2026:AHC-LKO:63083-DB

A.F.R.

Reserved On : - August 13, 2026
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HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW

WRIT TAX No. - 1024 of 2026

M/S Neelkanth Entrepreneurs Private Limited Thru. Its Director

…..Petitioner(s)

Versus

State Of U.P. Thru. Prin. Secy. Deptt. Of State Tax U.P. Lko. And Another

…..Respondent(s)

Counsel for Petitioner(s)	:	Manish Misra, Abhinav Kumar Mathur, Dileep Pandey
Counsel for Respondent(s)	:	C.S.C.

Court No. - 3

HON'BLE SHEKHAR B. SARAF, J.
HON'BLE ABDHESH KUMAR CHAUDHARY, J.

ABDHESH KUMAR CHAUDHARY, J.: Heard Shri Manish Misra, learned counsel assisted by Shri Dileep Pandey and Shri Abhinav Kumar Mathur, learned Counsel for the petitioner and Shri Sanjay Sarin, learned Additional Chief Standing Counsel appearing for the respondent(s).

2. The present writ petition substantially seeks two fold relief(s), the *first* being quashing of the impugned Show Cause Notice dated 09.07.2026 issued by the Deputy Commissioner, State Tax, Jurisdiction Lucknow and the second being a declaration to the effect that Section 16(2)(c) of the Central Goods and Services Tax Act, 2017 and the corresponding Section 16(2)(c) of the Uttar Pradesh Goods and Services Tax Act, 2017 are ***ultra vires*** to Articles 14, 19(1)(g) and 300A of the Constitution of India, or in the alternative, to read down the aforesaid provision, so as to hold that the denial of Input Tax Credit thereunder shall not apply to a bona fide recipient who has otherwise satisfied the conditions of Section 16(2)(a), (b) and (d) and has paid the tax to the supplier, in the facts and circumstances of the case.

3. Briefly stating the petitioner, M/s Neelkanth Entrepreneurs Private Limited, is a private limited company, registered under the Goods and Services Tax Act, with GSTIN No. 09AADCN8452H1Z6 and engaged in the supply of works-contract services under SAC No. 9954. (*i.e General construction, building work, civil engineering, specialized trades (plumbing, electrical installation), and completion or repair services for residential, commercial, and industrial properties etc.)*

4. The petitioner claims to be engaged in the execution of large-scale sub-contract works for NCC Limited (a public infrastructure company) across the States of Bihar, Jharkhand, Uttar Pradesh and Maharashtra. The works *inter alia* include excavation and diaphragm-wall construction for the Old Anicut (barrage) irrigation project at Dehri, Bihar; development of distribution infrastructure under the Revamped Distribution Sector Scheme (R.D.S.S.) at various locations in Jharkhand and Uttar

Pradesh; installation of Advanced Metering Infrastructure/smart prepaid meters for North Bihar Power Distribution Company Limited and for MSEDCL in Maharashtra; and rural civil and water-supply works under the State Water and Sanitation Mission in Uttar Pradesh. The relevant work orders issued by NCC Limited in favour of the petitioner, together with completion/experience certificates issued by NCC Limited certifying satisfactory execution of the works (with individual contract values ranging approximately from ₹1.24 crore to ₹8.43 crore), form part of the record.

5. According to the petitioner, for the Financial Year 2025-26, they sub-contracted certain portions of the aforesaid works on a back-to-back basis to eighteen registered sub-contractors, which were duly registered with the GST department. These firms can be depicted in a tabular chart as herein below:

M/s MVN Infracon Private Limited	*(GSTIN 10AANCM9887B1Z9)*
M/s KV Projects and Logistics Private Ltd	*(GSTIN 09AAHCK9740K1ZX)*
M/s Vijay Kumar Jha	*(GSTIN 10ALZPJ9029N1ZF)*
M/s Himalay Pratap	*(GSTIN 07FQCPP5982F1ZF)*
M/s Parab Infra Limited	*(GSTIN 09AAECM9066B1ZE)*
M/s Ekta Devi	*(GSTIN 10CLTPD8837L1ZN)*
M/s Pragya Tiwari	*(GSTIN 07BCKPT8795E1ZT)*

M/s Stalin Kumar Das	*(GSTIN 07HPEPD0153K1Z1)*
M/s Gaurav	*(GSTIN 07DYTPG1137G1ZC)*
M/s Sanjay Kumar	*(GSTIN 07NIPPK1513N1ZN)*
M/s Manoj Dhaneshbhai Thakar	*(GSTIN 27AAJPT0190P1Z1 and GSTIN 27AAJPT0190P3ZZ)*
M/s Rajdhani Private Limited	*(GSTIN 27AAKCR0773L1ZW)*
M/s Ajit International Private Limited	*(GSTIN 07AAPCA1800Q1ZE)*
M/s Vineet Shukla	*(GSTIN 07MZUPS9441L1ZY)*
M/s Chandrajeet Kumar Singh	*(GSTIN 07EWAPS8762K1ZS)*
M/s Krishna Kumar	*(GSTIN 07GOWPK0776M1ZY)*
M/s Sandeep Kumar	*(GSTIN 07KXMPK5161F1Z4)*

6. The petitioner claims that the work orders issued by them to these aforesaid sub-contractors, including the tax invoices raised by these sub-contractors, measurement sheets/work-completion records, bank statements evidencing payments made through banking channels, GSTR-2A/B2B invoice summaries, GST registration status documents of the sub-contractors (showing them as active at the time of the transactions), and signed undertakings from the authorized signatories/proprietors of the sub-contractors confirming execution of the works, amounts billed, GST charged, receipt of consideration, and filing of GSTR-1 and GSTR-3B returns with discharge of GST liability forms the part of the record and the figures mentioned in several of these undertakings correspond to the amounts reflected in the impugned show-cause notice.

