GSTAT

State Bench Hyderabad

Division Bench Court No. Court II

APL/211/HYD/2026

MANDALANENI SRINIVASARAO **.....Appellant**

Versus

RADICAL BIO ORGANICS LIMITED, WHOLE TIME DIRECTOR, 2-2-162/A GROUND FLOOR SHANTHINAGAR TANDUR TGVIK 501141 **.....Respondent**

Quorum

Hon'ble A P Ravi, Member(Judicial)
Hon'ble Duvvuri Krishna Srinivas, Member (Technical)

Counsel for Appellant	**Counsel for Respondent**
SHRI P.V.V. SATYANARAYANA MURTHY AND SHRI MOHD. KHALID	SHRI L. VENKATESWARA RAO, ADVOCATE

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. : ZN560361126000256H **Date of order :** 17/11/2026

1.	GSTIN/Temporary ID/UIN -	
2.	Appeal Case Reference no. - APL/211/HYD/2026	Date - 11/05/2026
3.	Name of the appellant - MANDALANENI SRINIVASARAO , mandalanensr.g099001@gov.in , 9440950233	

4.	Name of the respondant - 1. RADICAL BIO ORGANICS LIMITED , buyyani.srinivasreddy@gmail.com , 9000236543	
5.	Order appealed against -	
	(5.1) Order Type - Other order	
	(5.2) Ref Number - HYD-GST-SC-AP2-111-2023-24	Date - 11/08/2023
6.	Personal Hearing - 17/11/2026 02/11/2026 09/10/2026 11/09/2026 07/08/2026	
7.	Status of Order under Appeal - Modified – Order under Appeal is modified	
8.	Order in brief - The Department has raised five issues while proposing to demand GST on the respondent. The Original authority confirms the demand against which an appeal was filed by respondent before the First Appellate Authority. By the impugned order the First Appellate Authority quashed and set aside all the grounds of demand raised by the Department save and except the levy contended to arise by reason of Goods and Services Tax on royalty paid in relation to mining operations. In respect of that lone surviving charge, the First Appellate Authority, being of the view that the question involved a pure point of construction and interpretation of the statute and not a case of deliberate evasion or suppression, reframed the nature of the liability by converting the Department's demand originally raised under Section 74 of the Act into a demand under Section 73 of the Act. The First Appellate Authority did not, however, adjudicate upon or record any specific conclusion in relation to the penalty alleged to be leviable under Section 122(2)(b) of the Act. The Bench upholds the First Appellate Authority's determinations. The FAA was correct in extending the benefit of Notification No. 25/2019—Central Tax (Rate) dated 30 September 2019, Entry No. 47 of Notification No. 12/2017—Central Tax (Rate) dated 28 June 2017, and Entry No. 99 of Notification No. 02/2017—Central Tax (Rate) dated 28 June 2017, to the transactions in issue. The bench further find that the FAA rightly directed a re-computation of the impugned demand qua royalty and the contribution to the District Mineral Foundation under Section 73 of the Central Goods and Services Tax Act. Finally, in the absence of findings sustaining the higher degree of culpability requisite for the application of Section 122(2)(b), the penalty originally levied under Section 122(2)(b) must stand converted and be reworked under Section 122(2)(a) of the Act.	
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	1073160	0	1073160	0	0	0	0	0	2146320	0
(b) Interest	0	0	0	0	0	0	0	0	0	0
(c) Penalty	0	0	0	0	0	0	0	0	0	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
Any other	Dropped the demand Confirmed in OIO No.12/2022-23 dated.29-09-2022	

Place :HYDERABAD

Date : 17.11.2026

Sd/-
Signature
HYDERABAD A P Ravi
Designation : Member
Jurisdiction :Hyderabad

ORDER

DATE OF HEARING: 02/11/2026

DATE OF PRONOUNCEMENT: 17/11/2026

JUDGEMENT

Per: A P Ravi, Judicial Member

FINAL ORDER No.28/COURT-II/HYD/2026

1.0 The Department (hereinafter referred to as "the Appellant") has instituted the present appeal under Section 112 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act") against Order-in-Appeal No. HYD-GST-SC-AP2-111-2023-24 dated 11.08.2023 (hereinafter referred to as "the order impugned") passed by the First Appellate Authority (hereinafter referred to as "the FAA"), in the appeal preferred by M/s Radical Bio Organics Ltd., (hereinafter referred to as "the Respondent").

1.1 The expressions "Act" and "Rules", wherever used in this order, shall mean and include the Central Goods and Services Tax Act, 2017 and the State Goods and Services Tax Rules, 2017, respectively, since the provisions of both the Acts and both the sets of Rules are common and the same shall apply equally and concomitantly.

2.0 The Respondent is a manufacturer and supplier of Extra Neutral Alcohol (hereinafter referred to as "ENA") and Impure Spirit. The Respondent is registered with the Department and is paying appropriate taxes, wherever applicable.

3.0 The entire controversy arises out of a verification of the books of account of the Respondent conducted by the audit wing of the Department.

