

GSTAT

Single Bench Court No. 1

APL/1/PB/2026

M/s Sterling & Wilson Pvt. Ltd.
Through ZARINE YAZDI DARUVALA

.....**Appellant**

Versus

COMMISSIONER, ODISHA, COMMISSIONERATE OF CT GST
& ORS.

.....**Respondent**

Counsel for Appellant
IN-PERSON

Counsel for Respondent

Hon'ble Justice (Retd.) Dr. Sanjaya Kumar Mishra, President

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 : Yes

Order reference no. : ZA270010226000054H

Date of order : 11/02/2026

1.	GSTIN/Temporary ID/UIN - 21AAACS9939D1ZG	
2.	Appeal Case Reference no. - APL/1/PB/2026	Date - 31/10/2025
3.	Name of the appellant - Zarine Yazdi Daruvala , joydip.rang@sterlingwilson.com , 9830400796	
4.	Name of the respondent - 1. Commissionerate of CT GST , sunil.barik@odisha.gov.in , 8895447232 2. Commissionerate of CT GST 3. Sanjukta Gantayat	

5.	Order appealed against - AD210821009764B	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - ZD210922002623X	Date - 06/09/2022
6.	Personal Hearing - 11/02/2026 21/01/2026 13/01/2026 06/01/2026 26/12/2025 22/12/2025 18/12/2025	
7.	Order in brief - The matter is remand back to the learned Proper Officer for re-consideration.	

Summary of Order

8.	If demand order then whether demand quantified: No	
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
Short or non-payment of tax	NA	
10.	If remanded with directions:	
	a) Remanded to: Adjudicating Authority	
	b) Directions subject to which remanded, if any: Please refer final order below.	

Place :DELHI PB

Date : 11.02.2026

Final Order

1. Relying upon the reported case of V.S. Products Vs Additional Commissioner (Appeals), (2024) 19-Centax 434 (BOM), the Defects pointed out are ignored.
2. ADMIT.

This is a second Appeal filled under Section 112 of the Central Goods & Services Act, 2017 hereinafter referred as the act for brevity, against the order passed by the first Appellate Authority namely the Additional Commissioner of CT and GST (Appeals), Puri Range, Orissa.

3. The brief facts of the case are as follows: -

- i. The Appellant, M/s Sterling and Wilson Private Limited, is engaged in the business of engineering, procurement and construction (EPC) services and is duly registered under the Goods and Services Tax laws bearing GSTIN: 21AAACS9939D1ZG. The Appellant—Taxpayer has challenged the First Appellate Order bearing No. ZD2100922002623X dated 06.09.2022, Order-In-Appeal (OIA), passed by the 1st Appellate Authority, namely the Additional Commissioner of CT & GST (Appeal), Puri Range, Puri, in First Appeal Case No. AD210821009764B, pertaining to the tax period 01.04.2018 to 31.03.2019 (FY 2018–19). The said appeal order arose out of Order No. ZD2104210054090 dated 26.04.2021 Order-In-Appeal (OIA), passed under Section 74 of the OGST/CGST Act, 2017, whereby a demand of CGST and SGST amounting to ₹27,06,634/-, along with interest of ₹11,04,582/- and penalty of ₹27,06,634/-, aggregating to ₹65,17,849/-, was raised on

the allegation that the Appellant had disclosed a lesser tax liability in GSTR-3B as compared to GSTR-1.

- ii. That for the Financial Year 2018–19, the Appellant had declared an output tax liability of ₹31,36,18,763/- in GSTR-1, whereas the liability declared in GSTR-3B was ₹31,09,12,131/-, resulting in an alleged short disclosure of tax liability amounting to ₹27,06,634/-, comprising of ₹13,53,317/- under the CGST Act and ₹13,53,317/- under the SGST Act.
- iii. That the 1st Appellate Authority, after examining the records including GSTR-1, GSTR-3B, GSTR-9 and GSTR-9C filed by the Appellant for the year 2018–19, determined the tax demand of ₹27,06,634/-, interest of ₹15,84,248/-, and reduced the penalty to ₹2,70,664/-, thereby determining a total liability of ₹45,61,546/-. Since the Appellant had already paid an amount of ₹2,70,664/- on 24.08.2021, the balance demand payable was computed at ₹42,90,882/-, comprising tax of ₹24,35,970/-, interest of ₹15,84,248/-, and penalty of ₹2,70,664/-, vide Appeal Order No. ZD2100922002623X dated 06.09.2022.
- iv. The Appellate Authority held that there is no establishment of any intention of the tax payer to evade tax by act of fraud or suppressing the facts to evade tax as the appellant has disclosed the same in debit/credit notes supported with invoices duly accounted for in books of account but did not disclose it in periodical returns matching with total liability in annual return correctly. However, first Appellate Authority further held that Appellant could not prove that ITC passed by the Appellant to the Recipients were not utilised. Hence,