7. The petitioner has placed on record its own outward tax invoices raised upon NCC Limited under HSN/SAC 995421, 995422 and 995461 (together with a credit note), alleging that the works/services received from the sub-contractors were utilized in the execution of its contractual obligations towards NCC Limited. The petitioner has also carried on a separate trade in medical consumables with government departments.

8. It is the case of the petitioner that, although they are GST complaint, however, the respondents vide the impugned Show Cause Notice dated 9.07.2026, issued under Section 74A (1) of the Central Goods and Services Tax Act, 2017 has proposed to deny the Input Tax Credit availed by the petitioner, together with levy of tax, interest and penalty. The principal allegation in the said notice being that the works, which were sub-contracted to the above-named firms appeared to be bogus and non-existent, and as such the petitioner had wrongfully availed the Input Tax Credit.

9. No reply has been filed by the petitioner to the aforesaid Impugned Show Cause Notice and instead they have rushed to this Court invoking the extra-ordinary Writ Jurisdiction of this Court by alleging that the aforesaid sub-contractors were duly registered and active at the time of the transactions; and those transactions were duly reflected in the returns filed by both parties and auto-populated in GSTR-2A. Furthermore, according to the petitioner, the payments were made through banking channels and the works were actually executed and utilized in outward supplies. Also no physical verification of the premises of the sub-contractors was conducted nor any survey report or third-party information confronted to the petitioner before issuance of the impugned notice. The petitioner further contends that the reliance placed in the notice on the decision of the Hon'ble Supreme Court in the case of ***State of Karnataka v. M/s Ecom Gill Coffee Trading Private Limited*** (a case under the Karnataka Value Added Tax Act, 2003 relating to movement of goods) is inapposite, inasmuch as the present transactions involve works-contract services and not purchase or movement of goods.

10. Therefore, the writ petitioner has interdicted the very issuance of the aforesaid impugned show-cause notice dated 09.07.2026 on various grounds and also seeks declaration of Section 16(2)(c) of the CGST Act, 2017 and the corresponding provision of the UPGST Act, 2017 as ***ultra vires*** to the Articles 14 and 300A of the Constitution of India.

11. At the very outset, Shri Manish Mishra, learned Counsel for the petitioner has very fairly submitted that as far as the *second* relief sought in the present writ petition, relating to declaration of Section 16(2)(c) of the CGST Act, 2017 to be *ultra vires*, the same stands settled by the Hon'ble Supreme Court, wherein the Special Leave Petition filed in ***Bhandari Scrap Traders v. Union of India & Ors.*** *reported in* ***2026 SCC OnLine SC 1570;*** was ***dismissed*** by the Apex Court vide order dated 24 July 2026, thereby affirming the Gujarat High Court's judgment in *Maruti Enterprises v. Union of India & Ors***.** This Court finds that the aforesaid decision confirms the Constitutional validity of Section 16(2)(c) of the CGST Act, 2017, holding that Input Tax Credit (I.T.C.) is available only if the supplier has actually paid the corresponding GST to the Government and the Court declined to dilute or read down this statutory condition, reiterating that I.T.C. is a conditional statutory benefit rather than an absolute or vested right. Thus, Shri Mishra in view of the said subsequent development, wishes not to press for the second relief(s).

12. As far as the first relief concerning the challenge to the impugned show cause notice dated 09.07.2026 is concerned, Shri Mishra has attacked the same with great vigour on its four corners. According to him, a jurisdictional error has crept in the issuance of the said show cause notice denting the very validating of the same. He has submitted that the entire Tax Component relates to genuine Input Tax Credit arising from actual inward supplies received from registered selling dealers, who were all registered at the relevant point of time and have reported the tax pertaining to the supplies in their GST returns, which stood reflected in the petitioner's

GSTR-2A. According to the learned Counsel, the tax being duly paid, the petitioner has rightly availed input credits as the tax charged in respect of supply has been actually paid by the said suppliers to the Government. Thus, he submits that the conditions contemplated under Section 16(2)(c) of the GST Act has been duly complied with and as such there was no occasion for the respondents to have issued the impugned the show cause notice.

13. It has been next submitted that the petitioner and the concerned Suppliers are existing and functional registered tax payers. According to him, the petitioner is neither a non-existent entity nor an untraceable person and apparently, the suppliers were registered persons and the relevant supplies were duly reported in their returns and the corresponding tax was duly discharged. Thus, the petitioner cannot be made liable for any unsubstantiated inference regarding the supply chain, particularly without any specific allegations or demonstrable evidence that the petitioner has itself participated in any fraudulent transaction.

