GOODS AND SERVICES TAX APPELLATE TRIBUNAL

BENGALURU BENCH

DIVISION BENCH – COURT NO. 3

APL/42/BUR/2026

The Commissioner of Central GST and Central Excise,

Belagavi Commissionerate **……Appellant**

Versus

M/s PRN Infratech, Hubballi **……Respondent**

Counsel for Appellant	**Counsel for Respondent**
Shri Venu Gopala Naidu	Shri Jatin Christopher
Assistant Commissioner	Chartered Accountant
Departmental Representative	Authorised Representative

Hon'ble Shri Prabhakaran P.M., Judicial Member

Hon'ble Shri Ravi Jesuraj S., Technical Member (State)

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the Goods and Services Tax Appellate Tribunal

Whether Remand Order: No

1.	GSTIN/Temporary ID/UIN	29AACFP9636K1ZM
2.	Appeal Case Reference No.	APL/42/BUR/2026
	Appeal Date	12-05-2026
3.	Name of the Appellant	The Commissioner of Central GST and Central Excise, Belagavi Commissionerate, No. 71, Club Road, Belagavi – 590 001. Through Shri Venu Gopala Naidu, Assistant Commissioner, Departmental Representative.
4.	Name of the Respondent	M/s PRN Infratech, "Prakalpa", No. 34, Brindavan Layout, Vidyanagar, Hubballi – 580 021. Through Shri Jatin Christopher, Chartered Accountant, Authorised Representative.
5.	Order Appealed Against	Order-in-Appeal No. BGM-JJ-ADC-30-2023-24-GST passed by the Additional Commissioner (Appeals), Central Tax, Belagavi.
	Order Type	Order-in-Appeal under Section 107 of the CGST Act, 2017, modifying Order-in-Original No. BEL-GST-000-HBL-AC-PBG-24-2020-21 dated 30.03.2021 passed by the Assistant Commissioner, Hubballi Division.
	Reference No	BGM-JJ-ADC-30-2023-24-GST
	Order Date	26-06-2023

6.	Personal Hearing	10-09-2026, 06-10-2026 and 27-10-2026
7.	Order in Brief	Appeal of the Revenue allowed. The non-payment of GST on royalty under reverse charge for July 2017 to October 2019 was by reason of suppression of facts to evade tax. The demand of Rs. 1,00,20,488/- is confirmed under Section 74(1), with interest under Section 50 and a penalty equal to the tax. The Order-in-Appeal is set aside to the extent it applied Section 73 and imposed a penalty under Section 73(9).

Summary of Order

8.	If Demand order then whether Demand Quantified	Yes. Details below.		
	Particulars (Rs.)	CGST	SGST	Total
	Tax (Section 74(1))	50,10,244	50,10,244	1,00,20,488
	Interest (Section 50)	To be computed	To be computed	To be computed
	Penalty (Section 74(9) read with Section 74(1))	50,10,244	50,10,244	1,00,20,488

	Less: paid on 20.11.2019, appropriated against tax	23,18,625	23,18,625	46,37,250
9.	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	
	Non-payment of GST under reverse charge on royalty of Rs. 8,86,04,082/- deducted by Government departments from July 2017 to October 2019, by suppression of facts to evade tax. Tax of Rs. 1,00,20,488/-, interest and penalty equal to tax confirmed under Section 74(1).	Tax payable. Suppression found, but not shown to have been made to evade tax. Demand confirmed under Section 73 with interest and a penalty of ten per cent under Section 73(9).	The facts were suppressed to evade tax. Section 74 applies. Tax of Rs. 1,00,20,488/-, interest under Section 50 and a penalty of Rs. 1,00,20,488/- confirmed. Rs. 46,37,250/- already paid to be appropriated.	
10.	If remanded with Directions	Not Applicable.		

Place: Bengaluru **Date: 19-11-2026**

FINAL ORDER

Per: Shri Ravi Jesuraj S., Technical Member (State)

Introduction

1. The question involved in this appeal is whether the failure of the Respondent to pay GST on royalty under reverse charge for the period from July 2017 to October 2019 was "by reason of … suppression of facts to evade tax" within the meaning of Section 74(1) of the Central Goods and Services Tax Act, 2017 ("the CGST Act") and of the Karnataka Goods and Services Tax Act, 2017 ("the KGST Act"). The Additional Commissioner (Appeals), Central Tax, Belagavi ("the Appellate Authority"), found that the Respondent had suppressed these transactions, but held that the suppression was not shown to have been made to evade tax. On that view, it confirmed the demand under Section 73. The Revenue challenges that conclusion. If Section 74 applies, the further question is whether the Respondent must bear the penalty which that section attaches to such a finding, namely a penalty equal to the tax.

2. The Appellant is the Commissioner of Central GST and Central Excise, Belagavi Commissionerate. The Respondent, M/s PRN Infratech, is a partnership firm at Hubballi. The appeal is directed against Order-in-Appeal No. BGM-JJ-ADC-30-2023-24-GST dated 26.06.2023. The Revenue has filed this appeal under Section 112(3).

3. The levy of GST on royalty, and the amount of tax, are not in dispute before us. Only two questions remain: whether the demand falls under Section 74 or under Section 73, and what interest and penalty follow. In this order, a section means a section of the CGST Act unless stated otherwise. The KGST Act contains the same provisions.

Facts of the case

4. The Respondent executes works contracts for Government departments. It builds roads, dams, reservoirs and bridges. Its clients include the Karnataka Urban Water Supply and Drainage Board and the Public Works Department.

5. Under these contracts, the departments charge royalty on the minor minerals used in the work, such as gravel, murrum, rock fill and sand. They work out the royalty in a statement, which shows the quantity of each mineral and the rate applied, and deduct it from the running account bills. In RA Bill No. 3 under Agreement No. KWB/EEB/DM/55/2017-18 dated 26.12.2017, for instance, the Board deducted Rs. 37,52,549/- as royalty.

6. Between July 2017 and October 2019, the departments deducted royalty of Rs. 8,86,04,082/- in this way. The Respondent entered each deduction in its ledgers as royalty paid to the Government. It did not pay GST on these amounts under reverse charge. Nor did it show them in any of its monthly GSTR-3B returns for July 2017 to September 2019.

