



2026:AHC:164420-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 3378 of 2026

Hcl Infotech Ltd.

.....Petitioner(s)

Versus

State of Uttar Pradesh and 2 others

.....Respondent(s)

Counsel for Petitioner(s)	: Akanksha Pandey, Atul Gupta
Counsel for Respondent(s)	: C.S.C.

Court No. - 39

**HON'BLE SAUMITRA DAYAL SINGH, J.
HON'BLE ARUN KUMAR, J.**

1. Heard Sri Atul Gupta, Learned counsel for the petitioner and Sri Ankur Agarwal, learned Standing Counsel for the State.
2. Challenge has been raised to the show cause notice dated 22.07.2026 issued to the petitioner under Section 74 of the UPGST Act, 2017 (hereinafter referred to as 'the Act ') for Financial Year 2017-18.
3. Three fold submissions have been advanced. First, it has been submitted that the notice dated 22.07.2026 had been issued beyond limitation. The limitation to issue the notice expired on 05.08.2024. In absence of any provision in the Act to allow for issue of fresh notice beyond that period of limitation and in absence of any specific direction issued by the writ Court in its order dated 27.09.2024 in **Hcl Infotech Ltd Vs. Commissioner, Commercial Tax And Another, 2024:AHC:158274-DB**, the impugned show cause notice is time barred and therefore

without jurisdiction. In any case, it may never have been issued with reference to Section 75(3) of the Act. Second, it has been submitted that the order of the Writ Court had clearly recorded findings in favour of the petitioner. Those hit on the jurisdictional facts claimed to be in existence, by the adjudicating authority.

4. Third, it has been submitted that the impugned show cause notice contains recital in paragraph 3 (ग) clearly indicating prejudice against the petitioner. After submissions were complete and order was being dictated, another submission has been advanced that the revenue authorities had no jurisdiction to issue impugned show cause notice inasmuch as they had first initiated proceedings under Section 73 of the Act for the same tax period, vide show cause notice dated 30.09.2023. It was dropped/withdrawn on 30.12.2023. On the same grounds, the second show cause notice may not have been issued under Section 74 of the Act.

5. On the other hand, learned Standing Counsel would contend, once the writ Court granted liberty to the revenue authorities to issue fresh show cause notice under Section 74 of the Act - vide order dated 27.09.2024 passed in **Hcl Infotech Ltd (supra)**, by own force of law created under Section 75(3) of the Act, fresh notice may have been issued before expiry of 2 years from the date of communication of the order of the writ Court dated 27.09.2024. To the extent the impugned show cause notice has been issued within that time, there is no bar of limitation. On the second and fourth issue, it has been submitted, all contentions being advanced were raised before the writ Court on the first occasion in **Hcl Infotech Ltd (supra)**. On a holistic consideration of such submissions, the writ Court quashed the earlier show cause notice issued under Section 74 of the Act dated 03.08.2024 and thereafter left it open to the revenue authorities to issue a fresh show cause notice under Section 74 of the Act. Therefore it cannot be gain said that the writ Court had adjudicated the merit issue or that the revenue lost jurisdiction to issue a fresh notice either occasioned by the earlier show cause notice issued

under Section 73 of the Act dated 30.9.2023 (later dropped) or for reason of later show cause notice dated 03.08.2024 issued under Section 74 of the Act being quashed by the writ Court. On the third issue, learned Standing Counsel fairly states that the observations contained in paragraph 3 (ग) of the impugned show cause notice are out of place.

6. Having heard learned counsel for the parties and having perused the record, the facts are undisputed. In that, notice dated 30.09.2023 was issued to the petitioner under Section 73(1) of the Act on the following counts:

"1. ITC availed on import of goods, however, not substantiated with relevant evidences like BOE

<i>Tax</i>	<i>IGST</i>	<i>SGST</i>	<i>CGST</i>	<i>CESS</i>
<i>ITC availed on import of services in GSTR-3B</i>	<i>620875</i>	<i>0</i>	<i>0</i>	<i>0</i>

You are hereby directed to substantiate with relevant evidences whether the goods have been imported and IGST has been paid or not during the course of import of goods.

