GSTAT

Court No. Court II

APL/16/BUR/2026

I-NXT ....**Appellant**

Versus

SANDEEP BANGA, COMMISSIONER, BENGALURU ZONE & ORS. ....**Respondent**

Counsel for Appellant
DISHA GURSAHANEY

Counsel for Respondent
MR. PRABHAT KUMAR,
ASSISTANT COMMISSIONER ,
CGST

Hon'ble Sudha Koka, Member (Technical)
Hon'ble Srikanth Venkatraman, Member(Judicial)

ORDER

Per: Srikanth Venkatraman, Member (Judicial)

The present appeal is filed against the order of the Commissioner (Appeals) Central Tax, Mysuru ('the Appellate Authority'), passed in order-in-appeal no. MYS GST-OOO-APP-1A-05/Z024-25 dated 29.6.2024. The Appellate Authority had confirmed the order of the Joint Commissioner of Central Tax, Bengaluru West GST Commissionerate ('the Adjudicating Authority'), passed in order-in-original no.126/2023-24 dated 17.01.2024. The main issue in the appeal relates to correctness of penalty imposed under Section 74 of the Central Goods and Services Tax Act ("the CGST Act").

Factual matrix

1) The appellants are registered under the CGST Act bearing registration no. GSTIN No: 29ANKPM1717H1ZU and falling under the jurisdiction of Central Tax administration of Bengaluru West GST Commissionerate. The genesis of the dispute is the information gathered by the officers of the anti-evasion wing, GST Commissionerate, Bengaluru West as a result of which the allegation of mismatch was made between the input tax credit ("ITC") claimed in Form GSTR 3B returns and the ITC available in Form GSTR 2A, for the period from July 2017 to November 2021.

2) The Superintendent, Anti Evasion Wing had issued a communication dated 28.12.2021 to the appellant directing furnishing of information and details of inward supplies for the period from July 2017 to

November 2021. The details were furnished vide letter dated 13.1.2022. On verification of returns, it was noticed that the appellant had availed excess ITC for Rs. 2,74,20,293/-. The appellant submitted a letter on 18.1.2022 admitting to the lapses and the tax along with interest was paid on 18.1.2022. An investigation was initiated by the department vide O.R. No.52/2021-22 dated 21.1.2022 and the statement of the proprietrix was recorded. The proprietrix admitted the factum of excess availment of ITC but the same was due to oversight. It was further stated that the excess ITC was not utilised.

3) The adjudicating authority had issued a show cause notice dated 28.2.2023 invoking the extended period of limitation under section 74 of the Act. It was alleged that the appellant had suppressed the fact of excess availment of input tax credit in the Form GSTR 3B returns in contravention of the provisions of the Act and the rules. The payment of tax was made only as a result of verification conducted by the officers of the anti-evasion wing.

4) The appellant had submitted the objections vide letter dated 24.3.2023 contending that the tax was paid by debiting the electronic credit ledger along with interest was made on 18.01.2022 and there was no intent to evade taxes and hence Section 74 cannot be invoked. It was further submitted that the burden was on the department to prove the existence of malafide and that the said burden was not discharged by the department. Reliance was placed on the meaning of "suppression" as defined in the Explanation 2 in Section 74 in support of their plea that there was no mens rea and no intention to evade payment of taxes.

5) The adjudicating authority passed the order-in-original confirming the demand of excess ITC of Rs.2,74,20,293/- u/s 74(1) of CGST Act, interest under section 50 and imposed penalty of Rs.2,74,20,293/- u/s 74(1) of the CGST Act. It was held that the appellant had availed excess ITC without fulfilling the eligibility conditions specified in Section 16 of the Act. The availment of excess credit came to light only after verification by the officers of the anti-evasion wing, GST Commissionerate, Bengaluru West. The payment was made pursuant to verification/investigation by the officers of the anti-evasion wing. Penalty at 100% of the tax was imposed as the appellant had not paid 15% penalty along with tax and interest payment. The payment of tax and interest made on 18.01.22 was adjusted against the confirmed tax and interest demand.

6) The first appeal was dismissed by the Commissioner (appeals) on 29.6.2024 vide order-in-original no. 01/APR/2024BW/GST. The appellate authority held that the appellant had paid the excess ITC amount only on being pointed out by the department. The appellant had not declared the fact of excess availment of ITC to the department. Therefore, it was held that there was a clear case of suppression of facts. The appellate authority confirmed the imposition of penalty at 100% of the tax as the appellant had not paid the penalty at 15% of the tax, along with the tax and interest, as required under section 74 of the Act. Hence, the present appeal before this Tribunal.

