GSTAT

State Bench Prayagraj

Division Bench Court No. I

APL/22/ALB/2026

M/S FATEHPUR FOUNDRY & ENGINEERING WORKS **.....Appellant**

Versus

ARVIND KUMAR, ADDITIONAL COMMISSIONER GRADE-2 APPEAL, ADDITIONAL COMMISSIONER GRADE-2 APPEAL-3 PRAYAGRAJ & ORS. **.....Respondent**

Quorum

Hon'ble Mahtab Ahmad, Member(Judicial)
Hon'ble Ashish Varma, Member (Technical)

Counsel for Appellant	**Counsel for Respondent**
SATYARTH AGRAWAL	SMT VIBHA MISHRA DCST/ SR
SANJEEV AGRAWAL	SHRI SUNEEL KUMAR NIRMAL
DEEPIKA BEDI AGRAWAL	ACST/ ASR

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. : ZA090411126000037H **Date of order:** 17/11/2026

1.	GSTIN/Temporary ID/UIN - 09ACDPG9665Q1ZQ	
2.	Appeal Case Reference no. - APL/22/ALB/2026	Date - 29/05/2026
3.	Name of the appellant - M/S FATEHPUR FOUNDRY & ENGINEERING WORKS, fatehpurfoundry@gmail.com , 9415131297	

4.	Name of the respondent - 1. Shri Prakash Yadav Joint Commissioner(IT) State Tax Headquarters Lucknow , ctithqlu-up@nic.in , 7235002314 2. Arvind Kumar 3. Ajendra Kumar Tripathi	
5.	Order appealed against - AD090723053852U	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - ZD0901242729461	Date - 30/01/2024
6.	Personal Hearing - 17/11/2026 23/10/2026 12/10/2026 07/08/2026	
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed	
8.	Order in brief - Appeal is dismissed	
	Summary of Order	
9.	If demand order then whether demand quantified: No	

Place :PRAYAGRAJ
Date : 17.11.2026

Shri Pankaj Yadav
Designation : Legal Assistant
Jurisdiction :Prayagraj

Per: Hon'ble Mahtab Ahmad, Member(Judicial)

JUDGEMENT

The instant appeal u/s 112 of the CGST/SGST Act, 2017 (hereinafter referred to as "the Act") has been filed by the appellant, bearing GSTIN 09ACDPG9665Q1ZQ, against the Order-in-Appeal (OIA) No. ZD0901242729461 dated 30.01.2024, passed by Shri Arvind Kumar-III, Additional Commissioner, Grade-II (Appeal-III), State Tax, Prayagraj (hereinafter referred to as "the Appellate Authority"), in Appeal No. AD090723053852U dated 20.07.2023, pertaining to the financial year 2018-19, in the case of M/s Fatehpur Foundry and Engineering Works, Malwan, Fatehpur, u/s 74 of the CGST/SGST Act, 2017, against the Assistant Commissioner, Sector-2, Fatehpur. The aforesaid appeal arose out of Order-in-Original (OIO) No. ZD090623008200X dated 02.06.2023, passed u/s 74 of the Act by the Assistant Commissioner (hereinafter referred to as "the Proper Officer"), whereby, after reversal of the Input Tax Credit (ITC), a demand of Rs. 4,16,849.40 was raised, comprising CGST of Rs. 70,413.75 towards tax, Rs. 67,597.20 towards interest and Rs. 70,413.75 towards penalty, and an equivalent amount of SGST, i.e., Rs. 70,413.75 towards tax, Rs. 67,597.20 towards interest and Rs. 70,413.75 towards penalty.

2. **Facts of the case-**

2.1- The necessary facts, as emerge from the record, in brief, are that the appellant is a registered firm under the Act, engaged in the business of manufacturing iron goods from melted scrap iron, etc. The appellant has duly

maintained books of accounts, stock registers, ledgers, details of inward and outward supplies and has also regularly filed GST returns, i.e., GSTR-1, GSTR-3B, GSTR-9, etc.

2.2- During 2022, officers of the State Tax Department conducted a search at the principal place of business of one of the appellant's suppliers, namely, M/s Ganesh Enterprises, having GSTIN 09AFOPM3147D1ZD, and found the said firm to be non-existent. This fact was flagged by the Additional Commissioner (Prev.), CGST, Kanpur, vide Alert Notice No. 34/2022-23 dated 05.05.2022. Thereupon, the Assistant Commissioner, State Tax, Sector-II, Fatehpur, conducted an inquiry, wherein, upon perusal of the GSTR-2A of the appellant firm, it was found that the appellant had made two purchases from the aforesaid non-existent firm, M/s Ganesh Enterprises, Kanpur, during June 2018. The first purchase was made vide Invoice No. 50 dated 02.06.2018, having a taxable value of Rs. 4,29,875.00, involving CGST of Rs. 38,688.75 and SGST of Rs. 38,688.75. The second purchase was made vide Invoice No. 54 dated 06.06.2018, having a taxable value of Rs. 3,52,500.00, involving CGST of Rs. 31,725.00 and SGST of Rs. 31,725.00. The appellant had also availed and utilised ITC in respect of the aforesaid purchases.