7. Officers of the Hubli-Dharwad Preventive Unit received intelligence about this. On 20.09.2019, the Superintendent wrote to the Respondent and called for its records. A summons followed on 11.10.2019, and further letters on 18.10.2019 and 05.11.2019. On 14.11.2019, the Respondent produced its royalty ledgers, its GSTR-3B returns and sample RA bills.

8. On 20.11.2019, the Respondent paid Rs. 46,37,250/-. This was the tax on royalty for April 2019 to October 2019. It paid no interest, and nothing for July 2017 to March 2019.

9. On 28.11.2019, Shri Luther Swarna gave a statement under Section 70. He said that he had been the General Manager (Accounts) of the firm since 2010, and that he was in charge of its GST returns and tax payments. He accepted that licensing services for the right to use minerals, including their exploration and evaluation, are liable to GST under reverse charge. In the same answer, he said that the Government deducted the royalty while paying the contract amount, and that the firm held no mining licence and so did not fall under SAC 997337, which covers "licensing services for the right to use minerals including its exploration and evaluation". In short, he accepted that the service was taxable, but disputed that the firm received it. Asked why tax had been paid for April to October 2019 but not for the earlier months, he said that it was paid to reduce the amount in litigation, and because the tax so paid was available as input tax credit.

10. On 30.10.2020, the Assistant Commissioner (Preventive), Belagavi, issued a show cause notice under Section 74 of the CGST Act and the KGST Act. It proposed a demand of Rs. 1,00,20,488/- (CGST Rs. 50,10,244/- and SGST Rs. 50,10,244/-) for July 2017 to October 2019, with interest under Section 50 and a penalty under Section 122(2)(b) read with Section 74. Paragraph 8 of the notice set out the statement of the General Manager. Paragraph 11 recorded that the Respondent paid Rs. 46,37,250/- only after it was told that the tax was payable. Paragraph 12 alleged that the Respondent had suppressed the royalty by leaving it out of its monthly returns, that it had not self-assessed the tax, and that the default came to light only through the investigation.

11. The Respondent replied on 25.11.2020 and 12.01.2021 and denied liability. It said that it held no mining lease, that it bought its materials from licensed suppliers, and that the deduction only recovered royalty which the miners had not paid. Relying on the decision in *India Cement Ltd. v. State of Tamil Nadu*, (1990) 1 SCC 12, it said that royalty is a tax, and pointed out that this question was pending before a nine-Judge Bench of the Hon'ble Supreme Court. It pleaded that the matter was revenue neutral and denied any suppression. It also produced a letter of the Department of Mines and Geology, Dharwad, stating that no lease stood in its name and that no royalty had been received directly from it. Neither reply questioned the statement of the General Manager.

12. By Order-in-Original No. BEL-GST-000-HBL-AC-PBG-24-2020-21 dated 30.03.2021, issued on 31.03.2021, the Assistant Commissioner, Hubballi Division ("the Adjudicating Authority"), confirmed the demand of Rs. 1,00,20,488/- under Section 74(1). He appropriated the sum of Rs. 46,37,250/- already paid, ordered interest under Section 50, and imposed a penalty equal to the tax under Section 122(2)(b).

13. The Respondent appealed. By order dated 26.06.2023, the Appellate Authority held that the Respondent was liable to pay GST on royalty. It found that the Respondent had not declared the royalty in its returns, and that these transactions would have gone unnoticed but for the preventive officers. It held, however, that the suppression was not shown to have been made to evade tax. It relied on three circumstances: the levy on royalty had long been under challenge in the courts; tax paid under reverse charge was available as credit; and the Central Board of Indirect Taxes and Customs ("the Board") had later clarified the rate by Circular No. 164/20/2021-GST dated 06.10.2021. It therefore confirmed the demand under Section 73, with interest under Section 50 and a penalty of ten per cent of the tax under Section 73(9).

14. On 20.12.2023, the Principal Commissioner reviewed that order under Section 112(3), found it not legal and proper on the Section 74 point, and directed that this appeal be filed.

15. The appeal was heard on 10.09.2026, 06.10.2026 and 27.10.2026. Shri Venu Gopala Naidu, Assistant Commissioner, appeared for the Revenue. Shri Jatin Christopher, Chartered Accountant, appeared for the Respondent.

Submissions of the Appellant

16. It was submitted that the Appellate Authority itself found that the Respondent had suppressed its taxable transactions, and that the default would have gone unnoticed but for the investigation. Having so found, it could not apply Section 73.

17. It was submitted that the cases pending before the courts concerned service tax. Under GST, the position was clear, because SAC 997337 expressly covers "licensing services for the right to use minerals including its exploration and evaluation".

18. It was submitted that payment of tax under reverse charge is a statutory duty, and that the availability of credit does not excuse non-payment. A taxpayer who leaves such a supply out of its returns, and pays nothing on it, evades the tax.

19. It was submitted that Circular No. 164/20/2021-GST only clarified the rate. The liability existed before it, and the circular cannot support a plea of bona fide belief. The order of the Appellate Authority should therefore be set aside and the Order-in-Original restored.

Submissions of the Respondent

20. It was submitted that the Respondent concealed nothing. Government departments deducted the royalty in their own bills, and every deduction stood recorded in the Respondent's books. When the officers asked for records, the Respondent produced them, and the whole demand rests on those records.

21. It was submitted that the Respondent held no mining lease, and honestly believed that the lease-holders, and not it, received any service from the State. Whether royalty is a tax was then pending before a nine-Judge Bench of the Hon'ble Supreme Court, and the Department itself was unsure of the rate. A tax left unpaid on such a belief is not a tax evaded.

22. It was submitted that the tax, if payable, was available as credit, so that the Respondent gained nothing by not paying it. Reliance was placed on *Formica India Division v. Collector of Central Excise*, (1995) 77 ELT 511 (SC).

23. It was submitted that the Respondent paid the tax for April to October 2019 under protest, to narrow the dispute, and that the Revenue had pleaded no positive act of concealment.

24. It was submitted that interest is not payable where the tax itself is not payable, and reliance was placed on *Pratibha Processors v. Union of India*,

(1996) 11 SCC 101. The order of the Appellate Authority was correct and should be upheld.

Issues for consideration

25. The following issues arise for consideration:

(i). Whether the non-payment by the Respondent of GST on royalty for July 2017 to October 2019 was "by reason of … suppression of facts to evade tax" within the meaning of Section 74(1); and

(ii). Whether the Respondent is liable to interest under Section 50 and to a penalty equal to the tax under Section 74, in place of the penalty under Section 73(9) imposed by the Appellate Authority.

