IN THE GOODS AND SERVICES TAX APPELLATE TRIBUNAL
KOLKATA BENCH

COURT NO.1

Appeal No. APL/24/KLK/2026

Anil Kumar Singh
For the Commissioner
CGST & CX, Kolkata North Commissionerate
GST Bhawan, 180, Shantipally,
Rajdanga Main Road, Kolkata-700107

…… Appellant

VERSUS

Director
Summit Hotels & Resorts Private Limited
00, Sevoke Road, Siliguri,
WBDAR-734001

…… Respondent

In appearance :

For the appellant : Mr. Mukesh Kumar Shaw, Superintendent, CGST
For the respondent : Mr. Mayank Agarwal, Chartered Accountant

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CORAM :

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

Final Order

Date of Order : 29.09.2026

Per S.G. Chattopadhyay (JM):

[1]. The present appeal has been filed by the revenue under Section 112(1) of the Central Goods and Services Act, 2017 (in short CGST Act) against the impugned order dated 24.07.2025 passed by the first appellate authority.

[2]. The taxpayer is a hotelier in the name and style of M/s Summit Hotels and Restaurant Private Limited at Siliguri of Darjeeling District in West Bengal within the jurisdiction of this Tribunal.

[3]. A demand was created against the taxpayer under Section 74(1) of the CGST Act, 2017 for delayed payment of GST, belated filing of return in GSTR Form 3B and non-payment of interest pertaining to the financial year 2017-2018. SCN dated 05/08/2024 was served on the taxpayer asking him to pay or to show cause as to why the following amount of tax, interest and penalty were not be recovered from him :

> *"6. Now, therefore, M/s. SUMMIT HOTELS & RESORTS PRIVATE LIMITED, having their registered principal place of business at at G0402, Office Block - G, City Centre, Uttorayan, Darjeeling, West Bengal, 734010 registered with GSTIN: 19AAXCS7643D1ZPare hereby called upon to show cause under Section 74 of the Central Goods and Services Tax Act, 2017 read with Rule 142 of Central Goods and Services Tax Rules, 2017 to the Superintendent, Range IV, SILIGURI-DARJEELING DIVISION, Siliguri CGST & CX Commissionerate, (herein after referred as the Adjudicating Authority), within 30 (thirty) days of the receipt of this notice, as to why:*
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> *i) Tax amounting to Rs. 34,09,397/- (IGST Rs. 4,358/-, CGST Rs. 14,58,733/- & SGST Rs. 19,46,306/-) (Rupees Thirty Four Lakh Nine Thousand Three Hundred and Ninety Seven only) being the amount paid beyond due date contravention of Section 9(1) & Section 39 of the said Act during the relevant period should not be demanded and recovered from the appellant under Section 74(1) of the said Act;*
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> *ii) Amount of ITC for Rs. 34,09,397/- (IGST Rs. 4,358/-, CGST Rs. 14,58,733/- & SGST Rs. 19,46,306/-) (Rupees Thirty Four lakhs Nine Thousand Three Hundred and Ninety Seven only) being the amount paid beyond due date already paid by the appellant should not be appropriated towards payment of Govt. dues;*

iii) An amount of interest amounting to SGST Rs. 4,764/- (Rupees Four Thousand Seven hundred and Sixty Four only) during the period 2017-18 on delayed payment of tax liability in cash (as discussed in para 2.1) should not be demanded and recovered from them under Section 50 of the CGST Act, 2017.

iv) The interest amounting to SGST Rs. 4,764/- (Rupees Four Thousand Seven hundred Sixty Four only) already paid by the appellant should not be appropriated against the Govt. dues;

v) Penalty under Section 74 of the said Act should not be imposed upon the appellant on delayed payment of tax liability amounting to Rs. 34,09,397/- (IGST Rs. 4,358/-, CGST Rs. 14,58,733/- & SGST Rs. 19,46,306/ (Rupees Thirty Four Lakh Nine Thousand Three Hundred and Ninety Seven only).”

[4]. In reply to the show cause notice, the taxpayer said that though belatedly, he deposited self assessed tax and interest for delayed payment and uploaded return in GSTR 3B before the proceedings were drawn up against him. According to the taxpayer due to his error in the calculation, a sum of Rs.4764/- as interest was short paid which was also paid by him and intimated through DRC-03 dated 12.07.2022.

