

HC: Proceedings under Section 74 Unsustainable in Absence of Fraud; Demand to be Treated under Section 73

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REFER THE DECISION OF THE HON'BLE KARNATAKA HIGH COURT IN THE CASE OF

Basavaraj V. Sajjan vs. Deputy Director, Additional Director General, Directorate General of GST, Intelligence Citation: (2025) 32 Centax 207 (Kar.)

FACTS:

The petitioner, Basavaraj V. Sajjan, a government contractor, had short-paid GST because the Public Works Department (PWD) did not release the GST portion of the payment.

The tax authorities-initiated proceedings under Section 74 of the CGST Act, 2017, alleging fraud, suppression, or willful misstatement.

The petitioner challenged the action, stating that the short payment was neither due to fraud nor intentional suppression but due to non-receipt of GST component from PWD, which was beyond his control.

It was argued that invoking Section 74 (which applies to fraud, suppression, or willful misstatement) was arbitrary and legally unsustainable, and at best, proceedings could only be initiated under Section 73, which deals with cases without fraud or suppression.

Hon'ble High Court Judgement:

The Karnataka High Court held that the facts of the case did not reveal any fraud, suppression, or willful misstatement by the petitioner.

The court ruled that proceedings under Section 74 were wrongly invoked and that the order should instead be treated as one passed under Section 73, which covers demand and recovery where there is no intent to evade tax.

The court provided relief to the petitioner, effectively converting the proceedings from Section 74 to Section 73, ensuring lower penalty implications.