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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.2203 OF 2025 (FILING)

M/s. Milroc Good Earth Developers
Having its office at 5th Floor, 501,
Milroc Lar Menezes, SV Road,
North Goa - 403001
Through its Partner
Allaparthi Durga Prasad .... Petitioner

Versus

1. Union of India,
   Through the Secretary,
   Department of Revenue,
   Ministry of Finance,
   North Block,
   New Delhi - 110 001

2. Additional Director, Directorate
   General of India (DGGI),
   Pune Zonal Unit,
   201, Phoenix Building, 17,
   Bund Garden Road,
   Opp. Residency club,
   Pune - 411001

3. Additional Commissioner
   of Central Tax,
   Goa Commissionerate
   GST Bhavan, Patto Plaza,
   Panaji, Goa-403001

4. Joint Commissioner of
   of Central Tax,
   Goa Commissionerate
   GST Bhavan, Patto Plaza,
   Panaji, Goa - 403 001

5. State of Goa
   Though its Additional Secretary (Finance)
   Secretariat, Porvorim – Goa ... Respondents.

AND

WRIT PETITION NO.2312 OF 2025 (FILING)

Mariposa Beach Grove
Having its office at
H.No. 250, Niramalnagar, XELDEM
QUEPEM, South Goa, Goa - 403705 ... Petitioner
Through its Partner
Mr. Sanjay Dattu Naik Gaonkar

Versus

1. Union of India,
Through the Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi - 110 001

2. The Assistant Commissioner,
Central Goods & Services Tax
Division V, Margao, 4th Floor,
Blessings Pioneer Commercial
Complex, Opp. District Court,
Margao, Goa - 403601.

3. Deputy Director,
Directorate General Of Goods
and Service Tax Intelligence
(DGGI) Zonal Unit Pune
201, Phoenix Building,
17, Bund Garden Opp
Residency Club, Pune - 411 001

4. The Commissioner,
Central Goods & Services Tax
Division V, Margao,
4th Floor, Blessings
Pioneer Commercial Complex,
Opp. District Court, Margao,
Goa - 403601.

5. State of Goa
Though its Additional Secretary (Finance)
Secretariat, Porvorim –Goa ... Respondents.

Mr Bharat Raichandani, Advocate with **Mr Vibhav Amonkar, Mr Nikhil Angle and Mr Raj Chodankar, Advocate** for the Petitioner

Ms Asha Desai, Standing Counsel for Respondents No.1 to 4.

Mr Shubham Priolkar, Additional Government Advocate for Respondent No.5.

CORAM : BHARATI DANGRE &
ASHISH S. CHAVAN, JJ.

DATED : 09th OCTOBER 2025.

ORAL JUDGMENT: (Per. BHARATI DANGRE, J.)

1. The two Writ Petitions are heard collectively since there is a common question of seminal importance being, whether it is permissible to initiate proceedings under the Central Goods and Service Tax Act, 2017 (CGST Act, 2017) against the Assessee by clubbing or bunching of different financial years, as it is urged that under the Scheme of the CGST Act, 2017 which provides for levy and collection of tax on intra State supply of Goods and Services by the Central Government, the Tax period commensurate the period of Return, which necessarily is dependent on the financial year.

2. Upon the pleadings being completed, we have heard the learned Counsel, Mr Bharat Raichandani for the Petitioner, Ms Asha Desai, learned Standing Counsel representing Respondents No.1 and 2 and the learned Additional Government Advocate, Mr Shubham Priolkar, representing the State of Goa.

3. By consent of parties, we deem it appropriate to issue Rule which is made returnable forthwith.

For the sake of convenience, we refer to the pleadings in M/s Milroc Good Earth Developers in Writ Petition No.2203 of 2025(Filing).

The Petitioner, a Partnership Firm, involved in supply of taxable goods is aggrieved by issuance of the impugned Show Cause Notice dated 28.03.2025, received on 11.04.2025 which inter alia, set out the following demands:

> (i) demand of GST amounting to ₹2,16,31,813/- on construction services provided to the landowner of the Colina Project;
>
> (ii) reversal of alleged ineligible ITC under Section 17 of the CGST Act, 2017 read with Rule 42 of the CGST Rules, 2017 amounting to ₹2,30,24,751/- on account of transfer of certain flats after receipt of the completion certificate;
>
> (iii) demand of GST amounting to ₹9,32,63,552/- on construction services provided to the landowner of the Adarsh Project; and
>
> (iv) demand of GST amounting to ₹2,39,95,000/- under the Reverse Charge Mechanism (RCM) on TDR services allegedly received from the landowner/society of both projects in respect of un-booked/unsold inventory at the time of receipt of the completion certificate, purportedly in terms of Para IA of

Notification No. 4/2019-CTR dated 29.03.2019, Notification No. 5/2019-CTR dated 29.03.2019, and FAQ (Part-III) on real estate issued under F. No.354/32/2019-TRU dated 14.05.2019.

