IN THE GOODS AND SERVICES TAX APPELLATE TRIBUNAL
KOLKATA BENCH

COURT NO.1

Appeal No. APL/19/KLK/2026

Atanu Mondal
For the Commissioner
CGST & CX, Kolkata North Commissionerate
GST Bhawan, 180, Shantipally,
Rajdanga Main Road, Kolkata-700107

…… Appellant

VERSUS

Partner
Jay Technical Services
GE1 1st Floor, Ganges Garden, 106,
K C Singha Road, Shibpur, WB HOW-711102

…… Respondent

In appearance :

For the appellant : Ms. Tanu Das, Superintendent, CGST
For the respondent : Mr. Aditya Dhanania, Chartered Accountant

CORAM :

Hon'ble Shri S.G. Chattopadhyay : Judicial Member
Hon'ble Shri Bijoy Kumar Kar : Technical Member

Final Order
Date: 01.09.2026

<u>Per S.G. Chattopadhyay (JM)</u>:

[1]. The proceedings were drawn up against the respondent (the taxpayer herein) by way of issuing show cause-cum-demand notice dated 08.01.2024 invoking Sections 73 & 74 of the Central Goods and Services Act, 2017 (hereinafter called 'the CGST Act, 2017') for multiple financial

years together from 2017-18 to 2023-24. In the said show cause notice the following demands were made against the taxpayer :

> "i. *have availed and utilized ineligible ITC to the tune of Rs.20,92,513/- (Rupees Twenty Lakhs Ninety Two Thousand Five Hundred Thirteen only) (IGSt-Rs.57,623/-,CGST-Rs. 10,17,445/-, SGST-Rs.10,17,445/-) by way of excess availment of ITC in GSTR-3B as compared to actual ITC available in GSTR-2A during the period from 2018-19 to 2022-23 violating the provision of Section 16(2)(a) and Section 16(2)(C) of the said Act, read with Rule 36 of the Central Goods and Service Tax Rules, 2017, which is required to be recovered/reversed under Section 73 of the said Act along with applicable interest and penalty under Section 50 and Section 73 of the said Act.*
>
> ii. *Have availed and utilized ineligible ITC to the tune of Rs.43,44,046/- (Rupees Forty Three Lakh Forty Four Thousand Forty Six Only) (CGST-Rs.21,72,023/- & SGST-Rs. 21,72,023/-) by way of availment of ITC in GSTR-3B on the basis of fake invoice issued by the non-existent entity during the period from 2017-18 to 2023-24 (Upto Nov'23) violating the provision of Section 16 of the said Act, read with Rule 36 of the Central Goods and Services Tax Rules, 2017, which is required to be recovered/reversed under Section 74 of the said Act along with applicable interest and penalty under Section 50 and Section 74 of the said Act*
>
> iii. *have made short payment of Rs.6,45,910/- (CGST-Rs.3,22,955/-& SGST-Rs.3,22,955) by suppressing taxable value amounting to Rs. 35,88,39 1 of inward supply of goods and services during the period of 2017-18 to 2022-23 violating the provision of section 9,37,49,59 of the said Act, which is required to be recovered under Section 74 of the said Act along with applicable interest and penalty under Section 50 and Section 74 of the said Act."*

[2]. The taxpayer who is running his business of repairing and maintenance of heavy equipment from the centre housed in 26/1/1B, Strand Road, Burrabazar, Kolkata-700001 with GSTIN 19AACFJ8636M1ZR challenged the said show cause-cum-demand notice by submitting his reply dated 21.02.2024 in which he denied and

disputed all the 03 demands brought against him by the appellant (the Revenue hereunder).

[3]. With regard to the demand of excess availment of ITC to the tune of Rs.20,92,513/- during the period from 2018-2023, the taxpayer straightway denied the said demand by relying on GSTR3B and GSTR2A and DRC-03.

[4]. As regards the charge of availment of excess ITC of Rs.43,44,046/- based on fake invoices issued by the non-existent suppliers during the period from 2017-2023 in breach of Section 16 of the CGST Act, 2017, the taxpayer denied the charge and claimed that the alleged suppliers obtained GST registration and during the period of supply their registration was alive on the GST Portal and the taxpayer received the supplies and made payment to them as per the invoices issued from their end and as such there was no iota of truth in the charge of availment and utilisation of ineligible ITC. In this regard, the revenue in the show cause notice in paragraph 2.5 provided a table containing the names of those suppliers, who were found non-existent during the period of supply. For the sake of clarity and convenience, the said table is reproduced hereunder :

AB-INITIO CANCELLED SUPPLIER OF M/s JAY TECHNICAL SERVICES							
Sl.No.	Legal Name	GSTIN	TV.	IGST	CGST	SGST	Total
1	RISING STAR TRADECOM	19ABFFR1727D1ZB	1608149	0	144733.41	144733.41	289466.9
2	VIJAY JAISWAL	19ALZPJ4198C1ZG	689800	0	62082	62082	124164
3	JIBAN RISHI	19AYRPR5381E1ZR	660797.6	0	59471.78	59471.79	118943.6

4	RABINDRA NATH BASAK	19BJUPB3055L1ZR	9409031.6	0	846812.85	846812.85	1693626
5	RUPALI SARKAR	J9BNBPS2235J1ZT	1642148.4	0	147240.85	147240.85	294481.7
6	MITWA MALLICK	19BNUPM9630A1ZM	6176S3.2	0	55588.79	55S88.79	111177.6
7	SOUMEN BAG	19BZVPB00d9M1ZW	2550964	0	229586.76	229586.76	459173.5
8	BIRJU CHOWDHURY	19CHOPC9373D170	2553766	0	229838.94	229838.94	459677.9
9	DIPALI ROY	19CTCPR2848N1ZX	261639	0	23547.51	23547.51	47095.02
10	BABLU PASWAN	19DEPPP1313P1ZU	888812.8	0	78118.15	78118.15	156236.3
11	PANCHU MAITY	19DSIPM3574A1ZN	679060	0	61115.4	61115.4	122230.8
12	BHADRESHWAR BAG	19ETMPB3981A1ZO	2263305.13	0	203697.47	203697.47	407394.9
13	RAJESH HELA	19AZQPH0046Q1ZV			30189	30189	60378
			Total		**2172022.9**	**2172022.9**	**4344046**

[5]. It would be appropriate to quote the reply of the taxpayer to this demand in his own words which is as under :

In context of allegation, the following facts are mentioned:

1. We have verified the GSTIN of every taxpayer mentioned at the time of procuring supply and after being found active we procured supply from above mentioned parties.