4.0 The audit raised allegations that, during the period from July 2017 to March 2019, the Respondent had not paid tax on the following payments made to various departments of the Government of Telangana:

(a) fees paid to the Assistant Director, Mines and Geology, Government of Telangana;

(b) fees paid to the Pollution Control Board, Government of Telangana;

(c) fees paid to the APAP, Irrigation Department, W & P, Vikarabad, Government of Telangana;

(d) boiler licence fee paid to the Government of Telangana; and

(e) licence fee paid for renewal of licence DR2 (RG), for manufacture of spirits using grains as a fermentative base for industrial purposes, to the Commissioner of Prohibition and Excise, Government of Telangana.

5.0 On the basis of the above allegations, Show Cause Notice vide C.No.V/01/GST/590/2019-20 Gr.76 dated 07.08.2021 (hereinafter referred to as "the SCN") was issued to the Respondent.

5.1 By the SCN, the demand of tax was proposed under Section 74(1) of the Act. Interest was proposed to be demanded under Section 50 of the Act, and penalty was proposed to be imposed under Section 122(2)(b) of the Act.

6.0 The Adjudicating Authority (hereinafter referred to as "the AA"), vide Order-in-Original No. 13/2022-23/Adjn-GST/Sgr dated 29.09.2022 (hereinafter referred to as "the OIO"), confirmed the demand of ₹21,52,184/-.

6.1 The AA appropriated the amounts already paid by the Respondent towards tax and interest.

6.2 The AA further imposed a penalty of ₹21,52,184/- under Section 122(2)(b) of the Act.

7.0 Aggrieved by the Order-in-Original, the Respondent preferred an appeal before the First Appellate Authority under Section 107(1) of the Act; by the impugned order the First Appellate Authority quashed and set aside all the grounds of demand raised by the Department save and except the levy contended to arise by reason of Goods and Services Tax on royalty paid in relation to mining operations. In respect of that lone surviving charge, the First Appellate Authority, being of the view that the question involved a pure point of construction and interpretation of the statute and not a case of deliberate evasion or suppression, reframed the nature of the liability by converting the Department's demand originally raised under Section 74 of the Act into a demand under Section 73 of the Act. The First Appellate Authority did not, however, adjudicate upon or record any specific conclusion in relation to the penalty alleged to be leviable under Section 122(2)(b) of the Act.

8.0 The Appellant, being aggrieved by the order impugned, is in appeal on the grounds summarised in the succeeding paragraphs.

8.1 The Appellant further submits that the Distillery Licence Fee of Rs. 88,00,000/- does not qualify for the concessional treatment embodied in Notification No. 25/2019–Central Tax (Rate) dated 30 September 2019. It is the Appellant's case that the benefit of the said entry is confined to "alcoholic liquor for human consumption" and, therefore, cannot extend to industrially produced ethyl alcohol such as Extra Neutral Alcohol (ENA) or to rectified spirit, both of which, according to the Appellant, are not intended for human consumption. In consequence, it is contended that the Respondent is not entitled to the relief claimed under the notification in respect of the Distillery Licence Fee and that any concession under the said entry must be denied insofar as it relates to ENA and rectified spirit.

8.2 In support, the Appellant relies on the decisions of the Hon'ble Supreme Court in Synthetics and Chemicals Ltd. v. State of U.P., reported in 1990 (1) SCC 109, and State of U.P. v. Modi Distillery, reported in 1995 (5) SCC 753, and on the decision of the Hon'ble High Court of Allahabad in Jain Distillery (P) Ltd. v. State of U.P., dated 28.09.2021.

8.3 The Appellant places on record Notification No. 25/2019–Central Tax (Rate) and states that the said notification, by its terms, was amended with retrospective effect from 1 July 2017. It is further submitted that legislative and judicial treatment of raw Extra Neutral Alcohol (ENA) uniformly characterises the same as an industrial input and not as an article of human consumption; consequently, ENA cannot be brought within the category of "alcoholic liquor for human consumption" for the purposes of the notification. The Appellant urges that, in light of the retrospective amendment and the

consistent weight of Indian jurisprudence treating raw ENA as an industrial intermediate, the benefit conferred by the impugned entry cannot be extended to ENA and that the Respondent's claim to the concessional treatment must therefore be rejected.

8.4 The Appellant submits, in respect of the Boiler Licence Fee, Factory Licence Fee, Pollution Control Board Fee and Explosive Licence Fee, that the exemption contained in Entry No. 47 of Notification No. 12/2017–Central Tax (Rate) dated 28 June 2017 (as amended) must be given a narrow and textual construction. It is the Appellant's case that the impugned entry contemplates only the *grant* of a licence or permission by a governmental authority insofar as such grant authorises the carrying on of an activity in the course or furtherance of business, and does not extend to fees paid merely for the renewal or continuance of an existing licence. The Appellant therefore avers that the amounts paid to the Respondent in respect of the Boiler, Factory, Pollution Control Board and Explosive licences were charged as renewal fees and not as fees for the initial grant of a licence or permission. On the basis of the ordinary and legal meanings of "grant" and "permission," and having regard to the principle that exemptions are to be construed strictly, the Appellant contends that renewal fees fall outside the ambit of Entry No. 47. The Appellant invites the Authority to reject any strained or expansive reading of the entry that would extend concessional treatment to renewal charges absent express statutory language so providing, and to hold that the impugned renewal fees are not entitled to the exemption.