The impugned Show Cause Notice seeks to invoke Sections 74(1) and 74A of the CGST Act, 2017, along with interest under Section 50 and penalties under Sections 74(1) and 122(1)(xvi) & (xvii) of the CGST Act, 2017, for the period FY 2017-18 to FY 2023-24.

4. It is the case of the Petitioner that being engaged in the construction of residential and commercial complexes, it is registered with the GST Department and has undertaken development of two projects, namely, Colina and Adarsh and in the former, the landowners intended to construct new structures by utilizing Floor Space Index (FSI) and the TDR FSI relating to and arising out of the said plot whereas in case of Adarsh Project, the Society desired to redevelop the dilapidated buildings, as it was incurring huge costs for repairs and maintenance and it was resolved to demolish the old structure and construct a new one by utilising the plot FSI and the TDR FSI relating to and arising out of the plot.

The Petitioner being appointed as a 'Developer" to carry out the re-development, entered into appropriate agreement for giving effect to the Project and as per the Agreement, the landowner of the Society agreed to hand over the existing land to it as Developer and the

Developer undertook to construct new buildings and hand over the same to the members of the Society and the Petitioner was permitted to use the FSI for the construction of the sale component.

5. Based on the intelligence collected by the Department that the Petitioner is engaged in supply of construction service but has failed to pay GST on the construction services, certain data/documents were collected and summons were issued to the Petitioner under Section 17 of the CGST Act.

The case of the Petitioner is that it cooperated in the proceedings by attending the summons from time to time but being not satisfied with the stand adopted, impugned Show Cause Notices were issued fastening a liability amount on the Petitioner, on the construction services provided to the landowner. It was also alleged that the Petitioner availed ineligible Input Tax Credit (ITC) and he is not entitled to reverse the ITC.

6. It is in this background, the Show Cause Notices were issued but instead of getting into the merits of the matter, Mr Raichandani, has pressed into service, one proposition of law which, according to him, has been well settled by various decisions of the distinct High Courts that there cannot be clubbing of the assessment for different years and on

this ground, he claim that the notices are bad in law and though the Petition has raised several grounds about the Show Cause Notices being unsustainable in the wake of the nature and the activity being carried out by the Petitioners, we are called upon to consider the aspect of consolidated Show Cause Notices being issued for multiple years by relying upon Section 74.

In the second Petition, filed by Mariposa Beach Grove, the Petitioners are aggrieved by the order dated 14.01.2025 passed by the Assistant Commissioner of CGST thereby confirming the demand of GST of ₹99,44,778/- under Section 74(1) under CGST/Goa GST Act, along with interest and penalty for the period of F.Y. 2017-2018 to F.Y. 2022-2023 and apart from the merits of the matter, this Petition also raises the issue about the action based on consolidated Show Cause Notices involving multiple assessment years.

7. Mr Raichandani, the learned Counsel representing the Petitioners in both the Petitions, by inviting our attention to the scheme of the GST law and in specific the Central Goods and Services Tax, 2017, would urge that the concept of 'assessment" under Section 2(11) of the Act means determination of tax liability and include self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment. Further, the term,

"Return" under Section 2(97) is assigned a definite connotation as Return prescribed or otherwise required to be furnished by or under this Act or the rules made thereunder and according to him, this definition has to be read with the definition of the term 'Tax period', to mean the period for which the Return is to be furnished.

Pointing out to us that the procedure for assessment as contemplated in Chapter XII require every registered person to self-assess the tax payable for each 'Tax period' as specified under Section 39, he would submit that there is provision for provisional assessment and also an assessment of non-filers of Returns and a provision is also made when there is a failure to furnish the Return, it is competent for the proper officer to assess the tax liability of the said person to the best of his judgment and issue an assessment order within a period of five years from the date specified under Section 44 for furnishing of the annual Return for the financial year to which the tax not paid relates. It is, therefore, his submission that the notice shall be issued for any Tax period based on filing of Return, namely, monthly or annual Return and if it is based on annual Returns, it can be only for the Tax period within the relevant financial year but the Act do not contemplate assessment beyond the relevant financial year. According to Mr Raichandani, once the Act mandates for issuance of notice in a

particular manner, it has to be done in that same manner and in no other way.