2.3- The Proper Officer, on this basis, arrived at the conclusion that the appellant had claimed the said ITC on the basis of collusive and sham purchases from the aforesaid non-existent firm, supported by showpiece invoices and without actual receipt of any goods thereunder. Accordingly, he issued SCN in Form DRC-01 bearing No. ZD090622048500L dated 16.06.2022 under Section 74 of the Act.

2.4- In response to the notice, the appellant submitted a reply dated 11.07.2022. The appellant was also represented by Shri Sanjiv Agrawal, Advocate, on 01.06.2023, the date fixed for hearing. In its reply, the appellant admitted the aforesaid purchases and the claim of ITC in respect thereof but denied that the transactions were collusive and sham or were based on showpiece documentation. It was asserted that the transactions had taken place in June 2018 and that the supplier firm, M/s Ganesh Enterprises, had surrendered its registration and got the same cancelled on 10.11.2020, whereafter the firm was finally closed. The alleged inspection by the officers of the Tax Department was conducted only in 2022, much after the closure of the firm, which was quite natural.

2.5- It was further contended that the purchases in question were real and genuine; that tax invoices had been duly issued; and that e-way bills for the movement of goods had also been generated and handed over to the appellant. The goods were actually transported through trucks, supported by genuine Goods Receipts (bilties). The payments were made through banking channels from the appellant's bank account to the bank account of the supplier firm. It was also stated that the supplier firm was registered and active at the time of the said purchases and had regularly filed its returns for FY 2018-19, as evident from the status downloaded from the GST portal. The firm had also filed GSTR-1 for June 2018, corresponding to the aforesaid purchases.

2.6- However, the Proper Officer was not satisfied with the explanation and observed that, although the requirement of Section 16(2)(a) of the Act stood fulfilled, the conditions prescribed under Sections 16(2)(b) and 16(2)(c) were

not satisfied. Since the supplier firm was found to be non-existent upon inquiry at its place of business, and the material brought on record by the appellant was considered insufficient to establish actual receipt of the goods, the ITC in question was held liable to be reversed. The Proper Officer further held that the ITC had been availed on the basis of collusive transactions and, accordingly, confirmed the demand along with interest and penalty under Section 74 of the Act. Accordingly, the Proper Officer, vide OIO No. ZD090623008200X dated 02.06.2023, raised a demand of Rs. 4,16,849.40, comprising tax of Rs. 1,40,827.50, interest of Rs. 1,35,194.40 and penalty of Rs. 1,40,827.50 (100% of the tax).

2.7- Being aggrieved by the aforesaid OIO, the appellant preferred an appeal under Section 107 of the Act, bearing Appeal No. AD090723053852U dated 20.07.2023. After hearing the appellant and the Revenue, the Appellate Authority also dismissed the appeal vide Order No. ZD0901242729461 dated 30.01.2024, observing that the supplier firm was found to be non-existent during the inquiry and, therefore, it was not possible that the said firm had actually supplied the goods and deposited the corresponding tax. It was further observed that the appellant, in collusion with the said firm, had entered into sham transactions and claimed fictitious ITC. Accordingly, the proceedings initiated by the Proper Officer against the appellant under Section 74 of the Act were held to be proper, and the appeal was dismissed. Being aggrieved by the aforesaid orders passed by the authorities below, the appellant has preferred the present appeal before the Tribunal.

3. **Grounds of Appeal**

3.1- The appellant stated in the appeal memo that both the orders passed by the authorities below are bad in law and on facts. The purchases in question are genuine and real supported by valid tax invoices issued by the supplier in favour of the appellant firm. The supplier firm had also generated e-way bills through the GST portal, containing all the relevant details of the transactions, including the vehicle numbers used for transportation of the goods. It was further submitted that, upon arrival at the appellant's place of business at Malwan, Fatehpur, the goods were weighed at Natraaj Electronic DharmKata, Malwan Industrial Area, Fatehpur, vide receipts dated 03.06.2018 and 07.06.2018, and were duly entered in the books of accounts and stock register. It was also stated that the goods had been transported under Goods Receipts (G.R.) dated 02.06.2018 and 06.06.2018, bearing Nos. 870 and 878, respectively. Payments were also made through banking mode from the appellant's bank accounts, A/c nos 00600200021383 of Bank of Baroda and 00000031207435085 of State Bank of India, to the registered account of M/s Ganesh Enterprises.