Discussion and findings

Scope of the appeal

26. The review order questions only the shift from Section 74 to Section 73. The Respondent has not challenged, by an appeal of its own, the finding that GST is payable on royalty, and the amount of tax is not in dispute. Neither question is open in this appeal. We are aware that the levy of GST on royalty has been questioned in several courts. Our decision does not touch that question. We proceed on the footing that the tax was payable.

27. An appeal under Section 112 lies to this Tribunal on questions of fact as well as of law. Section 113(1) defines our power:

> "113. (1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against …"

Whether facts were suppressed to evade tax is a question of fact. Under the Act, this Tribunal is the final authority on facts. We have therefore examined the record for ourselves. We have not confined ourselves to asking whether the view of the Appellate Authority was a possible one.

Issue (i): Whether the demand falls under Section 74 or Section 73

The scheme of Sections 73 and 74

28. Sections 73(1) and 74(1), as they stood during the period in dispute, read:

> "73. (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 for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who

has wrongly availed or utilised input tax credit, 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 leviable under the provisions of this Act or the rules made thereunder."

"74. (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 which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, 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."

29. Explanation 2 to Section 74 defined "suppression" as follows:

"Explanation 2.—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."

30. Explanation 2 was omitted with effect from 01.11.2024, and the same definition now appears as Explanation 2 to Section 74A. The notice in this case was issued on 30.10.2020, and the Order-in-Original was passed on 30.03.2021. Explanation 2 was then part of the Act, and it governs this case.

31. Both sections deal with the same default: tax not paid. What separates them is the reason for the default. Section 74 applies where tax is unpaid "by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax". Every other case falls under Section 73. The consequences also differ. Section 73(9) reads:

> "(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order."

Under Section 73, the penalty is thus ten per cent of the tax, or ten thousand rupees, whichever is higher. Under Section 74, it is equal to the tax. The heavier penalty answers the graver default. That is why the Act asks for more

before Section 74 can be applied, and why the line between the two sections must be drawn with care.

32. The Revenue's case is that a finding of suppression is enough to take the matter out of Section 73. We cannot accept that submission in so bare a form. Section 74(1) does not speak of suppression alone. It speaks of "suppression of facts to evade tax". Explanation 2 tells us what suppression is: the non-declaration of facts which the taxpayer must declare. It describes the act. It says nothing about the object of the act. That object is supplied by the words "to evade tax". Two things must therefore be proved. The first is a suppression within Explanation 2. The second is that the facts were suppressed to evade tax, so that the suppression is the reason the tax went unpaid. The burden of proving both lies on the Revenue.

33. Section 73 confirms this reading. It covers non-payment "for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax". A taxpayer who has not paid tax will nearly always have left the item out of a return. If every such omission attracted Section 74, Section 73 would have very little left to cover. A non-declaration may thus be suppression within Explanation 2 and yet fall under Section 73, if it is not shown to have been made to evade tax.

The principles laid down by the Honourable Courts

34. The Hon'ble Supreme Court has explained similar words in the central excise law, and its guidance helps in reading Section 74. It was held by the Hon'ble Supreme Court in *Collector of Central Excise v. Chemphar Drugs and Liniments*, (1989) 2 SCC 127, that something positive, other than mere inaction or failure, must be shown, and that there must be a conscious or deliberate withholding of information by an assessee who knew otherwise. It was held in *Pushpam Pharmaceuticals Co. v. Collector of Central Excise*, 1995 Supp (3) SCC 462, that suppression means a deliberate act or omission to escape payment of duty, and does not cover a failure made in good faith.

35. It was held by the Hon'ble Supreme Court in *Cosmic Dye Chemical v. Collector of Central Excise*, (1995) 6 SCC 117, that a misstatement or suppression of facts must be wilful, that is, made in order to evade duty. It was held in *Anand Nishikawa Co. Ltd. v. Commissioner of Central Excise*, (2005) 7 SCC 749, that suppression of facts means a deliberate failure to disclose correct information in order to escape duty. It was held in *Continental Foundation Jt. Venture v. Commissioner of Central Excise*, (2007) 10 SCC 337, that an omission to give correct information is suppression only when it is deliberate and meant to stop payment of duty. It was held in *Uniworth Textiles Ltd. v. Commissioner of Central Excise*, (2013) 9 SCC 753, that mere non-payment of duty does not by itself amount

to suppression, and that the burden of proving such conduct lies on the Revenue.

36. These decisions construed the central excise law, which was framed in different words. Section 74(1) does not ask about the state of mind of the taxpayer in the abstract. It asks whether facts were suppressed to evade tax. We apply these decisions to that question, and only so far as they explain when an omission becomes suppression.

37. The High Courts have applied the same test to Section 74. It was held by the Hon'ble High Court of Karnataka in *M/s NCS Pearson Inc. v. Union of India*, W.P. No. 7635 of 2024 (T-RES), decided on 16.07.2025, that a mere omission to state the correct value in a return is not suppression, and that Section 74 applies only where facts are wilfully suppressed to evade tax. That judgment of the jurisdictional High Court binds this Bench. It was held by the Hon'ble High Court of Andhra Pradesh in *M/s Sriba Nirman Company v. Commissioner (Appeals), Guntur*, W.P. No. 25826 of 2023, decided on 29.01.2025, that suppression in Section 74 means wilful or deliberate suppression for evading tax, and that every non-payment of tax cannot be treated as evasion. On the facts before it, the Hon'ble High Court found wilful suppression in the conduct of the taxpayer and upheld the proceedings under Section 74.

38. We respectfully follow these principles. Read with Explanation 2, they yield a clear test. A non-declaration, without more, does not bring a case within Section 74. Whether the facts were suppressed to evade tax is a question of fact. It is seldom proved by direct evidence, and the law does not demand such evidence. It is found from what the taxpayer knew and what the taxpayer did. Non-payment alone does not prove it. But non-payment by a person who knew that the tax applied, who kept the transactions out of every return, who disclosed nothing to the proper officer, and who paid only part of the tax after the officers began their inquiry, may well prove it. The charge is proved when the facts established on the record, taken together, reasonably lead to that conclusion.