It is the contention of Mr Raichandani that the Scheme involved never contemplated consolidated assessment. Apart from this, it is also the submission of Mr Raichandani that when there is limitation prescribed in the Scheme, by issuing consolidated notices, the time limit for subsequent financial year get curtailed and this would cause serious prejudice to the Petitioner and this could never have been the intention of legislature, when it introduced Sections 73/3, 74/3 in the statute, which refers to the issuance of statements for respective tax periods and he would submit that a notice under Section 73/1, 74/1 is issued for a particular tax period, the statement shall be issued for subsequent months.

8. In support of his submission, he would invoke the principle of law laid down in various authoritative pronouncements and this include the latest decision of the Madras High Court in case in the case of **Ms R A And Co vs. The Additional Commissioner of Central Taxes** passed in W.P.No.17239 of 2025 & W.M.P.Nos.19530 of 2025 (Order date 21.07.2025), when the High Court had an opportunity to pronounce upon the effect of meaning of 'Tax period' in the statute vis-a-vis, the Scheme of the CGST and the Tamil Nadu SGST Act and a conclusion is drawn, that issuance of composite show cause notices

covering multiple financial years, making a composite demand for multiple years without separate adjudication per year will frustrate the limitation scheme and also prevent the assessee from giving year specific rebuttals, which result in jurisdictional overreach.

In addition, he would also place reliance in another decision of Madras High Court in the case of case of **Titan Company Ltd., v/s. The Joint Commissioner of GST & Central Excise, Salem Commissionerate & Ors.** passed in Writ Petition No.33164 of 2023 on 18.12.2023. He has also placed reliance upon the decisions of the Karnataka High Court in the case of **M/s Veremax Technologie Services Limited v/s. The Assistant Commissioner of Central Tax** in Writ Petition No.15810 of 2024 as also in the case **M/s. Bangalore Golf Club v/s. Assistant Commissioner of Commercial Taxes (Enforcement)-22** passed in Writ Petition No.16500 of 2024.

9. Ms Asha Desai, the learned Standing Counsel, representing the Revenue, has raised a preliminary objection about maintainability of the Petition as she would submit that the Petitions are filed being aggrieved by the Show Cause Notices and it is open for the Petitioners to show cause and contest the claim, before the Competent Authority.

She would place reliance upon the decision of the Bombay High Court in case of **RioCare India Pvt. Ltd v/s. Assistant**

Commissioner, CGST and C.Ex.[1] and also the decision of the Delhi High Court in the case of **Ambika Traders Through Proprietor v/s. Gaurav Gupta v/s. Additional Commissioner, Adjudication DGGSTI, CST Delhi North** dated 29.07.2025 in Writ Petition (C) No.4783 which, according to us has been confirmed by the Apex Court.

10. In light of the above counter arguments, we deem it appropriate to issue Rule, and by making the Rule returnable forthwith, we have taken up the Petition for final hearing.

As far as the preliminary objection raised by Ms Asha Desai about the Petition being premature, we find substance in the submission of Mr Raichandani who would submit that since the issue raised before this Court is a jurisdictional issue and if the Authority lack jurisdiction to have a composite assessment for different tax periods/assessment years, then the formality of responding to the Show Cause Notice shall not be encouraged and we agree with him, as we are pronouncing upon the issue as to whether it is permissible to issue Show Cause Notice covering different tax periods, we do not find it appropriate to relegate the Petitioners to file their response and let the issue be decided by the Authority as, in any case, we find that the

[1] (2025) 26 Centax 339 (Bom.)

jurisdiction in the Authority will be dependent upon the Scheme of the Statute and we have heard respective Counsel on the merits of the matter.

11. The Central Goods and Services Tax Act, 2017, an Act which makes provision for levy and collection of tax, on intra-State supply of goods and services or both by the Central Government, is a statute which was enacted to broaden the tax base and confer the power on the Central Government to levy goods and service tax on supply of goods and services which takes place within the State. The avowed purpose of the legislation being simplifying and harmonising the indirect tax regime in the country, resulting into the reducing cost of production and inflation in the economy and thus making intra trade and industry more profitable, domestically as well as international. Permitting seamless transfer of input tax credit from one stage to another in the chain of value addition, by prescribing an inbuilt mechanism in the design of Goods and Services Tax would incentivise tax compliance by tax payers and the Parliament has defined certain terms for its effective understanding.