8.5 The Appellant submits in respect of the Water Charges that Entry No. 99 of Notification No. 02/2017–Central Tax (Rate), dated 28 June 2017, must be interpreted in accordance with its plain text and commercial context and construed strictly in favour of the revenue. It is the Appellant's case that the exemption under Entry No. 99 is confined to the *sale* of water — that is, a supply or sale of water as a commodity for which consideration is invoiced or billed in the ordinary course of commercial dealings. By contrast, the payment made by the Respondent to the Irrigation Department, so it is averred, does not comprise consideration for the sale or supply of water as such but is a fee payable for the grant or continuance of a Licence, permit or access to a water-supply facility or infrastructure. The Appellant emphasises the functional distinction between (a) a transaction whereby water is delivered and sold to a consumer (typically evidenced by an invoice, meter reading and a bill), and (b) a statutory or administrative charge levied for permission to draw water, to use an irrigation facility, or to maintain a connection with a public water-supply system. Accordingly, the appellant submits that the water charges paid by the respondent is in the nature of Licence Fee and therefore the same is out of the purview of Entry 99 of the said Notification.

8.6 The Appellant submits that the levy described as "royalty" in respect of mining activity is not a tax but constitutes consideration for the grant of a contractual or statutory right to extract mineral resources. Repeated appellate decisions have recognised this characterisation and, on that basis, have held that royalty falls within the ambit of a supply chargeable to goods and services tax where the recipient is obliged to discharge tax by way of the reverse charge

mechanism. The Appellant relies, in particular, upon the decision of this Hon'ble Court in Mineral Area Development Authority v. Steel Authority of India Ltd., wherein the Supreme Court treated payments of royalty as consideration flowing from a proprietary or usufructuary grant and not as an exaction in the nature of a tax. That reasoning, it is submitted, is directly material to the present controversy. The legal consequences which, according to the Appellant, flow from this classification are twofold. First, as royalty is consideration for the grant of mining rights, it constitutes an element of "supply" within the meaning of the Central Goods and Services Tax Act and the Integrated Goods and Services Tax Act and is therefore prima facie taxable. Second, where the contractual or statutory scheme contemplates that the recipient of the mining right (or the grantor of the right) should not or cannot be made the normal person liable to discharge tax, the statutory reverse charge mechanism appropriately applies and the recipient (or another specified person) becomes liable to pay GST on such consideration.

8.7 In fine, the Appellant prays that the order impugned be set aside, that the OIO be restored in its entirety, and that such other order as may be deemed fit be passed.

9.0 The Respondent, in its cross objections, has controverted the grounds of the Appellant as summarised in the succeeding paragraphs.

9.1 With regard to the Distillery Excise Tax (alcoholic liquor licence fee) paid towards renewal of the licence for manufacture of ENA, the Respondent contends that the decisions relied upon by the Appellant relate to the levy on the supply or sale of ENA, whereas the issue in the present case is whether

GST is payable on the licence fee, or its renewal, for manufacture of ENA. It is contended that the Appellant has misconceived the issue.

9.2 The Respondent submits that Entry 8 of the State List to the Constitution of India empowers the State Legislature to make laws with respect to the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, that the act of licensing is therefore well within the purview of the State Government, and that it falls outside the purview of GST.

9.3 The Respondent submits that Notification No. 25/2019-Central Tax (Rate) was issued on the basis of the decision of the GST Council in its 26th meeting held on 10.03.2018. The Respondent places emphasis on the said Notification, which provides that the grant of a licence for alcoholic liquor for a fee shall be treated neither as a supply of goods nor as a supply of services, and submits that no GST is leviable on such licence fee. The Respondent further submits that the Notification does not employ the expression "alcohol for human consumption" and that its wording extends the benefit to all industrial use.

9.3.1 The Respondent draws attention to Circular Cr. No. 145/2018/DDB/Ex/G3 dated 29.03.2018 and Circular Cr. No. 286/2019/DDB/Ex/G3 dated 04.04.2019, to establish that the State Government of Telangana has been collecting Distillery Excise Tax.

9.4 With regard to the boiler inspection, the Respondent submits that, under the Factories Act, the boilers installed inside a factory are required to be inspected periodically by the Inspection Authority and that a certificate certifying the fitness of the boiler is issued. It is submitted that the activity is therefore covered by Entry No. 47 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

9.4.1 Similar submissions are made in respect of the Factory Licence, the Pollution Control Board renewals and the Carbon Dioxide Explosive Licence fee. The Respondent submits that safety measures are of paramount importance in respect of carbon dioxide.