3.2- The supplier, M/s Ganesh Enterprises, had also furnished details of its outward supplies in Form GSTR-1 for June 2018, which were auto-populated as the appellant's inward supplies in GSTR-2A for the same month. The said supplier had also furnished its return in Form GSTR-3B for June 2018, indicating that the firm had discharged its tax liability in respect of the outward supplies made during the said month. While furnishing the aforesaid supporting documents, the appellant further submitted that these evidences clearly established that the purchases were genuine, against which the appellant had paid the value of the goods, including taxes, to the supplier; that the goods had been transported from Koiana, Kanpur, to Malwan, Fatehpur; that the goods had

undergone weighment at the weighing scale; and that the same had actually been received by the appellant.

3.3- It was further contended that the subsequent cancellation of the supplier's registration, almost two years after the purchases in question, on the ground that the firm was not found at its registered place of business during an inquiry conducted after the closure of the business, was not sufficient, by itself, to infer that the supplier firm was non-existent or fictitious at the time of the transactions. The subsequent cancellation of the supplier's registration, filing of returns by the supplier for the period prior to cancellation of registration and closure of business, and discharge of its tax liability through timely filing of GSTR-3B were, according to the appellant, sufficient to establish that the supplier had also discharged its tax liability in respect of the purchases in question.

3.4- As such, the authorities below had completely erred and acted unfairly towards the appellant in initiating proceedings against it under Section 74 of the Act. It was further submitted that, while passing the OIO dated 02.06.2023 and the OIA dated 30.01.2024, the authorities below had completely ignored the appellant's case and the supporting evidence furnished by it and had passed totally unjust, unfair and illegal orders, which were not sustainable in law. Therefore, the appeal is liable to be allowed by setting aside the orders passed by the authorities below, and the demand raised and confirmed is liable to be quashed.

3.5- In support of its submissions, the appellant cited and furnished, under Rule 56 of the GSTAT (Procedure) Rules, 2025, case laws namely, Assistant Commissioner of State Tax v. Suncraft Energy (P.) Ltd., SLP (C) Nos. 27827–

27828 of 2023, decided on 14.12.2023, reported as [2023] 157 taxmann.com 352 (SC); M/s Khurja Scrap Trading Company v. Additional Commissioner, Grade-II (Appeal) & Anr., Writ Tax No. 743 of 2023, decided on 29.08.2025, reported as [2025] 178 taxmann.com 48 (Allahabad); M/s Singhal Iron Traders v. Additional Commissioner, Writ Tax No. 1357 of 2022, decided on 04.11.2025, reported as [2025] 180 taxmann.com 163 (Allahabad); Saniya Traders v. Additional Commissioner, Writ Tax No. 1743 of 2024, decided on 03.12.2025, reported as [2025] 181 taxmann.com 487 (Allahabad); and M/s Sahil Enterprises v. Union of India & Ors., W.P. (C) No. 688 of 2022, decided on 06.01.2026, reported as [2026] 182 taxmann.com 144 (Tripura).

4. <u>Revenue's Contention</u>

4.1- No formal written reply has been filed by the Revenue. However, in her oral submissions, the learned SR, Ms. Vibha Mishra, DCST, vehemently opposed the appeal and supported the orders passed by the authorities below. Her submission is that the Proper Officer had issued a detailed notice u/s 74 of the Act, stating therein that the supplier firm, M/s Ganesh Enterprises, Koiana Nagar, Kanpur, had been found to be a non-existent entity. The appellant was found to have received the impugned inward supplies from the said non-existent firm and had also availed and utilised ITC in respect of those supplies. This fact, according to the Revenue, establishes that the appellant, in collusion with the said firm, had fraudulently availed and claimed ITC in respect of the said supplies on the basis of fake invoices issued by the supplier firm. In response to the said notice, the appellant had furnished only the original tax invoices, e-way bills and evidence of payments made through banking channels. The appellant

did not submit any proof of movement of goods, such as Goods Receipts (GRs/bilties), toll slips, Dharm Kata slips, etc., except the e-way bills, which were not sufficient to establish the actual movement of goods. As such, the appellant had failed to satisfy the requirements of Sections 16(2)(b) and 16(2)(c) of the Act. Accordingly, considering the aforesaid facts and other circumstances, the Proper Officer had rightly passed the OIO under Section 74 of the Act against the appellant.