2. That we have received the supply in actual and have made payment to the suppliers which is evident from my bank account statement as we have made all payment through cheque/ online transfer. We have received goods in actual and there is no violation of the provisions as mentioned under Section 16(2)(b).

3. In the SCN, it has been alleged that 13 no. of GSTIN as mentioned above are cancelled ob- intio and for that ITC, availed against the invoices issued by those suppliers, has been rendered irregular. But neither the reason of ab-intio cancellation is mentioned in the SCN nor any evidence has been enclosed. Thus the department have issued SCN on the basis of assumption that if the GSTIN of a particular supplier is cancelled ab-initio, the said suppliers have not made supply since inception of the business. If the GSTIN of taxpayer is cancelled ab initio, it never means that the *taxpayer have not made any supply to any other taxpayer. As per given view of the department, a genuine taxpayer will be put into trouble due to double payment of GST on input supplies. We have made payment of GST along with the price of goods which is evident from my ledger copy and bank statement and again we have been put into scanner by issuing SCN on basis of the assumption of the department.*

4. Had the GSTIN of above suppliers cancelled on the basis of fraud, alert circular would hove been issued from different investigating formation along with supporting documents such as panchanama, statement, IR report etc. In the present case, we have neither been informed about any such proceedings earlier nor have any evidence been enclosed along with the SCN. Thus issuing SCN for rendering ITC, availed on the basis of invoices issued by above taxpayer, 'is nothing but whimsical concept of the department causing irregular, illegal and mental trouble to the genuine & bonafide taxpayer.

5. We request you to drop the above proceedings. Above mentioned documents are enclosed for your kind perusal and consideration please."

[6]. As per the show cause-cum-demand notice dated 08.01.2024, the third demand against the taxpayer was for a sum of Rs.6,45,610/- under the reverse charge mechanism (RCM in short). It was alleged that the taxpayer evaded tax and made short payment by suppressing taxable value of Rs.35,88,391/- for inward supply of goods and services. Allegedly, the taxpayer in his returns made short payment of a sum of Rs.6,45,910/- and as such the said amount along with penalty and applicable interest was recoverable from him. The taxpayer, in response, claimed that he incurred expenses towards convenance charges, hiring of labourers etc. on RCM basis which does not come within the purview of taxable services. The taxpayer further claimed that he also incurred cost towards freight, travel expenses and expenses for hiring the professional

services of Chartered Accountants which were not also taxable in terms of RCM. In his reply, the taxpayer filed details of such expenses incurred by him.

[7]. The Revenue did not accept his reply and consequently the matter was taken up by the adjudicating authority for adjudication.The taxpayer was given opportunity of hearing. His personal hearing was held on 04/03/2024 in presence of one of the partners of the taxpayer. The adjudicating authority in paragraph 11 of the Order-in-Original (in short OIO) has recorded that despite notice, the taxpayer did not submit the required documents in the course of personal hearing.

[8]. Upon adjudication of the issues, the adjudicating authority by his order dated 29.04.2024 passed the following order in para 11 :

> *"11. Therefore, on the basis of the above discussion and findings, the following order is passed.*
>
> ***Order***
>
> ***(A)***
>
> *i) I disallow the ITC to the tune of Rs. 17,22,513/- (Rupees seventeen lakh twenty two thousand five hundred thirteen only (IGST- Rs. 57,623/- CGST-Rs. 8,32,445/SGST-Rs. 8,32,445/-) for violation of 16(2)(c) of the CGST Act out of the total demand amount of Rs. 20,92,513/- (IGST-Rs.57,623/ CGST Rs.10,17,445/-17 SGST-Rs.10,17,445/-) and order for recovery of the confirmed amount under section 73(9) of CGST Act read with section 20 of IGST Act.*
>
> *ii) I order for payment of interest at an appropriate rate on the demand confirmed in Sl no. A(i) above as per section 50(3) of the CGST Act, in terms of Section 73(9) of the CGST Act read with section 20 of IGST Act.*
>
> *iii) I impose penalty to the tune of Rs. 1,86,488/- (Rupees one lakh eighty six thousand four hundred eighty eight only (IGST-*

Rs.20,000/- CGST- Rs.83,244/ SGST-Rs. 83,244/-)) in terms of section 73(9) of CGST Act read with section 20 of IGST Act.

iv) I drop the demand of Rs.3,70,000/- [Rupees three lakh seventy thousand only (CGST-Rs. 1,85,000/- & SGST- Rs. 1,85,000/-)) as discussed in Para 8.4(a);

(B)

i) I disallow the ITC to the tune of Rs. 43,44,046/- (Rupees forty three lakh forty four thousand and forty six only (CGST- Rs.21,72,023/- & SGST- Rs. 21,72,023/-)] for violation of section 16(2)(b) & 16(2) (c) of the CGST Act and order for recovery of the confirmed amount under section 74(9) of CGST Act.

ii) I order for payment of interest at an appropriate rate on the demand confirmed in Sl no. B(i) above as per section 50(3) of the CGST Act, in terms of Section 74(9) of the CGST Act.

iii) I impose penalty to the tune of Rs. 43,44,046/- [Rupees forty three lakh forty four thousand and forty six only (CGST- Rs. 21,72,023/- & SGST- Rs. 21,72,023/-)] in terms of section 74(9) of CGST Act.