> The term, 'Central Tax' is defined under Section 2(21) to mean the Central Services and Goods and Services Tax levied under Section 9;
>
> Section 2(11) define the term, 'Assessment' to mean determination of tax liability under this Act and includes self-

assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment;

Section 2(97)-'Return' means any return prescribed or otherwise required to be furnished by or under this Act or the rules made thereunder;

Section 2(106)-'Tax period' means the period for which the return is required to be furnished;

Section 2(107)- 'Taxable person' means a person who is registered or liable to be registered under Section 22 or Section 24; and

Section 2(108)- 'Taxable supply' means a supply of goods or services or both which is leviable to tax under this Act.

12. In the statutory Scheme, Chapter VI is the provision for registration and Section 22(1) prescribe that every supplier shall be liable to be registered under the Act in the State or Union Territory, from where he makes supply of goods or service or both if his aggregate turnover in a financial year exceeds the limit prescribed.

Apart from this, the provision contemplated that every person who, on the day immediately preceding the appointed day, is registered or holds a licence under an existing law, shall also be liable to be registered under this Act with effect from the appointed day. The Act also specify the persons not liable for registration and also compulsory registration in prescribed cases, apart from setting out the procedure for registration.

Section 35(1), included in Chapter VIII under the head of 'Accounts and Records', make it mandatory for every registered person, at his principal place of business, a true and correct account of --

(a) production or manufacture of goods;
(b) inward and outward supply of goods or services or both;
(c) stock of goods;
(d) input tax credit availed;
(e) output tax payable and paid; and
(f) such other particulars as may be prescribed

Section 36 prescribe the period for retention of accounts and by virtue of this provision, it is imperative for every registered person to maintain books of accounts and or other records in accordance with the provisions of sub-section (1) of section 35 shall retain them until the expiry of seventy-two months from the due date of furnishing of annual Return for the year pertaining to such accounts and records.

13. Chapter IX contain provision pertaining to Returns and as per Section 37, every registered person, shall furnish electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein. Section 39 is

another relevant provision for furnishing of Return and sub-Sections (1), (2) and (8) read thus:

> [(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed:
>
> Provided that the Government may, on the recommendations of the Council, notify certain class of registered persons who shall furnish a return for every quarter or part thereof, subject to such conditions and restrictions as may be specified therein.
>
> (2) A registered person paying tax under the provisions of section 10, shall, for each financial year or part thereof, furnish a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, tax paid and such other particulars in such form and manner, and within such time, as may be prescribed.]
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> ..
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> ..
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> (8) Every registered person who is required to furnish a return under sub-section *(1)* or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

14. Section 44 in the said Chapter is a provision for annual Return which contemplate that every registered person, shall furnish an annual report which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the Return furnished for the financial year, with the audited annual financial statement for every

financial year electronically, within such time and in such form and in such manner as may be prescribed.

Thus, we find a provision of annual Return to be furnished.

15. Next to the aforesaid, comes the provision of payment of taxes included in Chapter X and the most crucial provision under Section 49, which pertain to payment of tax which shall be credited to the electronic cash ledger to be maintained in such manner as may be prescribed and it also prescribe the manner in which the amount of input tax credit available in the electronic cash ledger of the registered person shall be utilised. The explanation appended to the said Section has defined the expression 'tax dues' to mean the tax payable under the Act and 'other dues' to mean the interest, penalty, fee or other amounts payable under the Act.

16. In the Scheme of CGST, our attention is drawn to Chapter XII, a provision for assessment and we find Section 59 is a provision for self-assessment and furnish a Return for 'each Tax period' as specified in Section 39. Therefore, there is a provisional assessment where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis, pursuant to which the proper officer shall pass an

order within 90 days allowing the payment of tax on provisional basis at such rate or on such value as may be specified.

The Chapter further prescribe the procedure for scrutiny of Returns, assessment of non-filers of Returns so as to assess the tax liability and also a provision for assessment of unregistered persons.