4.2- It was further submitted that, even before the Appellate Authority, the appellant neither pleaded nor produced the GRs, toll slips and Dharm Kata slips to establish the actual movement and receipt of the goods. Instead, the appellant had raised only the issue of the impossibility of establishing payment of tax by the supplier in respect of the invoices in question, on the ground that GSTR-3B is a consolidated summary return reflecting the taxable supplies and tax paid by the supplier. In this regard, the appellant had relied upon the legal maxim ***Lex non cogit ad impossibilia***, which means that the law does not compel a person to do something which is impossible to perform. The aforesaid legal proposition may be correct; however, the appellant could have produced supporting documents, such as Goods Receipts (GRs/bilties), toll slips and Dharm Kata slips, along with the tax invoices and e-way bills, before the authorities below to establish the actual movement and receipt of the goods. However, for reasons best known to the appellant, the said documents were not produced before the authorities below. These documents have now been produced for the first time in the present appeal, without seeking prior permission of the Tribunal for their admission as additional evidence. As such, these documents are not legally admissible. Further, the documents appear to be suspicious and have been

created as an afterthought; hence, they should not be relied upon. Since the appellant has failed to establish the actual supply of goods through proof of their movement and delivery, the condition prescribed under Section 16(2)(b) of the Act for availment of ITC remains unfulfilled.

4.3- The Revenue has consistently alleged from the very beginning that, since the supplier firm, M/s Ganesh Enterprises, was found to be non-existent, it reasonably establishes that the transactions in question were fictitious and that the invoices and e-way bills issued by the supplier were merely showpiece documents, without any actual supply of goods, with the clandestine intention of enabling the appellant to make a false claim of ITC. It was further alleged that both the supplier firm and the appellant had acted in collusion and in a clandestine manner. Accordingly, the provisions of Section 74 of the Act are fully applicable in the present case. As such, there is no infirmity in the orders passed by the authorities below and, therefore, the appeal is liable to be dismissed.

5. In view of the rival submissions made by the parties, the following points for determination arise before us:

I. Whether the transactions in question are real and genuine, under which the goods were actually transported and received by the appellant?

II. Whether the authorities below were justified in invoking the provisions of Section 74 of the Act against the appellant in respect of the transactions in question, and whether their actions complied with the necessary ingredients of the said provision?

6. We have given a patient hearing to the learned counsel for the appellant, Shri Sattyarth Agarwal, Advocate, and the learned SR, Ms. Vibha Mishra (DCST), assisted by the ASR, Shri Suneel Kumar Nirmal (ACST), appearing for the Revenue, and have gone through the records.

7. **Discussion**

7.1- **Points of Determination No.1-**

1. **Whether the transactions in question are real and genuine, under which the goods were actually transported and received by the appellant?**

7.1.1- In the present appeal, the centre of the dispute is the appellant's two purchases from M/s Ganesh Enterprises, Koila Nagar, Kanpur, during the month of June 2018, vide Invoice No. 50 dated 02.06.2018, having a taxable value of Rs. 4,29,875.00, involving CGST of Rs. 38,688.75 and SGST of Rs. 38,688.75, and Invoice No. 54 dated 06.06.2018, having a taxable value of Rs. 3,52,500.00, involving CGST of Rs. 31,725.00 and SGST of Rs. 31,725.00. These transactions were auto-populated in the appellant's GSTR-2A for June 2018. The appellant, as the purchaser, availed and utilised ITC on the aforesaid purchases in its GSTR-3B for the same month.

7.1.2- The said supplier, M/s Ganesh Enterprises, had issued the aforesaid invoices in favour of the appellant in respect of the said transactions and had also generated e-way bills and handed over the same to the appellant. In the year 2022, the Department conducted a search at the registered place of business of the aforesaid supplier and found the firm to be non-existent. Consequently, an

alert notice was issued. Thereupon, the jurisdictional Assistant Commissioner, who is also the Proper Officer in the case forming the subject matter of the present appeal, examined the appellant's GSTR-2A for June 2018 and, upon noticing the aforesaid inward supply transactions from the said firm, which was found to be non-existent at the time of inspection, issued SCN in Form DRC-01 to the appellant, stating the aforesaid facts and observing that the same indicated that the appellant had entered into the said transactions in a clandestine manner and in collusion with the fictitious supplier, and had obtained showpiece invoices and e-way bills without actually receiving any goods, with the intention of claiming false ITC.

7.1.3- Before the Proper Officer, the appellant appeared through its Advocate and filed a reply along with invoices, e-way bills and books of accounts, claiming that the transactions were real and genuine and that the goods thereunder had actually been transported and received by the appellant. It was further contended that the supplier's registration was active on the dates of the purchases, that the supplier was regularly filing its returns and that the business was closed only on 10.11.2020, upon its own application. As such, the inquiry conducted in 2022, in which the firm was found to be non-existent, was of no consequence in determining the genuineness of the transactions undertaken in June 2018.

