RAJASTHAN HIGH COURT
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HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 18970/2025
CNR: RJHC021037042025 | URN: CW / 42614U / 2025

Rajasthan High Court
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M/s Jaipur Development Authority, Jda Building, Jln Marg, Opp. Birla Mandir, Jaipur Rajasthan-302015 Through Mr. Deva Ram Shivran S/o Shri Laxman Ram Shivran, Osd (Resource Mobilization), Aged Approx, 56 Years, R/o Ga/3/t-2/88, Sector-6, Sahyog Apartment-2, Vidhyadhar Nagar, Jaipur, Rajasthan, 302039

----Petitioner

Versus

1. The Additional Commissioner, Cgst Audit, Jaipur, Rajasthan.
2. Joint/Additional Commissioner, Cgst Commissionerate, Jaipur.
3. Union Of India, Through Its Secretary Department Of Revenue, Ministry Of Finance North Block, New Delhi.
4. State Of Rajasthan, Through Additional Chief Secretary (Finance) To Government, Finance Department (Tax Division), Government Of Rajasthan, Ist Floor, Main Building, Government Secretariat, Jaipur Rajasthan, 302005

----Respondents

For Petitioner(s)	:	Mr. Jatin Harjai with Mr. Rohan Agarwal Ms. Nikshubha Sharma
For Respondent(s)	:	Mr. Bharat Vyas,ASG, Sr. Advocate Mr. Nitin Jain Bhandari Mr. Kinshuk Jain, Sr. Standing Counsel with Mr. Saurabh Jain and Mr. Parth Khandal

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Judgment

Pronounced on : 04/ 11/2026

Reportable

Per: Arun Monga, J.

1. The petitioner, Jaipur Development Authority ("JDA"), a statutory body of the State of Rajasthan. It develops residential and commercial

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colonies and buildings. Its work also includes laying of roads and other external development works.

2. The petitioner assails a show cause notice dated 30.09.2025 issued under Section 74 of the Central Goods and Services Tax Act, 2017 ("the Act"). The notice calls upon the petitioner to answer a proposed demand of tax, interest and penalty. Hence, the petition in hand.

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FACTS

3. JDA is a statutory local authority constituted under the Jaipur Development Authority Act, 1982 ("JDA Act"). It plans, coordinates and supervises the development of the Jaipur Region.

4. On 27.08.2019, the Directorate General of GST Intelligence ("DGGI"), Jaipur Zonal Unit, began an enquiry into the GST affairs of the petitioner. A show cause notice dated 04.04.2022 followed for the period July 2017 to March 2019. It ended in an Order in Original dated 01.02.2023 passed by the Additional Commissioner, CGST and Central Excise, Jaipur ("Respondent No.1"). The petitioner filed an appeal under Section 107 of the Act on 04.05.2023. It is said to be pending. The respondents say this enquiry was confined to one issue. That issue was GST under reverse charge on guarantee commission paid by public undertakings to the Government.

5. Separately, the petitioner was taken up for audit under Section 65 of the Act. According to the respondents, a notice in FORM GST ADT-01 was issued on 04.02.2025. The audit was conducted by the Superintendent, Special Audit Group, CGST Audit Circle A, Jaipur ("the Superintendent"). It covered the financial years 2019-20 to 2023-24. An Audit Memo dated 30.08.2025 raised 16 observations. The petitioner

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replied on 16.09.2025. A Final Audit Report under Section 65(6) of the Act was issued on 29.09.2025.

6. On the strength of that report, six show cause notices dated 29.09.2025 were issued. They concerned alleged short payment or non payment of GST on (i) the difference between liability declared in GSTR-1 and GSTR-3B for October 2019, (ii) sale of Affordable Housing and Reserve Flats, (iii) sale of tree guards, (iv) entry tickets for Smriti Van, Jaipur, (v) interest on delayed filing of returns, and (vi) booking of under construction EWS flats.