<u>Submissions by the appellant and the respondent</u>

7) Ms. Disha Gursahaney, learned counsel appeared for the appellant and contended as under:

(a) that entire tax and interest was paid prior to initiation of investigation proceedings, during the information gathering/ verification stage itself. Once the assessee has paid the entire tax liability along with interest, the proceedings shall be deemed to have been concluded as per Section 73 and Section 74 would come into play only if applicable conditions under Section 73 have not been met;

(b) the mismatch of ITC between Form GSTR 3B and Form GSTR 2A had resulted primarily from the third-party default and not due to default of the appellant. Such procedural variance does not constitute "suppression of facts" under Explanation 2 to Section 74, as there was neither non-declaration nor withholding of information from the department;

(c) the extended period of limitation under Section 74 cannot be invoked mechanically unless the department proved the existence of fraud or wilful mis-statement or suppression of facts, with the intent to evade payment of taxes.

8) Reliance was placed on the following decisions at the time of hearing of the appeal, namely, *(a) 2024 (84) GSTL 146 (Rays Power Infra private limited vs. Superintendent of Central Tax) (Telangana), (b) 2026 (1) TMI 146 (Apollo Tyres limited vs. Union of India)(Madras), (c) 2025 (12) TMI 1442 (MRF Limited vs. Additional Director, DGGI Delhi zonal unit)(Madras), (d) (2026) 42 Centax 49 (Orissa) (Manoja Kumar Nayak vs. Commissioner, goods and service tax and central excise, Rourkela) and (e) (2026) 45 Centax 325 (Tri-GST-Kerala) (Santhome Latex Enterprises Vs. the Commissioner of CGST, Thiruvananthapuram).*

9) Shri. Prabhat Kumar, Learned Assistant Commissioner, appeared for the respondent and supported the findings of the adjudicating and the appellate authority. The authorised representative contended that the excess claim of ITC came to light only as a result of verification by the anti-evasion wing; that the payment was made only pursuant to the investigation audit objections and the non-declaration of excess credit constituted "suppression of facts".

10) Based on the pleadings and submissions, the following issue arises for our consideration:

"Whether the invocation of section 74 of the Act and the consequent imposition of a 100% penalty is just and proper when the entire amount of tax along with interest was paid prior to the issue of show cause notice, the demand arising due to a mismatch between Form GSTR 3B and GSTR 2A."

11) Section 73 applies in cases where tax has not been paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or wilful mis-statement or suppression of facts. Section 74 applies where tax was not paid or short paid or erroneously refunded or ITC wrongly availed or utilised due to fraud or wilful mis-statement or suppression of facts, on the part of the registered tax payer.

12) The stand of the appellant is that imposition of penalty was not warranted as the payment was made prior to the issue of the show cause notice and there was absence of intention to evade taxes and the stand of the authorities is that the payment was made pursuant to the investigation made by the authorities and hence section 74 was rightly invoked.

13) The Supreme Court in the case of ***(2026) 45 Centax 361 (Tata Steel Limited Vs. Union of India)*** laid down the principles to be kept in mind for invoking Section 74. The Court held as follows:

"11. At the outset we have to notice that the proceedings under Section 73/74 can be initiated only on the satisfaction of the Assessing Officer. Even if observations/objections are made on audit, the Assessing Officer should enter his satisfaction before a notice is issued. Insofar as a notice under Section 74, the satisfaction should be not only of mismatch of ITC and short payment of tax having occurred, as is alleged in this case, the Officer should be satisfied that either fraud/willful misrepresentation/suppression had led to such mismatch or short payment of tax."

"14. It is not mere lip service to the provisions that is intended when an extended limitation period is provided for recovering an excess benefit availed, short payment or excess refund, from the assessee, especially when the allegation is of fraud/willful misrepresentation/suppression. The foundational facts which led to the inference arrived at of fraud/willful misrepresentation/ suppression should be evident from the notice itself. The mere employment of such words will not indicate an application of mind, upon which alone the satisfaction can be arrived at. The words are not to be mechanically recited in the notice to enable recovery outside the normal limitation provided under the statute".

The Supreme Court has made in clear that even in the case of mismatch of ITC, the Adjudicating Authority should be satisfied that the mismatch had occurred due to fraud or wilful mis-statement or suppression of facts. The mere use of the words such as "fraud" or "wilful mis-statement" or "suppression" is not enough to confer jurisdiction on the adjudicating authority to invoke the extended period of limitation.