9.4.2 The Respondent submits that the exemption is not restricted to a one-time grant and that the Notification does not indicate any such intention, as contended by the Appellant.

9.5 With regard to water charges, the Respondent submits that the Irrigation Department of the Government of Telangana prescribed a fee of ₹3.85 per 1000 gallons of water, payable monthly, as per the quantum withdrawn, and refers to G.O. Ms. No. 115, I & CAD Department dated 27.06.2015. The Respondent submits that it installed water meters at its own cost for computing the quantum of monthly consumption.

9.5.1 The Respondent submits that the GST law does not contemplate or recognise any act of sale as a condition of the entry, and relies on paragraphs 6.2 and 6.3 of Circular No. 52/26/2018-GST dated 09.08.2018. The Respondent submits that the water in dispute is raw natural water, which is

unbranded, and that it is explicitly exempted by Entry No. 99 of Notification No. 02/2017-Central Tax (Rate).

9.6 With regard to Royalty and the contribution to the District Mineral Foundation paid to the mineral development authority, the Respondent submits that the FAA rightly directed re-quantification of the demand under Section 73 of the Act, instead of Section 74 of the Act, in exercise of the powers vested in him under Section 75(2) of the Act.

9.6.1 The Respondent submits that whether Royalty is subject to a levy has been a highly interpretative issue, that some courts have treated Royalty as a tax while other courts have held that it is not a tax, and that, in view of the lack of clarity on the levy itself, no mala fides can be attributed to the Respondent. The Respondent relies on various judgments in support of its submission that there was no intent to evade payment of tax.

9.7 The Respondent prays that the order impugned be upheld and that the appeal of the Department be dismissed.

10.0 We have heard the Learned Departmental Representative for the Appellant and the Learned Counsel for the Respondent.

10.1 Both, the Learned Departmental Representative and the Learned Counsel, have laid emphasis on the provisions of the Telangana Excise Act, 1968, to establish that a licence fee is levied for alcoholic liquor. The Learned Departmental Representative contends that, as per Notification No. 25/2019-Central Tax (Rate), the benefit is available only to alcoholic liquor meant for

human consumption and that the Respondent does not deal in alcohol meant for human consumption. Per contra, the Learned Counsel for the Respondent contends that the benefit of the Notification extends to the licence fee for alcoholic liquor, more so since the Notification does not contemplate alcohol for human consumption.

10.2 The Learned Counsel draws our attention to page 136 of the Annexure to the cross objections, where the conditions for the issue of a licence for alcoholic liquor are specified, and submits that what the Respondent has paid is only a fee for the renewal of such Licence.

10.3 The Learned Counsel further draws our attention to page 13 of the cross objections, which contains an extract of the minutes of the 26th meeting of the GST Council, and to the underlined portion thereof suggesting the inclusion of the phrase "Licence fee and application fee by whatever name it is called".

10.4 The Learned Counsel draws our attention to paragraphs 19 and 22 of the order impugned, and submits that the FAA has explained what ENA is, its types, and which of them is meant for human consumption and which is not. It is further submitted that the FAA has drawn the definition of the word "liquor" from Section 2(21) of the Telangana Excise Act, 1968.

10.5 With regard to Royalty and the contribution to the District Mineral Foundation, the Learned Counsel admits that tax is payable, but pleads that Section 74 of the Act cannot be invoked and that the FAA correctly converted

the demand to one under Section 73 of the Act. The Learned Counsel reiterates the grounds of the cross objections.

10.6 The Learned Departmental Representative submits that a rejoinder dated 29.09.2026 has been filed, and reiterates the grounds of appeal as well as the submissions made in the rejoinder.

11.0 During the hearing, the Bench directed the respondent to clarify whether the impugned supplies viz., Royalty and contributions made to District Mineral Foundation on which they had not paid the alleged GST under RCM had been disclosed in their GST returns.

11.0 By additional submissions dated 2 November 2026, the respondent stated that GSTR-3B contains no designated column for reporting such 'exempt' inward supplies, classifiable according to them as "non-GST supplies," and therefore they were unable to disclose such supplies in that return.

12.0 On a consideration of the appeal, the cross objections and the submissions of both sides, the following issues arise for determination:

(a) whether the FAA was correct in extending the benefit of Notification No. 25/2019-Central Tax (Rate) dated 30.09.2019 to the licence fee paid by the Respondent for the renewal of its distillery licence;

(b) whether the FAA was correct in extending the benefit of Entry No. 47 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 to the Boiler, Factory, Pollution Control Board and Explosive Licence Fees paid by the Respondent;

(c) whether the FAA was correct in extending the benefit of Entry No. 99 of Notification No. 02/2017-Central Tax (Rate) dated 28.06.2017 to the Water Charges paid by the Respondent;

(d) whether the FAA was correct in directing re-computation of the demand on Royalty and the contribution to the District Mineral Foundation under Section 73 of the Act, instead of Section 74 of the Act; and

(e) whether the penalty imposed under Section 122(2)(b) of the Act is sustainable.

