Dated: 12.11.2026

GSTAT

State Bench Bengaluru

Division Bench Court No. Court II

APL/263/BUR/2026

PALLAWI ANAND **.....Appellant**

Versus

SADHANA ENVIRO ENGINEERING SERVICES, PROPRIETOR, NO.4 GROUND 2ND CROSS RAGHAVANAGAR NTY LAYOUT BANGALORE KABNU 560026 **.....Respondent**

Quorum

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

Counsel for Appellant
VENUGOPAL NAIDU, AC
RAHUL, CGST AR

Counsel for Respondent
MOHAMMED SHABBIR

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the GST Appellate Tribunal

whether remand order : No

Order reference no. : ZN570171126000046H **Date of order :** 12/11/2026

1.	GSTIN/Temporary ID/UIN -	
2.	Appeal Case Reference no. - APL/263/BUR/2026	Date - 01/06/2026
3.	Name of the appellant - Pallawi Anand , pallawi.irs@gov.in , 9958528530	
4.	Name of the respondant - 1. SADHANA ENVIRO ENGINEERING SERVICES , nagarajts@sadhanaees.in , 9986851007	
5.	Order appealed against -	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - MYS-ADC/JC(A)-24/2025-26-GST	Date - 13/04/2025

6.	Personal Hearing - 12/11/2026 02/11/2026 29/10/2026 14/10/2026 08/10/2026 01/10/2026
7.	Status of Order under Appeal - Modified – Order under Appeal is modified
8.	Order in brief - 1. The preliminary objections raised by the Respondent regarding Bench jurisdiction, absence of DIN on the internal Review Authorization, applicability of Section 128A (Form GST SPL-05), and alleged violation of natural justice under Section 75(4) are rejected. 2. The impugned Order-in-Appeal No. MYS-ADC/JC(A)-24/2025-26-GST dated 13.04.2025 is modified to the extent challenged by the Revenue: A. Penalty on Rs. 34,69,134/-: The dropping of penalty is set aside, and a penalty of Rs.3,59,368/- (CGST: Rs.1,69,684/-, SGST: Rs1,69,684/-, IGST: Rs.20,000/-) is confirmed under Section 73 read with Section 75(2) of the CGST/KGST Acts, 2017 and Section 20 of the IGST Act, 2017. B. Penalty on Rs. 19,02,658/-: The conversion of proceedings to Section 73 is set aside, and the 100% penalty of Rs. 19,02,658/- (CGST: Rs.9,50,951/-, SGST: Rs.9,50,951/-, IGST: Rs. 756/-) under Section 74(1) of the CGST/KGST Acts, 2017 read with Section 20 of the IGST Act, 2017 is restored and confirmed. 3.The Written Submissions filed by the Respondent in Form GST APL-06 are disposed of accordingly.

Summary of Order

9.	If demand order then whether demand quantified: Yes

Section-I

Particulars	Central tax		State/UT tax		Integrated tax		Cess		Total	
	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount
1	2	3	4	5	6	7	8	9	10	11
(a) Tax	0	0	0	0	0	0	0	0	0	0
(b) Interest	0	0	0	0	0	0	0	0	0	0
(c) Penalty	1120635	0	1120635	0	20756	0	0	0	2262026	0
(d) Fees	0	0	0	0	0	0	0	0	0	0
(e) Others		0		0		0		0		0
(f) Refund	0	0	0	0	0	0	0	0	0	0

10.	For Other orders and Demand orders which are not quantified:	
Issues as raised by proper officer	Issues as determined by Appellate/Revisional authority	Order by GST Appellate Tribunal

Levy of Penalty	GST Payment of Rs, 34,69,134/- :- The Appellate Authority finds that this liability cannot be attributed towards the suppressed taxable value as the appellant has declared this liability in GSTR-1 & GSTR-9 returns and has discharged differential tax before issuance of SCN. Thus, this issue gets covered under Section 75(12) of CGST/SGST Act, 2017 as self-assessed tax. GST Payment of Rs. 19,02,658/- : The Appellate Authority finds that the appellant has self-declared the liability under statutory returns, before audit observation/issuance of DRC-01/ issuance of show cause notice and the same can be rightly demanded under Section 73 of CGST/SGST Act, 2017.	

