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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

UNVEILING SECTION 74 OF THE CGST ACT 2017: UNRAVELLING THE INTRICACIES OF DETERMINING TAX IRREGULARITIES DUE TO FRAUD OR MISSTATEMENT

AUTHORED BY - RITWIK GHOSH

ABSTRACT

The Central Goods and Services Tax (CGST) Act of 2017 is a cornerstone of India's tax legislation, designed to streamline the country's indirect tax system. Within this framework, Section 74 assumes a critical role, focusing on the determination of tax liabilities arising from fraud, misstatement, or the suppression of facts. Section 74 of the CGST Act 2017 empowers tax authorities to ascertain instances where taxes have been unpaid, short-paid, erroneously refunded, or where input tax credit has been wrongly availed or utilized due to fraudulent activities or willful misstatements. The provision acts as a deterrent against tax evasion and ensures the integrity of the GST system. The section outlines a meticulous process for tax determination, starting with the issuance of a show-cause notice to the concerned taxpayer. The notice provides details of the alleged tax evasion and grants the taxpayer an opportunity to present their case. Subsequently, the tax authority conducts a thorough examination, taking into account all relevant factors and evidence. The provision explicitly mentions that the determination should be made within a specified time frame, ensuring a fair and expedited resolution. Additionally, it emphasizes the principles of natural justice, allowing the taxpayer the right to be heard and present their case effectively. To prevent arbitrary use of power, Section 74 incorporates safeguards to protect the interests of taxpayers. The provision allows taxpayers to make representations against the proposed tax determination, presenting their case in a structured manner. This ensures that the adjudication process is not only fair but also allows for corrective measures in case of genuine errors or misunderstandings. Critics argue that the provision may be susceptible to misuse or misinterpretation, leading to unintended consequences for honest taxpayers. This paper aims to highlight striking the right balance between enforcing tax compliance and safeguarding taxpayer rights that remains a delicate task for tax authorities.

Keywords: CGST Act, Section 74, Tax Determination, Fraud, Misstatement, Suppression of Facts, GST Regulations, Tax Enforcement, Adjudication Process, Legal Implications, Input Tax Credit, Remedial Measures.

INTRODUCTION

With the goal of streamlining the tax system and establishing a single market, India's Goods and Services Tax (GST) regime marks a substantial change to the nation's indirect tax structure. GST was first introduced on July 1, 2017, and it took the place of a convoluted system of indirect taxes levied by the federal and state governments. One of the biggest tax revisions since India's independence in 1947 was praised for this action. The Goods and Services Tax (GST) is a nationwide tax that is levied on the supply of goods and services determined by the destination. India had a dual taxation system in place before the introduction of the Goods and Services Tax (GST). This system included state-level taxes like Value Added Tax (VAT) and Entry Tax, as well as government levies like government Excise Duty and Service Tax. Prices for products and services increased as a result of cascading taxation, in which taxes were imposed at different phases of production and distribution on top of one another. The goal of the GST was to eliminate this cascading effect by creating a single tax structure.

Taxes are imposed under the GST regime at many stages of the supply chain; however, credits for input taxes paid at each stage are allowed, so the tax is only imposed on the value addition. In the end, this process lowers consumer tax burdens and increases efficiency, which lowers the cost of goods and services. The four primary tax slabs for GST are 5%, 12%, 18%, and 28%. Certain necessary goods are subject to a concessional rate of taxation, while others are subject to an additional cess. Due to their respective concurrent responsibilities of taxation and collection, the federal and state governments had to work closely together to implement the Goods and Services Tax (GST). The GST Council was created as a constitutional body to make important decisions about GST, such as tax rates, exemptions, and legislative changes. It is chaired by the Union Finance Minister and includes representatives from all states and union territories. This collaborative approach ensured that the interests of all stakeholders were considered during the transition to the new tax regime.