14. Mr. Mishra has strenuously tried to impress upon this Court by submitting that the impugned Show Cause Notice has been issued by completely bypassing the statutory mechanism as provided under Section 61 of the GST read along with Rule 99(1) of the Rules framed therein. According to him, the foundation of the impugned Show Cause Notice is the scrutiny of returns filed by the petitioner and as such the respondent was obliged to follow Section 61 of the GST Act by first providing him an opportunity to reconcile the discrepancy or pay the differential tax, before the issuance of the impugned Show Cause notice. He has stressed on the word "shall" used in Section 61 read with Rule 99(1) of the GST Rules to buttress his argument that the word indicates a mandatory provision, so as to provide an assessee the opportunity to explain the discrepancy if the return is selected for scrutiny. The learned Counsel drawing a logical conclusion has argued that it is only when the assessee failed to furnish a satisfactory explanation or fails to take appropriate corrective steps that the Statute contemplates further proceedings for determination of tax as per law. Further, argument of Section 61 being a procedural safeguard for the assessee and the alleged discrepancy noted in the impugned Show Cause Notice being in the nature of discrepancy contemplated under Section 61 has been put forth to challenge the issuance of the impugned Show Cause Notice.

15. The learned Counsel has taken this Court through Rule 99(1) of the GST Rules to submit that the said Rules provide for a complete statutory mechanism for dealing with discrepancies noticed during scrutiny of returns. According to him, the respondent has neither followed the steps as required under Section 61 or Rule 99 and has technically deprived the petitioner an opportunity to explain the discrepancy at the threshold and straightaway issued the impugned Show Cause Notice under section 74A of the GST Act, thus, according to him, the impugned

Show Cause Notice is contrary to the statutory scheme and suffers from a fundamental procedural illegality. He further has relied on the following judgment to bring home his aforesaid submission:

(i) Judgment of Division Bench of the Orissa High Court in ***M/s Qualicum Solutions Pvt. Ltd. Kolkata V/s The Chief Commissioner of CT & GST (W.P (Civil) No. 27986 of 2024,*** *decided vide judgment dated 14.11.2024)****;***

(ii) Judgment of Single Judge of the Calcutta High Court in ***Amex Services & Anr. v/s Dy. Commissioner, Sales Tax (W.P (A) No. 9391 of 2024,*** *judgment dated 22.05.2024****);***

(iii) Judgment passed by Division bench of Rajasthan High Court in ***Goverdhandham Estate private Limited V/s State of Rajasthan & Ors. (D.B Civil Writ Petition No. 16702/2023*** *decided on 17/01/2024)****;***

(iv) Judgment of Single Bench of Gauhati High Court in ***M/s Pepsico Indian Holdings Pvt. Ltd. V/s Union of India (W.P (c) No. 6960 of 2023*** *decided by a Single Bench on 19.09.2025)****;***

(v) Judgment of Division bench in Rajasthan High Court in ***Ramhari & Brothers V/s Joint Commissioner (State Tax), Bharatpur, (D.B Civil Writ Petition No. 20189 of 2025*** *decided on 16.07.2026).*

16. The learned Counsel has next submitted that the impugned Show Cause Notice, which has been issued invoking the provisions of Section 74A(5)(ii) of the GST Act, actually suffers from jurisdictional error, in as much as the provisions, which has been sought to be invoked envisages a situation, wherein some fraud has been committed or that some willful statement or suppression of material facts have been made with an intention to evade tax, which is missing in the impugned Show Cause Notice. He submits that there is no specific allegation, much less any material demonstrating that the petitioner has caused any of the acts, so as to invoke the stringent Sections of 74A(5)(ii) of the GST Act, as the entire case of the respondents are based on returns and information furnished by the petitioner themselves or the corresponding data available on the GST common portal. Thus, he has submitted that the allegations are unsustainable on the face of it and as such the impugned Show Cause Notice is wholly without jurisdiction and legally unsustainable.

17. The learned Counsel has verbosely submitted that the Show Cause Notice suffers from non-application of mind, absence of necessary jurisdictional foundation and violation of the statutory procedure, apart from violation of principles of natural justice. According to the learned Counsel, the respondent cannot vicariously penalize the bonafide purchasing dealer by reversing their I.T.C. without first exhausting recovery measures against the supplier who failed to deposit the tax. He has relied on the judgment of ***Suncraft Energy P. Ltd. v. Asstt.***

Commr., S.T., (2023) 117 GSTR 78; affirmed by Supreme Court in *SLP(C) no. 027827/2023;* to submit that I.T.C. cannot be automatically denied to the recipient solely on the ground of GSTR-2A and 3B mismatch and the department should first proceed against the defaulter supplier and cannot arbitrarily shift the liability to a buyer unless the supplier is a missing dealer.

18. *Per contra*, Shri Sanjay Sarin, learned Additional Chief Standing Counsel for the Respondent-Department has submitted that the GST returns of the petitioner was never picked for scrutiny, so as to mandatorily follow the provisions of Section 61 of the GST Act or Rule 99 of the GST Rules. According to the learned Counsel, the said provisions are purely meant, in case the department choose to scrutiny the return and notes some discrepancy. He submits that the present impugned Show Cause Notice was issued not in the background that a discrepancy was noted in the GST returns of the petitioner, but on the fact that the petitioner has availed illegal I.T.C. of firms, which were not registered with the department.

