



2025:AHC:203994

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

Judgment reserved on 10.11.2023

Judgment delivered on 17.11.2025

**WRIT TAX No. - 1843 of 2024****with****WRIT TAX No. - 1841 of 2024****and****WRIT TAX No. - 1844 of 2024**

M/S Bp Oil Mills Ltd

.....Petitioner(s)

Versus

Additional Commissioner Grade-2 And Another

.....Respondent(s)

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Counsel for Petitioner(s)	:	Suyash Agarwal
Counsel for Respondent(s)	:	C.S.C.

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**Court No. - 7****HON'BLE PIYUSH AGRAWAL, J.**

1. Heard Sri R.R.Agarwal, learned senior counsel assisted by Sri Nitin Kumr Kesarwani, learned counsel for the petitioner and learned ACSC for the State -respondents.

2. Similar controversy involved in all the aforesaid writ petitions, therefore, with the consent of the parties, all the writ petitions are being decided by a common judgment treated Writ Tax No. 1843 of 2024 as leading case.

3. By means of the present writ petition the petitioner has assailed the order dated 9.9.2024 passed by the Additional Commissioner (Appeal) -1, State Tax, Agra, respondent no.1 and the order dated 19.9.2023 for the year 2022-23 (February 2023 to March, 2023) under section 74 of the Act passed by the respondent no. 2.

4. Learned senior counsel for the petitioner submits that the petitioner is a registered company having GSTIN carrying on the business of

manufacture and trading of mustard oil, mustard oil cake etc. on whole sale basis. In the normal course of business petitioner purchased raw material, i.e. mustard seeds from ex U.P. GSTN registered supplier, M/s Vijay Traders Alwar Rajasthan and the consignment was supported with 5 tax invoices, 5 e-way bills, 5 transport bilties, 5 KUMS documents of Alwar, 5 KUMS Agra pre-arrival slip, 5 KUMS Agra Pravesh Parchi and 5 Dharam Kanta measurement parchi which were reflected in the ledger account of the supplier in the books of account. He further submits that on 27.8.2023 notice under section 74 of the Act in DRC-01A was issued to the petitioner on the ground that the purchase of mustered seeds was made from bogus firm and proposed to impose tax under IGST and panalty. The petitioner submitted a detailed reply, not being satisfied the order was passed levying demand against the petitioner, against which an appeal was filed annexing all documents as already filed along with the reply, not being satisfied the appeal was dismissed by order dated 9.9.2024. Feeling aggrieved by the said order, present writ petition has been filed.

5. Learned senior counsel further submits that the allegation has been made that the selling dealer of the Rajasthan, being non existing dealer, the purchases made were bogus. He referred his rejoinder affidavit and submits that the registration of the selling dealer, i.e. M/s Vijay Traders was cancelled against which an appeal was filed and the same was allowed, a copy of which has been brought on record as Annexure R.A.2 and thereafter by order dated 27.5.2024 the registration of M/s Vijay Traders was restored. He further submits that once the registration of the selling dealer has been restored no action can legally be taken against the petitioner holding that the purchases have been made from unregistered dealer. He further submits that at the time of transaction being under taken the selling dealer was registered and subsequently the registration was cancelled, which has now been restored by the order dated 27.5.2024, therefore, the action taken against the the petitioner is futile.

6. He further submits that the transaction in question was duly accompanied with 5 tax invoices, 5 e-way bills, 5 transport bilties, 5 KUMS documents of Alwar, 5 KUMS Agra pre-arrival slip, 5 KUMS Agra Pravesh Parchi and 5 Dharam Kanta measurement parchi, which clearly show actual physical movement of goods. He further submits that

all transactions were made through banking channel by RTGS and account books duly reflect the same. He further submits that once the record shows the actual movement of goods accompanying all documents mentioned above, proceeding under section 74 of the Act is bad. He further relied upon the circular dated 13.12.2023 issued by the Government stipulates conditions for initiation of proceedings under section 74(1) of the Act. He further submits that once the conditions mentioned in the circular do not fulfil, section 74 of the Act proceedings cannot legally be initiated against the petitioner. In support of his submission he has relied upon the judgment of this Court in Writ Tax No. 743 of 2023 (M/s Khurja Scrap Trading Company vs. Additional Commissioner Grade 2 (Appeal) and another) decided on 29.8.2025.