Issue (a): Distillery Licence Fee

13.0 The Appellant accepts that the payment to the Commissioner of Prohibition and Excise, Government of Telangana, was a licence fee for the renewal of Licence DR2 (RG) for manufacture of spirits from grain for industrial use. The Appellant's sole objection is that Extra Neutral Alcohol (ENA) and rectified spirit so manufactured are industrial inputs, not "alcoholic liquor for human consumption," and thus do not fall within the exemption.

13.1 The Appellant submits that fiscal exemptions must be construed narrowly; ENA and rectified spirit, by reason of their concentration, denaturing and distribution to industrial users, are distinguishable from potable liquor and are properly characterised as industrial commodities. Accordingly, the licence renewal fee connected to their manufacture does not attract the Notification's exemption and remains taxable.

13.2 The relevant entry of Notification No. 25/2019-Central Tax (Rate) dated 30.09.2019 reads as under:

> *"Service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called."*

13.3 The entry forms part of a notification under which activities or transactions undertaken by the State Governments, in which they are engaged as public authorities, are treated neither as a supply of goods nor as a supply of services. The Appellant itself relies on the Notification as amended with retrospective effect from 01.07.2017. The entry, therefore, governs the entire period of dispute, namely, July 2017 to March 2019.

13.4 On a plain reading, the entry contains the following elements:

(f) a service by way of grant of an alcoholic liquor licence;

(g) the service is rendered by a State Government; and

(h) the consideration for the service is in the form of a licence fee or an application fee, or a fee by whatever name it is called.

13.5 The entry does not contain the words "for human consumption", or any other qualifying expression, after the words "alcoholic liquor". The submission of the Appellant requires this Tribunal to read into the entry words which the notifying authority has not employed. We are unable to subscribe to the submission that a limitation may be supplied by implication, when the language of the entry is clear and admits of only one meaning. It is a settled canon of interpretation that, where the words of a notification are plain and

unambiguous, they must be given their natural meaning, and that a Court or Tribunal is not entitled to add to or subtract from the words used.

13.6 The minutes of the 26th meeting of the GST Council have been relied upon by the parties. We are of the considered opinion that the minutes cannot be preferred to the text of the notification which has been issued to give effect to the recommendations of the Council. The notification is the instrument that operates in law, and, the text of the entry being free from ambiguity, no occasion arises to resort to the minutes for the purpose of construing it. We have, therefore, proceeded on the wording of the Notification alone.

13.7 The expression "alcoholic liquor" is not defined in the Notification. The licence in question is granted by the State Government under the Telangana Excise Act, 1968, and both sides have placed reliance on the provisions of that enactment. In this context, the FAA has referred, at paragraphs 19 and 22 of the order impugned, to Section 2(21) of the Telangana Excise Act, 1968, which defines the word "liquor". The said definition reads as under:

> *(21) "liquor" includes,-*
>
> *(a) Spirits of wine, denatured spirits, methylated spirits, rectified spirits, wine, beer, toddy and every liquid consisting of or containing alcohol; and*
>
> *(b) Any other intoxicating substance which the Government may by notification, declare to be liquor for the purposes of this Act;*

13.8 On a perusal of Section 2(21) of the Telangana Excise Act, 1968, it is clear that the expression "liquor" includes, among others, denatured spirits, methylated spirits and rectified spirits. The FAA has, after examining the nature and the types of ENA at paragraphs 19 and 22 of the order impugned,

held that ENA is liquor within that definition. We do not have any reservation in holding that ENA and rectified spirits are liquor. We find no reason to hold that the notifying authority intended the expression "alcoholic liquor" to bear a narrower meaning than the expression "liquor" bears under the State enactment under which the Licence is granted.

13.9 The Appellant has relied upon the decisions in Synthetics and Chemicals Ltd. (supra), Modi Distillery (supra) and Jain Distillery (P) Ltd. (supra) for the proposition that ENA is an industrial input and not alcohol for human consumption. The Appellant has not brought to our notice any passage in these decisions in which the words of Notification No. 25/2019-Central Tax (Rate) have been construed. The Respondent has submitted that these decisions relate to the levy on the supply or sale of ENA, whereas the question before us is the treatment of the fee paid for the licence to manufacture. The distinction is well founded. The issue before us is not whether ENA is potable or non-potable, nor whether GST is leviable on the supply of ENA, but whether the fee paid for the grant or renewal of a licence falls within the entry reproduced above.

13.10 The Respondent has also contended that the licensing of the production and manufacture of intoxicating liquors is a matter within Entry 8 of the State List to the Constitution of India. In view of our finding on the text of the entry, it is not necessary for us to examine this contention, and we express no opinion thereon.

13.11 The Respondent has drawn attention to Circular Cr. No. 145/2018/DDB/Ex/G3 dated 29.03.2018 and Circular Cr. No.

286/2019/DDB/Ex/G3 dated 04.04.2019, to show that the State Government has been collecting Distillery Excise Tax. Our conclusion, however, rests on the text of the entry and not on the circulars.