19. The learned Additional Chief Standing Counsel has further submitted that the present case is at the stage of Show Cause Notice and as on date no reply has been filed by the petitioner. According to him, the grounds and facts taken before this Court to challenge the Show Cause Notice can very well be taken in their reply to the Show Cause Notice and the department is very much accustomed and have the requisite jurisdictional power to decide the said objections of the petitioner. He further submits that the interference of this Court at the stage of issuance of Show Cause Notice is very limited under Article 226 of the Constitution of India and the petitioner has not been able to make a single ground for such interference. As far as the jurisdictional error in issuance of notice is concerned, the petitioner has not challenged the competency of the authority, who has issued the notice has but camouflaged the jurisdictional issue with facts and as such the ground of jurisdiction raised by the petitioner being an essential factual aspect, can be very well decided by the authority, who has issued the Show Cause Notice. Thus, he submits that the present writ be dismissed.

20. As far as the judgments referred by the petitioner is concerned, the learned Additional Chief Standing Counsel has submitted that in all these cases, there was no dispute as to whether the case was picked for scrutiny or not, as in each case the department has accepted that the returns had been taken for scrutiny and as such it has been submitted that in the said background, the Hon'ble Courts have held that Section 61 and Rule 99 was required to be complied mandatorily. However, in the present case, there was no requirement of any scrutiny and the department on the basis of the examination of the return formed an opinion to issue Show Cause Notice, which is not barred by law. He specifically relies on a judgment of a co-ordinate Bench of this Court, in ***Nagarjuna Agro Chemicals (P) Ltd. v. State of U.P.,*** reported in ***2023 SCC OnLine All 5339;*** *(decided on*

15.05.2023) and judgment of a division Bench of the Andhra Pradesh High Court, rendered in the case of ***Devi Traders Vs State of Andhra Pradesh, 2023 SCC Online AP 1886;*** to submit that issuance of Section 61 notice was not mandatorily required for issuance of Show Cause Notice under Section 74 of the GST Act.

21. Having heard learned Counsels for the parties and perused the material on record, this Court is of the considered view that inevitably the following points arise for consideration in the present petition:

(i) Whether the impugned Show Cause Notice dated 09.07.2026 is vitiated for non-compliance with Section 61 of the GST Act read with Rule 99 of the Rules framed thereunder;

(ii) Whether the invocation of Section 74A(5)(ii) of the GST Act in the impugned notice is without jurisdiction for want of the necessary ingredients of fraud, wilful misstatement or suppression of facts;

(iii) Whether, in the facts of the present case, this Court ought to exercise its extra-ordinary writ jurisdiction under Article 226 of the Constitution of India to interdict the impugned Show Cause Notice at the threshold.

22. As far as the first issue is concerned, this Court finds that Section 61 of the GST Act empowers the proper officer to scrutinize the returns and related particulars furnished by a registered person, so as "to verify the correctness of the return" and, upon noticing any discrepancy, to seek an explanation from the registered person in the manner prescribed under Rule 99 and for which Form GST ASMT-10 has been prescribed under the GST Act. Further, the provisions provide that the assessee is required to file an explanation to the said notice in terms of form ASMT-11 and this scrutiny proceedings can be closed on satisfactory explanation of the discrepancy by the assessee, leading to passing of a formal order as per Form ASMT-12 of the GST Act. It would be profitable, at this juncture, to quote Section-61 of the GST Act, which *inter-alia* states as under :-

> ***"Section 61 — Scrutiny of Returns :-***
>
> *Section 61(1) empowers the proper officer to scrutinise the return and related particulars furnished by a registered person to verify the correctness of the return, in the manner prescribed. Section 61(2) provides that where discrepancies are noticed, the officer shall inform the registered person in the prescribed form (Form GST ASMT-10, under Rule 99 of the CGST Rules, 2017) and seek an explanation within a specified time. Section 61(3) provides that where the explanation is found acceptable, the registered person is informed accordingly and no further action is taken; where no satisfactory explanation is furnished within thirty days (or the extended period allowed), or where the registered person, after accepting the discrepancies, fails to take corrective measures, the proper officer may initiate appropriate action, including proceedings under Sections 65, 66 or 67, or proceed to determine tax and other dues under Section 73 or Section 74 (and, for periods to which it applies, Section 74A)."*

23. A plain reading of the aforesaid provisions brings us to fore that Section 61 is basically a pre-adjudicatory, verificatory mechanism, as it does not itself result in a determination or confirmation of demand as neither any recovery can be effected on the strength of an ASMT-10 notice or an ASMT-12 order alone. The provision, both in its text and its placement in Chapter XII of the Act dealing with "Assessment", operates within a defined and self-contained field, namely, scrutiny of returns already filed by the registered tax payer.

24. However, as far as Section 73 or Section 74A is concerned, this Court, finds that both these Sections 73 and 74A operate independently and are attracted whenever tax has not been paid, or has been short-paid, or Input Tax Credit has been wrongly availed or utilised, which the department out to determine before proceeding any further. Further, we find that the said determination by the Department may be arrived at through several mechanism, including, (a) by scrutiny of returns under Section 61; or (b) through audit under Section 65; or (c) special audit under Section 66; or (d) inspection, search and seizure under Sections 67 to 72; or, as in the present case, independent verification and cross-examination of the antecedents of the sub-contractors from whom Input Tax Credit is claimed to have arisen. The list of grounds is not exhaustive as there can be several grounds for issuance of Show Cause Notice under Section 74A of the GST Act. Therefore, to say that Section 61 is the only mode and/or route through which Section 74A notice can be issued is a wrong understanding of the GST provisions. Nothing in the scheme of the Act renders the resort to Section 61 a mandatory pre-condition for invoking Section 74A; such a construction would render otiose the independent and free-standing powers conferred upon the proper officer under the latter provision.