If IGST not paid by you, then show cause why not the "ITC availed on said import" should be reversed along with interest as per section 50 and applicable penalty in the following manner:

<i>Particulars</i>	<i>IGST</i>	<i>CGST</i>	<i>SGST</i>	<i>Total</i>
<i>Reversal of ITC</i>	<i>620875</i>	<i>0</i>	<i>0</i>	<i>620875</i>
<i>Interest @ 18%</i>	<i>670545</i>	<i>0</i>	<i>0</i>	<i>670545</i>
<i>Penalty</i>	<i>62087</i>	<i>0</i>	<i>0</i>	<i>62087</i>
<i>Total</i>	<i>1353507</i>	<i>0</i>	<i>0</i>	<i>1353507</i>

2. ITC availed through TRAN-1, however, not substantiated with relevant evidences:

	<i>CGST</i>	<i>SGST</i>
<i>ITC availed through TRAN-1</i>	<i>21931776</i>	<i>00</i>

You are hereby directed to furnish explanation with supporting evidences whether the ITC availed through TRAN-1 form has been substantiated by the appropriate authority in accordance with provisions of Section 140 of the CGST Act. If not verified by the proper officer, then show cause why not the same should be reversed along with interest as per section 50 and applicable penalty in the following manner:

<i>Particulars</i>	<i>IGST</i>	<i>CGST</i>	<i>SGST</i>	<i>Total</i>
<i>Reversal of ITC</i>	<i>0</i>	<i>21931776</i>	<i>0</i>	<i>21931776</i>
<i>Interest @ 18%</i>	<i>0</i>	<i>23686318</i>	<i>0</i>	<i>23686318</i>

<i>Penalty</i>	<i>0</i>	<i>2193177</i>	<i>0</i>	<i>2193177</i>
<i>Total</i>	<i>0</i>	<i>47811271</i>	<i>0</i>	<i>47811271</i>

3. *Zero-rated supply made without payment of tax (Export and SEZ) declared in GSTR-9, however, not substantiated with LUT and other relevant evidences:*

	Taxable value	IGST	SGST	CGST	CESS
Zero-rated supply declared in GSTR-9	6222877	0	0	0	0

On verification from the portal, it has been found that no RFD-11 submitted by the company for the financial year 2017-18. The company is directed to provide the reason for non-payment of tax on above mentioned zero-rated supply in the absence of LUT. If the company is unable to explain such short/non-payment of tax, then show cause why the tax along with interest as per section 50 and applicable penalty should not be charged upon the company in the following manner: -

<i>Particulars</i>	<i>IGST</i>	<i>CGST</i>	<i>SGST</i>	<i>Total</i>
<i>Short paid tax @ 18%</i>	<i>1120118</i>	<i>0</i>	<i>0</i>	
<i>Interest @ 18%</i>		<i>0</i>	<i>0</i>	
<i>Penalty</i>	<i>112011.8</i>	<i>0</i>	<i>0</i>	
<i>Total</i>	<i>2441857.2</i>	<i>0</i>	<i>0</i>	

4. *Unreconciled ITC as per table 12(F) of GSTR-9C:*

<i>Unreconciled ITC</i>	<i>ITC to be reversed</i>			
	<i>IGST</i>	<i>SGST</i>	<i>CGST</i>	<i>CESS</i>
	<i>474921</i>	<i>0</i>	<i>0</i>	

You are hereby directed to furnish whether the unreconciled ITC has been paid or not. If not deposited by you, then show cause why not the same should be reversed along with interest as per section 50 and applicable penalty in the following manner:

<i>Particulars</i>	<i>IGST</i>	<i>CGST</i>	<i>SGST</i>	<i>Total</i>
<i>Reversal of ITC</i>	<i>474921</i>	<i>0</i>	<i>0</i>	<i>474921</i>
<i>Interest @ 18%</i>	<i>512914</i>	<i>0</i>	<i>0</i>	<i>512914</i>
<i>Penalty</i>	<i>47492</i>	<i>0</i>	<i>0</i>	<i>47492</i>
<i>Total</i>	<i>1035327</i>	<i>0</i>	<i>0</i>	<i>1035327</i>

