GSTAT

Court No. Court II

APL/10/BUR/2026

CONDUENT BUSINESS SERVICES INDIA LLP **.....Appellant**

Versus

COMMISSIONER OF CENTRAL TAX BENGALURU EAST GST COMMISSIONERATE , COMMISSIONER OF CENTRAL TAX, BENGALURU EAST GST COMMISSIONERATE & ORS. **.....Respondent**

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Hon'ble Sudha Koka, Member (Technical)
Hon'ble Srikanth Venkatraman, Member(Judicial)

ORDER

Per : Sudha Koka , Member Technical

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I. The Architecture of the Dispute

1. Tax law rests upon a delicate balance: the imperative of the State to collect revenues lawfully due, and the solemn guarantee to the tax payer of procedural fairness, statutory certainty, and protection against arbitrary action. Where extended periods of limitation and severe penal actions are invoked, the law requires not mere suspicion or administrative convenience, but the rigorous satisfaction of statutory pre-conditions.

2. The present appeal under Section 112 of the Central Goods and Services Tax Act, 2017 ("CGST Act") calls upon this Tribunal to examine the validity of **Order-in-Appeal No. 105/2024-25 dated 01.10.2024** ("impugned OIA") passed by the Joint Commissioner of Central Tax (Appeals-1), Bengaluru. By the impugned OIA, the Appellate Authority reversed the well-reasoned findings of the Adjudicating Authority in **Order-in-Original No. 04/2023-24 dated 12.06.2023** ("OIO") and proceeded to impose penalties under Section 74 of the CGST Act across all issues.

II. CHRONOLOGY OF PROCEEDINGS & RELEVANT DATES

3. The trajectory of the proceedings leading to the present appeal is extracted in the following table:

Date	Event / Stage	Description & Statutory Context
23.05.2022	**Audit Enquiry (Memo)**	Communication of audit findings under Section 65 for the period July 2017 to March 2020 totaling ?19,28,456.
18.06.2022	**Pre-SCN Discharge (Part I)**	Voluntary deposit via Form GST DRC-03 of agreed tax (?7,78,693) and applicable interest (?5,77,235).

20.06.2022	**Audit Reply**	Appellant submitted formal reply contesting the balance of un-agreed proposals and penalty liabilities.
07.07.2022	**Pre-SCN Discharge (Part II)**	Additional interest paid via Form GST DRC-03 to fully satisfy interest claims on agreed liabilities.
01.12.2022	**Final Audit Report**	Audit report finalized under Section 65(6) recommending issuance of Show Cause Notice.
25.01.2023	**Show Cause Notice (SCN)**	SCN No. 222/2022-23 issued under Section 74 proposing recovery of tax, interest, and Section 74 penalties.
28.02.2023	**Reply to SCN**	Detailed response filed online via Form GST DRC-06 (physical copy served on 02.03.2023).
12.06.2023	**Order-in-Original (OIO)**	Adjudicating Authority confirmed agreed tax/interest; **dropped Section 74 penalty for Issues 1 & 3**; confirmed penalty for Issue 2.
13.06.2023	**Penalty Payment (Issue 2)**	Appellant deposited 50% reduced penalty under Section 74(11) via Form GST DRC-03 for Issue 2.
07.02.2024	**Departmental Appeal**	Revenue challenged the dropping of Section 74 penalty for Issues 1 & 3 pursuant to a Review Order passed by the Commissioner.
18.03.2024	**Cross-Objections Filed**	Appellant filed detailed cross-objections contesting Revenue's appeal on merits and procedural grounds.
01.10.2024	**OIA**	First Appellate Authority allowed Departmental Appeal and imposed Section 74 penalty on Issues 1 & 3.