The formation of a single national market through the removal of interstate trade obstacles is one of

the main advantages of the GST. Businesses had to comply with numerous state-level taxes and regulations under the former tax system, which made it more difficult to conduct cross-border business. These obstacles were eliminated by the GST, which created a single tax system and allowed the smooth flow of goods and services across the nation. Businesses and consumers alike have benefited from the enhanced efficiency this has brought about in supply chains and logistics. Furthermore, by implementing online filing and a single registration system, GST has made it easier for businesses to comply with tax laws. Depending on their revenue, firms must file monthly, quarterly, or annual filings on the Goods and Services Tax Network (GSTN) site. Businesses now spend less on paperwork and compliance due to this digital infrastructure, which facilitates commercial transactions and creates a more transparent tax environment. However, the introduction of GST has not been without obstacles. During the first phase of the shift, supply chains experienced disturbances as companies adapted to the new tax structure. Moreover, there have been arguments for the simplification and rationalisation of tax rates regarding the categorization of goods and services under various tax slabs. Furthermore, reports of technological difficulties and compliance problems with the GSTN portal have shown how important it is to keep upgrading the infrastructure for tax administration.

Despite these difficulties, the Goods and Services Tax (GST) has been widely praised as a revolutionary change that has improved tax compliance, expedited India's indirect tax system, and increased economic growth. The federal and state governments have been able to spend in social welfare programmes, infrastructure, and other developmental projects because to the unified tax structure. Going forward, resolving the outstanding issues and optimising the advantages of this historic tax reform in India will require continued modifications and enhancements to the GST system.

SECTION 74 of the Act

Section 74 of the Central Goods and Services Tax (CGST) Act, 2017 pertains to the **determination of tax not paid or short paid, erroneously refunded, or input tax credit wrongly availed or utilized due to fraud, wilful misstatement, or suppression of facts**. When the proper officer suspects any of these irregularities, they serve a notice on the person liable for the unpaid tax, short-paid tax, erroneous refund, or wrongful input tax credit utilization. The notice requires the individual to show cause as to why they should not pay the specified amount along with interest and a penalty equivalent to the tax amount. The term “fraud” encompasses deceit with an intent to gain

an unjust advantage, while “wilful misstatement” typically involves deceit with the connivance of another party. “Suppression” specifically refers to non-declaration of facts or information required by law, including failure to furnish information when requested by the proper officer.

In addition, Section 74 permits the appropriate official to issue an assessment order that establishes the tax due, interest, and penalty of the individual receiving the notice. Furthermore, it respects natural justice principles by giving the person in question the chance to be heard prior to passing such an evaluation order. Moreover, it stipulates that the appropriate authority must issue a demand notice outlining the total amount that the person is required to pay, including the tax, interest, and penalty, and that the person must pay the notice's cost within thirty days of its delivery. Recovery procedures may be started if the debtor does not make the payment within the allotted time, that includes attachment of property, arrest, or detention in prison. Moreover, Section 74 encompasses provisions for refund or adjustment of excess amounts paid by the person, in cases where the amount paid exceeds the amount due under the assessment order. It is imperative to note that the section confers powers upon the proper officer to take necessary actions for the recovery of tax, interest, and penalty, ensuring compliance with the provisions of the CGST Act, 2017, and maintaining the integrity of the taxation system, while also ensuring fairness and due process to the person concerned.

DETRMINATION OF FARUD INTEREST AND PENALTY

The GST Act, 2017, Section 65, mandates that an audit be conducted of the registered person's records and books of account, as well as the verification of the documents used to maintain the books of account and the returns and statements provided under the provisions of the Act and the Rules made thereunder, in order to determine the accuracy of the turnover, the claims of exemptions and deductions, the rate of tax applied to the supply of goods or services, or both, the input tax credit claimed and used, the refund claimed, and other pertinent issues. Therefore, the audit team's primary goal is to review the records and books of accounts kept in the regular course of business as well as those required under Section 35 of the GST. Legislative actions, like the one being audited under Section 65, aim to bring attention to the fact that revenue has been lost and to offer a friendly legal remedy for that loss. In order to ensure that taxpayers abide by the civil duties imposed by the GST legislation, the audit process should be amicable on both ends and resolve any disagreements in a peaceful manner. There may be occasions during a Section 65 audit where tax under the GST Act is either not paid at all, is paid incorrectly, or is paid insufficiently. The frequency of

incomplete tax payments, incorrect refunds, or incorrectly claiming Input Tax Credits could be the result of an honest error or a calculated attempt to avoid paying taxes. Section 74 of the Act must be used to determine the tax in all situations where there is a *mens rea* component, and Section 73 of the Act must be used in all other situations. Given their expertise and awareness of contemporary corporate procedures, legislators have created two separate adjudication compartments: one for genuine errors and another for intentional tax evasion. Section 73 of the SGST/CGST Act, 2017 governs the determination of tax by the Proper Officer in the following circumstances where the person charged with tax has no intention of evading tax, either by fraud, willful misstatement, or suppression of facts. where the person chargeable with tax has intention to evade tax, either by way of fraud or through willful misstatement or through suppression of facts, the determination of tax, by the proper officer, shall be done under Section 74 of the SGST/CGST Act, 2017. The following scenarios include –(i) Tax is not paid or shortpaid. (ii). Any erroneous refund. (iii.) Input Tax Credit is wrongly availed or utilized.