By way of explanation, there exist a provision for audit by tax authorities under Section 65 where the Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed, but we are mindful that this is an exceptional provision and this is to be covered by Rule 101 of the CGST Rules, 2017, which permit an audit to be conducted for a financial year or part thereof or multiples thereof.

17. The crux of Mr Raichandani's arguments and the point for determination is based upon the provision of determination of tax in Chapter XV and as Section 73 is a provision for determination of tax, pertaining to the period up to Financial Year 2023-24, not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.

In the said provision, by Act 15 of 2024, the wording "pertaining to the period upto to Financial Year 2023-24" is added and with this

insertion, we find that subsequent to the financial year 2023-24, the effect of Section 73 and 74 is rendered nugatory and for financial year 2024-25, what is introduced in Section 74A which provides for "determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onward."

It is in light of the aforesaid scheme, it is urged before us that 'tax not paid/short paid/erroneously refunded shall be for the tax period for which the Return is filed and from perusal of the Scheme of the Act of 2017 under which every supplier must obtain the registration in the State/Union Territory, where he makes taxable goods if he crosses the turnover limit and it is imperative for him to provide for Returns furnishing the details of outward supply of goods and services for the Tax period. The term 'Tax period' is defined as the period for which the Return is required to be furnished which contemplate a provision for annual Return under Section 44, which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the Return furnished for the financial year, with the audited annual financial statement for every financial year.

The Act thus contemplate for furnishing of annual Returns for every financial year along with the audited final statement.

18. When we have perused the scheme of assessment and payment of tax, we find that the taxes payable under the Act commensurate with Return filed for 'each tax period' and this is may be in the form of self-assessment or provisional assessment as provided in the Act. However, what is important to note is that there is a prescription of period of five years of due date on which 'annual Return' is filed for the relevant financial year and provision of payment and recovery is also included in the statutory scheme in form of Section 73 and 74, which underwent significant amendment by the Act 15 of 2024 and the provision as per sub-section (12) shall be applicable for determination of tax pertaining to the period up to Financial Year 2023-24 and for financial year 2024-25 and onwards, the provision under Section 74A will be relevant.

19. From the perusal of the entire Scheme, it is evidently clear to us that the statutory provision for assessment of tax for each financial year expect the Show Cause Notice to be issued at least 3 months prior to the time limit specified in Section 73(10) and 74(10) of the Act, for issuance of assessment order as sub-section (10) provide that the proper officer shall issue the order within a period of five years from the due date for furnishing of annual Return for the financial year to which the tax not paid/short paid or input tax credit wrongly availed or utilised relates to

or within five years from the date of erroneous Return. Thus, there is limitation prescribed for demand of tax and its recovery.

The Act of 2017, therefore involve a definite tax period, based on the filing of the Return, which can be either monthly or annual Return and if the assessment is based on annual Return, the tax period shall be the relevant financial year.

In the light of the statutory scheme, we find that there is no scope for consolidating various financial years/tax period which is attempted by the impugned Show Cause Notices assailed in the Petition.

20. In arriving at the aforesaid conclusion, we are guided by the observations of the Madras High Court in the case of **Ms R A And Co** (supra), where this very issue with regards to 'bunching of show cause notices', i.e. issuance of single show cause notice by the respondent Revenue for more than one financial year was raised and on detailed scrutiny of the provision under the statute and by placing reliance upon the earlier authoritative pronouncement, the High Court recorded thus:

> "10. Section 73(10)/74(10) of the GST Act specifically provides the time limit of 3 years/5 years from the last date for filing the annual returns for the financial year to which the tax dues relates to. Thus, the GST Act considered each and every financial year as separate unit, due to which, the limitation has been fixed for each and every financial year separately. When such being the case, clubbing more than one financial year, for the purpose of issuance of show cause notice, would not be considered as in accordance with the provisions of Section 73/74 of the GST Act. Therefore, the limitation period of 3 years/5 years would be separately applicable for every financial year, thus, the

limitation period would vary from one financial year to other. It is not that the limitation would be carried over or continuing in nature, so as to, club the financial years together. For these reasons also, the bunching of show cause notice is impermissible. In this regard, the Constitution Bench of the Hon'ble Apex Court in the decision rendered, which was reported in AIR 1966 SC 1350 (State of Jammu and Kashmir and Others v. Caltex (India) Ltd) has held as follows:

> "where an assessment encompasses different assessment years, each assessment year could be easily split up and dissected and the items can be separated and taxed for different periods."