13.12 The Appellant has not contended that the amount paid by the Respondent is anything other than a fee for the licence. The expression "by whatever name it is called" in the entry is wide enough to take within its fold a fee for the renewal of the licence, whether styled as a licence fee or as a distillery excise fee.

13.13 We find that the Licence fee paid by the Respondent to the Commissioner of Prohibition and Excise, Government of Telangana, is a consideration in the form of licence fee for the grant of an alcoholic liquor licence, and that the entry in Notification No. 25/2019-Central Tax (Rate) dated 30.09.2019 is attracted. The FAA was correct in extending the benefit of the Notification to the Respondent, and the ground of the Appellant on this issue is rejected.

Issue (b): Boiler, Factory, Pollution Control Board and Explosive Licence Fees

14.0 The Appellant does not dispute that the amounts in question were paid to the Government of Telangana in connection with the boiler, the factory, the pollution control clearance and the carbon dioxide explosive licence of the Respondent. The contention of the Appellant is confined to the proposition that the entry covers only the grant of a licence or permission for performing an activity in the course of business, and not the renewal thereof.

14.1 The relevant entry, being Entry No. 47 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended, reads as under:

47	Heading 9983 or Heading 9991	Services provided by the Central Government, State Government, Union territory or local authority by way of- (a) registration required under any law for the time being in force; (b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force.	Nil	Nil

14.2 The Appellant themself describes the entry as covering the grant of a licence or permission by the Government. The question is whether a renewal falls outside such grant. We are unable to accept that it does.

14.3 A Licence or permission granted for a period, or subject to periodic inspection or certification, ceases to authorise the activity on the expiry of the period, or on the lapse of the certification. The renewal of the licence, or the renewed certification, is the means by which the Government authorises the continuance of the activity for a further period. In substance, a renewal is the grant of a licence or permission for that further period. The Appellant has not indicated any provision of the entry that excludes a renewal, or that confines the entry to a first-time or one-time grant.

14.4 The Respondent has submitted that, under the Factories Act, the boilers installed in a factory are required to be inspected periodically and a certificate certifying their fitness is required to be issued. The periodic character of the statutory requirement reinforces the view that a renewal fee is a fee paid in the ordinary course of obtaining the authorisation to operate.

14.5 The entry, as it stands, draws no distinction between a fee for the first-time grant and a fee for renewal. A distinction not found in the text of the entry cannot be introduced by way of construction, and the Appellant has not pointed to any provision in the notification that supports the restriction sought to be read into the entry.

14.6 We find that all fees paid by the Respondent, whether for the renewal or for the first-time obtaining of the licence, certificate or registration, are covered by Entry No. 47 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, and that the exemption contained therein cannot be disputed. The FAA was correct in extending the benefit of the entry to the Respondent, and the ground of the Appellant on this issue is rejected.

Issue (c): Water Charges

15.0 The Appellant contends that the amount paid by the Respondent to the Irrigation Department is a licence fee for the provision of a water supply facility and not a payment for water as such, and that Entry No. 99 of Notification No. 02/2017-Central Tax (Rate) dated 28.06.2017 is confined to the sale of water, for which an invoice or bill is generally generated.

15.1 The relevant entry, being Entry No. 99 of Notification No. 02/2017-Central Tax (Rate) dated 28.06.2017, reads as under:

99	2201	Water [other than aerated, mineral, 51[***] distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container]

15.2 The Respondent has placed on record that the Irrigation Department of the Government of Telangana prescribed, by G.O. Ms. No. 115, I & CAD Department dated 27.06.2015, a fee of ₹3.85 per 1000 gallons of water, payable on a monthly basis as per the quantum withdrawn. The Respondent has further stated that it installed water meters at its own cost for computing the quantum of consumption every month.

15.3 The amount payable by the Respondent is thus not a fixed fee for the grant of a permission or the maintenance of a facility. It varies with, and is computed on, the quantity of water actually drawn, as measured by the meters. A charge which is fixed by reference to the volume of water supplied, and which is payable in proportion to that volume, is in substance the price of the water supplied, irrespective of the nomenclature under which it is levied.

15.4 Section 7(1)(a) of the Act includes, within the scope of supply, all forms of supply of goods or services or both, such as sale, transfer, barter, exchange, licence, rental, lease or disposal, made or agreed to be made for a consideration. The Appellant itself proceeds on the footing that the entry is applicable to the sale of water. The supply of water by the Government to the Respondent against a consideration computed per unit of quantity is a sale of

water by the Government. The description of the payment as a licence fee does not alter its character.

15.5 The Appellant has contended that an invoice or bill is generally generated in the case of a sale of water. The entry does not make the generation of an invoice or a bill a condition of the exemption. The absence of an invoice cannot convert a supply of water into something other than a supply of water, and a condition not found in the entry cannot be introduced by construction.