25. Thus, according to this Court, Section 61 does not constitute the sole or exclusive gateway through which the Department must necessarily pass, before it can proceed under Section 73 or Section 74A of the Act.

26. The submission of learned Counsel for the petitioner, founded upon the word "shall" occurring in Rule 99(1), proceeds on the premise that the process of scrutiny under Section 61 had in fact been already initiated in the present case. That premise is factually incorrect and at variance with the present case, wherein the admitted case of the parties is that Section 61 has not been initiated at all. Further, we find that it has been categorically stated on behalf of the Respondent-Department, and not controverted by way of any material on record, that the returns of the petitioner were never picked up for scrutiny under Section 61; rather, the impugned notice traces its genesis to independent verification revealing that the eighteen sub-contractors, from whom the petitioner claims to have received works-contract services and consequential Input Tax Credit, were found to be bogus and non-existent entities.

27. The provisions of Rule 99 or the mandatory word of 'shall' comes into play only when Section 61 has already been invoked, which is not the present case herein.

28. Section 74A(1), like Section 74(1), which finds a place before it, opens with the words "where it appears to the proper officer", therefore, according to this Court these phraseology provided by the legislature under Section 74(1) is hinged on as to what appears to a Proper Officer, and in a way is an unfettered and unbound formulation which is not tethered to any one source of information, be it scrutiny under Section 61, audit under Sections 65/66, inspection under Section 67, or independent verification which all come jointly or severally be a conducive ground for the proper officer to trigger for action, leading to the issuance of the Show Cause Notice. The word "*appears*" has a wider amplitude subsuming in it not only Section 61 or 65/66/67 but also any other credible information from a different source. If the intendment of legislature was to make Section 74 bound by Section 61 alone, that fact would have been clearly depicted in Section 74. However, we do not find any specific reference to Section 61 in Section 74 except the usage "*where it appears*".

29. Further, it is also clear from a plain reading of Section 74A that it is not a discrepancy noticed during scrutiny of a return but a finding, arrived at independently, that the underlying supply itself is non-genuine, is the foundational fact for issuance of the impugned Show Cause Notice. Therefore, the obligation cast by Rule 99(1), which by its own terms operates "in case any discrepancy is noticed" during scrutiny is not attracted in the first place. This Court finds that an identical issue was raised before a Division Bench of the Andhra Pradesh High Court in ***Devi Traders Case*** *(supra)* wherein, the division Bench of that Court after discussing the various provisions of the GST Act returned a finding that scrutiny under Section 61 is not *sine qua non* for proceedings under Section 74 and that the proper officer may act on any material that causes tax evasion to "appear" to him.

30. The judgments relied upon by the petitioner, as fairly pointed out by learned Additional Chief Standing Counsel, were all rendered in a factual matrix where scrutiny under Section 61 had admittedly been undertaken by the Department. For instance, as far as the reliance on the Rajasthan High Court judgment, in ***Goverdhandham Estate (P) Ltd. v. State of Rajasthan and others,*** reported in ***(2025) 147 GSTR 239;*** *(decided on 17/01/2024),* is concerned, the facts clearly reveal that department undertook scrutiny of the returns and even issued notice in prescribed GST form of ASMT-10 intimating certain discrepancies, thereby drawing proceeding under Section 61 of the GST Act. The Rajasthan High Court clearly observed in the said judgment that jurisdiction under Section 73 was assumed only on the ground that discrepancies were found in the return and it was in that specific factual matrix that the High Court went on to hold that mandate of Section 61 was required to be followed by the proper officer before assuming jurisdiction under Section 73 of the GST Act. *(Please see paragraph 24 and 25 of the said Judgment).* Thus, the reliance of the petitioner on the said judgment is misplaced as the same is distinguishable on facts of the present case, wherein the department has not initiated any such exercise of scrutiny. The factum that an S.L.P. preferred against the said judgment of the Rajasthan High Court being *dismissed* also does not take the case any further in favour of the petitioner.

31. As far as reliance on the Gauhati High Court judgment in ***M/s Pepsico India Holdings (P) Ltd. v. Union of India,*** reported in ***(2026) 159 GSTR 404;*** *(decided by a Single Bench on 19.09.2025),* is concerned, this Court finds that the said judgment has been rendered by the learned Single Judge by heavily placing reliance on the judgment of the Rajasthan High Court in ***Goverdhandham case*** *(supra)*, which this Court has already observed herein above to be distinguishable on facts. Further, we note that although this Court is not bound by the judgment of the said learned Single judge of the Gauhati High Court, nor the same has any persuasive effect in view of the principle of hierarchy, however, the fact of the matter remains that we find that the judgment rendered by the learned Single Judge is based on an analogy that in case the alleged short payment, wrong availment of credits, discrepancy etc. is based on the scrutiny of the taxpayer's own returns i.e. material that are squarely and exclusively the subject matter of scrutiny under Section 61 and nothing more than, it was incumbent that any Show Cause Notice under Section 73 has to be mandatorily preceded by a conclusion arrived at by the revenue authority in the form of scrutiny of returns as prescribed under Section 61 of the GST Act.