7. Per contra, learned ACSC supports the impugned orders and submits that the purchases shown by the petitioner from Rajasthan dealer, its registration was cancelled. He further submits that once the registration has been cancelled the supplier becomes unregistered dealer and benefit of ITC cannot legally be permitted.

8. Having heard the learned counsel for the parties, the Court has perused the record.

9. Record shows that the petitioner is a manufacture and trading of mustered oil, mustard oil cake etc. on whole sale basis. In the said manufacturing activity the raw materials, i.e. mustered seeds were purchased from one M/s Vijai Traders, Alwar Rajasthan. A proceeding has been initiated on the basis of the information being received that the said firm is not existing as its registration has been cancelled. Record further shows that the registration of the selling dealer was restored, copy of the same has been brought on record along with the rejoinder affidavit as annexure R.A.2. The said fact that the registration of the selling dealer has been restored has not been disputed by the learned ACSC. Once the registration of the selling dealer has been restored it cannot be said that all transactions made from an unregistered dealer. Record further shows that the petitioner has brought on record the documentary evidence along with the reply to the notice under section 74 of the Act about the actual physical movement of the goods. Further record shows that all payments were made through banking channel, moreover, accounts book, ledger

book having entries of the same were produced in which no discrepancy was pointed out by any of the authorities.

10. Further the circular dated 13.12.2023 has been issued for initiation of proceedings under section 74(1) of the Act only if there is a fraud or mis-statement or suppression of fact with a view to evade payment of tax.

11. Further, paragraph nos. 3.2 & 3.3 of the circular dated 13.12.2023 read as under:-

*“3.2 In this regard, section 74 (1) of CGST Act reads as follows:*

*(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 utilized by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax.*

*3.3. From the perusal of wording of section 74(1) of CGST Act, it is evident that section 74(1) can be invoked only in cases where there is a fraud or wilful mis-statement or suppression of facts to evade tax on the part of the said taxpayer. Section 74(1) cannot be invoked merely on account of non-payment of GST without specific element of fraud or wilful mis-statement or suppression of facts to evade tax. Therefore, only in the cases where the investigation indicates that there is material evidence of fraud or wilful mis-statement or suppression of fact to evade tax on the part of the taxpayer, provisions of section 74(1) of CGST Act may be invoked for issuance of show cause notice, and such evidence should also be made a part of the show cause notice. ”*

12. On perusal of the aforesaid paragraphs, it is apparent that proceedings under section 74 can only be invoked when there is a fraud, wilfull mis-statement or suppression of fact to evade tax on the part of the taxpayer. It goes without saying that the circular issued by the higher authorities is binding upon the subordinate officers as held by the Apex Court in Suraj Impex (India) Private Limited vs. Union of India (2025) 30 Centax 362 (SC). Once the authorities have failed to record any finding of fact that there is a fraud or mis-statement or suppression of fact with a view to evade payment of tax, the proceedings under section 74 of the Act cannot be justified.

12. Record further shows that the registration of the selling dealer was restored. Once the registration of the selling dealer has been restored no

adverse view could have been drawn against the petitioner. Further record shows that the actual physical movement of the goods was established by bringing on record various documentary evidence but the same has been brushed aside by the authorities very lightly.

13. In absence of any adverse material on record, this Court feels that the proceedings initiated against the petitioner cannot be sustained in the eyes of law.

14. In view of the peculiar facts and circumstances of the case stated above, the impugned orders in all the writ petitions cannot be sustained and are hereby quashed.

15. Writ petitions succeed and are allowed.

**(Piyush Agrawal,J.)**

**November 17, 2025**  
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