e., with effect from 01.07.2017, all the three items are chargeable to GST at the rate of 28%. Therefore, whenever they effected the supply, they had raised separate invoices for each items and send it to the manufacturers.

2.4 He would also submit that for the purpose of convenience, the tyres, tubes and flaps are sent together by rising separate invoices. Therefore, at no point of time, the aforesaid items were supplied under a single invoice treating it as a "composite supply". Under these circumstances, with effect from 15.11.2017, the rate of duty against the tube was reduced from 28% to 18%. Likewise, from 01.01.2019, the duty liability of the flaps was reduced from 28% to 18%. Accordingly, the invoices were raised and supplies have been effected by the petitioner. However, there was a confusion among the industries as to whether effecting the supply of TTF in a carry strapping form is a "composite supply" or "individual supply". Therefore, on 12.01.2019, the petitioners had sent a communication that they are going to treat the supply of TTF in carry strapping as a "composite supply" and pay the short payment of additional 10%, along with the interest, for the tubes for the period between 15.11.2017 and 13.01.2019 and for the flaps for the period between 01.01.2019 and 13.01.2019. Accordingly, the entire tax amount, along with the interest, has been paid during the month of May 2022.

2.5 In the meantime, the Director General of GST Intelligence (DGGI) had initiated investigation against the petitioner on the supply of TTF on 21.01.2019 and took a view that in this case, the supply was effected as a "composite supply", for which, the petitioner should have paid the tax dues at the rate of 28%.

2.6 According to the respondents, though the petitioner's communication, for payment of the tax amount at the rate of 28%, was effected on 12.01.2019, the actual duty was paid only in the month of May 2022, i.e., subsequent to the investigation conducted by the DGGI dated 21.01.2019. Therefore, the respondents had arrived at a decision that the payment mechanism used by the petitioner is not valid in terms of Section 39(9) and hence, the petitioner is not entitled for avail ITC.

Hence, the impugned show cause notice was issued on the aspect of wrongful availment of ITC.

2.7 However, he would submit that the petitioner's inclination with regard to the payment of tax has been communicated to the respondents well in advance i.e., on 12.01.2019 itself. Subsequent to the receipt of the said information only, the respondents had initiated the investigation. In such case, the provisions of Section 39(9) would not apply in the present case.

2.8 Further, the petitioner had started the process of paying the amount from 12.01.2019 itself and thus, at any cost, the respondents cannot take a stand that the show cause notice under Section 74 of GST was issued against the petitioner by application of provision of Section 39(9) of the Act.

2.9 That apart, as on the date of passing of original order, under Section 74, there was no tax dues on the part of the petitioner. However, the said aspect was not at all taken into consideration by the 4th respondent while passing the impugned original order dated 27.04.2023. Hence, he would contend that the proceedings were initiated by the respondents by wrongly invoking the provisions of Section 74 of the GST Act, 2017 and subsequently, the impugned show cause notice was issued without satisfying the ingredients stated in the said provisions. When such being the case the issuance of the said show cause notice itself is illegal and the same is liable to be set aside.

2.10 Further, he would submit that Directorate of Revenue Intelligence (DRI) will have so many works to be looked into. Therefore, even in the worst situation, the confusion, which was prevailed on the aspect of application of tax rates for the goods, was cleared among the industries, i.e., not only with the petitioner but also the other industries, and accordingly, to avoid any further legal action and to buy peace, the TTF supply was construed as a "composite supply", for which the tax amount was calculated at the rate of 28% and the same was paid to the Department. Though the entire tax dues, along with the interest, has already been paid, the supply was not a "composite supply", but it is an individual supply, i.e., each and every item was supplied individually. However, without considering all the aforesaid aspects and even without fulfilling the ingredients of Section 74, the impugned notice came to be issued and original and appeal orders came to be passed by the respondents. Therefore, he requests this Court to set aside the entire proceedings initiated against the petitioner.