15.6 The water drawn by the Respondent is raw natural water and it is not branded. The Appellant has not contended that the water is of any category that is excluded from the entry.

15.7 The Respondent has also relied on paragraphs 6.2 and 6.3 of Circular No. 52/26/2018-GST dated 09.08.2018. In view of our finding on the text of the entry, we do not find it necessary to rest our conclusion on the Circular.

15.8 We find that the Water Charges paid by the Respondent are the consideration for the sale of raw, unbranded water by the Government, and that the supply is exempted by Entry No. 99 of Notification No. 02/2017-Central Tax (Rate) dated 28.06.2017. The FAA was correct in extending the benefit of the entry to the Respondent, and the ground of the Appellant on this issue is rejected.

Issue (d): Royalty and District Mineral Foundation contribution – Section 73 or Section 74

16.0 It is not in dispute before us that GST is payable on the Royalty and the contribution to the District Mineral Foundation. The Learned Counsel for the Respondent has admitted the same. The only question that survives is whether the demand is sustainable under Section 74 of the Act, as proposed in the SCN and confirmed in the OIO, or is to be determined under Section 73 of the Act, as directed by the FAA.

16.1 Section 74(1) of the Act, in so far as is relevant, provides as under:

> *"(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax … requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice."*

16.2 Explanation 2 to Section 74 of the Act provides as under:

> *"For the purposes of this Act, the expression 'suppression' shall mean 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."*

16.3 Section 75(2) of the Act provides as under:

"Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under section 74(1) is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under section 73(1)."

16.4 The provisions extracted above yield the following propositions:

(i) Section 74(1) may be invoked only where the non-payment of tax is by reason of fraud, or wilful misstatement, or suppression of facts, in each case to evade tax;

(j) the qualifying words "to evade tax" require that the intent to evade tax be established, and mere non-payment of tax is not sufficient;

(k) suppression, as defined in Explanation 2, is the non-declaration of facts or information which the taxable person is required to declare, or the failure to furnish information called for in writing by the proper officer; and

(l) where an Appellate Authority, an Appellate Tribunal or a court concludes that the charges of fraud, wilful misstatement or suppression of facts to evade tax have not been established, Section 75(2) directs that the tax payable be determined as if the notice had been issued under Section 73(1).

16.5 The FAA, being an Appellate Authority, was expressly empowered by Section 75(2) of the Act to take the course that he has taken. The contention

of the Appellant that the FAA erred in converting the demand cannot be accepted merely on the ground that the SCN was issued under Section 74. The question is whether the charge of fraud, wilful misstatement or suppression of facts to evade tax has been established.

16.6 The Appellant has asserted in its grounds that the Respondent suppressed facts with intent to evade tax. However, the Appellant has not identified any specific fact or information which the Respondent was required to declare and did not declare, or any information called for in writing by the proper officer which the Respondent failed to furnish. The entire controversy arises out of a verification of the books and accounts of the Respondent, and the payments in question were reflected in those very books. A liability that is discovered from the books of account maintained by the taxable person himself does not by itself indicate suppression within the meaning of Explanation 2.

16.7 The issue whether Royalty is subject to GST has been highly interpretative, as submitted by the Respondent. The question whether Royalty partakes of the character of a tax, and the consequences thereof, has engaged the attention of various courts, including the Hon'ble Supreme Court, and divergent views have been expressed. Where the law itself was in a state of uncertainty, a taxable person who does not pay tax on a payment of this nature cannot, without more, be said to have acted with the intent to evade tax.

16.8 The Hon'ble Supreme Court, in CCE v. Chemphar Drugs and Liniments, 1989 (40) ELT 276 (SC), has observed that fraud and the like are essentially

questions of fact, and that non-declaration of a particular matter is not suppression if there is no deliberate withholding of information. In Tamil Nadu Housing Board v. CCE, 1991 (74) ELT 9 (SC), it was observed that an intention to evade payment of duty is something more than a mere failure to pay duty, that the assessee must be aware that the duty is leviable and must deliberately avoid payment, and that where there was scope for doubt whether duty was payable, an intention to evade cannot be attributed. These decisions were rendered under the Central Excise law, but the expressions considered therein are of similar import to those employed in Section 74(1) of the Act, and the principles apply with equal force.

16.9 The Central Board of Indirect Taxes and Customs, in Instruction No. 05/2023-GST dated 13.12.2023, has clarified that Section 74(1) cannot be invoked merely on account of non-payment of GST, without a specific element of fraud, wilful misstatement or suppression of facts to evade tax. Although the Instruction was issued after the period of dispute, it is consistent with the plain reading of the statutory provision that we have adopted.