11. Section 73(3)/74(3) of the GST Act refers to issuance of "statement", for subsequent "tax periods", containing the details of tax liabilities pertaining to the respective tax periods. If a notice, under Section 73(1)/74(1) of the GST Act, is issued for any particular tax period, a statement shall be issued, in terms of Section 73(3)/74(3) of GST Act, for the subsequent months and the said statements shall deemed to be a notice issued under Section 73(1)/74(1) of the GST Act.

12. In Section 73(3)/74(3) of the GST Act, it has been stated that

"Where a notice has been issued for any period under sub-section (1)..... “Therefore, an argument was made by the learned Additional Solicitor General that "any period" means, the period, which may be more than one financial year and hence, he raised a contention that the notice under Section 73(1)/74(1) of the GST Act can be issued for more than one financial year.

13. In Section 73(4)/74(4) of the GST Act, it has been stated as follows:

> "(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice."

In making the aforesaid observations, the High Court was guided by the definition of term ‘Tax period’ and the term ‘Return’ as defined under Section 2 of the Act.

The observations of the Co-ordinate Bench in **Titan Company Limited** (supra) were gainfully reproduced where the bunching of the show cause notices was held to be against the spirit of the provision of Section 73 of the Act.

21. The relevant observation in the judgment rendered in **M/s. Tharayil Medicals v/s. The Deputy Commissioner[2],** by the Division Bench of Kerala High Court was also re-produced which read to the following effect:

> "26..
>
> 11. When we read sub-sections (9) and (10) of Section 74, which specifically refer to " financial year to which the tax not paid or short paid or input tax wrongly availed or utilised relates" while passing the final order of adjudication, it presupposes that independent show cause notice be issued to the assesse for each different years of assessment while proceeding under Section 74. We are constrained to hold so because, as we noted earlier, the assessee can raise a distinct and independent defence to the show cause notice issued in respect of different assessment years. In other words, the entitlement to proceed and assess each year being separate and distinct, and further the time limit being prescribed under the Statute for each assessment year being distinct, we see no reason as to why we should not hold that separate show cause notices are required before proceeding to assess the assessee for different years of assessment under Section 74.
>
> 12. There is yet another reason why we should hold that separate show-cause notices are issued for different assessment years. There may be cases where proceedings are initiated in the guise of a show cause notice under Section 74 wherein, on facts, the case of the assessee will fall under Section 73 of the CGST/SGST Act. We find that insofar as the time limit prescribed under Section 73(10) of the

[2] 2025:KER:30805

> CGST/SGST Act is concerned, it is three years instead of five years and further, the aspect of fraud, wilful misstatement and suppression do not arise for consideration in proceedings under Section 73. Thus, by issuing a composite notice, the assessing authority, cannot bypass the mandatory requirement of Section 73 to complete the assessment by falling back on a larger period of limitation under sub-section (10) of Section 74. If such a recourse is permitted, then certainly the said action would be a colourable exercise of the power conferred by the statute and will offend express provisions of the CGST/SGST Act qua limitation. This reason would also prompt us to hold that in cases where the assessing officer finds that an assessee is liable to be proceeded either under Section 73 or under Section 74 for different assessment years, a separate show cause notice has to be issued. Still further, since proper officer need to issue a show cause notice prior to 6 months to the time limit prescribed under sub-section (10) of Section 74, if a composite notice is issued, the assessee will be prejudiced inasmuch as the availability of a lesser period to submit a proper and meaningful explanation. This also is a strong indicative factor which would prompt us to hold in favour of the assessee.

In the wake of the aforesaid, the following conclusion is derived by the Madras High Court:

> "27. In view of the above discussion, it is clear that issuance of composite show cause notice covering multiple financial years making composite demand for multiple years without separate adjudication per year frustrate the limitation scheme and prevents the petitioner from giving year-specific rebuttals, which results in jurisdictional overreach, i.e., the proper officer acts without authority of law, rendering the order void ab initio. Further, the impugned order is passed in contravention of clear statutory safeguards under Section 74(10) and Section 136 of GST Act."

22. The Division Bench followed its earlier view taken in **Titan Company Ltd** (supra) which relied upon the decision of the Apex

Court in the case of **State of Jammu and Kashmir and Others v/s. Caltex (India) Ltd[3].** which held thus:

> "where an assessment encompasses different assessment years, each assessment year could be easily split up and dissected and the items can be separated and taxed for different periods. The said law was laid down keeping in mind that each and every Assessment Year will have a separate period of limitation and the limitation will start independently and that is the reason why the Hon'ble Supreme Court has held that each assessment year could be easily split up and dissected and the items can be separated and taxed for different period. The said principle would apply to the present case as well."