Place :BENGALURU

Signature

Date : 16.11.2026

BENGALURU Sudha Koka

Designation : Member

Jurisdiction :Bengaluru

ORDER

Per: Sudha Koka, Member Technical (Centre)

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1. **OPERATIVE ORDER**

1. **INTRODUCTION**

At the center of this case is a vital question: When a tax system relies on voluntary tax compliance, can the government punish a taxpayer with severe penalties because an audit finds omissions in tax returns hidden in their private account books? We must balance two competing rules: the strict law that treats missing entries in official tax returns as deliberate hiding, and modern court rulings that require clear proof of wrongful intent before heavy penalties can be applied. Ultimately, our goal is to keep the tax system fair and honest, ensuring that deliberate omissions are addressed without crossing the limits set by law.

2. **FACTUAL MATRIX OF THE CASE**

2.1. The Respondent, M/s. Sadhana Enviro Engineering Services, is engaged in providing operation and maintenance services for desilting machines (sewer cleaning services) to government departments and urban local bodies, along with supplying sanitation machinery and manpower services.

2.2. An audit of the Respondent's records for the period from **July 2017 to March 2020** was conducted by the Officers of Central Tax, Mysuru Audit Commissionerate, under Section 65 of the CGST Act, 2017. During audit verification and reconciliation across GSTR-1, GSTR-3B, GSTR-2A, GSTR-9, and the audited financial statements, two major discrepancies were unearthed:

- **Issue No. 1 (Short-payment of GST on Outward Supplies – Rs. 56,39,992/-):** Comprising (a) ? 34,69,134/- short-paid in GSTR-3B vis-à-vis GSTR-1 for FY 2018–19; (b) ?20,86,762/- on account of ?1,15,93,123/- accounted as "write-off" (claimed as commission from Green Nerds Pvt. Ltd.) in the Profit & Loss Account, whereas only ?1,01,03,123/- was declared in GSTR-9; (c) ?83,340/- on ? 4,63,000/- received from M/s. Mahindra & Mahindra Ltd. (reflected in Form 26AS under Section 194C TDS); and (d) Rs. 756/- extra IGST liability declared in GSTR-9 but not discharged.

- **Issue No. 2 (Wrong Availment of ITC – Rs. 1,20,860/-):** Input Tax Credit availed in GSTR-3B on supplier invoices not reflecting in Form GSTR-2A.

2.3. Following audit observations, the Respondent remitted the principal tax liability of Rs. 56,39,992/- via DRC-03 challans between November 2022 and January 2023 (along with Rs.10,000/- towards penalty), but did not pay the applicable interest or full penalty. Consequently, Show Cause Notice (SCN) No. 35/MYSAUDIT/2023-24/C-3(SG)/AC dated 23.05.2023 was issued under **Section 74(1) of the CGST Act, 2017**, demanding the tax/ITC amounts along with interest under Section 50 and 100% penalty under Section 74.

2.4. The Adjudicating Authority (Assistant Commissioner, West Division-4) vide Order-in-Original dated 08.01.2024 confirmed the entire tax demand of Rs.56,39,992/- and ITC disallowance of Rs.1,20,860/- under Section 74(1), appropriated the amounts already paid, and imposed 100% equivalent penalties under Section 74(1) along with interest under Section 50.

2.5. On appeal by the taxpayer, the First Appellate Authority (Additional Commissioner (Appeals), Mysuru) vide Order-in-Appeal dated 13.04.2025 partly allowed the appeal by holding as follows:

- **On Rs.34,69,134/- (GSTR-1 vs. GSTR-3B difference):** Held that since the liability was self-assessed and declared in GSTR-1/GSTR-9 and paid prior to the SCN, it is governed by **Section 75(12)** as unpaid self-assessed tax. Held that neither Section 74 nor Section 73 was required to be invoked; upheld interest under Section 50(1) but set aside the penalty completely.

- **On Rs.19,02,658/- (Additional liability declared in GSTR-9):** Converted the proceedings from Section 74 to **Section 73** via Section 75(2) on the ground that the taxpayer had self-declared the liability in statutory returns prior to the SCN, and imposed a reduced penalty of Rs.**2,10,190/-** under Section 73(9).