the Appellate Authority treated it to be a case under Section 73(9) of the CGST/SGST Act. Thus, the 1st Appellate Authority partly allowed the appeal by modifying the penalty imposed under Section 74 from ₹27,06,634/- to ₹2,70,664/-, levied under Section 73(9) of the OGST/CGST Act, 2017, being 10% of the tax amount, while confirming the tax and interest as adjudicated by the Proper Officer vide order dated 26.04.2021. Accordingly, the adjudication was converted from Section 74 to Section 73 of the OGST/CGST Act, 2017, vide Appeal Order No. 1653/CT & GST dated 29.08.2022.

4. That aggrieved by the aforesaid Order-in-Appeal, the Appellant has approached this Tribunal by way of the present Second Appeal, contending that the First Appellate Authority, despite having recorded a finding on the following ground.
 - i. The demand of tax and interest sustained is erroneous in law and facts.
 - ii. The Appellate Authority erred in upholding tax liability merely on account of return mismatch without verifying reconciliation records.
 - iii. Once absence of intent to evade tax was admitted, entire proceedings under Section 74 ought to have been dropped.
 - iv. The levy of interest and penalty is unsustainable as the issue is reconciliatory and revenue neutral.
5. The matter was taken up for hearing through virtual mode on 26.12.2025, 06.01.2026, 13.01.2026 and 21.01.2026. The final hearing in the present appeal was concluded on 21.01.2026. Shri Joydip Rang, Authorized Signatory, appeared on behalf of the Appellant. Shri Saurav

Tiberwal, Learned Additional Standing Counsel, along with Shri Kunu Padhi, Learned Joint Commissioner, appeared as Authorized Representatives for the Revenue-Respondents.

6. Memo of the cross objections were also filed by the Respondent on 05.01.2026. It is summarized as hereunder: -

- i. The Respondent has reiterated the findings recorded by the adjudicating authority as well as the First Appellate Authority and submitted that the Appellant failed to reconcile the mismatch between the tax liability declared in Form GSTR-1 and the tax discharged in Form GSTR-3B in the manner prescribed under the CGST/OGST Act, 2017. It was contended that statutory returns filed under the Act are self-assessed declarations and any variation therein must be duly explained and corrected within the framework of law.
- ii. It was further submitted that the explanations advanced by the Appellant regarding credit notes, advances, and prior-period adjustments were not supported by contemporaneous statutory compliance and were raised belatedly at the appellate stage. The Respondent contended that the Appellant failed to discharge the burden of proof cast upon it to justify the discrepancy noticed during scrutiny.
- iii. It was submitted that the First Appellate Authority, after due verification of records, had rightly upheld the tax and interest while modifying the penalty in accordance with law. It was, therefore, contended that the impugned order does not suffer from any legal infirmity and calls for no interference by this Tribunal.

7. It is submitted by the Appellant that proper officer observed that there is discrepancy between return of outward supply declared in GSTR-1 and tax paid in GSTR-3B. The appellant submitted that such difference arose due to issuance of credit notes and adjustment of advances pertaining to different tax periods which could not be amended in GSTR-1 due to system constraints. All such adjustments were duly reflected in books of accounts and in GSTR-3B, thereby eliminating any element of tax evasion. It was contended that these were clerical mistakes. At that time, the returns were being made manually and online system of filling returns etc. were not fully operational.

However, the Proper Officer did not accept the explanation and held that:

- a) Credit notes were not issued within the prescribed timeframe under Section 34(2);
- b) No proof of reversal of ITC by recipients was furnished;
- c) Liability reported in GSTR-3B was lower than GSTR-1 and not fully reconciled with GSTR-9/9C.