(C)

i) I confirm the demand of Tax amounting to Rs. 5,30,976/- [Rupees five lakh thirty thousand nine hundred seventy six only (CGST- Rs.2,65,488/SGST- Rs. 2,65,488/-) out of the total demand of Rs. 6,45,910/- (CGST- Rs.3.22.955/+SGST- Rs. 3,22,955/-) for violation of the provision of Section 9(3) of the CGST Act and order for recovery of the confirmed amount under Section 74(9) of the CGST Act.

ii) I drop the demand of Rs. 1,14,934/- (Rupees one lakh fourteen thousand nine hundred thirty four only (CGST- Rs.57,467/ SGST- Rs. 57,467/-)] as discussed in Para 8.4(c)(ii) above.

iii) I order for payment of interest at an appropriate rate on the demand confirmed in Sl no. C(i) above as per section 50(3) of the CGST Act, in terms of Section 74(9) of the CGST Act

iv) I impose penalty to the tune of Rs. 5,30,976/- (Rupees five lakh thirty thousand nine hundred seventy six only (CGST- Rs.2,65,488/- + SGST- Rs. 2,65,488/-)] in terms of section 74(9) of CGST Act.

12. This order is passed without prejudice to any other Action which may be taken against the Noticee under any other law for the time being in force."

[9]. The aggrieved taxpayer filed an appeal before the first appellate authority in terms of Section 107 of the CGST Act, 2017. The taxpayer besides presenting the facts and supporting documents before the first appellate authority raised several questions of law which were as under :

i) The Revenue should not have invoked Section 74 of the CGST Act, 2017 against the taxpayer since there was no proof of collusion and connivance between the taxpayer and his suppliers. During the relevant period of supply, the taxpayer verified the status of each of the suppliers on the official GST Portal and came to know that their GSTIN was alive on the dates of supply. He procured supplies from them supported by valid invoice and made full payment of consideration including GST at the applicable rate through proper banking channels. The taxpayer's ledger accounts and bank statements reflected those payments and proved genuineness of the transactions between the parties. The taxpayer, therefore, pleaded before the authority that charging him for availing excess ITC on the basis of fake invoice was not justifiable in the backdrop of these facts and circumstances and, therefore, Section 74 of the CGST Act, 2017 was not applicable in the case.

ii) The taxpayer claimed that a single consolidated show cause notice (SCN) clubbing multiple financial years deprived him of the opportunity of addressing the demands independently and thereby amounted to violation of the principle of natural justice. The taxpayer also claimed that since multiple financial years up to 2023-2024 was clubbed in the single SCN, he could not avail the benefit of amnesty provided under Section 128A of the CGST Act, 2017.

[10] As regards the demand of excess availment of ITC of Rs.20,92,513/- the first appellate authority examined GSTR3B and data contained in GSTR2A and from a comparison of GSTR2A with GSTR3B came to the conclusion that in the year 2018-19 taxpayer availed excess ITC only for a sum of Rs.55,405/- along with applicable interest of Rs.9545/- and penalty of Rs.5966/- which was reversed by him prior to the issuance of SCN. In respect of financial year 2019-20, the taxpayer was found to have availed excess ITC to the tune of Rs.84,565/- which was also reversed by him with interest and penalty vide DRC-03 under ARN No. AD190222005350R dated 19/2/2022. The appellate authority did not find any excess availment of ITC during the year 2020-21.

[11]. No excess ITC was found to have been availed by the taxpayer during the financial year 2022-2023.

[12]. As regards the demand of Rs.43,92,513/- against the taxpayer, for availing ITC on the basis of fake invoice, the first appellate authority was

of the view that the registration of the suppliers who issued the invoices was cancelled with effect from retrospective date and, therefore, on the dates of supply they were not registered under the GST Act which made the taxpayer ineligible for filing ITC based on the invoices issued by those suppliers. The first appellate authority viewed that since the Revenue could not prove any active connivance between the suppliers and taxpayer for availing ITC based on the invoices issued by them, Section 74 of the CGST Act, 2017 was not applicable in this case. The appellate authority viewed that in the given fact situation, excess ITC availed by the taxpayer should have been demanded by issuing notice in terms of Section 73 of the CGST Act, 2017 in absence of any proof of fraud, wilful misstatement of facts or suppression of facts to evade tax.

[13]. As regards the third demand against the taxpayer of Rs.6,45,910/- for evasion of tax by suppressing taxable value of Rs.35,88,910/- of inward supply of goods and services during the period from 2017-2023, the first appellate authority after examination of the relevant returns and documents of the taxpayer came to the conclusion that the demand against the taxpayer was not sustainable except his liability to the extent of Rs.20,472/- because the examination of his returns and other relevant documents revealed that the amount paid by the taxpayer towards freight expenses, legal charges and travelling expenses were not taxable under RCM. Based on his findings, the first appellate authority confirmed the demand under RCM to the extent of Rs.10236/- each under CGST and

SGST Act totalling to Rs.20472/- against RCM along with applicable interest and penalty. The demand confirmed by the first appellate authority was put in paragraph 6.14 in the impugned Order-in-Appeal (in short OIA) in tabular form which reads as under :

Issue 1: regarding mis-match of GSTR-2A vs. GSTR-3B

FY	*IGST*	*CGST*	*SGST*
2018-19	*0*	*0*	*0*
2019-20	*0*	*84565*	*84565*
2020-21	*0*	*0*	*0*
2021-22	*4208*	*10237*	*10237*

Issue 2: Irregular ITC on the basis of cancelled suppliers:

FY	*IGST*	*CGST*	*SGST*
2018-19	*0*	*816332*	*816332*
2019-20	*0*	*315312*	*315312*
2020-21	*0*	*116704*	*116704*
2021-22	*0*	*0*	*0*
2022-23	*0*	*694088*	*694088*
2023-24	*0*	*229587*	*229587*
Total:		2172023	2172023

Issue 3: RCM on various issues like legal charges, conveyances, etc.

FY	*IGST*	*CGST*	*SGST*
2017-18	*0*	*3264*	*3264*
2018-19	*0*	*4214*	*4214*
2019-20	*0*	*2579*	*2579*
2020-21	*0*	*179*	*179*
		10236	*10236*

[14]. In paragraph 6.15 of the OIA, the first appellate authority allowed the taxpayer to apply for amnesty for waiver of tax and interest for the permissible period in terms of Section 128A of the CGST Act, 2017 and passed the following order :

6.15. I find the SCN and the OIO was issued for multiple Financial Years ranging from 2017-18 to 2022-23. I find the demand was confirmed under both Section 73 and Section 74 of the CGST/SGST Act, 2017. Such order covering multiple year should not restrict the appellant to obtain any benefit extended by the Govt. in favour of the taxpayer. I allow the appellant to apply for the amnesty scheme under Section 128A of the Acts ibid for the amount or period of demand wherever applicable.