- **On Rs.2,68,200/- (Unreported P&L write-off differential):** Upheld invocation of **Section 74** and sustained the 100% penalty of **?2,68,200/-** (CGST ?1,34,100/- + SGST ?1,34,100/-) as the amount was suppressed and never declared in GSTR-1 or GSTR-9.

- **On ITC of Rs.1,20,860/-:** Accepted partial reconciliation for Rs. 45,476/- (Rs. 36,032/- + Rs. 9,444/-) based on supplier certificates under Circular No. 183/15/2022-GST, confirmed the un-reconciled balance of Rs.**75,384/-**, converted the demand to **Section 73** via Section 75(2), and imposed a reduced penalty of Rs. **40,000/-** under Section 73(9).

2.6. Aggrieved by the dropping and reduction of penalties, the Principal Commissioner of Central Tax, Bengaluru West Commissionerate, issued Authorization dated 15.09.2025 under Section 112(3) of the CGST Act, 2017, leading to the present departmental appeal before this Tribunal. The Respondent filed Cross-Objections in Form GST APL-06 on 12.10.2026 along with additional written submissions.

3. **CHRONOLOGY OF EVENTS**

Date	Event / Proceeding	Key Particulars & Statutory Reference
01.02.2021	Audit Intimation (Form GST ADT-01)	Issued under Section 65(3) by Mysuru Audit Commissionerate for the period July 2017 to March 2020.
25.08.2022	Commencement of Audit Verification	Detailed verification of books of account, P&L statements, Form 26AS, and GST returns undertaken by audit officers.
23.09.2022	Taxpayer's Working Submitted	Taxpayer submitted working quantifying additional liability of ? 53,71,784/- declared in GSTR-9 for FY 2018–19.
07.10.2022 / 10.10.2022	Audit Observations / Audit Enquiry Issued	Audit officers communicated short-payment of ?34,69,134/- (GSTR-1 vs. GSTR-3B) and additional P&L/26AS liabilities.

11.10.2022	Taxpayer's Acceptance Letter	Taxpayer agreed with audit observations regarding short-paid outward tax.
04.11.2022 & 05.11.2022	Tax Payment via Form DRC-03	Taxpayer remitted ?54,46,244/- towards FY 2018–19 tax liability and ?10,000/- towards penalty.
07.01.2023	Further Tax Payment via Form DRC-03	Balance tax paid, bringing total principal outward tax discharged to ?56,39,992/- (interest remained unpaid).
13.01.2023	Final Audit Report (Form GST ADT-02)	Issued under Section 65(6) concluding the audit.
15.05.2023	Pre-SCN Intimation (Form GST DRC-01A)	Issued under Rule 142(1A) for unpaid interest, penalty, and un-reconciled ITC.
19.05.2023 / 22.05.2023	Reply to DRC-01A	Taxpayer contested liability towards interest, penalty, and ITC reversal.
23.05.2023	Show Cause Notice (SCN) Issued	SCN No. 35/MYSAUDIT/2023-24/C-3(SG)/AC issued under **Section 74(1)** for ?56,39,992/- (tax) and ?1,20,860/- (ITC) with interest and 100% penalty.

04.07.2023 / 06.07.2023	Reply to SCN	Taxpayer filed written defence reply to the SCN.
24.11.2023 & 30.11.2023	Personal Hearing in Adjudication	Authorised Representative (Shri Rajkumar Jayanth, CA) appeared on 24.11.2023; further hearing held on 30.11.2023.
05.01.2024 / 08.01.2024	Order-in-Original (OIO) Passed & Issued	OIO No. 02/2024/WD4/GST confirmed demands, interest, and 100% penalties under **Section 74(1)**.
08.04.2024	First Appeal Filed	Taxpayer filed appeal before Additional Commissioner (Appeals), Mysuru.
08.10.2024	Personal Hearing in First Appeal	Proprietor Shri T.S. Nagaraj appeared and submitted partial ITC reconciliations.
13.04.2025	Order-in-Appeal (OIA) Passed	OIA No. MYS-ADC/JC(A)-24/2025-26-GST partly allowed appeal: dropped penalty on ?34.69L; converted ?19.02L and ?75,384 ITC to **Section 73**; upheld **Section 74** on ?2,68,200/-.
13.04.2025 / 22.05.2025	Application under Section 128A	Taxpayer filed Form GST SPL-02 seeking amnesty waiver under Section 128A read with Notification No. 21/2024-CT.