7. The next day, on 30.09.2025, Respondent No.1 issued the impugned notice under Section 74. It too rests on the audit. It alleges short payment of GST under three heads. These are (i) road cutting charges amounting to Rs.47,41,10,628/-, (ii) additional FAR charges and betterment levy amounting to Rs.25,86,40,540/-, and (iii) sale of Master Plan booklets and application forms amounting to Rs.15,94,342/-. The aggregate is Rs.73,43,45,510/-.

8. Two features of this chronology deserve notice at the outset. First, the receipts in question were not traced through any search or outside information. They were found in the petitioner's own books, in the course of an audit. Second, the same audit report gave rise to six notices on one day and to the impugned notice on the next. The six notices were issued by the Superintendent. The impugned notice was issued by Respondent No.1 under the harsher provision.

9. The petitioner has invoked our writ jurisdiction. It says the notice and the consequential proceedings are without jurisdiction. It also says they breach the statutory procedure and the principles of natural justice.

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10. Stand of respondent is that JDA was selected for audit on risk parameters by DGARM. Notice in FORM GST ADT-01 was issued on 04.02.2025. Records were examined. Observations were raised. Non-disclosure of material facts came to light. An Additional or Joint Commissioner may issue notices under Section 74. Where an audit report raises several issues, a separate notice can be issued for each. This is not bunching of five years. It is one issue spread over several years. An earlier notice on a different issue does not exhaust jurisdiction under Section 74. JDA neither disclosed nor deposited the tax. That amounts to wilful misstatement and suppression with intent to evade. The intent shows in the attempt to avoid tax under the guise of public functions.

SUBMISSIONS ON BEHALF OF THE PETITIONER

11. Mr. Jatin Harjai learned counsel for the petitioner, inter alia, made the following submissions.

11.1 **Section 74 is not attracted.** The provision applies only where short payment is caused by fraud, willful misstatement or suppression of facts with intent to evade tax. The notice names no specific act of that kind. It contains only general and conclusory allegations.

11.2 **Misstatement and suppression cannot co exist.** The notice alleges both wilful misstatement and suppression. Misstatement is a positive act of giving wrong information. Suppression is the withholding of information. The notice must say which one it is. By alleging both, it shows that the officer has not applied his mind.

11.3 **Full disclosure.** All receipts and transactions were disclosed in the statutory returns. They were within the knowledge of the Department. A mere omission, or a disputed classification adopted on a *bona fide* reading of the law, is not suppression. Reliance was placed on

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CBIC Instruction No.5/2023 dated 13.12.2023. It requires material evidence of fraud, wilful misstatement or suppression before Section 74 is invoked. It was further said that the material forming the basis of the notice was not appended to it. Reliance was placed on the decision of the Madhya Pradesh High Court in **GR Infra Projects Limited, Ratlam v. State of Madhya Pradesh.**[1]

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11.4 **Two plausible views.** Where two views are reasonably possible, the extended period cannot be invoked. Reliance was placed on paragraph 23 of the decision of the Supreme Court in **Commissioner, Central Excise and Customs v. Reliance Industries Ltd.**[2] It was pointed out that an advance ruling in the case of Rajasthan Housing Board treated receipts of this kind, in the hands of a government entity, as outside the levy.

11.5 **Bunching of years.** The notice covers five financial years, 2019-20 to 2023-24. Liability under the Act is tied to the tax period and the financial year. Clubbing five years into one proceeding is impermissible and prejudicial.

11.6 **Jurisdiction after audit.** The same Final Audit Report had already led to notices dated 29.09.2025 by the Superintendent. Under Section 65(7) read with Section 2(91), the power to proceed after audit vests in the "proper officer". The same report could not found a fresh and parallel exercise by another officer.

11.7 **Rule 142(1A).** No intimation in FORM GST DRC-01A was served before the notice. The petitioner thus lost the chance under Rule 142(1A) and (1B) of the CGST Rules to pay or to object.

11.8 **DRC-01 by a different officer.** The summary in FORM GST DRC-01 under Rule 142(1)(a) was issued by the Superintendent. The notice

1 W.P. No.40749/2025, reported as 2025:MPHC-IND:31486
2 2023 INSC 591.

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itself was issued by Respondent No.1. The summary must come from the officer who issues the notice.