7.1.4- However, the learned Proper Officer observed that the conditions laid down under Sections 16(2)(b) and 16(2)(c) of the Act for availing and utilising ITC had not been fulfilled. The supplier firm was found to be fictitious, and the appellant had failed to establish the actual supply of goods. Accordingly, the appellant was held to have entered into fictitious transactions and evaded tax in

collusion with the said supplier, thereby attracting the provisions of Section 74 of the Act. Consequently, the appellant was held liable for reversal of ITC, payment of the tax involved, interest thereon and penalty at the rate of 100%. Accordingly, the demand in question was raised.

7.1.5- In the appeal before the Appellate Authority also, the appellant raised the same contentions, relying upon the same facts and documents, which were again not accepted for the same reasons, with the conclusion that the transactions in question were collusive and sham transactions undertaken for claiming false ITC. Resultantly, the appeal was dismissed.

7.1.6- In the present appeal before us, apart from filing the aforesaid invoices and e-way bills in support of its claim, the appellant has also filed, for the first time, the GRs relating to the transportation of the goods, allegedly issued by the concerned transporter, namely, Ajanta Carriers, Railway Road, Collector Ganj, Kanpur. These are GR No. 870 dated 02.06.2018 and GR No. 878 dated 06.06.2018. The appellant has also submitted two Dharm Kata slips issued by Natraaj Electronic Dharmkanta, Malwan, Fatehpur.

7.1.7- We have given a close scrutiny to these documents, which have been brought on record only in the present appeal and were not produced before the authorities below, without seeking permission for their admission as additional evidence at the appellate stage in accordance with the prescribed procedure. The two GRs contain certain glaring discrepancies, which are apparent on the face of the documents themselves. Firstly, while the GR dated 02.06.2018 is a consignee's copy, the GR dated 06.06.2018 is a consignor's copy, even though the appellant was not the consignor of the transaction but the consignee.

Therefore, both the GRs ought to have been consignee's copies. Further, the first GR dated 02.06.2018 bears No. 870, whereas the second GR dated 06.06.2018 bears No. 878. However, it is apparent that the last digit '8' in the second GR has been created by putting a dot within the digit '0', which is clearly inconsistent with the manner in which the digit '8' appearing at other places in the GRs has been printed. If the last digit '8' of the second GR and the digit '8' appearing at the beginning of both the GR numbers had been generated through the same system, it is difficult to understand how the digit '8' could have been printed differently at different places in the same set of receipts. On the contrary, a comparison of the last digit, i.e., '0', in the first GR with the alleged last digit '8' in the second GR gives rise to a strong inference that both the digits are actually '0' and that, in the second GR, the digit '0' has been altered to '8' by putting a cross within it. Again, the first GR does not mention any truck number, whereas a truck number has been mentioned in the second GR. A close scrutiny of the first GR dated 02.06.2018 further reveals that the contents of the columns relating to description, weight and rate appear to have been written after erasing the original entries by using an ink remover, and traces of the original writing are still visible. In both the GRs, the columns relating to the name of the owner and the driver have been left blank. Further, the GR dated 02.06.2018 does not mention any truck number.

7.1.8- There appears to be no other plausible explanation for the aforesaid discrepancies in the GRs furnished by the appellant at this belated stage, except that, having noticed the lacuna in establishing the actual movement of goods under the transactions in question, the appellant has somehow created or procured these GRs at the appellate stage and filed the same to make its claim

appear complete and to satisfy the requirement of Section 16(2)(b) of the Act regarding actual receipt of goods or services or both. However, the aforesaid scrutiny of the GRs leaves no doubt that these are not genuine documents evidencing the actual movement and transportation of the goods.

7.1.9- As far as the Dharm Kata slips are concerned, these may, at best, constitute evidence of the weighing of goods at the destination. However, when the very transportation and movement of goods from Kanpur to Malwan, Fatehpur, and the supporting GRs evidencing such movement have come under serious suspicion and are found to be unreliable, the Dharm Kata slips also lose their evidentiary value. Their production for the first time at the appellate stage further raises serious doubts about their genuineness.

7.1.10- The appellant has also filed the invoices relating to the transactions in question, along with the e-way bills generated by the supplier. It has further filed its books of accounts and ledger, along with its GSTR-1, GSTR-2A and GSTR-3B for the relevant month. The appellant has also brought on record the GSTR-1 of the supplier firm, along with its GSTR-3B for the corresponding month and GSTR-9 and GSTR-9C. These documents indicate that the supplier had not only issued tax invoices in respect of the transactions in question but had also generated e-way bills for the purported movement of goods. The appellant had entered the transactions in its books of accounts and disclosed the same in its returns. The supplier had also reported the transactions in its returns and discharged its tax liability.