5. *You have made exempted/nil rated/non-GST outward supplies; however, it has been noticed that reversal of ITC as per rule 42 and 43 not been done. Why proceeding for its reversal may not be initiated. Clarification is hereby expected;*

S. No	Issue	Table No. in GSTR-09	Taxable value	SGST	CGST	IGST	Cess	Total
A	B	C	D	E	F	G	H	I
1	Total supplies	5N+10-11	43,12,80,476.65	2,74,29,520.55	2,74,29,520.55	2,06,34,534.39	0	7,54,93,575.49

2	Exempt Supplies	5C+5D+5E+5F	1,19,32,391.67	0	0	0	0	0
3	Common input tax credit	60+13-12	-	2,06,99,297.18	4,26,31,073.18	3,54,47,728.5	0	9,87,78,098.86
4	ITC to be reversed	(S.No.2/ S.No.1)(x) S.No. 3	0	5,72,694.88	11,79,489.2	9,80,745.02	0	27,32,929.1
5	ITC reversed as per GSTR-09	7C+7D	0	1,75,268	1,75,268	1,02,415	0	4,52,951
6	Difference/Excess ITC claimed	S.No.4(-) S.No. 5	0	3,97,426.88	10,04,221.2	8,78,330.02	0	22,79,978.1

You are hereby directed to furnish whether the excess claimed ITC has been paid or not. If not deposited by you, then show cause why not the same should be reversed along with interest as per section 50 and applicable penalty in the following manner:

Particulars	IGST	CGST	SGST	Total
Reversal of ITC	878330	397426	1004221	2279977
Interest @ 18%	948596	429220	1084558	2462374
Penalty	87833	39742	100422	227997
Total	1914759	866388	2189201	4970348

On the basis of all the anomalies discussed above, your total proposed demand is being summarized as below:

Cause of Demand	Act	Place of Supply	Tax	Interest	Penalty	Total
Point No. 1	IGST	U.P.	620875	670545	62087	1353507
	CGST	U.P.	0	0	0	0
	SCST	U.P.	0	0	0	0
Point No. 2	IGST	U.P.	0	0	0	0
	CGST	U.P.	21931776	23686318	2193177	47811271
	SCST	U.P.	0	0	0	0
Point No. 3	IGST	U.P.	1120118	1209727.4	112011.8	13565871
	CGST	U.P.	0	0	0	0
	SCST	U.P.	0	0	0	0
Point No. 4	IGST	U.P.	474921	512914	47492	1035327
	CGST	U.P.	0	0	0	0
	SCST	U.P.	0	0	0	0
Point No. 5	IGST	U.P.	878330	948596	87833	1914759
	CGST	U.P.	397426	429220	39742	866388
	SCST	U.P.	1004221	1084558	100422	2189201
Total	IGST	U.P.	3094244	3341782.4	309423.8	6745450.2
	CGST	U.P.	22329202	24115538	2232919	48677659
	SCST	U.P.	1004221	1084558	100422	2189201

Grand Total			26427667	28541878.4	2642764.8	57612310.2
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That notice was dropped on 30.12.2023.

7. Thereafter, another show cause notice on the same issues was issued to the petitioner, this time under Section 74 of the Act. It is dated 03.08.2024. It was challenged by the petitioner by means of earlier writ petition being Writ Tax No. 1396 of 2024. Amongst others, it was specifically pressed by the petitioner that the second show cause notice (issued under Section 74 of the Act) was bad in law for reason of earlier notice issued under Section 73 of the Act having been dropped. Contention of the petitioner has been noted in paragraph-10 of the order of the writ Court. Analysis of the same has been made in subsequent paragraphs. Thereafter, it was reasoned as below:

“22.The field of operation of Section 73 and 74 of the CGST Act is altogether different i.e. Section 73 operates in all other cases of wrongly availed or utilized Input Tax Credit for any reason other than fraud or wilful mis-statement or suppression of facts and Section 74 comes into play when the excessive Input Tax Credit has been availed due to some fraud or wilful mis-statement or suppression of facts. Thus it is patently manifest that for deriving the jurisdiction to initiate proceedings under Section 74 of the CGST Act, the adjudicating authority must expressly mention in the Show Cause Notice that he is prima-facie satisfied that the person has wrongly availed or utilized Input Tax Credit due to some fraud or a wilful mis-statement or suppression of facts to evade tax and that must be specifically spelled out in the Show Cause Notice. Once the aforesaid basic ingredient of the Show Cause Notice under Section 74 of the CGST Act is missing, the proceedings becomes without jurisdiction as the adjudicating authority derives jurisdiction to proceed under Section 74 of the CGST Act only when the basic ingredients to proceed under Section 74 are present. ”

8. After considering the law laid down by the Supreme Court in that context, the writ Court concluded that the show cause notice dated 03.08.2024 did not make a whisper either that the petitioner had wrongly availed or utilised ITC occasioned by fraud or willful misstatement or suppression of facts to evade tax. That basic ingredient of Section 74 found lacking, the writ petition was allowed on the following terms:

“28. Accordingly, this writ petition is allowed. The Show Cause Notice dated 03.08.2024 is quashed leaving it open for

Respondent No. 2 to initiate fresh proceedings under Section 74 of the CGST Act against the petitioner by issuing a fresh Show Cause Notice containing the basic ingredients regarding fraud or wilful mis-statement or suppression of facts to evade tax, if they so exist. ”

(emphasis supplied)

9. The above order of the writ Court has attained finality. Neither side is shown to have challenged the same before the Supreme Court. Also, it is not the case of the petitioner that it had sought any review of that order. Consequently, it cannot be successfully canvassed by the petitioner, at this stage, that the order of the writ Court did not allow the revenue another opportunity to issue a notice under Section 74 of the Act. First, the writ Court is not shown to have reached any finding that there was no jurisdiction to initiate proceeding under Section 74 of the Act and second, by virtue of specific direction contained in paragraph 28 of the order, leave was granted to the adjudicating authority to initiate fresh proceeding under Section 74 of the Act, subject to the condition that there must exist ingredients of fraud or willful misstatement or suppression of facts to evade tax. By making that direction conditional and by employment of the words 'if they so exist' there survives no doubt in that regard.

10. On the issue of limitation, besides the fact that the writ Court had issued a positive direction allowing the revenue authority to initiate fresh adjudication proceedings, provision of Section 75(3) of the Act is also relevant. For ready reference, it reads as below :

“Section 75. General provisions relating to determination of tax.-

(1). ...

(2.) ...

(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.”

11. In the first place, the section contemplates remand of a proceeding after adjudication order may have been set aside by an Appellate Authority, Appellate Tribunal or a Court. Therefore it has to be

acknowledged that where an adjudication order may have been passed but is later set aside by the Appellate Authority, Appellate Tribunal or a Court, the revenue would have limitation to pass a fresh order. That limitation is two years from the communication of the order of the Appellate Authority, Appellate Tribunal or a Court, as the case may be.

12. Read together with the direction issued by the writ Court, it cannot be disputed that even though, no final order had been passed but only show cause notice had been set aside, by virtue of specific direction issued by the writ Court, the limitation to pass a fresh order existed upto two years from the communication of the order dated 27.09.2024.

13. To reason that no limitation survived to issue a fresh cause notice under Section 74 of the Act by reading the provisions of Section 75(3) of the Act literally, may limit its application only to cases where final adjudication order may have been set aside. It would defeat the ends of justice and contradict the order of the writ Court that has attained finality. Though the legislature may have worded the provision in the manner noticed above - to refer to only an order, by virtue of specific direction issued by the writ Court (in the instant case), no submission may be successfully advanced on the strength of strict reading of the word 'order' appearing in Section 75(3) of the Act. If at all that issue should have been raised and canvassed at the relevant time before the writ Court or in proceedings that may have arisen upon the order dated 27.09.2024 passed by the Writ Court. Since the order has long attained finality, it does not survive to the petitioner to now raise an objection in that regard.