11.9 On merits, contention is that additional FAR charges and betterment levy are statutory levies. They arise from regulatory functions under the JDA Act, referable to Article 243W of the Constitution. They are not consideration for a supply under Section 7. Road cutting charges merely recover the cost of restoring public roads damaged by utility agencies. Amounts for Master Plan booklets, application forms and tender forms are nominal printing recoveries incidental to statutory functions. None of these is a taxable supply.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

12. Mr. Bharat Vyas, learned Additional Solicitor General, assisted by Mr. Nitin Jain Bhandari, Advocate, opposed the petition. His arguments are noted hereinafter.

12.1 The proceedings are at a nascent stage. Only a notice has been issued. All the petitioner needs to do is reply with the relevant material.

12.2 No bias or prejudice is pleaded. There is no basis to fear that the authority will decide without considering the reply. The notice reflects only a *prima facie* view. If the reply satisfies the authority, the notice will be dropped.

12.3 The Act is a complete code. An order under Section 74(9) is appealable under Section 107. A further appeal lies to the Appellate Tribunal under Section 112. That route cannot be bypassed. Reliance was placed on the decision of this Court in **Punj Lloyd Ltd. (JV) v. Union of India**[3] and of the Supreme Court in **M/s Trillion Lead Factory Private Limited v. Superintendent of Central Tax**.[4] It was

3 D.B. Civil Writ Petition No.10695/2026, reported as 2026:RJ-JD:25512-DB
4 Special Leave to Appeal (Civil) No.7101/2026, reported as 2026 LLBiz SC 118.

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urged that a writ petition is not maintainable against a show cause notice, since it rests only on a *prima facie* opinion.

12.4 **Factual questions are involved.** The writ court exercises a supervisory jurisdiction. It does not sit in appeal over facts. Reliance was placed on **M/s GEA Westfalia Separator India Pvt. Ltd. v. State of Haryana**,[5] which in turn followed **Syed Yakoob v. K.S. Radhakrishnan** and **Central Council for Research in Ayurvedic Sciences v. Bikartan Das**.[6] Reliance was also placed on **M/s Shree Balaji Metal Works v. Union of India**.[7]

12.5 **Rule 142(1A).** Notification No.79/2020-Central Tax dated 15.10.2020 amended Rule 142(1A). The word "shall" was replaced by "may". Since then, intimation in FORM GST DRC-01A is optional. The impugned notice was issued long after the amendment.

DISCUSSION AND ANALYSIS

13. We have heard the rival contentions. We have perused the record, in particular the contents of the impugned notice. Essentially, the petitioner herein says the notice is *ex facie* bad in law on several grounds. The principal ground goes to jurisdiction. Section 74 can be invoked only where tax is unpaid or short paid by reason of fraud, willful misstatement or suppression of facts. Even then, such conduct must be with intent to evade tax. The petitioner says neither element is present. We shall turn to it after setting out the questions involved for adjudication.

14. The following questions arise for our consideration.

5 CWP No.19296/2024.
6 2023 AIR (SC) 4011, as cited in the reply.
7 D.B. Civil Writ Petition No.13625/2025. Placed on record as Annexure R/2.

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(i) Should this Court entertain a writ petition against a show cause notice, when a statutory process of adjudication and appeal is available?

(ii) Is the notice vitiated because it alleges both misstatement and suppression?

(iii) Does the notice disclose the jurisdictional fact of intent to evade tax, which alone opens the door to Section 74?

15. The aforesaid questions are interlinked. Question (i) depends on the nature of the defect alleged. If the defect lies in the merits, the petitioner must go before the adjudicating authority. If it lies at the threshold of jurisdiction, the position is different. Question (iii) is where that question is finally answered. We propose to take the questions in same order as they have been framed. But, our answer to the first is tied to what we find on the third.