In view of my discussions hereinbefore I proceed to pass the following order in terms of Section 107 of the CGST Act 2017.

ORDER

I therefore -

(i) Confirm Rs.1,93,812 (Rs.4,208/-IGST and Rs.94,802/- each under the head CGST and SGST) under Section 73 of the CGST/SGST Act, 2017 along with applicable interest and penalty for mis-match of ITC availed in GSTR-3B and available in GSTR-2A; They had reversed the ITC vide DRC-03 dated 26/3/2025 which may be appropriated against the demand;

(ii) Confirm demand of Rs.43,44,046/- [CGST & SGST] under Section 73 of the Acts ibid along with applicable interest and penalty;

(iii) Confirm the demand of Rs.10236/- [CGST] and Rs.10236/- [SGST] against RCM under Section 73 of the CGST/SGST Act, 2017 along with applicable interest and penalty.

(iv) The impugned order issued by the respondent is modified accordingly.

[15]. The Revenue has assailed the said OIA before us under sub-section (3) of Section 112 of the CGST Act, 2017 mainly on the following grounds:

i) The findings of the appellate authority that Section 74 of the CGST Act, 2017 is not applicable in the case is not correct because a thorough investigation undertaken by the revenue revealed that the taxpayer availed and utilized fake ITC on the basis of the invoices generated in the name of non-existent suppliers. This was done deliberately by the taxpayer with a fraudulent intention of availing ineligible ITC. According to the Revenue, the conduct of the taxpayer clearly contravenes the provision of Section 16(2)(b) of the CGST Act, 2017 and as such the revenue did not commit any wrong by invoking Section 74 of the CGST Act, 2017 in this Act.

ii) The Revenue has contended that the taxpayer committed fraud by availing ITC on the basis of fake invoices without actually receiving the goods and services. According to the revenue, the taxpayer failed to discharge his burden to establish actual transaction, actual physical movements of goods as well as the genuineness of the transactions for which he is liable to action contemplated under Section 74 of the CGST Act, 2017.

iii) The appellate authority committed error by dropping the demand of GST under RCM amounting to Rs.5,10,504/- without recording any justifiable reason.

iv) The appellate authority has exceeded its jurisdiction by confirming the demand under Section 73 of the CGST Act, 2017 himself after exonerating the taxpayer from the liabilities of Section 74 of the CGST Act, 2017. It is contended by the Revenue that from a reading of sub-section (2) of Section 75 conjointly with sub-section (3) of Section 75 of the CGST Act, 2017 it would appear that where the appellate authority is of the view that Section 74 is not applicable in a case, the appellate authority may only issue directions to the proper officer to determine the taxpayer's liability in terms of Section 73(1) of the CGST Act, 2017. The appellate authority in this case has acted beyond its jurisdiction by determining and confirming the demand himself.

[16]. The taxpayer has contested the appeal by filing the cross objection. As it appears from the cross objections uploaded by the taxpayer, his contentions are mainly as follows :

i) The decision of the appellate authority does not suffer from any illegality or impropriety and as such the said decision does not call for any interference.

ii) The Revenue has committed gross error by invoking Section 74 of the CGST Act, 2017 in this case without any proof of fraud, wilful misstatement or suppression of facts against the taxpayer.

iii) There is no proof that the taxpayer acted in connivance with the suppliers to avail the ITC based on fake invoices.

iv) Retrospective cancellation of 13 suppliers by revenue does not establish taxpayer's knowledge or complicity.

v) There is no merit in the contention of the revenue that the first appellate authority exceeded its jurisdiction by determining the liability of the taxpayer itself without issuing the direction to the proper officer as per requirement of law laid down under Section 75 (2) & (3) of the CGST Act, 2017 because the appellate authority is empowered to modify the amount of tax determined by the proper officer.

vi) The burden of proof cast upon the taxpayer to prove that he is eligible for ITC cannot be read as a presumption of fraudulent intention in absence of such proof.

vii) Reversal of ITC for a sum of Rs.60,378/- by the taxpayer cannot be treated as an admission of his guilt.

viii) For a claim under the Reverse Charge Mechanism (RCM), Section 74 of the CGST Act, 2017 cannot be invoked.

Under the premises aforesaid, the taxpayer has sought for dismissal of the present appeal.

[17] We have heard Ms. Tanu Das, Superintendent CGST, who represented the appellant. Ms. Das vehemently argued that the first appellate authority committed gross error by holding that Section 74 of the CGST Act, 2017 is not applicable in this case. While reiterating the grounds of appeal recorded in the memo of appeal, Ms. Das, Superintendent, contended that the taxpayer with a fraudulent intention availed and utilized huge amount of ITC based on fake invoice. The case

was investigated at the level of DGGI, KZU and inspection was also conducted at the business premises of the taxpayer. The invoices issued in the name of non-existent suppliers were discovered and the taxpayer also reversed a sum of Rs.60,378/- relating to M/s Ambika Enterprises which proved the fraudulent intention of the taxpayer. It was argued by Ms. Das that the facts and circumstances of the case and the materials available on record clearly established fraud, wilful misstatement, as well as suppression of facts against the taxpayer and as such Section 74 of the CGST Act, 2017 was rightly invoked against the taxpayer. Ms. Das urged this Tribunal to restore the order of the adjudicating authority by dismissing the impugned order passed by the appellate authority.

[18]. Mr. Aditya Dhanania, Chartered Accountant, appearing for the taxpayer, on the other hand, has contended that strict proof of fraudulent intention as contemplated under Section 74 of the CGST Act, 2017 is required for invoking Section 74 against the taxpayer. It is further contended by Mr. Dhanania that when the transactions were made with the suppliers, their registration under GST were active in the official portal and based on the actual supply of goods and services by them, the taxpayer made payment to the suppliers on the basis of invoices generated by them through banking channel. Retrospective cancellation of the registration of those suppliers does not *ipso facto* establish that the taxpayer connived with them to avail ineligible ITC. Mr. Dhanania, CA has

vehemently argued that the taxpayer has been pursuing his business honestly by filing regular returns as per law and paying tax. According to Mr. Dhanania, the appellate authority has fully applied its mind to the facts and circumstances of the case, examined the records in details and came to the conclusion about the remaining liabilities of the taxpayer by a reasoned order. Mr. Dhanania, therefore contends that the OIA does not call for any interference in the appeal before the tribunal. He urges for dismissal of this appeal.