The requirements of the show cause notice

39. The facts on which such a finding rests must be stated in the show cause notice. It was held by the Hon'ble Supreme Court in *M/s G.R. Infra Projects Ltd. v. State of Madhya Pradesh*, Civil Appeal No. 11277 of 2026, decided on 19.08.2026, that the allegations of fraud or suppression must be found in the notice itself, and that the words of the section cannot be used as a bland recital. It was held in *M/s Tata Steel Ltd. v. Union of India*, 2026 INSC 920, decided on 25.08.2026, that the foundational facts behind such a finding must be evident from the notice. It was held in *Collector of Central Excise v. H.M.M. Ltd.*, 1995 Supp (3) SCC 322, that the notice must put the assessee

on notice of the specific allegation, and in *Commissioner of Customs v. Toyo Engineering India Ltd.*, (2006) 7 SCC 592, that the Department cannot travel beyond the notice. It was also held in *M/s G.R. Infra Projects Ltd. v. State of Madhya Pradesh*, Civil Appeal No. 11277 of 2026, decided on 19.08.2026, that a notice which lacks these facts cannot be made good later through a counter affidavit. Whether the charge is proved is then decided at adjudication, on the evidence. We therefore examine the notice first, and confine ourselves to the facts stated in it.

40. The Board has stated the same principle for its officers. Paragraph 3.3 of Instruction No. 05/2023-GST dated 13.12.2023 reads:

> "3.3 From the perusal of wording of section 74(1) of CGST Act, it is evident that section 74(1) can be invoked only in cases where there is a fraud or wilful mis-statement or suppression of facts to evade tax on the part of the said Taxpayer. Section 74(1) cannot be invoked merely on account of non-payment of GST, without specific element of fraud or wilful mis-statement or suppression of facts to evade tax. Therefore, only in the cases where the investigation indicates that there is material evidence of fraud or wilful mis-statement or suppression of fact to evade tax on the part of the Taxpayer, provisions of section 74(1) of CGST Act may be

invoked for issuance of show cause notice, and such evidence should also be made a part of the show cause notice."

41. The Instruction was issued three years after the notice in this case. We refer to it only because it shows the Department's own reading of Section 74. It asks for two things: material evidence gathered in the investigation, and that evidence made part of the notice. Both are present here. The investigation produced the ledgers of the Respondent, its returns and the statement of its General Manager. The notice relied on each of them and listed them as relied-upon documents in its paragraph 18. It did not rest on non-payment alone.

42. The Board has since restated this position in Circular No. 258/04/2026-GST dated 26.10.2026, issued under Section 168(1). Paragraph 5.1 of the Circular reads:

"5.1 The notice should specifically disclose the basis for invoking the provisions relating to tax demand on grounds of fraud, wilful-misstatement, or suppression of facts."

43. Paragraph 5.3 of the Circular says that Section 74(1) cannot be invoked merely because GST was not paid, without specific evidence of fraud, wilful misstatement or suppression of facts to evade tax. Paragraph 5.4 adds that this must be clearly established in the show cause notice, along with the

evidence. That is the rule we have drawn from the Act and from the decisions of the Hon'ble Supreme Court.

44. Paragraph 5.2 of the Circular says that a mere omission to furnish correct information does not amount to suppression unless it is deliberate. The Revenue is bound by its own Circular, and we have tested the case on that footing as well. The omission here was not a mere omission. As we find in paragraphs 61 to 78, the Respondent knew of the royalty and of the notification that taxed it, left the royalty out of every return for July 2017 to September 2019, disclosed nothing to the proper officer, and paid only part of the tax after detection. That omission was deliberate on any view. The case therefore meets the test in the Circular as well as the test in the Act.

45. It was held by the Hon'ble High Court of Madras in *M/s Fastenex Private Limited v. State Tax Officer*, W.P. No. 35967 of 2024 and connected cases, decided on 08.06.2026, that the words "where it appears" in Section 74(1) set a prima facie threshold for issuing the notice, and that the officer need not prove fraud or suppression before issuing it. Proof comes at adjudication. If the charge then fails, the proceeding does not lapse, for Section 75(2) treats the notice as one issued under Section 73. It reads:

> "(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 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 sub-section (1) of section 73."

The question before us is therefore not only whether the notice was validly issued, but also whether the charge of suppression of facts to evade tax has been proved on the record. We examine both.

Whether the notice states the foundational facts

46. The notice in this case is not a bland recital. It sets out the royalty paid to the Government, taken from the ledgers of the Respondent. It records that the GSTR-3B returns for July 2017 to September 2019 showed no tax paid on royalty under reverse charge. It sets out the statement of the General Manager: his acceptance that the service is taxable under reverse charge, his plea that the firm did not receive it, and his reasons for paying tax for only seven months. It records that Rs. 46,37,250/- was paid only after the Department pointed out the liability. On these facts, it alleges suppression of facts to evade tax. Read as a whole, the notice states the foundational facts and tells the Respondent the case it has to meet. The Respondent understood that case and answered it in two replies. The requirement, as held in *M/s G.R. Infra Projects Ltd. v. State of Madhya Pradesh*, Civil Appeal No. 11277 of

2026, decided on 19.08.2026, and in *M/s Tata Steel Ltd. v. Union of India*, 2026 INSC 920, decided on 25.08.2026, is met.

47. The two judgments were considered by a Division Bench of the Hon'ble High Court of Patna in *Amit Agency v. Commissioner, CGST and CX, Patna*, C.W.J.C. No. 14955 of 2024, decided on 13.10.2026. It was held there that each of those cases turned on its own facts. As discussed there, in *M/s G.R. Infra Projects Ltd. v. State of Madhya Pradesh*, Civil Appeal No. 11277 of 2026, decided on 19.08.2026, the notice made only a bland statement of fraud or concealment. In *M/s Tata Steel Ltd. v. Union of India*, 2026 INSC 920, decided on 25.08.2026, as discussed there, the Department had itself taken the audit objections to the Public Accounts Committee, which showed that the officer was not satisfied even of the short payment. It was also held that a simple case of non-payment for bona fide reasons cannot be brought within Section 74, but that every case must be examined on its own facts. The notice before us does not rest on a bare recital. It sets out the knowledge, the admission and the conduct of the Respondent.

48. It was held by the Hon'ble High Court of Kerala in *Ayyappan Pillai v. State Tax Officer*, W.P.(C) No. 29409 of 2024, 2024:KER:72634, decided on 30.09.2024, that where the notice sets out the instances of suppression, Section 74 is rightly invoked, and whether those instances are made out is

for the statutory authorities to decide on the facts. That is the task before us now.