32. However, the facts of the present case are at stark difference as the Show Cause Notice is not only based on the GST returns of the petitioner, but also on the returns filed by 18 different parties as aforesaid. The analogy, sought to be drawn by the learned Counsel for the petitioner, basing his reliance on the judgment of the learned Single Judge of the Gauhati High Court is not only trying to give a very restrictive meaning to Section 73 of the GST Act but also tries to give Section 61 such a predominance, which it does not deserve for the operation and effect of Section 74A of the GST Act. On a facial reading of Section 73, it is clear that it is not inter-dependent on Section 61 and no doubt scrutiny of case under Section 61 may eventually lead to issuance of Show Cause Notice under Section 73 but to say that Section 73 can be invoked only once Section 61 has been followed and/or complied, would be a misnomer and an absolute absurdity. According to this Court, Section 61 and Section 74A lacks commutative property, as Section 61 may lead to Section 74A but the reverse is not true. It has to be remembered that literal or strict interpretation is essential for fiscal, tax and penal laws and the Court cannot abridge or elongate the meaning of those statutory provisions, particularly, when the language employed therein is plain, unambiguous and simple. The Apex Court has reiterated the strict rule of interpretation in a slew of decisions. In ***Union of India v. Deoki Nandan Aggarwal,*** reported in ***1992 Supp (1) SCC 323 : AIR 1992 SC 96;*** the Apex Court observed thus:

> ***"14.…….*** *It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there."*

Further, we find that the learned Single Judge, Gauhati High Court has also observed that since the department did not dispute that any such scrutiny was not undertaken by them or that explanation was not sought, the Court held that the notice issued by the revenue was unauthorised and contrary to the provisions of law. However, in the present case, there is a specific dispute raised by the respondents that they have not undertaken any scrutiny in the sense sought to be adjudicated by the learned Counsel for petitioner. Thus, this Court, on scrutiny of the facts and the law relied on by the learned Single Judge of the Gauhati High Court, finds the facts of that present case to be absolutely different from the present case. We are unable to subscribe to the submission of the learned Counsel for the petitioner that the learned Gauhati High Court has mandatorily held that Section 61 should be followed in all cases, wherein, the department proposes to issue notice under Section 74A of the GST Act. In any case, the said judgment also does not further the case of the petitioner in any manner.

33. Next, we come to the third judgment relied by the learned Counsel for the petitioner of the Rajasthan High Court, in ***Ramhari and Brothers Vs Joint Commissioner (State Tax), Bharatpur,*** reported as ***(2026) 44 Centax 327 (Raj.);*** *(decided on 16.07.2026),* again the said judgment is distinguishable on facts, in as much as it is well recorded in the said judgment itself that the revenue authority have themselves admitted in the impugned order of that case that *'after scrutiny of returns under Section 61 of the RGST/CGST Act, 2017, a notice intimating discrepancies was issued to the petitioner through the GSTN Portal and that full opportunity of hearing was afforded to the petitioner in accordance with the principles of natural justice'*. Therefore, on the fact of that case, the Rajasthan High Court found that although the department has initiated scrutiny under Section 61 of the GST Act, however, actually no notice was ever served on the assessee and it was in this background that the said High Court after recording Section 61 and Rule 99 of the GST Rules, went on to hold the mandatory nature of compliance of the said Section and the Rules framed therein. In contrast, in the present case, it is an admitted fact of the department that they have not initiated any scrutiny under Section 61 of the GST Act, therefore, to the mind of this Court, there was no requirement of issuance of any notice under the said provision, nor any compliance was required under Rule 99 of the GST Rules, as is being agitated by the petitioner. The Rajasthan High Court case is thus like the earlier one, is absolutely distinguishable on facts, as in both the case, there is a clear admission on the part of the revenue authority that they have initiated scrutiny under Section 61 of the GST Act.

34. Similarly, in other cases relied by the petitioner, rendered by a Division Bench of the Orissa High Court in ***M/s Qualicum Solutions (P) Ltd. Vs The Chief Commissioner of CT & GST,*** reported in ***2024 SCC OnLine Ori 3126;*** *(judgment dated 14.11.2024)* and judgment by a Single Judge of the Calcutta High Court, in ***Amex Services v. Commr., State Tax,*** reported in ***(2024) 129 GSTR 482;*** *(judgment dated 22.05.2024)*, it was an admitted case by the department that Scrutiny proceedings were initiated under Section 61 GST Act, however, the department without issuing notice under Section 61 and/or without considering the reply of the assessee, issued a Show Cause Notice under Section 73 of the GST and it was in these peculiar facts that the High Court quashed the Section 73 Show Cause Notice and held the same without jurisdiction.