7.1.11- However, in view of the fictitious nature of the GRs, as discussed hereinabove, the actual movement of goods and their delivery to the appellant

become doubtful and unbelievable. In these circumstances, the only possible conclusion that can be drawn is that the entire documentation prepared by the parties in respect of these transactions was merely showpiece paperwork, intended to enable the appellant to claim and avail false ITC. We have no hesitation in arriving at this conclusion. Here, it would not be out of context to mention that the appellant is engaged in the business of manufacturing of iron goods from melted scrap iron, cast iron, etc. It is not uncommon in this line of business for manufacturers to procure raw materials from unregistered sources, manufacture goods using such raw materials and sell the manufactured goods, while discharging the tax liability on such sales by utilising ITC arising from false and fictitious inward purchases of raw materials instead of discharging the same from their own financial resources. Such suppliers are also found indulge in a chain of fake supply. Therefore, payment of the tax by someone or few fake suppliers in the chain can also not be given much weight.

7.1.12- The learned counsel for the appellant has referred to and furnished certain judgments of the higher Courts under Rule 56 of the GSTAT (Procedure) Rules, 2025. We now proceed to examine the applicability of those judgments to the facts of the present case.

7.1.13- The first judgment is that of the Hon'ble Supreme Court in *Assistant Commissioner of State Tax v. Suncraft Energy (P.) Ltd.*, [2023] 157 taxmann.com 352 (SC). The said judgment relates to the issue of non-reflection of the supplier's invoices in GSTR-2A and the consequential reversal of ITC by the Revenue. The Hon'ble High Court had held that the Press Release dated 18.10.2018 clarified that GSTR-2A was intended for the facilitation of taxpayers

and did not affect the entitlement to avail ITC. It was further held that reversal of ITC from the recipient was not warranted, except in exceptional circumstances involving collusion, a missing supplier or lack of assets. Where the supplier was in possession of tax invoices and payments had been made through banking channels, reversal of ITC without conducting an inquiry into the supplier's affairs was held to be arbitrary. The SLP filed by the Revenue was dismissed by the Hon'ble Supreme Court. However, this decision is clearly distinguishable and not applicable to the facts of the present case, as the issue herein does not relate to non-reflection of ITC in GSTR-2A. Rather, the present case involves allegations of collusion with a non-existent supplier to defraud the Revenue by claiming false ITC.

7.1.14- Thereafter, we come to three judgments of the Hon'ble Allahabad High Court, namely, *Khurja Scrap Trading Company v. Additional Commissioner, Grade-II (Appeal)*, [2025] 178 taxmann.com 48 (Allahabad); *Singhal Iron Traders v. Additional Commissioner*, [2025] 180 taxmann.com 163 (Allahabad); and *Saniya Traders v. Additional Commissioner*, [2025] 181 taxmann.com 487 (Allahabad).

7.1.15- In all these cases, the GST registrations of the suppliers were valid and operative on the dates of the transactions in question. The purchases made by the recipient dealers were supported by invoices and e-way bills, and the consideration had been paid through banking channels. The suppliers had filed GSTR-1 and, in the relevant cases, GSTR-3B as well, indicating that the tax liability had been discharged. The transactions were also auto-populated in the GSTR-2A of the respective recipients. The registrations of the suppliers were

cancelled subsequently, i.e., after the transactions had taken place. Since the supplier firms were found to be non-existent during departmental inspections conducted subsequent to the transactions, proceedings under Section 74 of the Act were initiated, resulting in the reversal of the ITC claimed and the raising of demands towards tax, interest and penalty at the rate of 100%, which were also confirmed in appeals. The Hon'ble High Court held that the suppliers were duly registered on the dates of the transactions and that their returns evidenced the reporting of outward supplies and discharge of tax liability. The data auto-populated in GSTR-2A and the corresponding GSTR-3B records remained undisputed and could not be ignored. It was further held that subsequent cancellation of registration after the transactions could not, by itself, defeat the recipient's entitlement to ITC under Section 16 of the Act, particularly when the foundational ingredients of Section 74, namely, fraud, wilful misstatement or suppression of facts to evade tax, were absent. Accordingly, the orders passed by the Revenue Authorities under Section 74 of the Act were quashed.