We do not intend to multiply the authorities the fact since we find that even the Karnataka High Court as well as the Andhra Pradesh High Court has adopted a similar view.

23. Ms Asha Desai has relied upon the decision of the Delhi High Court in case the of **Ambika Traders** (supra), where the issue that fell for consideration was whether the Order-in-Original dated 23.01.2025 passed by the Additional Commissioner, Adjudication (DGGSTI), North Delhi and the facts reveal, that the entity, a sole proprietorship of Mr Gaurav Gupta registered under the VAT regime migrated to the GST regime and a search operation was carried out at the residential

[3] AIR 1966 SC 1350

premises of the Petitioner and various files/records were resumed by the GST Department and the proprietor was arrested by the Directorate of GST Intelligence. A Show Cause Notice came to be issued along with form DRC-01 by the DGGI, for five financial years from 2017-2018 to 2021-2022 demanding a sum of Rs.83,76,32,528/- on the ground of alleged fraudulent availment and wrongful passing of Input Tax Credit.

It is in this background, the Delhi High Court appreciated the submission advanced in light of the specific provision of Section 74(9) of the CGST 2017 in the backdrop of Section 75. It is in the wake of whole sole fraud which attracted the attention and was the focus point of the decision, the Bench took into consideration the definition of the term 'tax period' as defined in Section 106 and when it interpreted the terms "for any period and "for such periods" under Section 74(3), 74(4), 73(3) and 73(4), it reproduced the Section, with its impact upon availing of ITC and that is why, it observed thus:

> "46. The nature of ITC is such that fraudulent utilization and availment of the same cannot be established on most occasions without connecting transactions over different financial years. The purchase could be shown in one financial year and the supply may be shown in the next financial year. It is only when either are found to be fabricated or the firms are found to be fake that the maze of transactions can be analysed and established as being fraudulent or bogus."

The fact involved before the Delhi High Court being distinct and revolving around the wrongfully claimed ITC, which was prescribed for the subsequent years, is quite distinct from the facts which are before us.

In any case the SLP was withdrawn by Ambika Traders before the Apex Court and the said decision will not apply to facts in the present case.

24. Another case which Ms Asha Desai has placed reliance is the decision of the Bombay High Court in case of **RioCare India Pvt. Ltd v/s. Assistant Commissioner, CGST and C.Ex** (supra), where we find a prima facie observation made in paragraphs 3 and 4 to the following effect:

> 3. At least prima facie we are not impressed with this argument. There is nothing in Section 74 and more particularly 74(1) which would prohibit the Authority from issuing a notice calling upon the assessee to pay tax that 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. At least prima facie, a notice under Section 74(1) can be issued for any period provided said notice is given at least 6 months prior to the time limit specified in sub-section (10) of Section 74 for issuance of the order.

> 4. In the present case, admittedly there is no issue of limitation as contemplated under Section 74(10). In these circumstances, at least prima facie we are not satisfied that this Writ Petition ought to be entertained and which is challenging the show cause notice. The Petitioner will have to face the show cause notice and can canvass all arguments before the authority concerned, including the issues raised in the present Writ Petition."

25. In our view, the aforesaid observations merely being of primary nature without appreciating the provisions in the Act of 2017 and Rules made therein, and recording a finding that there is no prohibition in issuance of notice calling upon payment of tax for different financial years, in our considered opinion, since the Petition before the Division Bench called for quashing of the demand notice referring to different financial years, but in any case the Court expressed the prima facie opinion and recorded that there is no issue of limitation as contemplated under Section 74(10).

In any case the Court refused to show indulgence and directed the Petitioner to face the show cause notice and therefore the Division Bench did not express it final opinion.

26. For the reasons recorded above, by overruling the objections raised by Ms Desai for entertaining the Petition is

merely based on the show cause notice as we find that there is no provision to club various tax periods and apart from the fact that it is also beyond the period of limitation, we find that the action of Respondent No.2 in issuing consolidated show cause notices for multiple assessment years is without jurisdiction and since it is a judicial overreach, we quash and set aside the same.

The Writ Petition is made absolute in the aforesaid terms.

ASHISH S. CHAVAN, J. **BHARATI DANGRE, J.**