

Treco Wire India Private Limited v. Additional Commissioner Central Tax Delhi North & Ors.

Case number: W.P.(C) 583/2026 with CM APPL. 2873/2026

Citation: 2026:DHC:8599-DB

Decision date: 2026-09-29

Section 74 ITC demand: missing supplier-wise particulars and fraud findings; constitutional challenge rejected, adjudication quashed and remanded

Court: High Court of Delhi at New Delhi

Bench: Division Bench: Anil Kshetarpal and Bharat Parashar

Decision stage: Final disposal of the writ: section 16(2)(c) constitutional/read-down prayers rejected; challenged adjudication and consequential proceedings set aside and remanded. ITC merits expressly undecided.

01 Facts of case and issues

Treco, a registered copper-wire manufacturer, underwent a GST audit for 1 July 2017 to 31 March 2021. An audit memo dated 23 July 2023 alleged ITC of ₹3,34,21,261 on supplies from suppliers whose registrations were retrospectively cancelled, and ₹50,30,256 interest for alleged payment to suppliers beyond 180 days. The ADT-02 audit report followed on 27 July 2023, then a DRC-01A intimation and a section 74 show-cause notice dated 22 September 2023. Treco disputed the allegations, claimed genuine transactions with suppliers registered at the relevant time and contested the ingredients for section 74. These were its defences, not findings that the transactions were proved genuine.

Order-in-Original No. 45/ADC/D.N./Bhavan Meena/2024, described as dated 15 January 2024, confirmed the ₹3,34,21,261 ITC demand with interest and an equal penalty, plus the separate ₹50,30,256 interest demand. Treco challenged that order, consequential DRC-07, the notice/proceedings, section 16(2)(c), and the section 16(2) proviso insofar as interest arose after 180-day supplier-payment delay.

Pinpoint: Paragraphs 1–11, physical pp. 1–4; paragraphs 12–14, pp. 4–5. The full audit period is in paragraph 5; the audit objection quoted in paragraph 27, pp. 7–8, lists 2017–18, 2019–20 and 2020–21.

02 Discussion by Hon'ble Court

The Court rejected the constitutional/read-down attack on section 16(2)(c), relying on the Supreme Court decision it cited as Bhandari Scraps Traders v. Union of India, SLP(C) 23931/2026, decided 24 July 2026, concerning the Gujarat High Court decision cited as Maruti Enterprises. The independently checked Supreme Court record is titled Bhandari Scrap Traders v. Union of India & Ors. It is a reasoned dismissal of SLP(C) 23931/2026 with 24088/2026 and 24103/2026, expressly affirming and upholding the Gujarat decision. It distinguishes the CGST and Delhi VAT schemes and discusses re-availment after supplier tax discharge. It is not a merits judgment on a civil appeal after recorded grant of special leave.

That rejection did not relieve the authority of establishing section 74 requirements in this case. The Court found that the adjudication omitted supplier names/GSTINs, invoice dates, effective registration-cancellation dates, supplier-wise ITC amounts and supporting material. It also lacked specific findings of fraud, wilful misstatement or suppression with intent to evade tax, and did not demonstrate consideration of Treco's defence. General assertions or repetition of statutory wording were insufficient. These omissions undermined both the factual basis of the quantified demand and an effective opportunity to respond.

The Court did not determine the legal consequences of inconsistent adjudication dates. It also held that the separate order dated 24 September 2025 in W.P.(C) 14428/2025 was not determinative of this proceeding: this adjudication had to be assessed against its own notice, material and findings.

Pinpoint: Treco paragraphs 17–26, pp. 5–7; paragraphs 28–41, pp. 8–11. Bhandari official order: p. 1 case metadata; pp. 2–3 reasons and disposal, unnumbered paragraphs.

03 Judicial decision and operative relief

The Court set aside the identified Order-in-Original and consequential proceedings and remanded for fresh adjudication according to law. The authority must issue appropriate notice, afford a reasonable and effective hearing, consider Treco's reply/material, identify relevant suppliers and transactions if relying on retrospective cancellations, address its supporting evidence and independently record findings on the section 74 requirements. Paragraph 46 expressly leaves the proposed ITC demand's merits and Treco's section 16 entitlement open.

The authority was directed to endeavour to make a fresh order within eight weeks of Treco's appearance. Counsel was directed to appear on 8 October 2026 at 2:30 p.m. This is a past direction as at the 17 October 2026 review; attendance and any fresh order have not been verified. The eight-week period runs from actual appearance, and is expressed as an endeavour, not a verified fixed disposal date.

The section 16(2)(c) constitutional/read-down prayers were rejected. No further consequential orders were considered necessary at that stage. The writ petition and pending application were disposed of. The judgment does not separately invalidate the 180-day-payment proviso or declare the related interest universally unlawful.