8. The Appellant further contended that the Proper Officer confirmed the demand under Section 74, imposing equivalent penalty, even though the issue was primarily reconciliatory in nature and without any suppression, fraud, or mis-statement.

9. It is further submitted by the Appellant that the it is not disputed at this stage that the Proper Officer i.e. the Deputy Commissioner of CT and GST, Puri Circle, Orissa did not find any suppression, misrepresentation or fraudulent mis-statement to attract Section 74 of the CGST/SGST Act. Nonetheless, the Proper officer proceeded to decide the case as one under section 74 of the CGST / SGST Act.

10. It is further submitted by the Appellant that the afore-said course of action has been set aside by the Appellant Forum. The Appellant forum,

however, did not took into consideration the detailed reconciliation submitted with the supporting documents including Credit notes, Debit notes, invoices and advance adjustments working. The Appellant further submitted that it produced a summary of reconciliation between GSTR-1 and GSTR-3B supported by updated data extracted from the GST portal.

11. It is also submitted by the Appellant that the Appellate Authority not accepted that the difference of ₹ 27,06,634/- was duly supported by documentary evidence and did not involve intent to evade tax. The appeal was partly allowed by the First Appellate Authority. The details of the Reconciliation have been submitted by the Appellant which is quoted below: -

Details of Reconciliations and Documentary Basis

Particulars	GST Amount	Concerned Customer	Reference / Annexure
GST on advance considered in 2017-18 in GSTR3B not in GSTR-1 ₹ 4,93,322 and advance adjusted in 2018-19 in GSTR-3B not in GSTR-1 ₹ 4,93,322	(-) 4,93,322	Shapoorji Pallonji & Co	Annex-IV
GST on advance considered in 2017-18 in GSTR3B & GSTR-1 ₹ 44,85,714 and advance adjusted in 2018-19 in GSTR-3B not in GSTR-1 ₹ 9,25,003	(-) 9,25,003	ITC Ltd.	Annex-IV

GST on debit note booked in 2018-19 considered in GSTR-3B not in GSTR-1	2,88,073	Odisha Power Transmission Corporation Ltd.	Annex-V
Credit note booked in 2018-19 for pre-GST period invoices	(-) 6,99,562	Odisha Power Transmission Corporation Ltd.	Annex-II
Credit note booked in 2018-19 (Sept'18) for invoice of 2017-18 (Oct'17)	(-) 3,23,210	Thyssenkrupp Industries	Annex-III
Credit note booked in 2018-19 (Mar'19) for invoice of 2018-19 (Jan'18)	(-) 4,76,308	Shapoorji Pallonji & Co	Annex-III
Credit note booked in 2018-19 (Sept'18) for invoice of 2017-18 (Mar'18)	(-) 77,305	Jindal Steel & Power Ltd.	Annex-III
Total Difference	(-) 27,06,637		

12. It was, therefore, submitted that adjustments were duly reflected in the appellant's books of accounts and accounted for in respective GSTR-3B filings for FY 2018-19. It is also submitted that the variations in GSTR-1 arose solely due to timing and technical constraints in amending earlier returns.

In reply to the submissions of the Appellant the Revenue would submit that Appellant's argument that the 1st Appellate Authority upheld the demand merely on mismatch without verification is factually incorrect.

13. It was stated by the Revenue that the Appellate Authority examined the reconciliation statements of credit notes, supply invoices and the updated return data as available on the GSTAT Portal. The Appellant have relied upon Credit notes/ Debit notes and advances but the scrutiny revealed multiple discrepancies including:

- a) Non-amendment of GSTR-1.
- b) Non reconciliation in Annual return and audit Return i.e. GSTR 9 and 9(C) respectively.
- c) Credit notes issued beyond timelines under Section 34(2).
- d) Failure to establish reversal of ITC by recipients where credit notes were claimed resulting in risk of unjust enrichment.
- e) Several claims relating to prior periods/pre-GST issues which could not be adjusted in GST returns.