[19] We have already discussed in the preceding paragraphs that the Revenue attributed three demands to the taxpayer through the show cause-cum-demand notice dated 08.01.2024. At the cost of repetition, it would be appropriate to recapitulate the said demands at this place for the sake of clarity and convenience. The first demand relates to availment and utilization of excess ITC to the tune of Rs.20,92,513/- by the taxpayer. As regards this demand, the first appellate authority after making a comparison between GSTR3B and GSTR2A and on perusal of the invoice and returns of the taxpayer confirmed the demand by modifying and reducing it to a sum of Rs.1,93,812/- along with applicable interest and penalty. The first appellate authority viewed that rest of the amount was reversed by the taxpayer vide DRC-03 dated 26.03.2025. The second demand relates to availment and utilization of ITC of a sum of Rs.43,44,046/- by the taxpayer on the basis of fake invoice issued by as

many as 13 number of non-existent suppliers during the period from 2017 to 23.11.2023 for which the revenue invoked Section 74 of CGST Act,2017 on the ground that the taxpayer availed and utilized the said amount of ITC with a fraudulent intention by wilful misstatement in order to avail ineligible ITC. The first appellate authority confirmed the demand but viewed that invocation of Section 74 of CGST Act, 2017 was not justifiable and legally correct in the given facts and circumstances of the case. By the third demand, the revenue asked the taxpayer to pay a sum of Rs.6,45,910/- under RCM along with applicable interest and penalty in terms of section 74, CGST Act, 2017 for suppressing taxable value amounting to Rs.35,88,319/- of inward supply of goods and services during the period from 2017-18 to 2022-23. The First appellate authority also modified and reduced the demand and held that penalty and interest would be recoverable in terms of Section 73 instead of Section 74, CGST Act, 2017 as there is no proof of fraud, wilful misstatement or suppression of facts against the tax payer in so far as this demand under RCM is concerned.

[20] As regards the demand of Rs.20,92,513/- for the mismatch between GSTR3B and GSTR2A the adjudicating authority re-examined the said demand and found that the taxpayer already deposited Rs.3,70,000/- and uploaded the DRC-03 on the portal before the issuance of demand notice. Therefore, the adjudicating authority reduced the demand and confirmed

a demand of Rs.17,22,513/-. The first appellate authority dealt with the matter in paragraphs 6.3 and 6.4 of the impugned order, which reads as under :

> *6.3. The appellant submitted annual GSTR-3B obtained from portal which tallied with the value declared by them against GSTR-3B for the relevant Financial Years in the submitted table at Para 5 above. The data regarding available ITC in GSTR-2A was also submitted by them in soft form and the value matched with the submitted table. The amount as declared by them is Credit Note/ Debit Note adjusted with the ITC figure. Accordingly, find, the differential value declared by them in the Table at Para 5 above is true and tallied with the data retrieved from the portal.*
>
> *6.4. The appellant submitted DRC-03 dated 20/5/2019 for reversal of excess availed IGST of Rs.55,405/- (IGST) and interest of Rs.9545/- along with penalty of Rs.5966/- pertaining to The FY 2018-19. The reversal was made prior to issuance of SCN.*
>
> *The excess availment of ITC in the FY 2019-20 amounting to Rs.84,565/- under each of CGST & SGST was admitted by the appellant and they reversed the dues vide DRC-03 under ARN No. AD190325046585T dated 26/3/25 for the above amount without payment of interest and penalty.*
>
> *In 2020-21, I find no excess availment of ITC as per the available data.*
>
> *In 2021-22, I find, the appellant availed excess ITC of Rs. 4208/- [IGST], Rs. 195236/-(each under CGST & SGST]. I find the Adjudicating Authority accepted a payment of Rs.185000/- (under each of CGST & SGST] along with interest of Rs.3000/- each vide DRC-03 under ARN No. AD190222005350R dated 19/2/2022. The payment was made prior to issuance of SCN. The balance amount of Rs.4208/- [IGST], Rs.10,237/-each under CGST & SGST was paid by the appellant on 26/3/2025 vide DRC-03 No. AD190325046634Y. They did not pay any interest and penalty thereon.*
>
> *I find no excess availment of ITC in the FY 2022-23.*

[21] It appears to us that the first appellate authority has dealt with the matter elaborately and after a meticulous comparison between GSTR2A

and GSTR3B and DRC-03 uploaded by the taxpayer, the appellate authority computed the liabilities of the taxpayer. This apart, in the memorandum of appeal the revenue does not agitate this issue either in the grounds of appeal or in the prayer portion of the memorandum of appeal. In the course of hearing, the representative of the revenue argued that had the appellate authority been convinced that the demand was based on improper computation, the appellate authority should have referred the matter back to the proper officer with a direction to him for fresh computation of the impugned tax. According to the revenue, the appellate authority exceeded its jurisdiction by taking up the computation itself. The said contention is not acceptable by us because Section 75 of the CGST Act, 2017 which has laid down the **general provisions relating to determination of tax** empowers the Appellate Authority or Appellate Tribunal or Court under sub-section (8) to modify the amount of tax determined by the proper officer and provides that where the amount of tax is modified by the Appellate Authority or Appellate Tribunal or Court, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

[22] Therefore, Revenue’s challenge to the jurisdiction of the first appellate authority in respect of modification of tax amount by itself is devoid of merit. From a careful perusal of the record we find no illegality in the order of the first appellate authority in respect of this demand. There

is, therefore, no reason for us to interfere with the findings of the appellate authority insofar as it relates to the order confirming Rs.1,93,812/- along with applicable interest and penalty for mis-match of ITC between GSTR3B and GSTR2A.