2.11 In support of his contention, he referred to the judgement of the Hon'ble Telangana High Court rendered in ***Rays Power Infra Private Limited vs. Superintendent of Central Tax*** reported in ***2024 (84) GSTL 146 (Telangana).***

3.Respondents' submission:

3.1 Mr.AR.L.Sundaresan, learned Additional Solicitor General, appearing for the respondents would submit that in this case, the petitioner had inserted tubes and flaps inside the tyre and wrapped it together and supply it to the manufacturers. While effecting supply, a common invoice was sent by the petitioner by mentioning different duties for each goods. Subsequently, they had treated the supply of TTF in a carrying strap as "composite supply" vide communication dated 12.01.2019. Therefore, it is clear that the previous actions of the petitioner in payment of the duties by reducing the tax rate from 28% to 18% for tubes and flaps, without treating the supply as "composite supply”, is deliberated and motivated.

3.2 Further, though the intimation was provided with regard to the payment of tax dues on 12.01.2019, the entire tax amount was paid by the petitioner only after the investigation of DGGI. In other words, the shortage amount was remitted by the petitioner only during the month of May 2022, which is subsequent to the investigation of DGGI conducted on 21.01.2019. Therefore, the petitioner's case would certainly attract the provisions of Section 74 of the Act.

3.3 He would also submit that in terms of the provisions of Section 39(9), if any registered person, after furnishing a return, discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify the same. In this case, as stated above, the shortage amount was remitted by the petitioner subsequent to the investigation of DGGI. When such being the case, certainly, bar under the provisions of Section 39(9) would come into picture and accordingly, the impugned show cause notice was issued against the petitioner. Consequently, the original and appeal orders were also passed. Hence, he prays for dismissal of this petition.

4. Petitioner's reply:

4.1 In reply, the learned Senior counsel appearing for the petitioner would submit that in this case, the petitioner's inclination with regard to the payment of tax has been communicated to the respondents well in advance i.e., on 12.01.2019 itself. The said amount was remitted during the month of May 2022. In such case, no action can be initiated against the petitioner under Section 74 of the Act. Further, he would submit that on the very next day of the enquiry, i.e., 22.01.2019, the petitioner had deposited a sum of Rs.5 Crore to the respondents and intimated that the said deposit shall be utilised for further tax liability.

4.2 Further, he would submit that the applicability of Section 74 would come into picture only if there is any short payment of tax due to fraud or wilful misstatement or suppression of material facts to evade tax. In this case, the petitioner had no intention to play any fraud to evade tax. Only due to the confusion with regard to the supply of goods and in application of rate of tax, they had paid reduced tax rate for the period from 15.11.2017 to 13.01.2019 for tubes and 01.01.2019 to 13.01.2019 for flaps. Subsequently, the said confusion was clarified, not only by the petitioner but also other manufacturers, whereby they arrived at a conclusion that the supply has to be treated as "composite supply". Pursuant to the same, the petitioner had expressed their intention to pay the tax at the rate of 28%. In such case, no criminal motive, viz., fraud, wilful misstatement or suppression of material facts, can be attributed against the petitioner, so as to invoke Section 74 of the Act. Consequently, the view taken by the respondents that the petitioner is not permitted to rectify the mistake or make payment due to bar under Section 39(9) will also not come into picture. Hence, he requests this Court to quash the entire proceedings initiated by the respondents against the petitioner.

5. I have given due considerations to the submissions made by the learned Senior counsel appearing for the petitioner and the learned counsel appearing for the respondents and also perused the entire materials available on record.

6. Now, the issue that has to be decided in this case is as to whether the invocation of the provisions of Section 74 of the Act, is justifiable on the part of the respondents or not?

7. In this case, initially, the petitioner-company has been supplying the goods, viz., tyres, tubes and flaps (TTF) directly to the manufacturers. As on the date of introduction of GST, i.e., with effect from 01.07.2017, all the three items are chargeable to tax at the rate of 28%. Subsequently, with effect from 15.11.2017, the rate of duty against the tube was reduced from 28% to 18%, likewise, from 01.01.2019, the duty liability of the flaps was reduced from 28% to 18%.