III. THE THREE MATTERS IN CONTROVERSY & FINANCIAL DISSECT

4. To understand the scope of the dispute, it is necessary to parse the three distinct issues evaluated by the statutory authorities:

Issue No.	Description of Audit Point	Demanded in Audit (₹)	Agreed & Paid Pre-SCN (Tax)	Pre-SCN Interest Paid	Adjudication Finding (OIO)	Appellate Finding (OIA)
1	Excess ITC in GSTR-3B vs GSTR-2A	17,06,697	6,59,549	4,86,993	Tax agreed confirmed; Balance dropped. **Sec 74 Penalty dropped.**	**Reversed:** Sec 74 Penalty imposed.
2	Ineligible ITC under Section 17(5)	1,19,169	16,554	7,220	Tax confirmed; **Sec 74 Penalty confirmed** (50% paid).	*Uncontested.*
3	Irregular Transitional Credit (TRAN-1)	1,02,590	1,02,590	83,022	Tax confirmed; **Sec 74 Penalty dropped.**	**Reversed:** Sec 74 Penalty imposed.
TOTAL	**Combined Demands**	**19,28,456**	**7,78,693**	**5,77,235**	**Sec 74 penalty dropped for Issues 1 & 3.**	**Sec 74 penalty extended to all issues.**

IV. THE PRELIMINARY OBJECTION: REASONABLE APPREHENSION OF BIAS

A. The Statutory Mandate and Executive Hierarchy

5. A preliminary objection was raised by the Appellant, alleging that the appellate proceedings before the First Appellate Authority were vitiated by an inherent institutional bias. The argument proceeds on the premise that because the Revenue appeal was instituted pursuant to a Review Order passed by an officer of the rank of **Commissioner of Central Tax**, the hearing of the appeal by a subordinate officer—the **Joint Commissioner (Appeals)**—reeks of institutional prejudice.

6. We are unpersuaded by this contention. The quasi-judicial architecture under Section 107 of the CGST Act is a creation of statute. Parliament has explicitly structured the hierarchy of appellate mechanisms. When an officer exercises quasi-judicial authority under statutory authorization, that jurisdiction is exercised independently under the command of the statute, not as a delegate of executive orders. The administrative review conducted by the Commissioner under Section 107(2) is merely an executive decision to seek legal determination; it does not constitute a judicial directive binding against the Appellate Authority on merits.

B. The Standard of Proof: Real Danger vs. Mere Apprehension

7. The law on administrative bias does not entertain vague suspicions or subjective discomfort. In a landmark decision of **State of Punjab & Ors. v. V.K. Khanna & Ors. [(2001) 2 SCC 330]**, the Supreme Court laid down the authoritative test:

"The apprehension must be judged from the healthy, reasonable and average point of view... The concept of bias must be confined within its proper limits... There must be a real likelihood of bias, not merely a suspicion."

8. Merely because a quasi-judicial officer belongs to the same departmental hierarchy or decides a statutory appeal initiated following a superior officer's administrative review direction does not establish a "real danger of bias." In the absence of personal animus, financial interest, or direct subject-matter prejudice, the preliminary challenge to the jurisdiction of the First Appellate Authority fails and is accordingly rejected.

V. THE SUBSTANTIVE JURISDICTIONAL DEFECT: SECTION 74 vs. SECTION 73

A. The Jurisdictional Threshold of Section 74

9. We now turn to the substantive core of the appeal: whether the First Appellate Authority was legally justified in imposing penalty under Section 74 of the CGST Act for **Issues 1 and 3**.

10. Section 74 is an extraordinary provision. It empowers the Revenue to invoke an extended period of limitation and visit the taxpayer with onerous penalties of 100%. However, the statute deliberately conditions this power upon the existence of specific, positive *mens rea* elements: **fraud, willful misstatement, or suppression of facts with intent to evade tax**. In the absence of these specific elements, any tax shortfall falls strictly within the domain of Section 73.

B. The Ratio of Tata Steel: Foundational Facts and Independent Satisfaction

11. The constitutional and statutory boundaries of Section 74 have been definitively settled by the Supreme Court of India in **M/s Tata Steel Limited v. Union of India & Ors. [2026 INSC 920]**. The Apex Court laid down three inviolable principles governing Section 74 proceedings:

- **No Mechanical Invocation:** The extended period and penal provisions under Section 74 cannot be triggered by mechanically reciting statutory terms like "suppression" or "willful misstatement."