14. The Learned Additional Standing Counsel as well as Deputy Commissioner of the CT & GST Commissionerate, Orissa submitted a written argument in the portal. It was emphasized by the Revenue that as per the Judgement passed by the Hon'ble Supreme Court in "**Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company Ors**", (2018) 9 SCC 1, [para 24 and 34] and contended that taxation statute calls for strict interpretation. Further reliance is placed on judgment of Hon'ble Supreme Court in "**Hamida Vs. Md. Khalil**- 2001 4 Supreme 21, where in Supreme Court has held that issues not raised before the lower fora cannot be permitted to be raised for the first time at the appellate stage, especially in second appeals.

15. Coming to the last question at first, we find that in the case of Hamida Vs. Md. Khalil- 2001, Supra., (08.05.2001) in CA No. 3695 of 2001, the Hon'ble Supreme Court took into consideration the Provision of Section 100 of Code of Civil Procedure, 1908, hereinafter referred as the Code, for brevity, and came to the conclusion that lower appellate court is final court of fact and, therefore, the high court erred in re-appreciating the

evidences and without finding the conclusion of the lower appellate court were not based on the evidence, reversed the conclusions of fact on the ground that view taken by it was also a possible view on the fact. The Supreme Court further stated that it is well settled that while exercising jurisdiction under Section 100 of the Code, the High Court cannot reverse the findings of the lower appellate court on facts merely on the ground that on the facts found by the lower appellate court another view is possible.

16. However, we find Jurisdiction of the Appellate Tribunal under the CGST / SGST Act is different from the Jurisdiction of the High Court Under Section 100 of the Code. There is a need to compare the language used by two different Provisions. Section 100 of the Code provides the Second Appeal Jurisdiction in a Civil Matter and Section 112 of the CGST Act along with Rule 112 of the CGST Rules, 2017 provide for second appeals in GST matters. The aforesaid provisions are quoted below.

Section 100 of the Code reads as follows:- (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex-parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question: Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.

Section 112 of the CGST Act, 2017 reads as follows:- (1) Any person aggrieved by an order passed against him under Section 107 & 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within ¹three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal ⁴[; or the date, as may be notified by the Government, on the recommendations of the Council, for filing appeal before the Appellate Tribunal under this Act, whichever is later.

(2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed fifty thousand rupees.

(3) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or Commissioner of Union territory tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority

under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within ²six months from the date on which the said order has been passed ⁴[; or the date, as may be notified by the Government, on the recommendations of the Council, for the purpose of filing application before the Appellate Tribunal under this Act, whichever is later,] for determination of such points arising out of the said order as may be specified by the Commissioner in his order.

(4) Where in pursuance of an order under sub-section (3) the authorised officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under sub-section (11) of Section 107 or under sub-section (1) of Section 108 and the provisions of this Act shall apply to such application, as they apply in relation to appeals filed under sub-section (1).

(5) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the time specified in sub-section (1).

(6) The Appellate Tribunal may admit an appeal within three months after the expiry of the period referred to in sub-section (1) ⁴[or permit the filing of an application within three months after the expiry of the period referred to in sub-section (3)], or permit the filing of a memorandum of cross-objections within forty-five days after the expiry of the period referred to in sub-section (5) if it is satisfied that there was sufficient cause for not presenting it within that period.

(7) An appeal to the Appellate Tribunal shall be in such form, verified in such manner and shall be accompanied by such fee, as may be prescribed.

(8) No appeal shall be filed under sub-section (1), unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and

(b) a sum equal to ⁵[ten per cent.] of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of Section 107 arising from the said order, ³[subject to a maximum of ⁵[twenty crore rupees]] , in relation to which the appeal has been filed.

⁶[Provided that in case of any order demanding penalty without involving demand of any tax, no appeal shall be filed against such order unless a sum equal to ten per cent. of the said penalty, in addition to the amount payable under the proviso to sub-section (6) of section 107 has been paid by the appellant.]

(9) Where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

(10) Every application made before the Appellate Tribunal,

(a) in an appeal for rectification of error or for any other purpose; or

(b) for restoration of an appeal or an application, shall be accompanied by such fees as may be prescribed.