15.09.2025	Review Authorization Issued	Principal Commissioner, Bengaluru West authorized appeal to GSTAT under Section 112(3).
08.10.2025 & 18.12.2025	Compliance Payments for Section 128A	Taxpayer paid ?75,384/- (ITC demand) on 08.10.2025 and ? 4,83,656/- (tax, interest & Section 74 penalty on ?2,68,200/-) on 18.12.2025.
26.12.2025	Section 128A Waiver Order (SPL-05)	Assistant Commissioner issued Form GST SPL-05 waiving ? 40,000/- penalty pertaining to the Section 73 demands.
01.06.2026	Departmental Appeal Filed	Revenue filed Appeal No. APL/263/2026 in Form GST APL-07 before GSTAT.
12.10.2026	Written Reply of Respondent	Respondent filed written submissions in Form GST APL-06.

4. **GROUNDS OF APPEAL BY THE APPELLANT (DEPARTMENT)**

4.1. **Erroneous Waiver of Penalty on Short-Paid GST of ?34,69,134/-:**

- The First Appellate Authority erred in treating the ?34,69,134/- differential (GSTR-1 vs. GSTR-3B for FY 2018–19) exclusively under Section 75(12) and dropping the penalty entirely.

- Although declared in GSTR-1, the taxpayer withheld payment in GSTR-3B for over three years and discharged the principal tax via DRC-03 on 11.10.2022 *only* after audit intervention on 10.10.2022.

- Under **Section 75(2)**, when a notice under Section 74 is deemed to be issued under Section 73, waiver of penalty under Section 73(6) or Section 73(8) is permissible *only* when both tax and applicable interest are paid. Since the taxpayer had not discharged the interest liability, the penalty could not be waived. The Department prays for imposition of penalty of **?3,59,368/-** under Section 73.

4.2. **Improper Conversion to Section 73 on Additional GST Liability of ?19,02,658/-:**

- The First Appellate Authority erred in downgrading the demand of ?19,02,658/- (comprising ? 18,18,562/- towards P&L write-off, ?83,640/- towards Mahindra & Mahindra 26AS receipts, and ? 756/- IGST) from Section 74 to Section 73.

- The Appellate Authority overlooked that the taxpayer declared this additional liability in GSTR-9 for FY 2018–19 *only* after the initiation of audit on 25.08.2022 and after being confronted by the audit team.

- Because the short-payment surfaced solely due to audit scrutiny rather than voluntary compliance, **Section 74** is squarely applicable, warranting a 100% penalty of **?19,02,658/-** under Section 74.

5. **SUBMISSIONS & CROSS-OBJECTIONS BY THE RESPONDENT (TAXPAYER)**

5.1. **Preliminary Objection on Bench Jurisdiction:** In additional written submissions dated 11.11.2026, the Respondent contended that under Office Order No. 4/GSTAT/PB/2026 dated 29.07.2026 (Special Classification for Bengaluru Bench), disputes involving determination of tax/ITC under Sections 73 and 74 fall under Category-III (Bench-3) rather than Category-II (Bench-2).

5.2. **Invalidity of Authorization for Want of DIN/RFN:** The Respondent contended that the Review Authorization dated 15.09.2025 signed by the Principal Commissioner does not bear an electronically generated Document Identification Number (DIN) or Reference Number (RFN) as mandated by CBIC Circular No. 122/41/2019-GST (as amended by Circular No. 249/06/2025-GST). Relying on ***Pradeep Goyal v. Union of India*** [2022 (63) G.S.T.L. 286 (SC)], ***Vikranth Mines and Minerals v. Assistant Commissioner*** (AP HC), and ***Sai Manikanta Electrical Contractors*** (AP HC), the Respondent argued that the authorization is *non-est*and invalid.