The statement of the General Manager

49. Much turns on the statement of Shri Luther Swarna, the General Manager (Accounts) of the Respondent. It was recorded on 28.11.2019 under Section 70. It is set out in paragraph 8 of the notice, and it was considered in the Order-in-Original and in the Order-in-Appeal. At no stage has the Respondent disputed that the statement was made, or what it records. Section 70 gives such a statement its legal character:

> "70. (1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.
>
> (2) Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code."

50. A statement recorded under this power is evidence. An admission in it binds its maker unless it is shown to be untrue or involuntary. It was held by the

Hon'ble Supreme Court in *Bharat Singh v. Bhagirathi*, AIR 1966 SC 405, that an admission is substantive evidence of the fact admitted. It was held in *K.I. Pavunny v. Assistant Collector (HQ), Central Excise Collectorate, Cochin*, (1997) 3 SCC 721, and in *Naresh J. Sukhawani v. Union of India*, 1995 Supp (4) SCC 663, that a statement made to an officer of the revenue, who is not a police officer, is admissible in evidence and may be relied upon. It was held in *Surjeet Singh Chhabra v. Union of India*, (1997) 1 SCC 508, that such a statement binds its maker even when it is later retracted.

51. The statement here came from the officer who ran the accounts of the firm and filed its returns. He spoke for the firm on the very matters now in issue. The statement was never retracted. Neither reply to the notice said that it was untrue, or that it was taken under pressure. The Respondent did not question it before the Appellate Authority or before us. We therefore accept it as a true account of what the Respondent knew, and of why it paid when it did.

Whether there was suppression

52. Section 9(3) places the liability on the recipient. It reads:

> "(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the

provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both."

53. Serial No. 5 of Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017, issued under Section 9(3), covers:

> "Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, — (1) renting of immovable property, and (2) services specified below— (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers."

The supplier is the Government. The person liable to pay is "any business entity located in the taxable territory".

54. The service is classified under the Scheme of Classification of Services annexed to Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The Scheme adopts, with necessary changes, the Services Accounting Codes used internationally. Group 99733 covers "licensing services for the right to

use intellectual property and similar products". Within that group, Service Code 997337 covers "licensing services for the right to use minerals including its exploration and evaluation".

55. Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 lists the services that are exempt from tax. None of its entries covers this service as received by the Respondent. The service was therefore taxable under GST from the start. Ordinarily, the supplier of a service pays the tax on it. Where, however, the Government supplies the service to a business entity, Serial No. 5 of Notification No. 13/2017 places the liability on the recipient. On this, there was no ambiguity.

56. Section 39(1), as it then stood, required a monthly return of inward supplies and tax payable:

> "39. (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof."

57. Form GSTR-3B has a separate row for inward supplies liable to reverse charge. In every return for July 2017 to September 2019, the Respondent left that row empty for royalty. The Appellate Authority recorded this finding, and the Respondent does not dispute the omission. This is "non-declaration of facts or information which a taxable person is required to declare in the return" within Explanation 2. Suppression within the meaning of Explanation 2 is thus established. This is not a case of a wrong value stated in a return, as was the case discussed in *M/s NCS Pearson Inc. v. Union of India*, W.P. No. 7635 of 2024 (T-RES), decided on 16.07.2025. The transactions themselves were left out. The non-declaration was also the means by which the tax went unpaid, because under self-assessment a liability left out of the return is a liability left unpaid. That is the link which the words "by reason of" in Section 74(1) require. Whether the omission was deliberate, and whether the facts were suppressed to evade tax, we take up below.

58. A coordinate Bench of the Goods and Services Tax Appellate Tribunal at Chandigarh has taken the same view of Explanation 2. It was held in *M/s Bharat Packaging Industries v. Commissioner, CGST, Chandigarh*, Appeal No. APL/14/CHD/2026, decided on 28.10.2026, that rental income which the taxpayer did not declare in its GST returns, and which came to light only from its Form 26AS, amounted to suppression within Explanation 2. The

royalty here was likewise left out of every return, and came to light only through the investigation by the preventive officers.

59. The Respondent says that the royalty was openly shown in the bills of the Public Works Department and the other works departments, so that nothing was hidden. It was held by the Hon'ble Supreme Court in *Nizam Sugar Factory v. Collector of Central Excise*, (2006) 11 SCC 573, that once the facts are known to the Department, the assessee cannot be charged with suppressing them. It was held in *Audi Automobiles v. Commissioner of Central Excise and Service Tax, Indore*, 2026 INSC 858, decided on 13.08.2026, that where both sides know the facts, an omission by one of them is not suppression. In both cases, the facts were before the very authority that assessed the duty. Here they were not.

60. The works departments are not the proper officer under the Act, and they do not assess GST. The Department that does assess it learnt of the royalty only in September 2019, through intelligence gathered by its preventive officers. Explanation 2 looks to what the taxpayer declares in its own return, because the return is how the Act places the facts before the proper officer. A transaction known to a works department, but kept out of the return, remains hidden from the authority that assesses the tax. The principle, as held in *Nizam Sugar Factory v. Collector of Central Excise*, (2006) 11 SCC 573, and in *Audi Automobiles v. Commissioner of Central Excise and Service Tax,*

Indore, 2026 INSC 858, decided on 13.08.2026, does not help the Respondent.

Whether the facts were suppressed to evade tax

61. We now ask whether the facts were suppressed to evade tax. Three circumstances bear on this question: what the Respondent knew, what it disclosed, and how it paid after detection. Each is proved by the record, each was stated in the notice, and each was answered by the Respondent in its replies. We then examine the explanations offered by the Respondent, including those which the Appellate Authority accepted. We consider the circumstances together, because the answer lies in the whole of the conduct. Conduct after detection cannot by itself prove what the Respondent did during the period. We consider it because it shows what the Respondent knew, and how it chose to act on that knowledge. As we find below, that knowledge did not arise for the first time in November 2019.

