



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION No. 7941 OF 2025

[A. M. Marketplaces Pvt. Ltd., New Delhi through its authorized signatory and Director Ms. Suchishree Mukherjee W/o Sandeep Kunte vs. The Union of India, through Ministry of Finance, Department of Revenue, New Delhi and ors.]

Office Notes, Office Memoranda
of Coram, Appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. Anurag Soan with Mr. Onkar Bhope, Advocates for the petitioner
Ms. Ketki Jaltare Vaidya, Advocate for respondent nos. 1, 3 & 4
Mr. A. J. Gohokar, AGP for respondent nos. 2 and 5

CORAM : **ANIL L. PANSARE AND**
NIVEDITA P. MEHTA, JJ.

DATE : **17-01-2026.**

For the time being, learned counsel for the petitioner is not pressing for orders on prayer clauses (c) and (d) of the petition.

2. On 9-1-2025, following order was passed.

“Learned counsel for the petitioner submits that affidavit of service is filed. The Registry has not recorded its satisfaction as regards service to respondents. A vague report is filed that petitioner’s counsel has filed affidavit of service.

The Registry shall examine affidavit and make categorical remark/s as regards service to respondents. This practice shall be followed in all the cases.

Registrar (Judicial) shall accordingly, by way instructions, issue circular/office order, as the case may be.

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Kept back.

(JUDGE)

(JUDGE.)

Later on, heard for some time.

The issue involved is whether time gap of three months should be maintained between issuance of notice under sub-section (2) of Section 73 and passing order under sub-section (10) of Section 73 of the Central Goods and Services Tax Act, 2017 (for short 'CGST Act').

*Learned counsel for the petitioner has invited our attention to the judgment passed by the Division Bench of Delhi High Court in the case of **C.H. Robinson Worldwide Freight India Pvt. Ltd. Vs. Additional Commissioner, CGST-Delhi-South and ors. in W.P (C) 15508/2024**, dated 29-10-2025 wherein while interpreting the provisions, the Court held as under :-*

“9. Heard, ld. Counsels for the parties. Sections 73(2) and Section 73(10) of the CGST Act were interpreted by this Court in W.P(C) 4781/2025 titled Tata Play Limited vs. Sales Tax Officer Class II/AVATO where it has been observed as under :

20. The limitation for issuance of such a notice under Section 73 of the CGST Act has to be construed in the light of Section 73(2) and 73(10) of the CGST Act. The said two sub-sections are set out below :

"Section 73(2) - The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

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Section 73(10) - The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to or within

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three years from the date of erroneous refund.”

21. A perusal of the above stated provisions would show that an order has to be passed by the 'proper officer' within a period of three years from the due date for furnishing the annual returns for the said financial year. For issuance of a show cause notice, at least three months' period prior to the time limit under Section 73(10) of the CGST Act would be available. Thus, the show cause notice has to be issued at least three months prior to the outer limit prescribed for passing of an order under Section 73(10) of the CGST Act.

22. In the opinion of this Court, there is a difference in the language of the two subsections discussed herein above. Section 73(10) of the CGST Act prescribes an outer limit for passing of an adjudication order under the Act.

23. On the other hand, Section 73(2) of the CGST Act provides that at least three months prior to the outer limit of 3 years for passing an order under Section 73(10) of the CGST Act, a notice is to be served.

24. While the purpose behind Section 73(10) of the CGST Act is to fix the date by which an adjudication order has to be issued, the purpose of Section 73(2) of the CGST Act is to ensure that at least three months is available to the taxable person for filing a reply to the show cause notice issued to them and for being heard in a proper manner. Thus, the time period between issuance of the show cause notice and the outer limit for passing of the order should be at least three months.

25. The statutory intent behind providing this gap of 3 months can be interpreted to arise from a further reading of Section 73, CGST Act wherein, Section 73(3), CGST Act contemplates the service of a statement

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upon the noticee, giving all the details of the demand proposed to be raised. Further under Section 73(5), CGST Act, the noticee has the option of paying the tax by doing a self-assessment and if such amount is paid within 30 days of the issuance of the show cause notice under Section 73(1), CGST Act, no penalty would be payable by the noticee."