8. In the subject supply, the tubes and flaps were kept inside the tyres and wrapped together. Thereafter, supply was effected. According to the petitioner, a mere wrapping up would not amount to natural bundling

of the goods, so as to consider it as a “composite supply”. However, to avoid further confusion, the petitioner had treated that the supply of TTF in a carry strapping form is a “composite supply” and offered to pay the tax at the rate of 28%. The inclination of the petitioner was communicated to the respondents vide communication dated 12.01.2019. Accordingly, the arrears of tax amount, along with interest, was remitted to the respondents during the month of May 2022.

9. However, the acceptance of the petitioner that the subject supply is a “composite supply” with the intention to buy peace, will not exclude the jurisdiction of this Court to decide the issue as to whether the subject supply is “composite supply” or “individual supply”. Further, such a mere admission would not disentitle the petitioner to raise the said issue before the Court of law, even though the said point was not raised in the appeal. However, in this case, though elaborate arguments were made on

the above aspect, since the subject supply was treated as a "composite supply" vide communication dated 07.01.2019 and also since the present petition has been filed only challenging the invocation of Section 74, this Court is not inclined to deal with the said aspect of composite supply.

10. Under these circumstances, the investigation was conducted by the DGGI on 21.01.2019. On the very next day of the enquiry, i.e., 22.01.2019, the petitioner had deposited a sum of Rs.5 Crore to the respondents and intimated that the said deposit shall be utilised for further tax liability. Under these circumstances, the notice under Section 74 came to be issued on 20.04.2022 by the 3rd respondent. Upon receipt of the said notice, a reply was filed by the petitioner on 28.04.2022 and subsequently, paid the entire tax dues during the month of May 2022. However, without considering the said reply, the order in original was passed by the 4th respondent on 27.04.2023. Aggrieved over the said

order, an appeal was preferred by the petitioner, however, the said appeal was also rejected by the 5th respondent vide impugned order dated 18.03.2024, and the same is under challenge before this Court.

11. At this juncture, it would be apposite to extract the relevant provisions of Section 74 of the Act, which reads as follows:

> ***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 willful 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 willful 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.

12. A reading of the above provision would show that this provision would apply only in the event of payment of tax, which is not paid or short paid or erroneously refunded or ITC wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts. When such being the case, the Authorities are supposed to have traced out as to whether there is any evasion of tax in the course of payment of tax dues with the intention of fraud or provision of wilful misstatement or suppression of facts. If the aspects of fraud, misstatement or suppression of facts were not established while issuing the show cause notice, the same would be considered as issued without fulfilling the ingredients of Section 74 of the Act and such notice is liable to be set aside as the same was issued without jurisdiction.

13. Now, let this Court examine the issue as to whether there is any fraud, wilful misstatement or suppression of materials facts involved in the petitioner's case, so as to attract the provisions of Section 74 of the Act.

14. In this case, as stated above, the petitioner had voluntarily come forward and stated that the supply of TTF effected by them is a "composite supply" and accordingly, paid the entire tax dues along with interest, to buy the peace. In such case, the respondents cannot attribute any bad intention, such as, fraud, wilful misstatement or suppression of material facts, against the petitioner. At the worst, same could be considered as tax not paid or short paid due to confusion in the entire industry and that the petitioner deferred the payment of tax and paid the same, once the doubts had been cleared. The same would attract proceedings under Section 73 of the Act. However, in the present case,

the short payment of tax was remitted along with interest before the issuance of notice and hence no such action can be taken. Thus, the respondents should have considered the aspect of confusion among the industries about viewing the subject supply as "composite supply".

15. Further, the respondents cannot invoke the provisions of Section 74 merely on the ground that the tax amount was remitted by the petitioner subsequent to the investigation of DGGI. In this case, the petitioner had expressed their intention to pay the tax dues, vide communication dated 12.01.2019, which is much prior to the date of investigation. When such being the case, it is clear that the present proceedings initiated against the petitioner was without satisfying the ingredients of the provisions of Section 74 of the Act.