62. First, the Respondent knew the facts, and knew of the notification that taxed them. The royalty was charged under its own contracts and deducted from its own bills. Its ledgers recorded the amounts as royalty paid to the Government. Serial No. 5 of Notification No. 13/2017 is plain: services supplied by a State Government to a business entity are taxed under reverse charge, and the recipient pays the tax. The Respondent is a business entity. Its General Manager had handled its accounts since 2010 and was in charge

of its GST returns. In his statement under Section 70, he accepted that licensing services for the right to use minerals are liable to GST under reverse charge. He did not claim that he, or the firm, was unaware of the levy or of the notification.

63. The General Manager disputed one thing only: that the firm received the service, because it held no mining licence. That plea does not show ignorance of the law. It accepts the levy and seeks to place it on someone else. We deal with it, as an explanation for the default, in paragraph 72. For the present question, what matters is that the Respondent itself did not act on it. It paid tax as recipient for April to October 2019. A plea which the Respondent set aside for those seven months cannot explain why nothing was declared or paid for the twenty-one months before. The facts were not unknown, and the notification, on its face, was not obscure. In the words of the Hon'ble Supreme Court in *Collector of Central Excise v. Chemphar Drugs and Liniments*, (1989) 2 SCC 127, this is an assessee "who knew otherwise".

64. Second, the Respondent disclosed nothing, either in its returns or to the proper officer. GST rests on self-assessment. Section 59 reads:

> "59. Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39."

65. A return under Section 39 is not mere silence. It is a positive statement, made by the taxpayer itself, of the tax it owes. From July 2017 to September 2019, the Respondent filed returns which declared no reverse-charge liability on royalty, though it knew of the royalty and of the notification that taxed it. Each such return told the proper officer that no such liability existed. That is the "something positive, other than mere inaction or failure" of which the Hon'ble Supreme Court spoke in *Collector of Central Excise v. Chemphar Drugs and Liniments*, (1989) 2 SCC 127. The notice alleged this in its paragraph 12, and the Respondent answered it. This also answers the submission that the Revenue pleaded no positive act of concealment.

66. A registered person who doubts whether a supply is taxable has a plain course. It may declare the value, pay the tax and contest the levy. At the least, it may disclose its view to the proper officer. Nothing in the record shows that the Respondent took any such step before 20.09.2019. It sought no clarification and no advance ruling. A doubt kept to oneself, and voiced only after the officers have found the default, does not answer the charge of suppression.

67. Third, the Respondent paid only after the investigation began, and even then only in part. The Department called for records on 20.09.2019, issued a summons on 11.10.2019, and wrote again on 18.10.2019 and 05.11.2019.

The Respondent paid on 20.11.2019. The payment came after the inquiry, and because of it.

68. A payment made after detection does not, by itself, show that facts were suppressed to evade tax. It was held in *Uniworth Textiles Ltd. v. Commissioner of Central Excise*, (2013) 9 SCC 753, that mere non-payment is not suppression. A later payment, standing alone, proves nothing either. It is, however, a relevant circumstance, and the courts have treated it as one. As discussed in *M/s Sriba Nirman Company v. Commissioner (Appeals), Guntur*, W.P. No. 25826 of 2023, decided on 29.01.2025, the taxpayer there paid its dues only after an inspection by the Directorate General of GST Intelligence. The Hon'ble High Court of Andhra Pradesh upheld the proceedings under Section 74, finding wilful suppression in the conduct of the taxpayer during the period of default. The Hon'ble Supreme Court dismissed the Special Leave Petition against that judgment, SLP (C) No. 14270 of 2025, on 16.05.2025. We do not treat that dismissal as a declaration of law, for it was held by the Hon'ble Supreme Court in *Kunhayammed v. State of Kerala*, (2000) 6 SCC 359, and in *Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.*, (2019) 4 SCC 376, that the dismissal of a special leave petition by a non-speaking order does not lay down the law. We rely on the reasoning of the High Court, which we find persuasive. It was also held by the Hon'ble High Court of Patna in *Manju Devi Agarwal v. Central Board of Indirect Taxes and Customs*, C.W.J.C. No.

862 of 2026, decided on 27.04.2026, that where the notice specifically alleged wilful suppression, payment of the tax after the default was pointed out in audit did not take the case outside Section 74.

69. What matters here is not the payment itself, but what it reveals. A taxpayer who pays tax, even to narrow a dispute, should be encouraged to do so, and we draw no adverse inference from the payment as such. The Respondent, however, did not correct the whole default. It paid for seven months, left twenty-one months unpaid, and paid no interest. Its General Manager said that the payment was made to reduce the amount in litigation, and because the tax was available as credit. His answer explained why the firm paid for those seven months. It did not explain why the twenty-one months before were left unpaid. The payment shows that the Respondent knew how to treat the royalty as an inward supply under reverse charge, and did so as soon as it chose to. A taxpayer who pays for part, after weighing the cost of litigation and the credit it can take, has made a measured choice about how much tax to pay. That is a conscious withholding, not an oversight.

70. It was held by the Hon'ble High Court of Gujarat in *Anjani Cotton Industries v. Principal Commissioner of Central GST,* R/Special Civil Application No. 17915 of 2023, decided on 03.05.2024, a case of tax payable by the recipient under Section 9(3), that a recipient which went on without paying after it had been told of the liability had deliberately not paid the tax. The Respondent

stood in the same position. Even after the officers had pointed out the liability, it left the tax for twenty-one months unpaid.

The explanations offered by the Respondent

71. The Respondent says that it paid under protest. The record does not bear this out. The statement recorded eight days after the payment gave other reasons, and the plea first appears in the appeal before the Appellate Authority. We do not treat this as a separate circumstance against the Respondent. It simply does not help it.

72. The defence of a bona fide belief does not hold. A belief can explain a default only if it existed when the default occurred. The plea that royalty is a tax, and so outside GST, was raised for the first time in the reply to the notice, more than a year after detection. It cannot explain the conduct of 2017 to 2019. It was held by a nine-Judge Bench of the Hon'ble Supreme Court in *Mineral Area Development Authority v. Steel Authority of India Ltd.*, 2024 INSC 554, decided on 25.07.2024, that royalty is not a tax. We refer to that decision only to complete the record. The question before us is what the Respondent believed during the period, and that is a question of fact. When questioned in November 2019, the General Manager of the Respondent accepted that the service was taxable, and the Respondent itself paid tax on the same royalty for seven months. The plea that only lease-holders receive the service fares no better. The royalty in question was not paid to a lease-

holder as part of the price of minerals bought from him. The Government charged royalty to the Respondent directly, under the Respondent's own contracts, and recovered it from the Respondent's own bills. The Respondent accepted those deductions and entered them in its ledgers as royalty paid to the Government. It was the Respondent, and no one else, that paid the royalty for the minerals used in its works. The plea could not, therefore, have been honestly held during the period. Whether the Respondent received the service is not open in this appeal (paragraph 26).