Pinpoint: Paragraphs 42–51, physical pp. 11–13; paragraph 2, p. 2 (scope of proviso challenge).

04 In favour of

Mixed: Treco obtains quashing of the defective adjudication and fresh adjudication; Revenue succeeds against the section 16(2)(c) constitutional/read-down challenge. No final ITC entitlement or permanent tax relief is awarded.

Final writ disposal with substantive rejection of the section 16(2)(c) challenge and procedural/adjudicatory relief by quashing and remand. This is neither an unqualified taxpayer merits victory nor a dismissal leaving the impugned demand intact. The fresh authority may determine liability only after the directed lawful adjudication.

Pinpoint: Paragraphs 23–26, pp. 6–7; paragraphs 42–51, pp. 11–13, especially paragraph 46.

05 AKHB REVIEW POINT

AKHB analysis: Keep eligibility under section 16 and the evidentiary basis for invoking section 74 separate. A failed constitutional challenge does not supply missing transaction particulars or fraud findings. Conversely, setting aside an inadequately reasoned section 74 order does not prove eligibility for the disputed credit.

For a cancellation-based ITC dispute, prepare a supplier/invoice reconciliation covering GSTIN, invoice and supply dates, the cancellation order and its effective date, supplier-wise credit and the material actually relied on by the department. Preserve records supporting the recipient's defence and require the adjudication to address them. These are practical review steps derived from the identified deficiencies; the judgment does not prescribe an exhaustive evidence checklist or decide the sufficiency of particular commercial documents.

Review the fresh notice/order, recorded reasons and section 74 findings before assessing the monetary exposure. Do not describe ₹3,34,21,261 as a refund or final credit award, add the ₹50,30,256 figure to the ITC demand without distinguishing its separate interest function, or treat the SCN as independently extinguished beyond the operative remand. The judgment records inconsistent order dates but does not decide their standalone legal effect.

Read the Supreme Court's complete Bhandari record when using the constitutional issue. Treco's narrower remand reasoning must not be converted into a general rule that retrospective cancellation always permits or always defeats ITC. Verify post-remand developments separately before reliance.

Source arithmetic caution: the adjudication quoted in paragraph 11 prints CGST ₹1,67,10,630 and SGST ₹1,67,10,630, which sum to ₹3,34,21,260, against the repeatedly stated total of ₹3,34,21,261. This ₹1 discrepancy is preserved without silently correcting the source total.

Pinpoint: AKHB source-based analysis, not an additional judicial holding: paragraphs 24–36, pp. 7–10; paragraph 37, p. 10; paragraphs 42–50, pp. 11–13. Source arithmetic caution: paragraph 11, physical p. 4.

Sources and limitations

Relevant provisions

CGST Act 2017: section 16(2)(c), constitutional/read-down challenge rejected; CGST Act 2017: section 16(2) proviso concerning 180-day supplier payment, pleaded challenge; no separate invalidation; CGST Act 2017: section 74, core factual/statutory adjudication requirements and remand; CGST Act 2017: section 50, interest components in challenged order; CGST Act 2017: sections 41 and 73, discussed through the cited Bhandari authority; CGST Rules 2017: rule 36(4); CGST Act section 37(1); SGST provisions and IGST Act section 20, appearing in quoted audit/adjudication passages only

Statutory note

Provision references distinguish the Court's reasoning from quoted departmental assertions. No independent current statutory-consolidation certification or generalized holding on rule 36(4), section 37(1), the 180-day proviso or all periods is supplied.

Treatment note

Bounded official-domain searches on 17 October 2026 for Treco, W.P.(C) 583/2026, 2026:DHC:8599-DB and review/recall/stay or October terms located the original judgment/listing and earlier cause lists, but no identified later primary order altering this judgment. Supreme Court official-domain Treco searches yielded no identified appeal/stay order. This is not a comprehensive docket search, proof that no appeal exists, certification that the judgment remains unaffected, or confirmation of appearance/remand compliance. The 8 October 2026 appearance is already past; no attendance or fresh adjudication record was located in this bounded check.

Scope of source review

Complete Treco judgment and independently re-downloaded complete three-page Bhandari Supreme Court order. Underlying audit file, SCN, original adjudication, supplier cancellations, full Gujarat judgment and post-remand records were not independently obtained.

Identity note

This W.P.(C) 583/2026 judgment of 29 September 2026 is distinct from Treco's W.P.(C) 14428/2025 order of 24 September 2025. Decision date is 29 September; digital signing/upload footer is 1 October 2026. Use Bharat Parashar without reproducing the anomalous honorific in the source coram line.

Primary source

Complete official 13-page oral judgment. All extracted text read and all 13 pages visually inspected; original bytes retained. Neutral citation verified in the rendered page header.

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Source pages: 13

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Supreme Court official Bhandari Scrap Traders order, 24 July 2026

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