14) The Telangana High Court in the decision reported in ***2024 (84) G.S.T.L. 146 (Telangana) (Rays Power Infra Private Limited v. Superintendent of Central Tax)*** held as under:

"*15. In the said circumstances, we are of the considered opinion that the case of the petitioner is one which that would fall strictly under Sub-Sections (5) and (6) of Section 73 where it has been emphatically laid down by the law makers that any person chargeable with tax, if he pays the amount of tax along with the interest payable there on, proper officer upon receipt of such information shall not initiate any further proceedings under Sub-Section (1) and all the proceedings shall have to deemed to be concluded."*

"17. We are also of the considered opinion that applicability of Section 74 would come into play only if the conditions stipulated in Section 73 has not been met with by the taxpayer i.e. to say in the event if the conditions stipulated in Sub-Section (5) of Section 73 is not honored by the taxpayer in spite of the tax liability being brought to his knowledge. Then in the said circumstances, Section 74 would automatically attract and in those circumstances, the contention of the learned Senior Standing Counsel would be acceptable."

15) The Madras High Court in the decisions reported in ***2026 (1) TMI 146 (Apollo Tyres limited vs. Union of India)*** *and* ***2025 (12) TMI 1442 (MRF Limited vs. Additional Director, DGGI Delhi zonal unit),*** had held that section 74 cannot be invoked merely because the tax was paid pursuant to the investigation by the DGGI. The GST Tribunal, Thiruvananthapuram bench in the decision reported in ***(2026) 45 Centax 325 (Tri-GST-Kerala) (Santhome Latex Enterprises Vs. the Commissioner of CGST, Thiruvananthapuram)***, had held that every act of transgression of section 16(2)/42(1) of the CGST Act cannot be termed as violation inviting proceedings under section 74 of the CGST Act unless clear and categorical evidence has been adduced to the effect that the said transgression was the result of fraud or willful mis-statement or suppression of facts with an intent to evade tax.

16) The existence of mismatch can enable a proper officer to determine the tax liability under Section 73 but for the purpose of invoking Section 74, something more has to be done by the proper officer as stated by the Supreme Court in the case of ***Tata Steels limited*** *(cited supra)*. There must be a clear link between the mismatch and the alleged fraud, wilful mis-statement or suppression of facts. In the present case, the demand arose as a result of mismatch between the ITC claimed in Form GSTR 3B and the ITC available in Form GSTR 2A. Form GSTR 2A is a statement available in the common portal enabling the tax payers and the departmental authorities to verify the inclusion of the details furnished by the supplier in Form GSTR 1 return.

17) Section 73(5) and section 74(5) permit the person chargeable with tax to pay the tax along with interest before issue of a show cause notice. Both the provisions adopt the same language – *"on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment"*. The person chargeable to tax can thus pay the tax either on his own accord or after receiving a communication from the proper officer. The term *"the tax as ascertained by the proper officer"* recognises the fact the proper officer can point out the omission during an audit or verification. Once the tax payer accepts the officer's ascertainment and makes the payment of tax along with interest, Section 73(6) mandates that the proper officer shall not serve any notice.

18) The term "suppression" is defined in explanation 2 in section 74 as meaning *non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing by the proper officer"*. There must be deliberate non-disclosure of facts or information in any return, statement, report or any other document required to be furnished by the tax payer under the Act or in case of failure to furnish any information by the tax payer. In the present case,

suppression was alleged on the ground of mismatch and not non-disclosure. The excess availment of ITC was not due to default committed by the appellant but by the third-party supplier. Default by a third-party supplier cannot be attributed to the appellant to sustain the charge of suppression.

19) In order to invoke Section 74, the authorities must establish a link between wrongful availment of ITC and the alleged fraud or wilful mis-statement or suppression of facts. Mere use of the language is not enough. In the case under appeal, the adjudicating authority and the appellate authority have not established any link between the mismatch and alleged suppression of facts. Dispute was not raised about the genuineness of the transaction or the suppliers. The payment of excess ITC with interest made prior to the issuance of show cause notice, pursuant to departmental verification, are governed by Section 73 of the Act, as the intention to evade payment of tax is absent.

Conclusion

(1) We therefore set-aside the order-in-appeal no. MYS-GST-000-APP-IA-05/2024-25 dated 29.6.2024 and hold that the imposition of penalty under section 74 is invalid and unjustified.

(2) In the result, the appeal is allowed.

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(Sudha Koka)

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(Srikanth Venkatraman)

Dated: 15.09.2026

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