7.1.16- The appellant has also referred to the judgment of the Hon'ble Tripura High Court in *Sahil Enterprises v. Union of India*, [2026] 182 taxmann.com 144 (Tripura), wherein the Hon'ble Court held that the benefit of ITC could not be denied to a bona fide purchaser merely on the ground that the supplier dealer had not deposited the tax, as the purchaser had no mechanism to ascertain such payment before claiming ITC. In such circumstances, the Hon'ble Court considered it appropriate, in the interest of justice, to read down the provisions of Section 16(2)(c) of the Act. However, this judgment is also distinguishable from the facts of the present case, as the issue involved herein is not merely the non-deposit of tax by the supplier. In fact, the Hon'ble Supreme Court, in SLP

(C) No. 23931 of 2026, *Bhandari Scrap Traders v. Union of India*, held contrary to the aforesaid view, observing that deposit of tax by the supplier, as required under Section 16(2)(c) of the Act, is a condition precedent for claiming ITC.

7.1.17- We now proceed to examine the applicability of the judgments delivered by the Hon'ble Allahabad High Court in the aforesaid cases.

7.1.18- In the case before us, the registration of the supplier firm was cancelled almost two years after the appellant's purchases in question. Further, the supplier firm was found to be non-existent during the departmental spot inspection conducted almost four years after the transactions and subsequent to the cancellation of its registration on its own application. The supplier firm is found to have filed GSTR-1 and GSTR-3B for the relevant period, indicating that the sales were disclosed and the corresponding tax liability was discharged. The sales were also auto-populated in the appellant's GSTR-2A, and the appellant had also discharged the tax liability on its outward supplies while filing GSTR-1, GSTR-3B and GSTR-9. The appellant was also in possession of the corresponding invoices and e-way bills. Further, the transactions were duly entered in its books of accounts and ledger. The authorities below, however, took an adverse view against the appellant solely on the ground that it had failed to furnish evidence establishing the actual movement of goods and their delivery to the appellant. They accordingly concluded that the appellant had made the said purchases in collusion with the non-existent supplier by relying upon showpiece documentation in the form of invoices and e-way bills, without any actual movement or delivery of goods, with the intention of claiming false ITC. This conclusion of the Revenue Authorities was primarily based on the

appellant's failure to produce documents establishing the actual movement and delivery of goods. The appellant has attempted to fill this lacuna before us by producing the alleged GRs of the transporter to establish the movement of goods under the transactions in question. However, as discussed in the foregoing paragraphs, these GRs have been found to be forged and fabricated through erasure and interpolation, apparently with the intention of filling the lacuna in the appellant's case and supporting its claim of actual receipt of goods. This conduct of the appellant renders the transactions and the other supporting documentation unreliable and lends support to the allegation of collusion with the supplier firm, which was ultimately found to be non-existent, though belatedly, almost four years after the transactions, with the intention of claiming false ITC.

7.1.19- Therefore, in view of the aforesaid facts and circumstances, we are of the considered view that the judgments in *Khurja Scrap Trading Company* (supra), *Singhal Iron Traders* (supra) and *Saniya Traders* (supra) are distinguishable on facts and cannot be applied in favour of the appellant.

7.1.20- Thus, in view of the aforesaid discussion and the reasons recorded hereinabove, we arrive at the conclusion that the transactions in question were neither real nor genuine and that the appellant had not actually received any goods under the said transactions. Consequently, the appellant is not entitled to avail and utilise ITC in respect of the transactions in question. Accordingly, the above point of determination is decided.

7.2 <u>Point of Determination No.2</u>

2. **Whether the authorities below were justified in Invoking the provisions of Section 74 of the Act against the appellant in respect of the transactions in question, and whether their actions complied with the necessary ingredients of the said provision?**

7.2.1- The present proceedings against the appellant under Section 74 of the Act were initiated by the Tax Authority upon receipt of Alert Notices dated 05.05.2022 and 09.05.2022 from the Additional Commissioner (Prevention), CGST, Kanpur, regarding the supplier firm involved in the transactions in question, namely, M/s Ganesh Enterprises, Koyala Nagar, Kanpur, GSTIN 09AFOPM3147D1ZD, which was reported to have been found non-existent and bogus during spot inspection. Acting upon the said alerts, the jurisdictional Assistant Commissioner examined the GSTR-2A of the appellant and noticed the transactions in question made by the appellant with the said firm. Thereupon, the Proper Officer issued a notice under Section 74 of the Act to the appellant, stating therein that the appellant had availed and utilised ITC on the transactions in question on the basis of bogus invoices issued by a non-existent and fictitious firm.

7.2.2- In response to the said notice, the appellant filed a reply stating therein that the transactions were supported by genuine tax invoices and e-way bills issued by the supplier firm and that payments under the transactions had been made through banking channels. It was further submitted that the said transactions had taken place in June 2018, almost four years prior to the issuance of the aforesaid alert notices and the spot inspection conducted by the Department. The supplier had, on its own application, got its registration

cancelled. At the time of the transactions in question, the supplier firm was duly registered, carrying on its business and regularly filing its returns. In fact, in the GSTR-1 for June 2018 filed by the said firm, the transactions in question were duly disclosed as its outward supplies, and the GSTR-3B return for the said month had also been filed, which, according to the appellant, indicated that the tax liability in respect of the said transactions had been discharged by the supplier. Therefore, it was neither logical nor justified to infer that the appellant had acted in collusion with the supplier firm.