[23] As regards the finding of the appellate authority on the demand of Rs.530976/- against RCM along with interest and penalty under Section 74 of the CGST Act, 2017, the appellate authority has dealt with the matter in paragraph 6.10 to paragraph 6.13 by addressing the issue meticulously. It would be appropriate for us to reproduce the said paragraphs which are as under :

> *6.10. In case of liability of payment of GST under RCM I find that, the adjudicating authority confirmed the demand on Rs.530,976/- under CGST & SGST. There are four parts in the demand. In case of conveyance expenses, the appellant submitted ledger copy of expenses wherein I find that, the expenses were against the local conveyance of the labour/ employees/ workers. Such expenses are not taxable on RCM basis. The demand was Rs.88570/- (CGST + SGST].*
>
> *6.11. Some expenses were incurred by the appellant against freight. They submitted relevant documents like part of GSTR-2A, ledger for freight expenses etc. I find M/s TCI Express Ltd., National Carrying Corporation charged the freight on FCM. Such tax of 12140/- on FCM is not payable by the appellant. The remaining demand of RCM on freight pertained to pre-GST period amounting to Rs. 1734/- is not payable. They also submitted that, they paid Rs.1090/ in FY 2020-21 in GSTR-3B. Remaining amount of Rs.20472/- is payable by the appellant.*
>
> *6.12. In legal charges, I find that, they paid the amount to chartered accountant for various related works which I find is not taxable under RCM. The demand was for Rs.7060/-which did not have any ground.*
>
> *6.13. In case of travelling expenses, I find that, they travelled by rail and the relevant tickets were submitted by them. These are not taxable in the hand of the appellant. The demand amount was*

Rs.399,910/-. I find in the entire demand of Rs.530,976/-they are to pay Rs.10236/- & 10236/- (under CGST & SGST) with interest and penalty. The entire accounts was available and I find they had reflected the expenses in their annual financial statement. They had no intention to evade the tax. I confirm the demand under section 73 of the CGST/SGST Act, 2017.

[24] After examination of the entire accounts of the taxpayer the first appellate authority came to the conclusion that there was no attempt on the part of the taxpayer to evade his tax liabilities since all the expenses were properly reflected in the annual financial statements of the taxpayer. The first appellate authority reduced the demand by way of modification and confirmed the demand under RCM to the tune of Rs.10236/- under CGST and Rs.10236/- under SGST along with applicable interest and penalty. The first appellate authority categorically held that there was no material to attribute fraud, wilful misstatement or suppression of facts as contemplated under Section 74, CGST Act,2017 to the tax payer in respect of this demand. It was, therefore, held that the tax modified by the first appellate authority along with applicable interest and penalty would be recoverable in terms of Section 73, CGST Act, 2017.

[25] We have examined the said findings of the first appellate authority in the light of the records made available before us, the position of law and the submissions made on behalf of the parties. It is a settled position that the term *suppression of facts* as contemplated under Section 74, CGST Act, 2017 must be construed strictly. The Hon’ble Supreme Court in the case of **Pushpam Pharmaceuticals Company vs Collector of Central**

Excise, Bombay reported in 1995 Supp (3) SCC 462 deliberated on the meaning and contour of *suppression of facts* in taxation and held as under:

"4. ………..…..In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape payment of duty. Where facts are known to both the parties, the omission by one to do what he might have done and not that he must have done, does not render in suppression"

[26] In so far as this demand under RCM is concerned, no deliberate action to suppress the material information with a view to evade tax has been proved against the tax payer. Therefore, in the light of the judgment of the Hon'ble Apex Court in **Pushpam Pharmaceuticals** (supra), we cannot but agree with the finding of the first appellate authority that Section 74, CGST Act, 2017 cannot be invoked for enforcement of this demand.

[27] As regards the demand of Rs.43,44,046/- for availment and utilization of ITC based on fake invoice issued by the non-existent suppliers, the first appellate authority confirmed the said demand but it was of the view that the Revenue should not have been invoked Section 74 of the CGST Act, 2017, for enforcement of this demand since no fraud or any wilful mis-statement or suppression of facts as contemplated under Section 74, CGST Act, 2017 has been proved against the taxpayer. The

first appellate authority, therefore, confirmed the demand of Rs.43,44,046/- along with applicable interest and penalty payable in terms of Section 73 of the CGST Act, 2017. As already discussed by us in the forgoing Paragraphs, both the parties have advanced arguments and counter arguments on this issue.

[28] Apparently, the appellant before us is the Revenue. In so far as the order of the first appellate authority confirming the demand of Rs. 43,44,046 [CGST & SGST] is concerned, the tax payer does not challenge the order. As discussed, the first appellate authority held that notice should have been served under section 73, CGST Act. Therefore, the first appellate authority confirmed the demand enforceable under section 73, CGST Act holding that section 74 does not apply in this case. The revenue has challenged the order on the ground that the decision of the first appellate authority is erroneous, in as much as, it holds that the given fact situation does not justify invocation of section 74, CGST Act 2017.

[29] According to Revenue, the tax payer failed to discharge its burden of proving the correctness of his ITC claims. He could not adduce any proof of actual delivery of goods which is a sine qua non for claiming ITC and therefore, the charge of availing ITC on the basis of fake invoice against the tax payer gains ground which justifies the application of Section 74, CGST Act, 2017.

[30] The revenue has further contended that the tax payer has clearly breached Section 16 (2) (b) of the CGST Act, 2017 which postulates that the tax payer would not be eligible for taking ITC unless he has received the goods or services or both. According to the revenue, the tax payer in this case availed and utilised ITC based on invoices generated by non-existent suppliers and he was completely aware that he did not actually receive the goods and such conduct of the tax payer is a clear indication of his culpable mind.

[31] Therefore, the short question which is posed for our consideration is whether the first appellate authority was justified in holding that revenue could not prove fraud against the tax payer for serving notice under Section 74, CGST Act, 2017 for enforcement of the demand of Rs. 43,44,046.

[32] While considering the question aforesaid, section 74 (1), CGST Act, 2017, is required to be referred to, which reads as under:

"Section 74. Determination of tax [2][, pertaining to the period up to Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful- misstatement or suppression of facts.-

(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."

[33] Thus, Section 74 (1), CGST Act 2017, quoted herein above, in its plain terms clearly contemplates that a notice under Section 74 (1), CGST Act 2017 shall be served 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.