16. We begin with the impugned notice itself. Its relevant part reads as under:

"8. Whereas, in view of the facts narrated above, the taxpayer have made short payment of GST amounting to Rs.29,28,584/- (IGST Rs.4,68,000/- + CGST Rs.12,30,292/- + SGST Rs.12,30,292/-) under RCM on Sponsorship and Security Expenses incurred during the financial year 2019-20 to 2023-24 and the same appears recoverable from them under Section 74 of the CGST Act, 2017 along with applicable interest and penalty under Section 50 & 122(2)(b) of the Act ibid respectively read with corresponding relevant provisions of the SGST Act, 2017 & IGST Act, 2017.

9. In the era of self-assessment, the taxpayer was under obligation to correctly self-assess the tax/reversal liability by duly discharging the burden thereof. This assumes more significance since they had all the opportunities to rectify their mistakes and establish their Bonafide while filing the annual returns, viz. GSTR-9 and 9C, which are statements to be duly verified by the taxpayer. Further, an opportunity was also extended vide audit memo dated 30.08.2025 to the taxpayer but the taxpayer neither acknowledging the audit observation and nor deposited the due tax till date. Despite such opportunities, the taxpayer failed to deposit the aforesaid liability of Rs.29,28,584/- (IGST Rs.4,68,000/- + CGST Rs.12,30,292/- + SGST Rs.12,30,292/-) under RCM, which is tantamount to suppression as per Explanation 2 to Section 74 of the CGST Act, 2017, to evade GST.

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10. Whereas it appears that the taxpayer has wilfully & knowingly suppressed and mis-stated the facts regarding non-payment of GST. These facts came to the notice only during audit of the records of the taxpayer, carried out by the Internal Audit of the Department. If the auditors had not conducted the audit; the liability as discussed above would have been remained undetected. Hence, the provisions of section 74 of the CGST Act, 2017 read with corresponding relevant provisions of SGST Act, 2017 and IGST Act, 2017 are clearly invokable in this case. Therefore, taxpayer rendered themselves liable to pay GST under RCM alongwith interest under section 50 and penalty Section 122(2)(b) of the CGST Act, 2017 read with corresponding relevant provisions of SGST Act, 2017 & IGST Act, 2017.

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11. Whereas, the Assistant Commissioner, Audit Circle A, Jaipur, vide Para No. 08 of the FAR No.478/2024-25 dated 29.09.2025 (RUD-5) intimated the taxpayer regarding short payment of GST amounting to Rs.29,28,584/- (IGST Rs.4,68,000/- + CGST Rs. 12,30,292/- + SGST Rs.12,30,292/-) under RCM on Sponsorship and Security Expenses incurred during the financial year 2019-20 to 2023-24 and same appears recoverable from them under Section 74 of the CGST Act, 2017 along with interest under Section 50 of Act ibid and penalty under Section 122(2)(b) of the Act ibid readwith corresponding relevant provisions of SGST Act, 2017 and IGST Act, 2017.

12. Now, therefore, M/s Jaipur Development Authority, JDA Building, JLN Marg, Opp. Birla Mandir, Jaipur, Rajasthan-302015 are hereby called upon to show cause and explain to the Assistant / Deputy Commissioner, CGST Division, Moti Doongari, Jaipur, within 30 days from the receipt of this Show Cause Notice as to why:-

(1) Short payment of GST amounting to Rs.29,28,584/- (IGST Rs.4,68,000/- + CGST Rs. 12,30,292/- + SGST Rs.12,30,292/-) during the F.Y. 2019-20 to 2023-24 should not be demanded and recovered from them under Section 74 of the CGST Act, 2017 read with corresponding relevant provisions of SGST Act, 2017 & IGST Act, 2017.

(ii) Interest on the amount as mentioned at Point No.(i) above should not be demanded and recovered from them under of Section 50 of CGST Act, 2017 read with corresponding relevant provisions of SGST Act, 2017 & IGST Act, 2017.

(iii) Penalty should not be imposed upon them under Section 122(2)(b) of CGST Act,2017 read with corresponding relevant provisions of SGST Act, 2017 & IGST Act, 2017.

13. The taxpayer is further directed to produce at the time of showing cause all the evidences documentary or otherwise upon which they intend to rely upon in support of their defense. They should specifically mention in written submission as to whether they wish to be heard in person before the case is adjudicated and if no such mention is made it will be presumed that they do not wish to be heard in person.