5.3. **Bar of Proceedings by Virtue of Section 128A (Amnesty Scheme):** *(Note: Referred to in oral/summary submissions in the context of the statutory waiver scheme under Section 128A of the CGST Act)*—The Respondent submitted that pursuant to the Order-in-Appeal, it filed Form GST SPL-02 and obtained a formal order of conclusion of proceedings in **Form GST SPL-05 dated 26.12.2025** from the Assistant Commissioner, West Division-4, granting waiver of penalty under Section 128A. Hence, all proceedings stand conclusively terminated by operation of law.

5.4. **Violation of Principles of Natural Justice (Section 75(4)):** The Respondent alleged that the Order-in-Original dated 08.01.2024 was passed without granting an opportunity of personal hearing as mandated under Section 75(4) of the CGST Act, relying on ***Break Bounce India Pvt. Ltd.*** (Karnataka HC), ***M/s. Laxmidhan Stores*** (Calcutta HC), and ***M/s. Dana Pani*** (Allahabad HC).

5.5. **Absence of Suppression / Fraud under Section 74:** Relying on ***Tata Steel Ltd. v. Union of India*** [2026 INSC 920], ***G.R. Infra Projects Limited v. State of Madhya Pradesh*** [2026 Taxo.online 2535], ***HCL Infotech Ltd. v. Commissioner, Commercial Tax*** [(2024) 23 Centax 71 (All.)], and ***Varanasi Sangam Expressway Pvt. Ltd. v. Commissioner of State Tax*** (2025), the Respondent contended that since all figures were recorded in its audited financial statements and GST returns on the portal, mere audit detection or non-matching figures cannot establish wilful suppression or intent to evade tax under Section 74.

6. FINDINGS & ANALYSIS OF THE TRIBUNAL

We have carefully examined the records of the case, the Order-in-Original, the impugned Order-in-Appeal, the Review Authorization, the Cross-Objections, and the rival submissions advanced by both sides. We address each legal and factual issue sequentially below:

A. Maintainability & Bench Jurisdiction

6.1. At the outset, the objection regarding Bench allocation under Office Order No. 4/GSTAT/PB/2026 is devoid of merit. In the present appeal, the principal tax demands stand discharged and appropriated, and the sole surviving controversy brought before this Tribunal by the Revenue is the **imposition and quantum of penalties** dropped or reduced by the First Appellate Authority. Under Paragraph III (Category-II, Serial No. 9) of the said Office Order, matters relating to *"Order imposing penalty"* are expressly assigned to this Bench.

B. Requirement of DIN on Departmental Review Authorization

6.2. The Respondent has mounted a threshold challenge to the maintainability of the Revenue's appeal on the ground that the Authorization dated 15.09.2025 issued by the Principal Commissioner under Section 112(3) does not bear an electronically generated Document Identification Number (DIN), citing Circular No. 122/41/2019-GST and the decision of the Hon'ble Supreme Court in ***Pradeep Goyal v. Union of India*** [2022 (63) G.S.T.L. 286 (SC)].

6.3. We find this objection completely misconceived in law. A plain reading of CBIC Circular No. 122/41/2019-GST dated 05.11.2019 demonstrates that the mandate to generate and quote a DIN applies strictly to **communications issued by departmental officers to taxpayers and other external/concerned persons**(such as search authorizations, summons, arrest memos, inspection notices, and adjudication/appellate orders served on assessees) so as to provide recipients a digital facility to verify authenticity. Similarly, the ratio laid down by the Hon'ble Supreme Court in ***Pradeep Goyal*** (supra) pertains to notices, orders, and communications served upon taxpayers and third parties.

6.4. In sharp contrast, an **Authorization under Section 112(3) of the CGST Act, 2017** is purely an **internal, inter-departmental administrative direction** issued by the Principal Commissioner to the Review Section / Assistant Commissioner within the same Commissionerate authorizing the filing of an appeal. It is not a notice, order, or communication issued to an outside party or taxpayer. Consequently, non-quoting of a DIN on an internal review authorization does not vitiate the validity of the authorization or the maintainability of the appeal before this Tribunal.