73. It was held by the Hon'ble Supreme Court in *Padmini Products v. Collector of Central Excise,* (1989) 4 SCC 275, that where there was scope for doubt whether duty was payable, mere failure to pay it did not attract the extended period. The principle protects a taxpayer whose doubt was real and who acted on it openly. That was the position, as reasoned in *M/s NCS Pearson Inc. v. Union of India,* W.P. No. 7635 of 2024 (T-RES), decided on 16.07.2025. There, the taxpayer had sought an advance ruling, placed all its data before the authorities, and faced conflicting views within the Revenue itself. The Respondent did none of these things. It sought no ruling and disclosed nothing. Before detection, it recorded no view at all. After detection, its General Manager accepted that the service was taxable under reverse charge, and disputed only who received it.

74. The circumstances relied on by the Appellate Authority do not concern the conduct of the Respondent during the period. The litigation it referred to arose under the earlier service tax law, and on the constitutional nature of royalty. The Respondent never said, before the notice, that it was withholding tax because of that litigation. Circular No. 164/20/2021-GST was issued on 06.10.2021, about two years after the period ended and nearly a year after the notice. A document that did not exist during the default could not have shaped the conduct that caused it. The circular also dealt only with the rate for July 2017 to December 2018. A doubt about the rate is not a doubt about the liability, and the Respondent paid at neither rate.

75. The plea of revenue neutrality is answered by the Act itself. Section 17(5)(i), as it stood during the period, denied input tax credit in respect of:

> "(i) any tax paid in accordance with the provisions of sections 74, 129 and 130."

76. Parliament thus foresaw that tax may go unpaid by reason of suppression, and denied credit of that tax when it is later recovered. The availability of credit in the ordinary course cannot, therefore, show that a suppression was innocent. It was also held in *Anjani Cotton Industries v. Principal Commissioner of Central GST,* R/Special Civil Application No. 17915 of 2023, decided on 03.05.2024, that the liability of a recipient under Section 9(3) flows from a charging provision, and that the prospect of a later refund

does not absolve the recipient. The decision in *Formica India Division v. Collector of Central Excise*, (1995) 77 ELT 511 (SC), does not assist the Respondent. It dealt with an alternative plea for credit under Rule 56A of the Central Excise Rules, 1944, once a demand was upheld. It did not decide whether the availability of credit shows that facts were not suppressed to evade duty. Besides, the explanation of the Respondent itself ties its payment to the availability of credit. If credit had made the default pointless, the Respondent had no reason to pay for some months and not for others.

77. The Respondent says that it produced every record when asked, and that the demand rests on its own books. Its cooperation after detection is to its credit, and we have weighed it with the rest of its conduct. Explanation 2, however, has two limbs: non-declaration in the return, and failure to furnish information when asked. The cooperation of the Respondent answers only the second limb. Records produced after an inquiry has begun do not cure returns that were incomplete for over two years. Nor can cooperation after detection reduce the penalty. As we explain under Issue (ii), the penalty under Section 74 is fixed by the statute once its conditions are met.

Our conclusion on the evidence

78. We now draw the threads together. This is not a case of a wrong value stated in a return, of a disputed classification openly declared, or of a doubt shared with the proper officer. The Respondent knew of the royalty, which was

charged under its own contracts. It knew of the notification that placed the tax on the recipient, and its General Manager accepted that the service was taxable under reverse charge. Even so, it left the royalty out of every return for July 2017 to September 2019, and disclosed nothing to the proper officer. When the officers found the default, it paid for seven months only, without interest, for reasons of litigation and credit, and left the rest unpaid. None of its explanations existed during the period, and none of them withstands scrutiny. Each circumstance, taken alone, may not be enough. Taken together, they lead to one reasonable conclusion: the Respondent kept the royalty out of its returns so that the tax on it would not be paid. That is suppression of facts to evade tax. The Revenue has discharged the burden that lay on it.

Where the orders below fell short

79. The Adjudicating Authority rejected the plea of the Respondent only because it had found the tax payable. That reasoning is incomplete. Whether tax is payable, and why it was not paid, are different questions. A tax default establishes a demand. It does not, by itself, establish that facts were suppressed to evade tax. The Appellate Authority rightly kept the two questions apart. It found suppression, and then asked whether the facts were suppressed to evade tax. It looked for the answer, however, in three circumstances, none of which concerned the conduct of the Respondent, and

one of which arose after the period in dispute. On this question, it did not weigh the statement of the General Manager, or the timing and partial reach of the payment. These were material facts, stated in the notice and proved on the record. A finding reached by leaving out material evidence, and by relying on circumstances that have no bearing on the question, cannot be sustained.

Decisions distinguished

80. The decision of a coordinate Bench of the Goods and Services Tax Appellate Tribunal at Thiruvananthapuram in *M/s Santhome Latex Enterprises v. Commissioner of CGST, Thiruvananthapuram*, Appeal No. APL/21/TVP/2026, Final Order No. 04/TVP/KERALA/2026 dated 21.08.2026, does not lead to a different result. There, the credit in question had been self-assessed and shown in the returns of the taxpayer, and the notice rested on a single line treating the excess credit as suppression. As reasoned in *M/s Bharat Packaging Industries v. Commissioner, CGST, Chandigarh*, Appeal No. APL/14/CHD/2026, decided on 28.10.2026, the coordinate Bench at Chandigarh likewise declined to apply Section 74 to tax on freight under reverse charge and to excess credit. In those cases, the amounts stood declared in the returns, the notice did not say how facts were suppressed, and the adjudicating authority had itself found the credit revenue neutral. None of these features is present here. Nothing was declared in any

return, and the notice sets out the admission and the conduct on which our finding rests.

81. Nor does the principle, as held in *Uniworth Textiles Ltd. v. Commissioner of Central Excise*, (2013) 9 SCC 753, assist the Respondent. Our finding does not rest on non-payment alone. It rests on the knowledge of the Respondent, the omission of the royalty from every return, the absence of any disclosure to the proper officer, and a partial and measured payment made only after detection.