35. Even in the judgment of the Calcutta High Court rendered in ***Suncraft Energy P. Ltd. v. Asstt. Commr., S.T.,*** reported in ***(2023) 117 GSTR 78;*** and confirmed by the Hon'ble Supreme Court, we find that the Show Cause Notice itself followed a scrutiny under Section 61 that had revealed the discrepancy and it was in that specific context that compliance with the scrutiny mechanism assumed relevance. Those decisions, therefore, do not assist the petitioner in a case where no such scrutiny was ever undertaken by the department. This view finds support in the judgment of a co-ordinate Bench of this Court in ***M/s Nagarjuna Agro Chemicals (P) Ltd. v. State of U.P.,*** reported in ***2023 SCC OnLine All 5339;*** *(decided on 15.05.2023),* holding that issuance of notice under Section 61 is not a mandatory pre-requisite for initiation of proceedings under Section 74 of the Act, in the following words:

> *"......The argument that unless deficiency in return is pointed out to the assessee, and an opportunity is given to rectify such deficiency, that the department cannot proceed under section 74 is not borne out from the statutory scheme and the argument in that regard therefore, must fail.*
>
> *The scrutiny proceedings of return as well as proceedings under section 74 are two separate and distinct exigencies and issuance of notice under section 61(3), therefore, cannot be construed as a condition precedent for initiation of action under section 74 of the Act."*

36. We also find that in another judgment passed by a Single Bench of the Madras High Court in ***Mandarina Apartment Owners Welfare Assn. Vs Commercial Tax Officer/State Tax Officer,*** reported in ***2024 SCC Online Mad 3501;*** *(decided on 16 July 2024),* the Madras High Court held that Sections 61 and 73 operate as distinct and independent proceedings and a scrutiny under Section 61 is a pre-adjudication exercise under which no demand can be confirmed or recovered, and is not a condition precedent to proceedings under Chapter XV (Sections 73/74) of the CGST Act. The Court clarified that although an ASMT-10 notice, once scrutiny is undertaken and a discrepancy is found, must itself be issued (failing which the scrutiny exercise is vitiated), scrutiny as such is not a mandatory prerequisite to a Section 73 proceeding, since the Show Cause Notice represents the culmination of an investigation which the proper officer is free to conduct on material gathered from any source, and is not restricted to material unearthed only through Section 61 scrutiny.

37. Having noted the various precedents and on its reconciliation, we are clear in our mind that Section 61 is not, as a matter of law, an invariable jurisdictional precondition to issuance of every Section 74A notice; but where the proper officer in fact possesses only return-based discrepancy material and no independent source of information, compliance with Section 61 and Rule 99 may be a mandatory procedural safeguard, non-compliance of which may expose the resultant Section 74A proceedings to challenge on ground of jurisdiction or breach of the statutory scheme or principles of natural justice.

Thus, Point (i) is accordingly decided against the petitioner.

38. That brings us to the second issue. As far as the contention of the learned Counsel for the petitioner that the impugned notice suffers from a jurisdictional error inasmuch as it invokes Section 74A(5)(ii), which is attracted only where fraud, wilful misstatement or suppression of facts is made out, cannot detain this Court for very long. The impugned Show Cause Notice specifically alleges that the works purportedly sub-contracted by the petitioner to eighteen firms were bogus and that the said firms were non-existent, and that the petitioner has, on that basis, wrongfully availed Input Tax Credit running into a substantial sum. An allegation that the entire chain of sub-contracts and the corresponding invoices were engineered around fictitious entities is, on its very face, an allegation of a fraudulent claim of Input Tax Credit and is squarely capable of attracting Section 74A(5)(ii). Further, we find that an almost identical issue was engaging the attention of the Madras High Court in a batch of almost 250 writ petitions, leading being ***Tvl. K. Ezhil Arasan, Contractor v. Joint Commissioner (ST) Intelligence, Salem*** reported in ***2026:MHC:2274;*** *(decided on 08.06.2026),* wherein, on the very question of the jurisdictional/foundational-fact and the threshold for invoking Section 74 was raised. We find that the Madras High Court after dissecting the provision of Section 74 held that the expression "where it appears" permits the proper officer to invoke the provision once the material on record prima facie indicates evasion attributable to fraud, wilful misstatement or suppression, and that once the notice expressly invokes those ingredients and the allegations are traceable to connected records, the statutory requirement stands satisfied at the stage of initiation.

39. As far as the present case is concerned, we find that the impugned Show Cause Notice in as many words has mentioned the foundational fact for issuance as *'Thus, on the basis of fake documents/ invoices from the above firms, you have shown receiving inward supply based on fictitious documents without any actual movement of goods and deliberately utilized the so generated ITC illegally and improperly.'* The contention of the learned Counsel for the petitioner that these firms were very much in existence and thus, Show Cause Notice would not have had been issued in the manner as it has been issued, does not help the case of the petitioner. It is one thing to say that the Show Cause Notice does not contain any of the ingredients as mentioned under Section 74A(5)(ii) and an absolutely different thing to say that the allegations mentioned are disputed or erroneous, because the former being an issue of jurisdiction error can always be raised in a writ petition, however, for the later an adjudication of the Show Cause Notice necessarily has to follow as per law. For, whether the allegation is ultimately made out on facts or not, that is to say, whether the sub-contractors were in truth bogus and non-existent, or whether, as the petitioner asserts, they were genuinely registered, functional and had actually executed the works in question; is a matter requiring appreciation of evidence, work orders, measurement sheets, bank statements, GSTR-2A/2B reflections, undertakings of the sub-contractors, and, if necessary, verification of their physical existence and capacity to execute works of the value indicated.

40. According to this Court, such an exercise falls squarely within the domain of the adjudicating authority and is not amenable to determination in the summary jurisdiction under Article 226 of the Constitution of India. The existence of a jurisdictional fact is not the same as the truth or otherwise of that fact once alleged with sufficient particulars. Thereafter, the impugned Show Cause Notice discloses the foundational facts to attract Section 74A(5)(ii), and its correctness is a matter for adjudication and cannot be a cause for pre-emptive foreclosure by this Court.