C. Non-Applicability of the Section 128A Amnesty Waiver (Form GST SPL-05) to the Present Dispute

6.5. The Respondent has heavily relied upon the Order in Form GST SPL-05 dated 26.12.2025 issued under **Section 128A of the CGST Act, 2017** to argue that the entire dispute has attained statutory finality. However, a granular scrutiny of the statutory text of Section 128A read with Rule 164 of the CGST Rules, 2017, as well as the Form GST SPL-05 placed on record (Exhibits A-6 and A-7), reveals that the Respondent's contention is factually and legally untenable for the following reasons:

- **Scope Restricted Strictly to Section 73 Demands:** Section 128A(1) applies *exclusively* to demands raised or determined under **Section 73** of the Act. It has zero application to proceedings under Section 74 or to un-demanded/dropped liabilities that are the subject matter of a Revenue appeal.

- **What Form GST SPL-05 Actually Covered:** As recorded in the Assistant Commissioner's order dated 26.12.2025 (Exhibit A-6), the Respondent applied for Section 128A relief *only* in respect of the

residual **?40,000/- penalty** sustained under Section 73(9) in the Order-in-Appeal (pertaining to the ? 75,384/- un-reconciled ITC and the ?20,000/- IGST component). In fact, for the ?2,68,200/- demand upheld under Section 74 by the Appellate Authority, the Respondent itself paid the full tax, interest, and 100% Section 74 penalty of ?2,68,200/- on 18.12.2025 because Section 128A did not apply to Section 74.

- **Present Appeal Concerns Separate Un-adjudicated/Dropped Penalties:** The proceedings currently before this Tribunal challenge (i) the complete dropping of penalty on **?34,69,134/-** (where the First Appellate Authority held neither Section 73 nor Section 74 applied), and (ii) the improper downgrading of **?19,02,658/-** from Section 74 to Section 73. Neither of these departmental claims was covered by the Section 128A waiver order dated 26.12.2025. Furthermore, under Rule 164(15) and the statutory scheme of Section 128A, an order passed in Form GST SPL-05 cannot extinguish a statutory right of appeal already exercised by the Revenue under Section 112(3) against the underlying Order-in-Appeal. Thus, the Respondent has failed to demonstrate that the Section 128A proceedings cover or bar the proceedings currently before this Tribunal.

D. Allegation of Violation of Principles of Natural Justice (Section 75(4))

6.6. The Respondent has alleged that the Order-in-Original dated 08.01.2024 was passed in breach of **Section 75(4)** without granting a personal hearing. We have verified the factual record directly from the Order-in-Original (Paragraph 7.2, Page 18). The official record unambiguously establishes that:

- A personal hearing notice dated 17.11.2023 was duly issued fixing the hearing on **24.11.2023**.

- On **24.11.2023**, Shri Rajkumar Jayanth, Chartered Accountant and duly authorized representative of the Respondent, physically appeared before the Adjudicating Authority and made detailed oral submissions on both issues.

- A further personal hearing opportunity was also extended and attended on **30.11.2023**.

6.7. Therefore, the Respondent's allegation that no personal hearing was granted by the Adjudicating Authority is **factually false and contrary to the record**. The principles of natural justice and the mandate of Section 75(4) were scrupulously complied with.

E. Invocation of Section 74, Reconciling General Mismatch Jurisprudence with Explanation 2 to Section 74, and Applicability to the ?19,02,658/- Liability

6.8. The core substantive defense of the Respondent—anchored on recent pronouncements such as ***Tata Steel Ltd. v. Union of India*** [2026 INSC 920], ***G.R. Infra Projects Limited v. State of Madhya Pradesh***[2026 Taxo.online 2535], ***HCL Infotech Ltd. v. Commissioner, Commercial Tax*** [(2024) 23 Centax 71 (All.)], and ***Varanasi Sangam Expressway Pvt. Ltd. v. Commissioner of State Tax*** (2025)—is that fraud, wilful misstatement, or suppression of facts cannot be invoked under Section 74 for un-reconciled or omitted figures because the underlying transactions and numbers were recorded in its audited Profit & Loss Account and financial statements, and because discrepancies were merely culled out from returns and books during audit without establishing deliberate intent (*mens rea*).