16. It was submitted by the respondents that as per the provisions

of Section 39(9), no rectification can be made, after the initiation of the investigation. In such case, payment mechanism used by the petitioner is not valid in terms of Section 39(9) of the Act and accordingly, the petitioner is not entitled to utilise the ITC.

17. At this juncture, it would be apposite to extract the provisions of Section 39(9), which reads as follows:

> "***39. Furnishing of returns:-***
>
> *(1) to (8).............*
>
> *(9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or subsection (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act:"*

18. A perusal of the above would makes it clear that an assessee can be permitted to rectify the returns in the events other than scrutiny, audit, inspection or enforcement activity by the tax authorities and avail ITC. According to the respondents, the petitioner made payment of tax dues during the month of May 2022, which is subsequent to the enforcement activity, i.e., DGGI investigation dated 21.01.2019 and thus, it would clearly attract the provisions of Section 74 of the Act and thus, disentitle the petitioner to avail ITC.

19. However, upon perusal of records, it is clear that the petitioner's inclination to make the payment of tax dues was communicated to the respondents as early as on 12.01.2019, which is much prior to the date of DGGI investigation. When such being the case, as stated above, no criminal motive, viz., fraud, wilful misstatement or

suppression of material facts, can be attributed against the petitioner, since the petitioner had voluntarily disclosed the short payment vide the aforesaid communication.

20. That apart, the short payment on the part of the petitioner had occurred only due to the confusion among industries to treat the subject supply as "composite supply" due to the reduction of tax rate for the tubes with effect from 15.11.2019 and for the flaps with effect from 01.01.2019. The said confusion prevailed till 12.01.2019 and thereafter, a clear decision was taken by the petitioner and other industries that the supply of TTF effected by them is a "composite supply". Pursuant to the same, a communication was sent by the petitioner on 12.01.2019, whereby they expressed their intention to pay the short payment of tax dues along with interest. In such view of the matter, no ingredients of Section 74 of the Act was satisfied to invoke the said provision against

the petitioner and hence, the question of application of Section 39(9), so as to deprive the petitioner from availing ITC, would not at all arise. The said provision would attract only, in the event, if the enforcement action was initiated, much prior to the intimation of the petitioner to pay the short payment of tax.

21. Further, at the time of issuance of show cause notice under Section 74 of the Act, there was no liability of tax on the part of the petitioner. When such being the case, it is clear that the impugned proceedings was initiated by the respondents by wrongly invoking the provisions of Section 74 of the Act and hence, the same is liable to be quashed. Accordingly, the impugned show cause notice dated 07.04.2022, the impugned original order dated 27.04.2023 and the impugned appeal order dated 18.03.2024 are quashed.

22. As the arguments were advanced by the petitioner that the supply, of TTF in the form of carry strapping, effected by them is not a "composite supply" but it is an "individual supply" is concerned, since the petitioner had treated it as a "composite supply" and paid the tax accordingly to buy the peace, vide communication dated 12.01.2019, this Court feels that it is not a fit case to decide the issue as to whether it is a "composite supply" or "individual supply". As discussed above, mere payment of tax, which is applicable for "composite supply", by the petitioner, will not disentitle the petitioner to raise the said issue separately before the Authorities concerned. In such case, the Authorities are bound to decide the matter and they cannot cite the communication dated 12.01.2025 and reject the contention by stating that in a previous occasion, the petitioner had admitted the subject supply as "composite supply". The ultimate aspect that has to be considered by the respondents is as to whether the present supply would fall within the definition of

“composite supply” as defined in the Act. Therefore, the said issue is left open to be decided in any appropriate case.

23. For all the reasons stated above, the entire proceedings initiated against the petitioner, viz., the impugned show cause notice dated 20.04.2022, the impugned original order dated 27.04.2023 and the impugned appeal order dated 18.03.2024, are hereby quashed.

24. In the result, this writ petition is allowed. No cost. Consequently, the connected miscellaneous petitions are also closed.

28.11.2025

Speaking order
Index : Yes
Neutral Citation : Yes
nsa

To

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