

Revisiting Jurisdiction under Section 73 through the Lens of Section 61

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Introduction

The judgment of the Gauhati High Court in *PepsiCo India Holdings Pvt. Ltd. v. Union of India* (WP(C) 6960/2023, decided on 19.09.2025) is significant not merely for the relief granted, but for the clarity with which it reasserts jurisdictional discipline under the GST framework. While the immediate controversy concerned the validity of a show cause notice issued under Section 73, the ruling goes further—it clarifies the structural relationship between Sections 61 and 73 and the limits within which the Department may act when dealing with return-based discrepancies.

At a time when GST enforcement is increasingly driven by data analytics and reconciliation mismatches, the judgment serves as a reminder that **statutory safeguards embedded in the Act are not procedural formalities but foundational requirements**.

Factual Background of the case

The petitioner was issued a show cause notice dated 05.09.2023 alleging wrongful availment of input tax credit to the extent of approximately ₹19.51 crore. The allegation was founded entirely on a perceived mismatch between the figures reported in Form GSTR-9C and the financial statements, particularly in relation to Table 14.

Two aspects are material. First, it was not disputed that no notice in Form GST ASMT-10 had been issued, and therefore, no proceedings under Section 61 were undertaken. Secondly, the requirement to furnish details in Table 14 of GSTR-9C had been made optional through a series of notifications applicable to the relevant period.

The challenge before the Court was thus not on the merits of ITC entitlement, but on the **validity of the assumption of jurisdiction under Section 73**.

Findings of the court

1. Statutory Scheme and Legislative Structure

The Court's reasoning is anchored in a careful reading of the scheme of Chapter XII of the CGST Act. It proceeds on the foundational premise that GST is a system of self-assessment, where the return filed by the taxpayer is presumed to be correct unless tested through statutory mechanisms.

Section 61 provides the statutory framework for scrutiny of returns. As noted by the Court (paras 22–24), it contemplates a structured process—identification of discrepancies, communication to the taxpayer, and an opportunity to explain or rectify. Rule 99 operationalises this mechanism through the issuance of ASMT-10, response in ASMT-11, and closure or escalation via ASMT-12.

The Court then turns to Section 73 and observes that the formation of an opinion regarding short payment of tax or wrongful availment of ITC cannot arise in vacuum. Where such opinion is based on discrepancies in returns, it must

necessarily be preceded by scrutiny under Section 61 (para 27). Section 73, therefore, is not an independent starting point; it is consequential in nature.

2. Section 61 as a Jurisdictional Precondition

The Court (paras 25, 27, 33) reads Sections 61 and 73 together and arrives at the following principle: ***Where the basis of action is discrepancy in returns, the process under Section 61 must be followed before invoking Section 73.***

This is not stated expressly in the statute, but flows from the structure of Chapter XII. More importantly, the Court characterises this requirement as jurisdictional. The absence of scrutiny is not treated as a procedural lapse, but as a defect going to the root of the matter. Without initiation of proceedings under Section 61, there is no legally sustainable basis to conclude that any discrepancy exists. Consequently, the assumption of jurisdiction under Section 73 becomes untenable. This position is affirmed in clear terms when the Court holds that such invocation is “completely unauthorized” (para 39).

Key Takeaway:

In cases where the show cause notice is founded entirely on return mismatches, the absence of a prior ASMT-10 is not a curable defect. It goes to jurisdiction itself and can render the entire proceeding void at inception.

3. Table 14 is an optional Disclosure and not discrepancy

The second limb of the judgment deals with the nature of the alleged discrepancy itself. The Department’s case rested entirely on non-disclosure of data in Table 14 of GSTR-9C. The Court, however, takes note of the notifications issued by the Government making such disclosure optional for the relevant years (paras 34–36).

This finding has a direct legal consequence. If the law permits non-disclosure, such non-disclosure cannot be treated as a discrepancy. The Court thus rejects the foundational premise of the show cause notice. The reasoning is restrained and precise—the Court does not enter into the merits of ITC eligibility, but confines itself to the validity of the basis on which proceedings were initiated.

4. Binding Nature of Notifications and Departmental Discipline

The Court further reiterates that the Department is bound by its own notifications and circulars (para 37). Relying on settled Supreme Court jurisprudence, it affirms that the Revenue cannot adopt a position contrary to binding instructions issued by the Government. A show cause notice issued in disregard of such instructions is, therefore, legally unsustainable.

Key Takeaway:

Optional disclosures under GST returns cannot be retrospectively elevated into mandatory conditions through interpretation. Where the law grants flexibility, its exercise cannot be treated as a default.

5. Reliance on Precedent

The Court draws support from the decision of the Rajasthan High Court in *Joint Commissioner v. Goverdhandham Estate Pvt. Ltd.*, which had taken a similar view on the necessity of following Section 61 before invoking Section 73. The dismissal

of the Special Leave Petition against that judgment is noted (paras 29–32), lending further strength to the principle. The consistent judicial approach emerging from these decisions is that **where proceedings are triggered by return discrepancies, statutory scrutiny cannot be bypassed.**

6. Maintainability of Writ Petition

On the issue of alternative remedy, the Court reiterates that where the very jurisdiction of the authority is under challenge, the existence of an appellate remedy does not bar invocation of writ jurisdiction (para 40). This aligns with settled legal principles and ensures that taxpayers are not compelled to undergo adjudication where the notice itself is fundamentally flawed.

Practical Implications

The implications of the judgment are both immediate and significant. A large number of show cause notices under GST are presently issued on the basis of data mismatches—between GSTR-2A and GSTR-3B, between returns and financial statements, or between different statutory filings. The PepsiCo ruling makes it clear that such notices, where based solely on return discrepancies, must be preceded by scrutiny under Section 61.

At the same time, the judgment does not weaken the Department’s powers in genuine cases. It only says that the correct legal route must be followed. If the officer scrutinises the return, points out the discrepancy, gives the taxpayer an opportunity to explain, and then finds the explanation unsatisfactory, the law allows further proceedings. What the Court has disapproved is the shortcut.

An additional dimension arises in the context of limitation. In cases pertaining to earlier financial years, the time limits prescribed under Section 73 may have already expired. Where proceedings are set aside on jurisdictional grounds, the ability to re-initiate action may be constrained. This lends practical finality to what may otherwise appear to be a procedural defect.

Conclusion

Overall, the judgment is a welcome one. It brings the focus back to the basic discipline of the statute. Section 61 is not an empty formality. It is the statutory method for dealing with discrepancies in returns. If the Department wants to rely on such discrepancies, it must first follow that route. Section 73 cannot be used as a substitute for scrutiny.

In simple terms, the judgment says something very basic but very important: if the law prescribes a manner in which the Department must proceed, that manner has to be followed. It also underscores that optional disclosures cannot be converted into grounds for demand, and that departmental action must remain consistent with its own notifications.

In an increasingly data-driven tax environment, the ruling serves as an important reminder that **technology may identify mismatches, but jurisdiction must still be established in accordance with law.**

The views expressed are strictly personal and cannot be regarded as an opinion. For any queries or feedback please write to shruti.m@hnaindia.co.in and mannu@hnaindia.com.