Rule 112 of the CGST Rules, 2017 reads as follows (1) The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the Appellate Authority except in the following circumstances, namely: -

(a) where the adjudicating authority or, as the case may be, the Appellate Authority has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the Appellate Authority; or

(c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the Appellate Authority any evidence which is relevant to any ground of appeal; or

(d) where the adjudicating authority or, as the case may be, the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the Appellate Authority or the Appellate Tribunal records in writing the reasons for its admission.

(3) The Appellate Authority or the Appellate Tribunal shall not take any evidence produced under sub-rule (1) unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity –

(a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or

(b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1).

(4) Nothing contained in this rule shall affect the power of the Appellate Authority or the Appellate Tribunal to direct the production of any document, or the examination of any witness, to enable it to dispose of the appeal.

17. Thus, a plain reading of aforesaid three Provisions leaves no doubt in the mind of this tribunal that the limitations enshrined in the Section 100 of the Code are singularly absent in the appeal provisions in matters relating to GST under CGST Act as far jurisdiction of the Tribunal is concerned regarding second appeals. We may also note here that Section 117 and 118 of the CGST Acts provides for appeals to High Court and Supreme Court.

Sub Section (1) of 117 of the CGST Act, 2017 provides that “any person aggrieved by an order passed by the State Benches or Area Benches of the Appellate Tribunal to file an appeal directly to the High Court. The High Court may admit this appeal if it is satisfied that the case involves a substantial question of law”.

Sub Section (3) of 117 of the CGST Act, 2017 provides High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and the appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

18. Similarly, Section 118 of the CGST Act, 2017 provides that an appeal shall lie to the Supreme Court-

- (a) from any order passed by the Principal Bench of the Appellate Tribunal; or
- (b) from any judgment or order passed by the High Court as provide under Section 117.

19. It is further provided that the Code of Civil Procedure, 1908, relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section as they apply in the case of appeals from decrees of a High Court.

20. Thus, it is clear, the High Court as provided in Section 117 and Supreme Court as provided in Section 118 would be an Appellate Court to deal with the substantial question of law. Similar provision is found in Section 100 of the Code. Moreover, Sub Section (2) of 111 of the CGST Act, 2017 further provides that the Appellate Tribunal, while discharging its functions, possesses the same powers as a civil court under the Code.

Section 111(1) of the CGST Act, 2017 provides “that the Appellate Tribunal shall not, while disposing or proceeding before it or an appeal before it be bound by the procedure laid down in the Code of Civil Procedure, 1908”.

21. Thus, the argument advanced by the Revenue that the Tribunal cannot go into the question of fact is not sustainable and it is held that in exercise of Jurisdiction under Section 112 read with Rule 112 has power to examine question of facts also and it is the last adjudicating forum on questions of facts.

22. The Second question is that the Statute should be interpreted strictly and for that reason Revenue has relied upon the Reported case in “Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company Ors” (2018) 9 SCC 1 [para 24 and 34], Supra.” We have carefully examined the Constitution Bench Judgment, wherein the Hon’ble Supreme Court has held that “(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that this case comes within the parameters of the exemption clause or exemption notification, (2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject / assessee and it must be interpreted in favour of the Revenue. The ratio in Sun Export Corporation, Bombay Vs. Collector of Customs, Bombay, (1997) 6 SCC 564 is not correct and was overruled.

The Question that was examined by the Supreme Court is – What is the interpretative rule to be applied while interpreting a tax exemption provision/notification when there is an ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied?

We are in respectful agreement with the view of the Hon'ble Supreme Court, but note that question involved before the Constitution Bench has not direct relevance to the case in hand. In this case we are not deciding any interpretation of any exemption of tax available to an assessee. Here the simple question is whether the assessee has actually short paid taxes or not?

23. The First Appellate Authority while accepting part of the submissions made by the Appellant regarding absence of any fraudulent intent but not accepting the explanation given regarding reconciliation has held as under: -

As per above table, it becomes clear that the credit notes are not issued within the prescribed time limit as per section 34(2) of the CGST/SGST Act and in some cases though credit note is issued and disclosed in GSTR-1 but not reconciled correctly in GSTR-9 and GSTR-9C for 2018-19 by reflecting the liability correctly matching with corresponding periodical return in GSTR-3B. The liability for 2018-19 are also not found commensurating in GSTR-9 and GSTR-9C (as discussed at serial iii above). Besides this, the appellant could not establish the reversal of Input Tax Credit by the corresponding recipients who have already utilised the ITC relating to the supply invoices against which the appellant stated to have issued credit notes later.