[34] As we have already discussed in the preceding paragraphs, the revenue in this case has vehemently argued that the 13 number of suppliers in whose name the tax payer generated the invoice were fake and non-existent which was in the knowledge of the tax payer who availed and utilised a huge amount of ITC on the basis of such fake invoices and as such the demand notice was served on the tax payer under Section 74 (1) CGST Act, 2017. In counter argument, the Authorised Representative of the tax payer, has contended that the tax payer successfully proved

the genuineness of the transaction by producing invoices issued by the suppliers and the banking details showing the payment made by him against the supplies. Moreover, when the supplies were made and invoices were issued, the GST registration of all the 13 number of suppliers were active on the GST portal which was subsequently cancelled by the Revenue from retrospective date. Therefore, the transaction made before such cancellation of registration can not be said to be void and the tax payer can not be penalised for such transaction in terms of Section 74, CGST Act, 2017.

[35] **The CGST Act 2017 in Chapter XXI under Section 155** deals with the **burden of proof** which provides that the burden of proving rightful claim of ITC lies on the person claiming the credit. For better appreciation, we may quote Section 155, CGST Act, 2017, which reads as under:

"Section 155. Burden of proof.-

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

This clause provides that the burden of proving rightful claim of input tax credit will lie on the person claiming the credit (Notes on Clauses)"

[36] In order to discharge such burden the tax payer seems to have produced the invoices generated by the suppliers who were allegedly non existent and some of the banking details to prove that he made payment

against those supplies. We have perused the documents available on the portal on the side of the tax payer. We find no document/ material to prove and establish the actual physical movements of good which is a sine qua non for claiming ITC. In this regard, the Hon'ble Supreme court in the case of **STATE OF KARNATAKA vs ECOM GILL COFFEE TRADING PRIVATE LIMITED reported in [2023] 111 GSTR 1 (SC)** examined, along with other issues, as to whether the tax payer could discharge its burden of proof in terms of Section 70 of the Karnataka Value Added Tax at 2003 to justify his claim of ITC and in Paragraph 9.1 of the judgment, the Hon'ble Apex Court held as under:

"*9.1 Thus, the provisions of Section 70, quoted hereinabove, in its plain terms clearly stipulate that the burden of proving that the ITC claim is correct lies upon the purchasing dealer claiming such ITC. Burden of proof that the ITC claim is correct is squarely upon the assessee who has to discharge the said burden. Merely because the dealer claiming such ITC claims that he is a bona fide purchaser is not enough and sufficient. The burden of proving the correctness of ITC remains upon the dealer claiming such ITC. Such a burden of proof cannot get shifted on the revenue. Mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under section 70 of the KVAT Act, 2003. The dealer claiming ITC has to prove beyond doubt the actual transaction which can be proved by furnishing* *the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. The aforesaid information would be in addition to tax invoices, particulars of payment etc. In fact, if a dealer claims Input Tax Credit on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods, genuineness of transactions by furnishing the details referred above and mere production of tax invoices would not be sufficient to claim ITC. In fact, the genuineness of the transaction has to be proved as the burden to prove the genuineness of transaction as per section 70 of the KVAT Act, 2003 would be upon the purchasing dealer. At the cost of repetition, it is observed and held that mere production of the invoices and/or payment by cheque is not sufficient and cannot be said to be proving the burden as per section 70 of the Act, 2003.*"

[37] Apparently, there is no proof of physical movements of goods from the side of the alleged suppliers to the tax payer who has admittedly availed and utilised ITC based on the invoices issued by these suppliers. The imputation of the Revenue that the suppliers were non existent and fictious, thus, gains ground.

[38] In a recent judgment delivered on **25.08.2026 in the case of M/S Tata Steel Limited vs Union of India through the Secretary, Ministry of Finance and others**, the question which arose for consideration of the

Hon'ble Supreme Court was "……*whether the SCN can be sustained based on the extended period of five years as available under Section 74 which can be availed by the Department only if there is an allegation of fraud/wilful misrepresentation/ facts/suppression*."

[36] The Hon'ble Apex Court in the said judgment has succinctly held that the foundational facts which led the assessing officer to arrive at the inference of fraud/ wilful misrepresentation/ suppression should be evident from the notice itself. The Hon'ble Apex Court in Paragraph 14 of the said judgment has held as under:

"*14. It is not mere lip service to the provisions that is intended when an extended limitation period is provided for recovering an excess benefit availed, short payment or excess refund, from the assessee, especially when the allegation is of fraud/willful misrepresentation/suppression. The foundational facts which led to the inference arrived at of fraud/willful misrepresentation/ suppression should be evident from the notice itself. The mere employment of such words will not indicate an application of mind, upon which alone the satisfaction can be arrived at. The words are not to be mechanically recited in the notice to enable recovery outside the normal limitation provided under the statute*."

[40] In the case in hand, the assessing officer in **Paragraphs 2.1 and 2.2** of the SCN has clearly stated as under

"**2.1** During the course of investigation against M/s Ambika Enterprise (GSTIN- 19AXQPH0046QIZV) by the DGGI, KZU in connection with the fake racket busted by Noida Police, M/s Ambika Enterprise was found to be non-existent at their principal place of business and had passed on irregular/ inadmissible ITC. It appears from the GSTR-1 M of M/s Ambika Enterprise that M/s Jay Technical Services has availed ITC to the tune of Rs 60,378/- (CGST- Rs 30,189/- and SGST Rs 30,189/-) on the basis of fake invoice issued by M/s Ambika Enterprise.

2.2 Accordingly, on the basis of valid Authorisation of Inspection issued by the competent authority, verification was done at the principal place of business of the said notice at 26/1/1b, Strand Road, Burabazar, Kolkata, West Bengal- 700001 by a group of officers of Anti-Evasion on 31.10.2013. On reaching the said address, the officer met Mr. Niraj Sharma, husband of Smt. Namrata Sharma, (one of the partners of the said noticee). A spot summons was issued to the said noticee and statement of Shri. Sourav Dolui, accountant/ authorised representative of the firm was recorded. The officer then asked about the goods purchased from M/s Ambika Enterprise wherein Shri Sourav Dolui accepted that they have purchased goods from M/s Ambika Enterprise. However, on being asked, he agreed to pay/ reverse the ITC of Rs 60,378/- availed on the basis of invoices issued by M/s Ambika Enterprise and reversed the same along with interest and penalty vide DRC-03 having ARN No.-AD1911230008775."