- **Requirement of Foundational Facts in SCN:** The Show Cause Notice itself must explicitly set forth the underlying foundational facts demonstrating a conscious, deliberate device to evade tax. A failure to disclose foundational facts in the SCN is a jurisdictional defect that cannot be cured later.

- **Independent Satisfaction of the Proper Officer:** The Proper Officer must record independent, subjective satisfaction based on concrete material. The mere existence of an audit observation under Section 65 or a CAG query does not automatically translate into "suppression" under Section 74.

C. Application to the Present Matter: Audit Observations vs. Suppression

12. Applying the ratio of *Tata Steel to* the present case, the OIO contained explicit, categorical findings of fact:

All records, including GSTR-3B, GSTR-2A, and TRAN-1 declarations, were fully available on the departmental portal. There is no positive act of deliberate suppression or intentional misstatement alleged or established against the Appellant.

13. The Appellate Authority grossly erred in law by

1. Holding that the original authority had "no option" but to impose a Section 74 penalty once tax demanded under Sec 74 was confirmed. The mechanism under Section 74 requires independent satisfaction of *mens rea*; issuance of an SCN under Section 74 does not automatically bind the adjudicator to confirm penal liabilities where deliberate intent is absent.

2. The finding of the Appellate Authority that the contravention would have continued unabated "but for the audit verification" misconstrues the legal definition of *suppression*. Routine audit discoveries under Section 65 do not automatically trigger extended limitation or penal provisions.

3. The impugned finding directly violates the ratio of the Honble Supreme Court in *Tata Steel (supra)* and connected precedents which firmly establish that audit detection without proof of an active, deliberate intent to evade tax cannot sustain charges under Section 74.

14. Further, as held by the Supreme Court in **Anand Nishikawa Co. Ltd. v. CCE [(2005) 188 ELT 149 (SC)]**, when facts are known to both parties or are accessible via statutory records, non-disclosure does not amount to suppression.

VI. THE EFFECT OF PRE-SCN PAYMENT OF TAX AND INTEREST

15. It is an admitted fact that the Appellant voluntarily deposited the entire agreed tax liability along with applicable interest via Form GST DRC-03 in June and July 2022—**months prior to the issuance of the Show Cause Notice on 25.01.2023**.

16. Where tax and interest are fully discharged prior to the SCN, and where allegations of fraud or suppression are unsustainable, the statutory mechanism under Section 73(5) read with Section 73(8) comes into operation. The statutory scheme intends to grant immunity from penalty to taxpayers who settle their tax and interest obligations prior to formal adjudication, provided there is no deliberate intent to evade.

17. This position is fortified by the decision of the Karnataka High Court in **CCE & ST v. Adecco Flexion Workforce Solutions Ltd. [2012 (26) STR 3 (Kar)]**, which established that penal proceedings cannot be sustained when tax and interest are voluntarily discharged before the issuance of an SCN in the absence of deliberate evasion. The First Appellate Authority completely ignored this precedent.

VII. CONCLUSION:

18. In the light of the detailed analysis above, we summarize our conclusions:

- **Preliminary Challenge:** The allegation of bias against the First Appellate Authority is **rejected**. Institutional hierarchy does not meet the "real danger of bias" standard laid down in *V.K. Khanna (supra)*

- **Substantive Merits:** The imposition of Section 74 penalties on Issues 1 and 3 by the First Appellate Authority are unsustainable. In terms of the Supreme Court's mandate in *Tata Steel (supra) audit* mismatches and pre-SCN payments in the absence of positive proof of deliberate suppression cannot attract Section 74 penalties.

19. **ORDER**

1. The Appeal is **ALLOWED**.

2. OIA No. 105/2024-25 dated 01.10.2024 is **SET ASIDE**

3. The credit reversed and interest paid on issues 1& 3 above are held to be payments under Sec. 73 (5) of CGST ACT, 2017

Pronounced in the open Court on this 15th day of September 2026.

(Sudha Koka)

(Srikanth Venkatraman)

Dated: 15.09.2026