In consideration of the above observations, the reasons stated by the appellant are not accepted and the less liability of Rs.27,06,634/- found in GSTR-3B for 2018-19 than its corresponding liability in GSTR-1 is taken as short paid/ not paid and its interest and penalty are calculated in the table below. Besides this, the imposed penalty u/s 74 of the SGST/CGST Act by the LPO is not accepted in the absence of the establishment of any intention of the tax payer to evade tax by act of fraud or suppressing the facts to evade tax as the appellant has disclosed the same in debit/credit notes supported with invoices duly accounted for in books of account but did not disclose it in periodical returns matching with total liability in annual return correctly nor could prove the ITC passed by the appellant to the recipients are not utilised. Now he is imposed with penalty u/s 73(9) of the CGST/SGST Act for short paid liability of Rs.27,06,634/- for 2018-19.

24. Thus, in our considered opinion the first Appellate Authority while setting aside the penalty imposed by the Proper Officer under Section 74 of CGST Act came to the conclusion (as underlined above) that in the absence of establishment of any intention of the taxpayer to evade tax by way of fraud or suppressing the facts, as the appellant has disclosed the same in debit/credit notes, supported with invoices duly accounted for in books of accounts but did not disclose it in periodical returns matching with total liability in annual return correctly and could not prove the ITC passed by the appellant to the recipients are not utilised. Thus, First Appellate Court has accepted that the Appellant has disclosed the transaction in Debit / Credit notes and are supported with invoices duly accounted in books of Account. But his fault was that he did not disclose the transactions in the periodical returns matching with total liability in annual returns correctly. It also held that the LPO has not proved that the ITC passed by the Appellant to the Recipient were not utilized.

25. Thus, from the aforesaid findings, the only mistake which has been found with the Appellant is that he has not reflected the debit / credit notes which has been duly accounted in books of account in its periodical returns. And that he did not prove the ITC passed to the Recipients by the Appellant are utilized. In this case we are of the opinion that this aspect has to be relooked into by the Learned Proper Officer and Appellant should be given chance to amend his returns by condoning his delay occasioned in the meantime. This view was discussed in course of virtual hearing and Learned Joint Commissioner was not in agreement with same, however, Learned Additional Standing Counsel would submit that such a case will become a precedent and may cause numerous cases to be remanded. We are of the view that every litigation has its own merits and demerit. It has to be decided on its own facts and merits. A cannot be decided on the basis consequences that follow with respect to other litigations.
26. The Learned First Appellate Authority has come to the Conclusion that the view taken by the Learned Proper officer that the timeline prescribed by Sub-Section (2) of Section 34 of the CGST Act, 2017 that such credit notes cannot taken into consideration to decide whether there is short payment of tax.
27. In our considered view every honest taxpayer should be protected and if it is held, he has no intention of evading tax by submitting wrong data or misinformation or fraudulent misinformation having intend to evade tax then he should be given a proper hearing before saddling him with penalties and interest. In the ultimate analyses if a person has paid the tax and if it is accepted the taxes has been paid because of timeline, his argument is not heard, then he should be given another opportunity to argue his point of view. It may also be noted here that the period in which proceedings in original and appeal were heard was a difficult time as it is during the Covid-19 Pandemic. Though the order of the SC in SUO MOTO WPC (2) No. 3/2020, wherein the Supreme Court has taken

cognizance of the difficulties faced by the litigant and has directed to arrest of running of limitation from 15.03.2020 to 28.02.2022 is not applicable to timeline compliance in tax returns, we are though not applying the Principal, would like to take a pragmatic view and to Shun a pedantic approach in the matter. While examining order passed by the Learned First Appellate Authority, it was also noticed by this Tribunal that at concluding Paragraph, the Authority has converted the proceeding under Section 74 to pass an order u/s 73. The Learned Authorized Representative would submit that once the Appellate Authority holds that Section 74 is not applicable in this case, then it was improper on his part to pass an order imposing penalty interest etc. under Section 73.