6.9. While the principles enunciated in ***Tata Steel*** (2026 INSC 920) and ***Varanasi Sangam Expressway*** regarding the necessity of foundational facts and the caution against mechanical invocation of Section 74 for generic mismatches are fully respected by this Tribunal, we must remain equally cognizant of the caution sounded by superior courts that every non-payment of tax cannot be treated as evasion by way of fraud, wilful misstatement, or suppression of facts, and that each case must be scrutinized to ascertain whether necessary evidence of wilful suppression for the purpose of evading tax is available on record and demonstrated before the authority.

6.10. The correct legal yardstick and binding precedent directly governing the statutory interplay between non-declaration in returns and **Explanation 2 to Section 74** is the Division Bench ruling of the Andhra Pradesh High Court in ***M/s. Sriba Nirman Company v. Joint Commissioner (Appeals) & Ors.*** [2025 Taxo.online 42] (affirmed by the Hon'ble Supreme Court in *SLP (C) No. 14270 of 2025*), which addressed this exact issue and held as follows:

"24. There can be no quarrel with this view relating to Section 74(1) of CGST Act. Every non-payment of tax cannot be treated as evasion of tax by way of fraud, wilful misstatement or suppression of facts. Every case needs to be looked into for ascertaining whether necessary evidence of fraud, wilful misstatement or suppression of fact, for the purpose of evading tax, is available in the record and whether such material has been demonstrated before the authority."

"29. In the present case, there has been a failure, on the part of the petitioner, in filing the monthly returns and making payment of tax under the said monthly returns. This may not amount to fraud or misstatement. Explanation-2 to Section 74 states that suppression, for the purpose of the Act, would mean non-declaration

of facts or information which is required to be declared in the returns, statement or report or any other document which needs to be furnished under the Act. To that extent, non-filing of the monthly return would amount to suppression of fact. However, the requirement under Section 74 is not fulfilled on mere suppression of fact. The said suppression of fact would have to be wilful suppression of facts."

"30. The petitioner herein has neither filed the monthly returns nor made the necessary payments of tax. The defense of the petitioner is that his sole client, viz., M/s. Vijay Nirman Company had not paid its dues, due to which the petitioner could not remit the necessary taxes along with returns. The appellate authority held that the petitioner had been paid certain amounts by his main client M/s. Vijay Nirman Company and as such, there was no impediment for the petitioner to remit the necessary taxes. On this basis, the appellate authority held that there was wilful suppression and upheld the penalty. In such a situation it is difficult to accept the contention, of the petitioner, that there was no wilful intention to suppress facts or the turnover of the petitioner and the requirement to pay tax. The other penalties levied against the petitioner are natural corollaries of the above finding and do not require any further consideration."

31. *Consequently, the writ petition fails and the same is dismissed. There shall be no order as to costs. As a sequel, pending miscellaneous petitions, if any shall stand closed."*

6.11. **The Statutory Mandate of Explanation 2 to Section 74:** Explanation 2 explicitly defines "suppression" as the *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*. Under the self-assessment regime governed by Sections 39 and 59 of the CGST Act, 2017, a registered person is legally bound to report all taxable supplies, considerations, commissions, and operational write-offs in GSTR-1 and GSTR-3B. Concealing taxable receipts inside private P&L statements or internal ledgers while omitting them from statutory GST returns constitutes active, wilful suppression under Explanation 2.

6.12. **The Ratio of *Sriba Nirman Company* Applied to the Present Facts:** Applying the logic of paragraphs 24, 29, and 30 of ***Sriba Nirman Company*** to the present factual matrix, non-disclosure of taxable information in financial records which directly results in tax liability being omitted from statutory returns constitutes **wilful suppression with an intent to evade tax**. Just as non-filing or non-reporting of taxable receipts in statutory returns amounts to statutory suppression under Explanation 2, the concealment of taxable commission write-offs and operational receipts from GSTR-1 and GSTR-3B cannot be dismissed as a mere innocent accounting mismatch or technical error. Furthermore, the fact that the Respondent declared the additional liability in GSTR-9 *only* after audit intervention unearthed the financial records and Form 26AS particulars establishes beyond doubt that the disclosure was forced by scrutiny rather than voluntary compliance. Consequently, the test laid down in ***Sriba Nirman Company*** wholly applies, and the penal consequences under Section 74 are fully warranted.

