

**Court No. - 40**

**Case :-** WRIT TAX No. - 1016 of 2025

**Petitioner :-** M/S Singh Electrical Store

**Respondent :-** Superintendent Cgst And Central Excise, Range  
Azamgarh, Division

**Counsel for Petitioner :-** Prakhar Saran Srivastava

**Counsel for Respondent :-** Parv Agarwal

**Hon'ble Shekhar B. Saraf,J.**

**Hon'ble Kshitij Shailendra,J.**

1. Heard Sri Prakhar Saran Srivastava, learned counsel appearing on behalf of the petitioner and Sri Parv Agarwal, learned counsel appearing on behalf of the respondent.

2. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by the order dated February 21, 2025 (Ref. No.ZD0902252997022) passed by the respondent under Section 74 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'Act').

3. Upon a perusal of the impugned order, we are of the view that the respondent authority has not applied his mind and has come to the following finding :-

*"5.2 However, they argued that the said excess claim was on account of clerical error and not intentional. They contended at length as to why their case not covered under section 74 but under section 73 of the CGST Act, 2017. Since the jurisdiction to consider such claim lies with the appellate authority and above in terms of section 75, I do not find it appropriate to deal on this aspect at the level of adjudication."*

4. It is trite law that to be covered under Section 74 of the Act, there is a mandatory requirement of there being fraud or any willful-misstatement and/or suppression of material facts. This

being an essential ingredient of the particular section, the authority concerned could not have made the statement in the impugned order that it was not appropriate for him to deal on this aspect at his level of adjudication.

5. We are indeed surprised at the reasoning or rather for non reasoning of the authority concerned. In fact, there appears to be complete non application of mind which leads us to intervene in this matter at this stage. Accordingly, we direct the Commissioner, Central Goods and Services Tax, Varanasi to look into this particular issue wherein officers are passing orders under Section 74 of the Act without providing the reasons for invoking Section 74 of the Act for fraud or any willful-misstatement or suppression of material facts. Commissioner, Central Goods and Services Tax, Varansi is directed to take appropriate action at his end.

6. In light of the observation made above, the impugned order dated February 21, 2025 is quashed and set aside with a direction upon the authority concerned to grant an opportunity of hearing to the petitioner, and thereafter, pass a reasoned order within a period of twelve weeks from date.

7. With the above directions, the writ petition is allowed.

8. A copy of this order be communicated by Registrar (Compliance) of this Court to Commissioner, Central Goods and Services Tax, Varansi.

**Order Date :- 17.3.2025**

Dev

(Kshitij Shailendra,J.)      (Shekhar B. Saraf,J.)