Therefore, Section 74 of the Act's language "intention to evade tax, either by way of fraud or through willful misstatement or through suppression of facts" takes great significance. It is not enough to just not pay taxes when the law demands that there be an intent to avoid paying them. There has to be more to it. In this sense, "evade" refers to circumventing the legal requirement of paying taxes. The term "intent" adds extra stringency to it. The taxpayer must knowingly choose not to pay taxes that are legally required to be paid. In order to submit a proposal under Section 74 of the Act, the case must be of a kind that, based only on the documentation, persuades the relevant authority that the violation is being committed with the specific intention of avoiding paying taxes. To put it another way, the authorities must present a compelling argument. The presumption of innocence, which states that a person is presumed innocent unless proven guilty, is a cornerstone of legal theory. Regrettably, it seems that some of these fundamental ideas have been forgotten, which has led to an increasing number of people being punished even when they are innocent.

Furthermore, it has been discovered that Section 74 of the Act has been applied frequently in situations where the sellers are not accused of willful concealment or misrepresentation. On the other hand, some audit officers are employing Section 74 to levy fines without intentionally suppressing any information. These audit officers do not clarify how they arrived at the preliminary conclusion that deliberate falsification or omission of facts occurred. Therefore, the audit query regarding the

imposition of a penalty cannot be validated simply by using Section 74. Given the facts and the legislation, the proposal to impose a penalty under Section 74 is illegal given the lack of substantial evidence proving a purpose to dodge taxes by fraud, deliberate misrepresentation, or factual suppression. Every additional tax obligation is outside the purview of Section 74, which clearly addresses the willful attempt to avoid paying taxes. Because penal provisions are quasi-criminal in character, they should only be used sparingly and when supported by strong evidence.

It is important to note that the Act's proposed penalty under Section 74 on minor additional tax liability owing to a bona fide mistake directly accuses taxpayers of intending to evade taxes through fraud, deliberate misrepresentation, or suppression of facts. Before damaging tax payers' reputation on records, any accusation that undermines their honesty and integrity must be supported by strong evidence. Consequently, the notion of ease of doing business is hampered by such an unnecessary and unjustified suggestion under Section 74, which also results in time waste for the department and the taxpayer. The higher courts have ruled that when issuing letters and conducting audits in accordance with Section 65 of the Act, the Proper Officer is required to take the complexity and nature of the firm into account. Stated differently, the audits will not be carried out in a routine manner. Given the established legal framework surrounding the application of Section 74 of the GST Act's penal provisions, it is obvious that no punishment may be imposed under the provisions of that section until and unless there is proven to be willful, deliberate, or intentional tax evasion or attempt to evade any tax. A genuine mistake or simple omission cannot be considered a crime. Stated differently, the purpose of the individual to deceive the GST is a necessary condition for facing consequences under Section 74 of the GST Act, 2017.

The Apex Court in **Hindustan Steel limited versus State of Orissa** has held that a quasi-criminal proceeding results in an order imposing penalty for failure to comply with statutory obligations. Generally, no penalty will be imposed unless the party required to comply with the law did so knowingly, engaged in dishonest or contumacious behaviour, or acted willfully in disregard of its obligation. Additionally, penalties won't be applied just because it's legal to do so. The authority has the option to decide whether to impose a penalty for failing to fulfil a legislative requirement after taking into account all pertinent facts. Also the *Hon'ble Supreme Court rendered in the case of Assistant Commissioner (st) & ors. Vs. M/s. Satyam Shivam Papers Pvt. limited & Anr* while upholding the decision of the High Court stated that the High Court has meticulously examined and

correctly found that no **fault or intent** to evade tax could have been inferred against the writ petitioner. However the court also removed the costs as imposed by the High court in the said matter. It is pertinent to mention that although the aforementioned ruling was rendered in relation to the expiration of the **E-WAY BILL**, the ratios are equally applicable to all of the crimes listed in **Section 122** of the GST Act. The aforementioned ruling basically states that, with the exception of administrative minor violations covered by **Section 125** of the Act, intent to avoid taxes must cease in order to trigger punitive sanctions under **Section 74**.