10. *In terms of the above decision, the purpose of Section 73(2) of the CGST Act has been clearly held to provide the minimum period of three months to the assessee for filing the reply to the SCN. The three month's period prescribed in Section 73(2) of the CGST Act is mandatory when read with Section 73(10) of the CGST Act."*

*On the similar line, a view is taken by the Division Bench of Andhra Pradesh High Court in the case of **M/s. The Cotton Corporation of India Vs. Assistant Commissioner St Auditfac and others in Writ Petition No. 1463/2025** on 5-2-2025 wherein the Court held as under :-*

"13. Another way of looking at this issue is the purpose for which such limitation has been prescribed under the Act. Section 75 of the GST Act, stipulates that the tax payer is not only entitled to a notice before any assessment is carried out but also the right of personal hearing, irrespective of whether such personal hearing is requested. When there is a possibility of an adverse order being passed against tax payer, the facility of obtaining at least three adjournments for personal hearing etc. The said provisions, protecting the interest of the tax payer, would be rendered otiose if notice should permitted to be sent without a minimum waiting period. The said protections can then be bypassed by the authorities issuing show cause notice with a week's time or 10 days and calling upon tax payer to put forth his objections in that shortened time. That does not appear to be

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intent of the provisions of Section 75(2) or Section 73(10) of the GST Act.

14. For all the aforesaid reasons, we would have to hold that the time permit set out under 73(2) of the Act is mandatory and any violation of that time period cannot be condoned, and would render the show cause notice otiose.”

As such, in both the judgments, the facts were such that the notice under sub-section (2) of Section 73 was not issued within stipulated time as mentioned under sub-section (10) of Section 73. The reason assigned for setting aside notice, however, is that the time gap of three months between issuance of notice and passing final order requires multiple activities which includes following principle of natural justice, opportunity of payment of tax etc. and, therefore, time gap of three months should be strictly followed.

The argument is that this time gap of three months is applicable to the notices, which are issued well before the time prescribed under sub-section (10) of Section 73 of the CGST Act.

Learned Assistant Government Pleader seeks time to have research on the point. Time granted.

List on 17-1-2026.

Ms. Ketki Jaltare, learned counsel appears for respondent no. 1 and submits that Mrs. Mugdha Chandurkar, learned counsel be relieved. Statement accepted. Registry to note.”

3. As could be seen, learned Assistant Government Pleader sought time to have research on the point. Ms. Ketki Jaltare Vaidya, learned counsel appearing for respondent no. 1, who also appears for respondent nos. 3 and 4, was before the Court. Both the learned counsels were aware of the order passed on 9-1-2026. It was accordingly expected that the

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respondents will come up with the authority which either speaks otherwise on what has been quoted in our order or will support it, however, they are harping on the provisions, particularly, sub-section (10) of Section 73 of the Central Goods and Services Tax Act, 2017 (CGST Act) to contend that time gap of three months is applicable only in context with the outer date of issuance of notice and not for notices issued well within time.

4. The argument does not deal with the crucial reason which we have mentioned in our order as to why this time gap of three months between issuance of notice and passing final order is necessary. The necessity arises because multiple activities are to be performed in the intervening period which includes following principles of natural justice, opportunity of payment of tax etc. Thus, the rationale behind three month's time is to afford meaningful opportunity of hearing to the persons like the petitioner. If this time is shortened, the requirement of sub-sections (3) and (5) of Section 73 of CGST Act, which provide for service of a statement upon the noticee, giving all the details of the demand proposed to be raised and option to the assessee by paying tax by doing a self-assessment and to pay the amount, will not be achieved. The another reason is when there is a possibility of an adverse order being passed against tax payer, the facility of obtaining at least three adjournments for personal hearing etc. will be rendered otiose, if the assessment is to be done

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within the time lesser than three months which will fall short of giving reasonable opportunity of hearing. Thus, the protection guaranteed under the provisions of the CGST Act will not be extended, if the gap of three months between the issuance of notice and passing final order is not maintained.

5. For the aforesaid reason, we hold that it is mandatory to keep gap of three months between issuance of notice and passing final order under sub-section (2) read with sub-section (10) of Section 73 of the CGST Act.

6. In the present case, the notice has been issued on 15-5-2024 and final order has been passed on 9-7-2024. Thus, there was time gap of about one month 24 days. The order impugned is, therefore, unsustainable.

7. The petition is, accordingly, partly allowed. Show cause notice dated 15-5-2024 and order dated 9-7-2024 issued by respondent no. 5 are quashed and set aside.

8. The matter is remanded back to respondent no. 5 for consideration afresh in accordance with law and what has been stated in the body of the order.

9. The petitioner shall appear before respondent no. 5 on 23-1-2026.

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10. Respondent no. 7 shall also take corrective steps as regards removal of lien on petitioner's Current Bank Account No. 9911568883, if there is no other legal impediment.

11. The petition is disposed of in terms of above with no order as to costs.

(JUDGE)

(JUDGE.)

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