16.10 Further, the Bench directed the respondent to elucidate whether the impugned supplies viz., Royalty and contributions made to District Mineral Foundation on which they had not paid the alleged GST under RCM, had been disclosed in its GST returns. Having perused the respondent's explanation and the materials on record, the Bench finds the explanation to be satisfactory. There is no provision in the return format that expressly requires disclosure of inward supplies, which according to them are not leviable to GST, nor is there a statutory field according to them to record supplies asserted to be taxable

only under the reverse charge mechanism. In such circumstances, it would be unreasonable and contrary to principles of fair notice to treat the absence of such disclosure in the statutory return as constituting suppression. It is also undisputed that the said inward supplies were duly reflected in the respondent's books of account. On the aforesaid basis, the allegation of suppression in respect of the supplies on which no GST had been paid by them are without substance.

16.11 In the light of the above, we find that the elements of fraud, wilful misstatement or suppression of facts to evade tax have not been established against the Respondent in respect of the tax on Royalty and the contribution to the District Mineral Foundation. No mens rea can be attributed to the Respondent for the non-payment of tax on these payments. As such the reliance upon Section 74 of the Act in relation thereto is unsustainable.

16.12 We are of the considered opinion that the FAA was fully justified in directing re-computation of the demand under Section 73 of the Act, in exercise of the power conferred by Section 75(2) of the Act. The ground of the Appellant on this issue is rejected.

Issue (e): Penalty under Section 122(2)(b) of the Act

16.0 The FAA, while converting the demand from Section 74 to Section 73 of the Act, did not record any finding on the penalty imposed by the AA under Section 122(2)(b) of the Act. The effect of the omission is that the Respondent stands fastened with a penalty equal to the amount of tax confirmed, namely ₹21,52,184/-.

16.1 The Appellant, in the prayer, seeks the restoration of the OIO in its entirety. The OIO includes the penalty imposed under Section 122(2)(b) of the Act, and the sustainability of the penalty, therefore, falls for consideration in this appeal.

16.2 Section 122(2) of the Act, in so far as is relevant, provides as under:

> *"(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised, —*
>
> *… (b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher."*

16.3 Clause (b) of Section 122(2) is attracted only where the tax has not been paid for the reason of fraud, or wilful misstatement, or suppression of facts to evade tax. The expression employed is the same as the expression employed in Section 74(1) of the Act. The penalty under clause (b) cannot be imposed unless the very same elements are established.

16.4 We have held in paragraph 15.10 above that the elements of fraud, wilful misstatement or suppression of facts to evade tax have not been established against the Respondent, and that the demand on Royalty and the contribution to the District Mineral Foundation is sustainable only under Section 73 of the Act. Consequently, the condition precedent for the imposition of the penalty under Section 122(2)(b) of the Act is not satisfied.

17.0 Having found that the ingredients of Section 122(2)(b) are not attracted in the present matter, it is necessary to inquire whether the penalty can be sustained by conversion to Section 122(2)(a). This inquiry must be undertaken in the light of the statutory scheme, including the provisions of Section 75(8) of the Act, which govern the computation and adjustment of assessments and demands. In this regard, it would be pertinent to note the provisions of Section 75(8) of the Act, which reads as follows:

> *"(8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified."*

It follows, therefore, that any alteration in the quantum of tax by the FAA must concomitantly affect the quantum of penalty. Section 122(2) of the Act contemplates the imposition of penalty in both classes of cases — where suppression, willful mis-statement or fraud is found and where no such *mens rea* is established. In the present circumstances, having adjusted the demand of tax on the basis set out above, it is both permissible and appropriate for this Tribunal to reconceptualise the penalty in a manner consistent with that adjustment. Consequently, the penalty originally framed under Section 122(2)(b) is to be converted and sustained, insofar as applicable, under Section 122(2)(a), and the quantum of penalty is modified accordingly.

Conclusion and Directions

18.0 In conclusion, we uphold the First Appellate Authority's determinations. The FAA was correct in extending the benefit of Notification

No. 25/2019—Central Tax (Rate) dated 30 September 2019, Entry No. 47 of Notification No. 12/2017—Central Tax (Rate) dated 28 June 2017, and Entry No. 99 of Notification No. 02/2017—Central Tax (Rate) dated 28 June 2017, to the transactions in issue. We further find that the FAA rightly directed a re-computation of the impugned demand qua royalty and the contribution to the District Mineral Foundation under Section 73 of the Central Goods and Services Tax Act. Finally, in the absence of findings sustaining the higher degree of culpability requisite for the application of Section 122(2)(b), the penalty originally levied under Section 122(2)(b) must stand converted and be reworked under Section 122(2)(a) of the Act. The consequential recalculation of the penal liability shall be effected in accordance with the revised computation of tax.

19.0 The issues framed in paragraph 12.0 above is answered accordingly.

ORDER

20.0 On the above terms, the appeal is disposed of.

21.0 No order as to costs.

(Pronounced in open court on 17.11.2026 in the presence of DR)

Digitally signed by
A P RAVI
17-11-2026 16:52:54 IST

(A P Ravi)
Judicial Member

Digitally signed by
DUVVURI KRISHNA SRINIVAS
18-11-2026 10:28:07 IST

(Duvvuri Krishna Srinivas)
Technical Member

Date: 17.11.2026