14. The Taxpayer is also required to state whether they would like to avail the opportunity to be heard in person before the case is adjudicated. If no mention is made in the written submission, it would be presumed that they do not desire personal hearing. If no cause is shown, against the action proposed to be taken within 30 days of the receipt of this notice or they do not appear before the adjudicating authority when the case is posted for hearing, the case will be decided ex-parte on the basis of its merits and facts available on records.

15. The Taxable person may take advantage of the reduced penalty by paying Tax, Interest and reduced penalty as per time specified under Section 74 of the GST Acts, as the case may be

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> *16. This show cause notice is being issued without prejudice to any other action that may be taken against the taxpayer under the Central Goods and Services Tax Act, 2017 and corresponding SGST Act and the rules made there under or under any other law for the time being in force.*
>
> *17. Relied upon documents (already available with the taxpayer)-"*

17. A writ Court does not ordinarily interfere with a show cause notice. A notice is only the first step. It records a tentative view. The notice must reply, and the authority must decide. This is so held by the Supreme Court in **Union of India v. Kunisetty Satyanarayana**.[8] The other decisions relied upon by Mr. Bharat Vyas, learned Additional Solicitor General, reaffirm that rule, subject of course to the exceptions carved out to the said rule. We respectfully follow it.

18. An authority that has only issued a notice has not yet made up its mind. If courts stepped in at that stage, the statutory process would be cut short. The court would also end up deciding questions of fact which the statute leaves to the authority.

19. The rule, however, is one of self restraint. It is not a bar on jurisdiction. In *Whirlpool Corporation*, the Hon'ble Supreme Court held that an alternative remedy is no bar where the proceedings are wholly without jurisdiction. In **Siemens Ltd. v. State of Maharashtra**,[9] the Supreme Court entertained a challenge to a show cause notice that had moved beyond a tentative view. *Kunisetty Satyanarayana* itself recognises that a notice wholly without jurisdiction may be quashed in a rare case.

20. In **Calcutta Discount Co. Ltd. v. Income Tax Officer**,[10] the Supreme Court dealt with a notice to reopen an assessment. The power to reopen could be used only if certain conditions existed. Supreme Court held that the existence of an alternative remedy is not always a sufficient reason to refuse quick relief. A writ may issue to prohibit an

8 (2006) 12 SCC 28.
9 (2006) 12 SCC 33.
10 AIR 1961 SC 372, [1961] 41 ITR 191.

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authority acting without jurisdiction from continuing such action. The present case is of the same kind. Section 74 also depends on the existence of conditions laid down by the statute.

21. Section 74 is not a general power of assessment. It is a special power. It can be exercised only on the existence of certain facts. Those are fraud, wilful misstatement or suppression, coupled with intent to evade tax. These are jurisdictional facts. If, on the face of the notice, they cannot exist, then the officer assumes a jurisdiction the statute has not conferred him. Asking a notice to go through adjudication in such a case serves no purpose. Since, the defect lies at the threshold.

22. The prejudice is also real. A notice under Section 74 is not the same as a notice under Section 73 with a different label. It allows the Revenue to reach back five years instead of three. It carries a penalty equal to the tax. It casts a charge of evasion on the notice. A notice who is wrongly placed under Section 74 suffers these consequences from the day the notice issues. An appeal at the end of the process does not undo them.

23. Such a challenge raises a pure question of law. It is since to be decided on the notice as it stands. In the present case also, we do not propose to weigh evidence. We also do not propose to decide whether the three heads are taxable.

24. We therefore hold that the petition can be entertained.

Adverting now to question (II): Misstatement and suppression alleged together

25. Learned counsel for the petitioner argued that the notice alleges both misstatement and suppression. He said the two cannot stand together. Misstatement is a positive act of giving wrong information.

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Suppression is the withholding of information. So, he said, it must be one or the other.

26. We are unable to countenance the above proposition. The use of both expressions does not vitiate the notice. The two often overlap. A misstatement may itself amount to suppression. Take an assessee who is asked whether he has supplied a certain service. He answers no when the truthful answer is yes. That is a misstatement. It is also a suppression, because it hides the true fact and misleads the authority.