Thus, Point (ii) is also accordingly decided against the petitioner.

41. We now come to the third leg and the most important issue relating to the extent, this Court could exercise its Jurisdiction at the Show Cause Notice stage. It is well settled, as held by the Hon'ble Supreme Court in ***Union of India v. Kunisetty Satyanarayana,*** reported in ***(2006) 12 SCC 28;*** that ordinarily no writ lies against a mere Show Cause Notice, since such a notice does not by itself give rise to any cause of action or visit the noticee with an adverse civil consequence, unless it is shown to have been issued by an authority wholly without jurisdiction, a principle traceable to ***State of U.P. v. Brahm Datt Sharma,*** reported in ***(1987) 2 SCC 179 : AIR 1987 SC 943;*** and ***Special Director v. Mohd. Ghulam Ghouse,*** reported in ***(2004) 3 SCC 440.***

42. No doubt, time and again the Constitutional Courts have held that the availability of an alternative statutory remedy does not operate as an absolute bar on the writ jurisdiction under Article 226 and for maintainability of a writ petition has carved out the well-recognised exceptions in ***Whirlpool Corporation v. Registrar of Trade Marks,*** reported in ***(1998) 8 SCC 1;*** namely, enforcement of fundamental rights, violation of natural justice, proceedings wholly without jurisdiction, or a challenge to the *vires* of a provision.

43. However, we find that as far as the facts of the present case are concerned, the principles as carved out in the ***Whirlpool Corporation Case*** *(supra)* are conspicuously absent as none of the four contingencies, namely *(i)* infringement of fundamental rights; *(ii)* violation of principle of natural justice; *(iii)* want of jurisdiction; and *(iv) vires* challenge, is being attracted as noticed herein above.

44. We note that all objections available to the noticee/ petitioner, including the very grounds urged before this Court, namely, the genuineness of the sub-contractors, actual execution of works, banking-channel payments, reflection of the transactions in GSTR-2A, absence of any adverse finding upon physical verification, the applicability or otherwise of the ratio in ***Suncraft Energy*** *(supra),* as affirmed by the order of the Hon'ble Supreme Court dismissing the Department's *Special Leave Petition (C) Nos. 27827-27828 of 2023* vide order *dated 14.12.2023*, are available to be urged before, and considered by, the adjudicating authority in reply to the Show Cause Notice. The reliance placed by the petitioner upon ***Suncraft Energy*** *(supra)* is, in any event, premature at this stage and, on a closer reading, distinguishable as apparently the said decision proceeds on the footing of a genuine, existing supplier who had charged and collected tax but failed to deposit it, and expressly holds that the Department must, ordinarily, proceed against such a defaulting supplier before mulcting the bona-fide purchasing dealer, save in exceptional circumstances of collusion between the recipient and the defaulting supplier. However, according to this Court, ***Suncraft Energy*** *(supra)* does not deal with a situation, as alleged in the impugned notice, where the very existence of the supplying entities is itself doubted and put in question. Whether the present case falls within the parameter of ***Ecom Gill Coffee*** *(supra) or* ***Suncraft Energy*** *(supra)* or is one of non-existent suppliers taking it outside that ratio and squarely within its own exception is again a matter for the adjudicating authority to examine on facts, and this Court expresses no opinion thereon one way or the other, all such contentions being kept open.

Thus, point (iii) is also decided against the petitioner.

45. Having discussed the overwhelming facts and circumstances of the present case and the issue raised therein, it further deserves notice that the petitioner has, admittedly, not filed any reply to the impugned Show Cause Notice and has chosen instead to invoke the extra-ordinary writ jurisdiction of this Court even before the statutory authority had an occasion to consider its defence. The existence of an efficacious alternative remedy, coupled with the fact that the grounds urged herein are essentially factual and require an appreciation of the material referred to above, persuades this Court that this is not a fit case for exercise of jurisdiction under Article 226 of the Constitution of India. Interference at this stage would amount to short-circuiting the statutory adjudicatory process and pre-judging disputed questions of fact that are yet to be tested.

46. For all the aforesaid reasons, this Court finds no merit in the present writ petition. Learned counsel for the petitioner not having pressed the second relief in view of the decision of the Hon'ble Supreme Court referred to in paragraph 11 above, and the first relief having failed on the grounds discussed herein above, the writ petition is accordingly *dismissed*.

47. It is, however, made clear that the dismissal of this petition shall not preclude the petitioner from filing a detailed reply to the impugned Show Cause Notice dated 09.07.2026, raising all factual and legal contentions available to it, including those urged before this Court, within a period of four weeks from today. In the event such reply is filed within the aforesaid period, the adjudicating authority shall consider the same on its own merits, in accordance with law, uninfluenced by any observations made by this Court in the course of the present order, and after affording adequate opportunity of hearing to the petitioner, including an opportunity to place on record the documents referred to in paragraphs 6 to 8 above. All rights and contentions of the parties on the merits of the Show Cause Notice are kept open.

48. The writ petition stands *dismissed* in the above terms.

49. Pending application(s), if any, stand *disposed of.*

50. There shall be no order as to cost(s).

(Abdhesh Kumar Chaudhary, J.)

I agree

(Shekhar B. Saraf, J.)

September 09, 2026
Anuj Singh