[41] In GSTR 2A uploaded by the tax payer, the names of as many as 13 suppliers appeared and admittedly on the basis of invoices issued by them, the tax payer availed ITC to the tune of Rs 43,44,046/- under demand. In Paragraph 2.5 of the SCN, the assessing officer in clear terms has stated that a scrutiny undertaken by the Revenue disclosed that each of the suppliers was a non-existent entity from the date of online registration and none of them had ever conducted any business at all. They all obtained GST registration by providing fictitious address and defrauded the Government.

[42] Admittedly the tax payer availed the ITC under demand based on invoices issued by the said suppliers. His contention is that during transactions, their GST registration was operative in the portal which was cancelled later retrospectively. In the judgment in **ECOM GILL COFFEE TRADING PRIVATE LIMITED** (supra) the Hon'ble Apex Court has succinctly held that mere production of tax invoices would not be sufficient to claim ITC. The dealer/ purchaser has to prove and establish actual physical movement of goods. Obviously in the present case there is no proof of actual physical movements of the goods.

[43] The SCN, in unambiguous terms, states that the Revenue undertook a scrutiny and detected that all the 13 suppliers on whose

invoices the tax payer availed and utilised the ITC under demand were fake entity whose GST registration was cancelled with effect from the date of their online registration after they were found non-existent.

[44] The facts and circumstances stated above make us conceive that the tax payer was fully aware of the fact that the suppliers on whose invoice he availed and utilised ITC were non-existent. He was also completely aware of the fact that the goods for the supply of which he claimed ITC were not actually delivered to him. Added to this, there was an wilful misstatement in self assessment made by the tax payer in GSTR 3B. Such conduct of the tax payer clearly demonstrates that he deliberately defrauded the revenue for taking ineligible ITC. There is, therefore, no illegality in serving notice under Section 74, CGST Act, 2017 on the tax payer for enforcement of the demand of Rs 43,44,046/- along with applicable interest and penalty in terms of Section 74, CGST Act, 2017.

[45] We also need to address the issue raised by the tax payer as to whether a consolidated notice for multiple financial years can be issued under Section 74 of the CGST Act, 2017. Similar issue arose before the Hon'ble Delhi High Court in the case of **Ambika Traders vs Additional Commissioner, Adjudication, DGGSTI, CGST, Delhi North** reported in **[2025] 148 GSTR1 (Delhi)** and the Hon'ble High Court was of the following view:

“Consolidated SCN for multiple financial years

43. Insofar as the issue of consolidated notice for various financial years is concerned, a perusal of Section 74 of the CGST Act would itself show that at least insofar as fraudulently availed or utilized ITC is concerned, the language used in Section 74(3) of the CGST Act and Section 74(4) of the CGST Act is “for any period” and “for such periods” respectively. This contemplates that a notice can be issued for a period which could be more than one financial year. Similar is the language even in Section 73 of the CGST Act. The relevant provisions read as under:

“73. Determination of tax [, pertaining to the period up to Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.— XXXX (3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax. (4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice. XXXX 74. Determination of tax [, pertaining to the period

up to Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilfulmisstatement or suppression of facts.— XXXX (3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax. (4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice."

44. Some of the other provisions of the CGST Act, which are relevant, include Section 2(106) of the CGST Act, which defines "tax period" as under: "2.[…] (106) "tax period" means the period for which the return is required to be furnished"

45. Thus, Sections 74(3), 74(4), 73(3) and 73(4) of the CGST Act use the term "for any period" and "for such periods". This would be in contrast with the language used in Sections 73(10) and 74(10) of the CGST Act where the term "financial year" is used. The said provisions read as under: "73.[…] (10) The proper officer shall issue the order under sub-section (9) *within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund" "74.[…] 10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund." The Legislature is thus, conscious of the fact that insofar as wrongfully availed ITC is concerned, the notice can relate to a period and need not to be for a specific financial year.*

46. The nature of ITC is such that fraudulent utilization and availment of the same cannot be established on most occasions without connecting transactions over different financial years. The purchase could be shown in one financial year and the supply may be shown in the next financial year. It is only when either are found to be fabricated or the firms are found to be fake that the maze of transactions can be analysed and established as being fraudulent or bogus. 47. A solitary availment or utilization of ITC in one financial year may actually not be capable of by itself establishing the pattern of fraudulent availment or utilization. It is only when the series of transactions are analysed, investigated, and enquired into, and a consistent pattern is established, that the fraudulent availment and *utilization of ITC may be revealed. The language in the abovementioned provisions i.e., the word `period' or `periods' as against `financial year' or `assessment year' are therefore, significant."*

[46] In view of the legal position enunciated by the Hon'ble Delhi High Court in the case of **Ambika Traders (supra)**, we are of the view that a consolidated SCN for multiple financial years for enforcement of demand in terms of Section 74, CGST Act, 2017 cannot be said to be impermissible.

[47] Consequently, the findings of the first appellate authority whereby the first appellate authority has modified the demand of Rs 17,22,513/- to Rs 1,93,812/- payable along with penalty and interest in terms of Section 73 and modified the demand of Rs 5,30,976/- to Rs 10,236/- (CGST) and Rs 10,236/- (SGST) under RCM along with applicable interest and penalty payable in terms of Section 73, CGST Act, 2017 are hereby upheld by us. The findings of the first appellate authority in respect of the demand of Rs 43,44,046/- (CGST and SGST) stand rejected and the said demand of Rs 43,44,046/- (CGST and SGST) payable along with applicable interest and penalty in terms of Section 74, CGST Act, 2017 as confirmed by the adjudicating authority in the OiO stands restored.

As regards the order of the first appellate authority allowing the tax payer to file application seeking waiver of interest or penalty or both relating to the demands confirmed by the first appellate authority under Section 73 for the admissible tax period in terms of Section 128-A, CGST Act, 2017, we are of the view that if such application is filed, the competent authority in the revenue shall dispose such application within a period of 03 months from the date of filing the application.

The Appeal filed by the Revenue is thus partly allowed.

Announced in presence of the Authorised Representatives of the parties. Supply certified copy of the order to the parties.

(S.G. Chattopadhyay)

(Bijoy Kumar Kar)