The audit procedures' contents, in our experience, indicate that there is no possibility of the taxpayer hiding their tax liability. Furthermore, there is no possibility that the taxpayer purposefully provided any erroneous information. It seems to me that the only things that occur throughout the audit process are possible honest and unintentional mistakes made by the taxpayer when filing their returns, such as forgetting to include a few transactions in the overall turnover or small procedural errors while claiming the ITC. We are all prone to making "human errors," which is all that can be said about this. It occurs as a result of carelessness, which does not absolve the taxpayer of providing false information or making a conscious effort to hide their tax liability. Under Section 50, the taxpayer who provides false information would undoubtedly face additional tax and interest. As a result, in certain circumstances, the penalty under Section 74 shall not be applied. In addition to the possibility of genuine errors being made by the taxpayers, the Audit Officer who drafts the audit order may also be prone to errors that result in tax liabilities. Because of this, the GST Act offers adequate "checks and balances" to safeguard the interests of all parties involved. The primary burden to prove offence committed by the tax payer lies on the audit officer. In the audit proceedings, it forms an opinion, prima facie or otherwise, to launch penalty proceedings against the payer. However, that can only be put into practice by means of the statutory notice provided by Section 74 read in conjunction with Section 75(4), which includes a hearing opportunity. Although the audit proceedings serve as the foundation for penalty proceedings, they are not combined processes that can benefit from one another's strengths. Neither can heal the flaw in the other. Even when a penalty procedure results from a deliberate breaking of the law, it nonetheless needs to stand alone. These procedures end under a distinct regulatory framework that is nonetheless separate from amicable audit procedures. Therefore, only statutory notice may be used to notify the taxpayer of the reasons behind the penalty proceedings. The omnibus notification under Section 65 is prone to imprecise language.

ISSUING OF FAKE INVOICES

These days, the problem of fraudulent or fictitious invoices is so widespread in India that only a small number of cases are reported daily from all over the nation. Due to the fact that the Goods and Services Tax (GST) law is applied, complied with, and administered online, tax regulators find it comparatively easier to identify transactions that occur outside of the system, including broken links and unrecorded transactions. In order to avoid paying taxes, evading taxes, recording fraudulent transactions, fraudulently obtaining input tax credit, or even inflating incomes, turnover, expenses, or input in the business or circular trading, fraudulent or bogus invoices are used.

Since the implementation of GST, a significant number of incidents of GST fraud have been identified by the Central and State GST authorities. These cases involve the use of fraudulent invoices to obtain incorrect input tax credit (ITC), which is then utilised to pay GST on outbound supplies. Although the fraudulent use of Input Tax Credit (ITC) appears to be the mens rea for using these bogus invoices, the unethical businesses involved also cheat other authorities, including banks, by inflating turnovers and laundering money, among other things.

CBIC and GSTN have started detailed data analytics across a number of data sets available with them. The outcome of preliminary data analysis has revealed interesting insights such as (CITATION)

- It has emerged that there is variance between the amounts of IGST & Compensation Cess paid by importers at Customs ports and input tax credit of the same claimed in GSTR-3B.
- There are major data gaps between self-declared liability in FORM GSTR-1 and FORM GSTR-3B.

CONCLUSION

The CGST Act's Section 74 deals with the starting of legal action against someone who has violated any Act regulations or engaged in tax evasion. This section gives the tax authorities the authority to notify the taxpayer and carry out an investigation to ascertain the severity of the infraction and the resulting tax obligation. If the taxpayer is found guilty once the investigation is over, they might have to pay the fine in addition to the tax that is owed. In order to mitigate the effects of Section 74, taxpayers must strictly adhere to the CGST Act's stipulations. This includes paying taxes on time, filing returns on time, and keeping correct records of all transactions. Strong internal control systems

and routine audits can assist in proactively identifying any possible inconsistencies or non-compliance problems, enabling prompt correction. In addition, consulting with tax experts or consultants can guarantee compliance with legal requirements and offer insightful information regarding the intricacies of GST regulations. To reduce the risk of non-compliance, it is imperative to remain informed about any modifications or revisions to the CGST Act.