14. In any case once a positive direction has been issued by the writ Court, that direction had to be given effect to by the revenue authorities. To the extent, compliance made by the revenue authorities is within two years from the date of communication of the order dated 27.09.2024 passed by the writ Court, the same remains within the limitation prescribed by law. If the writ Court had not made any observation for the

future course to be adopted and if the writ Court had not left it open to the revenue to initiate fresh proceedings under Section 74 of the Act, the matter may have been dealt with differently. Here, positive writ issued cannot be diluted at the subsequent stage i.e. at the stage of giving effect to the order of the writ Court.

15. Last, on the observations made by the adjudicating authority, in paragraph 3 (ग) of the impugned show cause notice, it has been recited as below:

“ग) माननीय उच्च न्यायालय को गुमराह करने का कृत्य (*Misleading the Court*)

जब इस कार्यालय द्वारा ₹1,31,56,983/- की उक्त मूल विसंगति को पकड़ते हुए नियमानुसार कार्यवाही शुरू की गई, तो आप ने अत्यंत दुर्भावनापूर्ण तरीके से माननीय उच्च न्यायालय, इलाहाबाद के समक्ष रिट याचिका दायर की। आप ने माननीय न्यायालय के समक्ष दिनांक 30.12.2023 को पारित धारा 73 के 'Drop Order' को ढाल बनाकर प्रस्तुत किया और यह गलत व भ्रामक बयान (*Wilful Mis-statement*) दिया कि उनका संपूर्ण TRAN-1 का मामला पहले ही धारा 73 के तहत विभाग द्वारा स्वीकृत एवं निस्तारित किया जा चुका है। आप ने माननीय न्यायालय से यह तथ्य पूरी तरह छुपाया कि पूर्व का आदेश केवल उत्तर प्रदेश के ₹2,19,31,776/- के दावे तक ही सीमित था, जबकि वर्तमान विवाद पैन-इंडिया दावे में पाई गई ₹ 1,31,56,983/- की उस अतिरिक्त अवैध क्रेडिट विसंगति का है जिसे पूर्व की किसी भी कार्यवाही में शामिल नहीं किया गया था। यह कृत्य न्यायिक प्रक्रिया को बाधित एवं गुमराह करने की श्रेणी में आता है। ”

16. Those observations are clearly out of line. Neither those were required to be made in the context of the dispute nor those are desirable to be allowed to stand. However, the matter may not rest even if those observations are expunged. Plain recital of the same does indicate element of prejudice existing with the adjudicating authority. Further, to the extent that prejudice stems from the fact that the petitioner had approached this Court on earlier occasion and had been granted relief, compounds the matter further.

17. Solely for reason of element of that prejudice noticed, the impugned notice cannot be sustained and is set aside. The matter is again remitted for issuance of notice under Section 74 of the Act, if jurisdictional facts

exist. For that purpose, the following further observations are being made:

(i). The Additional Commissioner (Grade 1) State Tax, Gautam Budh Nagar, may assign the matter to any officer other than the officer who has issued the impugned show cause notice with a clear advice to apply mind to the facts of the case neutrally, without being prejudiced by any observation made in this order.

(ii). Such fresh notice, if necessary, may be issued within a period of 2 weeks from today.

(iii). If such notice is issued, petitioner shall have four weeks' time to respond to the same and file its written reply.

(iv). If any RUDs and/or non-RUDs are required, the petitioner shall make proper application in that regard along with its reply.

(v). All documents that may be prayed for by the petitioner and, as may be available with the adjudicating authority may be supplied to the petitioner within next two weeks. If any document is to be declined, appropriate reasoned order may be passed and communicated to the petitioner in that regard.

(vi). Thereafter, appropriate date for hearing may be fixed with at least 15 days' advance notice to the petitioner and reasoned and speaking order may be passed thereon, thereafter.

18. Since period of limitation is expiring, we further provide that the proceedings may be concluded as expeditiously as possible without allowing for any undue or long adjournments, by 31.12.2026.

19. Writ petition is accordingly **disposed of**.

(Arun Kumar,J.) (Saumitra Dayal Singh,J.)

August 06, 2026

Faraz