28. In Countering this Argument, the Learned Additional Standing Counsel would submit by resorting to the Sub-Section (2) of 75 of the CGST Act. It provides that the Appellant Authority can modify the tax liability, penalty & interest by holding it to be a case of short payment of tax and not a case of fraudulent intend of evasion tax. In order to appreciate the question, we took note of exact language used in the statute which reads as follows: -

Sub-Section 75 (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.

29. In this connection, the Registry of GSTAT, PB on instructions has examine the different notifications of CBIC Circular no. 254/11/2025-GST dated 27.10.2025 at paragraph 2 instructs as follows: -

2. It is observed that no proper officer has been assigned in respect of the following provisions of the CGST Act and the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “CGST Rules”):

- a) xxxx
- b) Section 75(2) of the CGST Act which provides where any Appellate Authority / Appellate Tribunal / 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 Page 2 of 6 the notice was issued, the proper officer shall determine the tax payable, deeming as if the notice were issued under section 73(1) of CGST Act.
- c) xxxx
- d) xxxx

30. Thus, it is clear that original Proper Officer who has issued Notice Under Section 74(1) of the CGST Act shall re-determine the tax payable by the Assessee and it cannot be done by the First Appellate Authority or the Tribunal. The natural corollary to such an observation would be that in case First Appellate Authority or the Tribunal comes to the conclusion that the proceeding initiated under Section 74 (1) of the CGST Act is not maintainable because of lack of requirements to attract the provision and comes to the conclusion that this is a matter to be considered under Section 73 of the CGST Act, then the matter has to be remitted back to the learned Proper Officer for re-determining the tax to be paid along with penalty, interest, etc.

31. So, even if we accept order of the First Appellate Authority in toto, without the qualification that we have discussed in the preceding

paragraphs, then also this matter has to be remanded to Proper Officer for re-determination of Tax to be paid by the assessee.

32. Moreover, we are of the opinion that CGST / SGST Act is relatively new Act and professionals may not be thorough in the filing returns at the relevant period, together with fact that, at that particular time most of returns were being filed manually and the technique of auto-population and full online filling was not operational to fullest extent as it is now. There were chances of human error. In order to obviate any such human error, the matter should be re-considered by the learned Proper Officer. If we remand the matter, the best or the worst, depending upon the point of view, either from Revenue or from the side of the assessee, that can happen is that the case would be re-heard and decided at the very threshold and effective judgment would be passed. It is also not disputed at this stage that Appellant was not heard in-person at the time of passing of the order-in-original.
33. In the Result, we come to the conclusion, on the basis of aforesaid reasoning, that order passed by the learned Proper Officer and the order passed by the First Appellate Authority, so far as it relates to treating the case as Section 73 of the CGST/SGST Act are concerned, cannot be sustained and accordingly is set aside. However, we are not setting aside the orders passed by the learned Appellate Authority as far as its finding that case does not come under Section 74 of SGST / CGST Act.
34. Moreover, on the basis of aforesaid discussion we remand the matter back to learned Proper Officer for re-consideration of matter giving liberty to the Appellant to file appropriate amendment petition, if so advised, within a period of one month from the date of the order uploaded and digitally signed on the portal / website.
35. The Appellant through its authorized Representative shall appear before the Proper Officer and file suitable application within a month. The case shall be re-considered as one under Section 73 of the CGST Act and after

affording a reasonable opportunity of hearing, producing documents and seeking amendment (amendment must be filed within 30 days from the publication of this judgment) shall be considered on merits by the learned proper officer. The learned Proper Officer while disposing the proceeding Under Section 73 of the CGST Act shall examine the genuineness of the Credit / Debit notes and other documents produced by the Appellant and render the final order.

36. There shall be no orders as to costs.
37. Before parting with the case, I record my appreciation of the efforts made by Shri Kunnu Padhi, JC, Shri Saurab Tiberwal, learned Standing Counsel, Shri Joydip Rang, Authorized Signatory of the Appellant, the Registry, GSTAT, GSTN-NIC team and other supporting staff of GSTAT in making it possible to conduct hearings in virtual mode and in a online paperless manner.

S K Mishra,
President, GSTAT

Date- 11.02.2026