27. Explanation 2 to Section 74 supports this view. It reads as under.

> *"Explanation 2.—*
>
> *For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer."*

28. A wrong declaration in a return is a misstatement. It also amounts to non declaration of the true facts. Both labels may thus fit the same conduct. We make it clear that we do not suggest that the petitioner has done any such thing. We only point out the fallacy in the argument.

Adverting now to question (iii) i.e. Intent to evade tax

29. In fact, this brings us to the argument that, in our view, goes to the root of the matter. It touches the rule of law in public administration. It also touches the propriety expected of the Executive when one arm of the State proceeds against another.

(a) The statutory scheme

30. Section 74(1) of the Act reads as under:

> *"(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful misstatement or suppression of facts to evade tax, he shall*

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> *serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice."*

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31. The notice covers the financial years 2019-20 to 2023-24. Following the amendments made by the Finance (No.2) Act, 2024, Sections 73 and 74 govern the determination of tax for periods up to the financial year 2023-24. Later periods fall under Section 74A. Section 74 thus governs the present case.

32. Section 73 covers the same ground for cases where tax is unpaid "for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax". The two provisions are thus mutually exclusive. A case falls under one or the other. It cannot fall under both.

33. Section 74 is the harsher of the two. The difference is not one of degree alone. Under Section 73(10), the order must be passed within three years from the due date of the annual return. Under Section 74(10), the period is five years. Under Section 73(9), the penalty is ten per cent of the tax or Rs.10,000/-, whichever is higher. Under Section 74(1), the penalty is equal to the tax. A finding of evasion may also lead to prosecution. Because the consequences are graver, the conditions must be strictly met. The Revenue cannot treat Section 74 as the default route and Section 73 as the exception.

34. The words "to evade tax" govern each of fraud, wilful misstatement and suppression. Those three are the means. Evasion is the end. Both must exist together. A notice that shows the means but not the end does not satisfy the section.

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35. Explanation 2 of Section 74, *ibid*, does not change this. It defines what "suppression" means. It does not dispense with the further requirement that the suppression be "to evade tax". Non declaration in a return may be suppression. It brings a case under Section 74 only if it is shown to be aimed at evasion. Any other reading would make the words "to evade tax" redundant. It would also erase the line the legislature drew between Section 73 and Section 74.

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(b) Who is said to have intended evasion?

36. Who, then, is said to have intended to evade tax here? The petitioner is a statutory authority of the State. It runs on the policies of the State. Its administration is in the hands of public servants. It is headed by an officer of the Indian Administrative Service of a rank not below Secretary to the State Government. That officer is not even from the cadre of JDA. He is posted there on deputation by the State.

37. Intent is a state of mind. A body corporate has no mind of its own. Its intent is found in the minds of those who direct its affairs. In a private company, those persons may stand to gain from evasion. Their gain may come through higher profits, dividends or the value of their holdings. Nothing of that kind exists here.

38. It is difficult to see what the officers of JDA could gain by evading tax payable by JDA. They would gain nothing, directly or indirectly. The tax, if payable, would come out of the funds of JDA. Those are public funds. They would go into the public exchequer. The money would move from one public purse to another. Evasion, in its true sense, presupposes a specific and identifiable person who stands to be enriched at the cost of the exchequer. To attribute such intent to the officers who run a public authority is, in our view, imprudent. It would be a travesty of administrative propriety.

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39. The Revenue says that JDA was registered, failed to disclose the liability and failed to pay. From this it infers intent. We cannot accept that inference. Failure to pay is the starting point of both Section 73 and Section 74. If failure to pay by itself proved intent to evade, Section 73 would have no field left. Every short payment would become evasion. Something more must be shown. The notice shows nothing more.

40. What the notice shows is a disagreement on law. The question is whether betterment levy, additional FAR charges and like receipts of a statutory authority are consideration for a supply. That is a dispute about the reach of the levy. It is not evidence of evasion.