82. We answer Issue (i) in the affirmative. The non-payment by the Respondent of GST on royalty for July 2017 to October 2019 was by reason of suppression of facts to evade tax, and Section 74 applies. The same findings decide the penalty, to which we now turn.

Issue (ii): The penalty and interest that follow

The penalty

83. Section 74(1) provides for "a penalty equivalent to the tax specified in the notice". Section 74(9) requires the proper officer to determine it:

> "(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order."

84. Once the conditions of Section 74(1) are established, the penalty follows in the measure the section fixes, and the officer has no discretion to reduce it. It was held by the Hon'ble Supreme Court in *Union of India v. Dharamendra Textile Processors*, (2008) 13 SCC 369, that a penalty of this kind under Section 11AC of the Central Excise Act, 1944 is a civil liability, which must be imposed in the measure fixed by law once the conditions of the provision are met. It was held in *Union of India v. Rajasthan Spinning and Weaving Mills*, (2009) 13 SCC 448, that the penalty equal to the duty under Section 11AC applies where the conditions for the extended period are found to exist, and not otherwise. Section 74 likewise ties the penalty to the very conditions that attract the section. Those conditions are met here. The Respondent knew of the royalty and of its taxability, declared none of it in its returns for July 2017 to September 2019, disclosed nothing to the proper officer, and paid part of the tax only after detection (paragraphs 61 to 78). These are the facts that take the case into Section 74, and the penalty which the section attaches to them must follow.

85. The Act offered the Respondent a way to lighten this burden. Section 74(5) reads:

> "(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per

cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment."

86. The Respondent paid part of the tax before the notice, but paid no interest or penalty on it, and nothing for the rest of the period. The benefit of Section 74(5) is therefore not available. It was held by the Hon'ble High Court of Andhra Pradesh in *M/s Sriba Nirman Company v. Commissioner (Appeals), Guntur*, W.P. No. 25826 of 2023, decided on 29.01.2025, that where the taxpayer had paid the tax before the notice, but not the interest and the fifteen per cent penalty, a notice under Section 74(1) could still issue. The Division Bench of the Hon'ble High Court of Patna took the same view in *Amit Agency v. Commissioner, CGST and CX, Patna*, C.W.J.C. No. 14955 of 2024, decided on 13.10.2026, where the taxpayer had neither paid under Section 74(5) before the notice nor contested the audit findings.

87. The Order-in-Original also observed that the penalty would be reduced to twenty-five per cent if the dues were paid within thirty days of the notice. That observation drew on Section 74(8), which reads:

"(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within

thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded."

That stage had passed long before the order was made. The observation had no effect, and we do not carry it into our order.

88. The Order-in-Original imposed the penalty under Section 122(2)(b). Section 122(2), so far as relevant, reads:

> "(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."

89. Section 9(3) applies all the provisions of the Act to the recipient as if it were the person liable to pay the tax. As held by the Hon'ble High Court of Gujarat in *Anjani Cotton Industries v. Principal Commissioner of Central GST*, R/Special Civil Application No. 17915 of 2023, decided on 03.05.2024, a penalty under Section 122(2) can be imposed on a recipient liable to tax under reverse charge, and the Court upheld such a penalty. Section 75(13), however, forbids a second penalty for the same act:

"(13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act."

90. Both provisions fix the same measure here: the tax due. Only one penalty can be imposed. The notice proposed it under Section 122(2)(b) read with Section 74, and so invoked both provisions. Since the demand is confirmed under Section 74, we impose the penalty under Section 74(9), read with Section 74(1), in the sum of Rs. 1,00,20,488/- (CGST Rs. 50,10,244/- and SGST Rs. 50,10,244/-). It takes the place of the penalty imposed under Section 122(2)(b) in the Order-in-Original. This changes the provision, not the amount. It causes the Respondent no prejudice, because the notice proposed a penalty equal to the tax under Section 74 and the Respondent met that proposal in its replies. The penalty of ten per cent under Section 73(9), imposed by the Appellate Authority, cannot survive once Section 74 applies.

Interest

91. Interest is governed by Section 50(1), which then read:

"50. (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof

remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendation of the Council."

92. It was held by the Hon'ble Supreme Court in *Pratibha Processors v. Union of India*, (1996) 11 SCC 101, that interest is compensatory and is linked to the tax. Where no tax is payable, no interest arises. Here the tax was payable, and it was paid late or not at all. Interest is therefore payable on the whole tax from the date on which the tax for each month fell due. On the sum of Rs. 46,37,250/-, it runs until 20.11.2019, when that sum was paid. That sum shall be appropriated against the tax. We answer Issue (ii) in the affirmative.

Conclusion

93. For these reasons, the appeal of the Revenue is allowed in the following terms:

(i). Order-in-Appeal No. BGM-JJ-ADC-30-2023-24-GST dated 26.06.2023 is set aside to the extent it confirmed the demand under Section 73 and imposed a penalty under Section 73(9).

(ii). The demand of tax of Rs. 1,00,20,488/- (CGST Rs. 50,10,244/- and SGST Rs. 50,10,244/-) for the period July 2017 to October 2019 is confirmed under Section 74(1) of the CGST Act and the KGST Act.

(iii). Interest on that tax is payable under Section 50, as stated in paragraph 92.

(iv). A penalty of Rs. 1,00,20,488/- (CGST Rs. 50,10,244/- and SGST Rs. 50,10,244/-) is imposed under Section 74(9), read with Section 74(1), in place of the penalty imposed under Section 122(2)(b) in the Order-in-Original. No other penalty shall be imposed for the same default.

(v). The sum of Rs. 46,37,250/- paid on 20.11.2019 shall be appropriated against the tax.

(vi). Subject to the above, Order-in-Original No. BEL-GST-000-HBL-AC-PBG-24-2020-21 dated 30.03.2021 is restored, except its observation on a reduced penalty under Section 74(8).

(vii). There shall be no order as to costs.

Pronounced in Open Tribunal on this the 19th day of November, 2026.

Prabhakaran P M
Digitally signed by Prabhakaran P M
Date: 2026.11.19 12:19:15 +05'30'

(Prabhakaran P.M.)
Judicial Member

Ravi Jesuraj S
Digitally signed by Ravi Jesuraj S
Date: 2026.11.19 12:16:22 +05'30'

(Ravi Jesuraj S.)
Technical Member (State)