6.13. Furthermore, this principle is reinforced by the foundational jurisprudence of the Hon'ble Supreme Court in ***Commissioner of Central Excise, Visakhapatnam v. Mehta & Co.*** [2011 (264) E.L.T. 481 (S.C.)] and ***Continental Foundation Joint Venture v. Commissioner of Central Excise, Chandigarh*** [2007 (216) E.L.T.177 (S.C.)], wherein the Apex Court held that where an assessee fails to declare taxable clearances or receipts in the prescribed statutory returns and the non-payment comes to light only upon scrutiny or audit of private financial records by the Department, the extended period and penal provisions for suppression are validly invoked; the mere existence of entries in private balance sheets or books of account cannot be pleaded as a defence against suppression when those figures were withheld from the statutory returns prescribed under the Act.

6.14. **Application to the ?19,02,658/- Liability:**

- Unlike a generic notice based on unsubstantiated mismatches, the SCN in the present case explicitly set out the foundational facts: it established that the Respondent received and accounted for ? 1,15,93,123/- as write-off/commission in its P&L account and earned receipts from M/s. Mahindra & Mahindra Ltd. (subject to TDS under Section 194C), yet completely omitted these taxable streams from its GSTR-1 and GSTR-3B returns for FY 2018–19.

- The additional liability of ?19,02,658/- was admitted and declared in GSTR-9 *only* after the Mysuru Audit team commenced verification on 25.08.2022 and confronted the taxpayer with its financial statements and Form 26AS. A disclosure forced by audit intervention cannot be dressed up as a voluntary pre-SCN disclosure.

- Because the taxable turnover was deliberately withheld from statutory returns in direct contravention of the self-assessment obligation, the ingredients of suppression under Explanation 2 to Section 74 are fully met. The First Appellate Authority erred in converting this demand to Section 73.

6.15. **Regarding Rs.34,69,134/- (GSTR-1 vs. GSTR-3B Short-Payment):** Here, the Respondent declared the outward supplies in GSTR-1 for FY 2018–19, which was already on the Department's portal, thereby negating suppression of turnover. However, the Respondent failed to discharge the self-assessed tax in GSTR-3B for over three years and paid the principal tax only on 11.10.2022 after audit intervention, without paying the mandatory interest under Section 50. While the First Appellate Authority rightly held that Section 74 was not invocable on this disclosed turnover, it erred in dropping the penalty altogether when the

Respondent failed to comply with the mandatory condition of paying both tax and interest required for penalty waiver under Section 73(6)/73(8) read with Section 75(2). Consequently, the Revenue's prayer for imposition of penalty of Rs.**3,59,368/-** under Section 73 is legally sustainable.

7. OPERATIVE ORDER

In view of the foregoing findings, the appeal filed by the Department is **allowed** in the following terms:

ORDER

1. The preliminary objections raised by the Respondent regarding Bench jurisdiction, absence of DIN on the internal Review Authorization, applicability of Section 128A (Form GST SPL-05), and alleged violation of natural justice under Section 75(4) are **rejected**.

2. The impugned Order-in-Appeal No. MYS-ADC/JC(A)-24/2025-26-GST dated 13.04.2025 is **modified** to the extent challenged by the Revenue:

A. **Penalty on Rs. 34,69,134/-:** The dropping of penalty is set aside, and a penalty of Rs.**3,59,368/-** (CGST: Rs.1,69,684/-, SGST: Rs1,69,684/-, IGST: Rs.20,000/-) is confirmed under **Section 73** read with Section 75(2) of the CGST/KGST Acts, 2017 and Section 20 of the IGST Act, 2017.

B. **Penalty on Rs. 19,02,658/-:** The conversion of proceedings to Section 73 is set aside, and the 100% penalty of Rs. **19,02,658/-** (CGST: Rs.9,50,951/-, SGST: Rs.9,50,951/-, IGST: Rs. 756/-) under **Section 74(1)** of the CGST/KGST Acts, 2017 read with Section 20 of the IGST Act, 2017 is restored and confirmed.

3.The Written Submissions filed by the Respondent in Form GST APL-06 are **disposed off** accordingly.

Sudha Koka
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Srikanth Venkatraman
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