41. Three further circumstances point the same way. First, on the Revenue's own case, these receipts were found in the petitioner's own records during audit. They were not hidden. They were recorded in books which the Department called for and examined. Second, as noted under point (ii)(b), the question admits of two plausible views. An advance ruling in a similar matter took the view the petitioner now takes. Third, the petitioner's stand rests on Article 243W of the Constitution and on Section 7 of the Act. Whether that stand is correct is not for us to decide now. It is enough that the stand is an arguable one, openly taken.

42. The Revenue says the intent shows in the attempt to avoid tax "under the guise of public functions". We are unable to agree. A guise is a pretence. Here there is no pretence. JDA does perform public functions under the JDA Act. Whether a particular receipt is linked to those functions is a legal question. Raising it in good faith is not a disguise. It is the ordinary exercise of a right that every taxpayer has.

43. Tested on this touchstone, the foundation for invoking Section 74 is weak. The structure built on it cannot stand. Even if the other

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ingredients, that is fraud, wilful misstatement or suppression, were assumed to exist, the absence of intent to evade would be fatal. Recourse to Section 74 is then not open.

(c) The criminal dimension

44. There is another aspect which makes the case equally curious. Where intent to evade is found, the consequences are not only civil. Criminal proceedings may also follow under Section 132 of the Act. The opening words of Section 132(1) are significant. They speak of a person who "commits, or causes to commit and retain the benefits arising out of" the offences listed. The idea of benefit is thus built into the penal provision itself.

45. If intent to evade is attributed to officers of a State authority who stand to gain nothing, the result would be unsavoury. One government officer would be prosecuting another, without any personal gain attributed or even possible in law. The legislature could not have intended Section 74 to operate in that manner. This consequence reinforces the view we have taken.

46. We may add here that we do not hold that a public authority can never be proceeded against under Section 74. There may be cases where the record shows deliberate falsification. There may be cases where those in charge acted for some collateral purpose.

47. Be that as it may, in the instant case, we hold that the impugned notice does not disclose the jurisdictional fact of intent to evade tax. The invocation of Section 74 is without jurisdiction.

CONCLUSION

48. As an upshot of the discussion, we order as under:

(i) The writ petition is allowed.

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(ii) The show cause notice dated 30.09.2025 issued by Respondent No.1 under Section 74 of the Act, and all proceedings taken under it, are quashed.

(iii) No order as to costs. Pending applications, if any, stand disposed of.

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49. Before parting, we note a policy of the Government of India on disputes between public bodies. Office Memorandum F. No.4(1)/2013-DPE(GM)/FTS-1835 dated 22.05.2018, issued by the Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises, sets out a mechanism for resolving such disputes. Its relevant part reads as under:

> *"4. As per the approved new mechanism to resolve the commercial disputes, the following structure and procedure shall be followed by the concerned disputing parties:*
>
> *A. Structure: i. At the First level (tier), such commercial disputes shall be referred to a Committee comprising of Secretaries of the Administrative Ministries/Departments to which the disputing CPSEs/Parties belong and Secretary-D/o Legal Affairs. ... Further, in case of a dispute between CPSE and State Government Department/Organization, the above said Committee will comprise the Secretary of the Ministry/Department of the Union to which the CPSE belongs and Secretary-D/o Legal Affairs and a senior officer nominated by the Chief Secretary of the State concerned. ...*
>
> *ii. In case the dispute remains unresolved even after consideration by the above Committee, the same will be referred at the Second level (tier) to the Cabinet Secretary, whose decision will be final and binding on all concerned."*

50. We are conscious that the Memorandum, in terms, deals with commercial disputes involving Central public sector enterprises. It may not strictly govern a tax dispute between a State authority and a Central tax department. Its underlying policy, however, is sound. Disputes between arms of the State are better settled across the table than through coercive proceedings. Litigation of this kind consumes public money on both sides. Whatever the outcome, the money stays within the public purse. We are of the view that the parties herein ought

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to approach the Secretary of the relevant Ministry of the Government of India, and explore a resolution in that spirit. This is an observation, not a direction.

51. Disposed of accordingly.

(ASHUTOSH KUMAR),J **(ARUN MONGA),J**

71/Bijesh

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