7.2.3- The Proper Officer, after taking into consideration the aforesaid facts and the reply along with the supporting documents, observed that the facts and evidence brought on record by the appellant did not establish the essential requirement for claiming ITC, namely, that the appellant had actually received the supply of goods. Since the supplier firm was found to be non-existent and bogus, the Proper Officer concluded that any supply by the said firm and delivery of goods to the appellant was not possible.

7.2.4- Section 74 of the Act is attracted in cases where tax has not been paid or has been short-paid, or where an erroneous refund has been made, or ITC has been wrongly availed and utilised by reason of fraud, or any wilful misstatement or suppression of facts to evade tax. It is true that neither in the notice in Form DRC-01 dated 16.06.2022 nor in the Order-in-Original dated 02.06.2023 has the specific expression "fraud, wilful misstatement or suppression of facts to evade tax" been used. However, both in the notice and in the Order-in-Original, it has been specifically mentioned that the supplier firm was found to be non-existent and bogus and that the appellant had availed and utilised ITC in respect of the

said purchases on the basis of showpiece invoices issued by such firm, in collusion with the supplier and with the intention of evading tax. The Proper Officer has also concluded that the appellant had not actually received the goods, as it had failed to establish the same. In our considered view, although the specific expression "by reason of fraud, wilful misstatement or suppression of facts to evade tax" has not been used in the notice and the order, the facts and conclusions recorded therein, in their pith and substance, satisfy the ingredients of Section 74 of the Act.

7.2.5- Section 160 of the Act specifically provides that no adjudication or notice initiated in pursuance of any of the provisions of the Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if the same are, in substance and effect, in conformity with or according to the intent, purpose and requirements of the Act or any existing law. The provisions of Section 160(1) are reproduced hereinbelow:

> **"160- Assessment proceedings, etc., not to be invalid on certain grounds.**
>
> *(1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance*

and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law."

7.2.6- Since the notice in Form DRC-01 issued and the Order-in-Original passed by the Proper Officer are found, in their pith and substance, to be in conformity with the provisions of Section 74 of the Act, we find no infirmity therein with reference to the requirements of the said section.

7.2.7- The Appellate Authority has also dismissed the appellant's appeal on the same grounds. Therefore, in respect of the appellate order as well, it cannot be said that the same is not in conformity with the provisions of Section 74 of the Act.

7.2.8- In view of the above discussion, we hold that provision of the 74 of the Act is applied with full vigour against the appellant in respect to the inward supply transactions in question and the notice DRC-01 issued and the Order-in-Original passed by the Proper Officer and the Order-in-Appeal passed by the Appellate Authority against the appellant comply with necessary ingredients of Section 74 of the Act. Accordingly, this issue is also decided against the appellant and in favour of Revenue.

8. **Conclusion**

For the above pointwise discussion and the reasons stated therein it is found that the appellant inward supplies in question are fictious and collusive with the intent to claim false ITC for discharging his tax liability, therefore, proceeding under Section 74 against him by the Revenue Authority/Proper Officer is justified and dismissal of appeal by the Appellate Authority is also

proper, just and fair which also comply with technicalities of Section 74 of the Act. Accordingly, we find no merit in the appeal and the same is liable to be dismissed.

ORDER

Appeal is dismissed. Accordingly, the impugned Order-in-Appeal (OIA) No. ZD0901242729461 dated 30.01.2024 along with Order-in-Original (OIO) No. ZD090623008200X dated 02.06.2023 are confirmed. No order as to costs.

A copy of this order shall be sent to the parties and the Authorities in terms of Section 113(5).

Dated: 17.11.2026

Digitally signed by ASHISH VARMA
Date:17-11-2026 12:05:45 PM

(Ashish Varma)
MEMBER (TECHNICAL)

Digitally signed by MAHTAB AHMAD
Date:17-11-2026 11:54:04 AM

(Mahtab Ahmad)
MEMBER (JUDICIAL)

The judgement is signed, dated and pronounced today in the open court.

Digitally signed by ASHISH VARMA
Date:17-11-2026 12:06:23 PM

(Ashish Varma)
MEMBER (TECHNICAL)

Digitally signed by MAHTAB AHMAD
Date:17-11-2026 11:54:49 AM

(Mahtab Ahmad)
MEMBER (JUDICIAL)

Dated: 17.11.2026