[5]. After giving due consideration to the demand notice and the reply of the taxpayer thereto, the adjudicating authority confirmed the entire demand and passed the following order on 20.01.2025 :

9. ORDER/(S)

“9.1 I confirm the demand of GST Rs 34,09,397/- (IGST Rs.4358/-, CGST Rs 14,58,733/- & SGST Rs. 19,46,306/-(Rupees Thirty-four lakhs nine thousand three hundred ninety-seven only) during the tax period 2017-18 in terms of Section 74(9) of the CGST Act 2017 and identical provisions of the WBGST/IGST Act 2017;

9.2 I however order for appropriation of the tax amount as stated in Para 5.1 above as the same has already been paid to the government exchequer;

9.3 I order for recovery of interest amounting to SGST-Rs.4764/- (Rupees Four thousand Seven hundred Sixty-four Only) during the

period 2017-18 on delayed payment of tax liability in cash in terms of Section 50 (1) of the CGST Act 2017 read with identical provisions under the WBGST/IGST Act 2017;

9.4 I however order for appropriation of the interest amount as stated in Para 5.3 above as the same has already been paid to the government exchequer vide DRC 03 dated 12.07.2022;

9.5 I impose penalty of an amount equal to the amount of confirmed demand [at para 5.1 supra] under Section 74 (9) of the CGST Act 2017 and identical provisions of the WBGST/IGST Act 2017. However, I allow the benefit of reduced penalty subject to fulfilment of the conditions as laid down in Section 74(11) of the CGST Act, 2017 (as amended);

9.6 I also order for entry of the demand in the Electronic Liability Register (Part-II: other than return related liabilities) of the Noticee (taxpayer) in the Form GST [PMT-01].”

[6]. Aggrieved taxpayer challenged the said OIO by filing an appeal under Section 107(1) of the CGST Act, 2017 before the first appellate authority. The first appellate authority was of the view that the revenue could not make out a case under Section 74(1), CGST Act, 2017 as there was no proof of fraud or any wilful misstatement or suppression of facts to evade tax against the taxpayer. The first appellate authority, therefore, viewed that though belatedly, the taxpayer cleared all the dues including the entire amount of interest. Therefore, the first appellate authority allowed the appeal by dismissing the order of the adjudicating authority by his final order dated 24.07.2025 and held as under :

“xxxxxxxxx
5.7 I find force in the arguments forwarded by the appellant that there is no evidence of suppression of facts in instant case as same has not been established in the impugned notice which indicates that ingredients of invoking Section 74 are present in the instant case. I find that in instant case is not paying interest liability on late payment of tax through cash to the tune of Rs. 4,764 (SGST) (Rupees Four Thousand Seven Hundred and Sixty Four only) by the appellant

during the F.Y 2017-18 (July 2017 to March 2018). I find that the appellant had already paid the interest through DRC 03 vide Debit Entry No. DC1907220029741 dated 12.07.2022 much before the issuance of Show Cause Notice. I find that as charges of fraud/wilful mis statement/suppression of facts to evade tax have not been established against the appellant, notice issued under Section 74 is not sustainable.

5.8 In view of the discussions held here-in-above, the following order is hereby passed:

O R D E R

6.1 I allow the instant Appeal filed by M/s Summit Hotels & Resorts Pvt. Ltd., G0402, Office Block G, City Centre, Uttorayan, Siliguri, Distt. Darjeeling 734 010 (West Bengal) having GSTIN 19AAXCS7643D1ZP and set aside the impugned Order-in-Original No. 86(GST)/AC/SLG CGST & CX Divn/2024-25 dated 20.01.2025 [ZD1901250467193 dated 29.01.2025] passed by the Assistant Commissioner, CGST & CX, Siliguri CGST Division, 35, Sarat Bose Road, Hakimpara, Siliguri-734 001 (West Bengal).

6.2 The appeal stands disposed off."

[7] In view of the above, the short question which arises for our consideration in this appeal is whether the revenue has been able to make out a case under Section 74, CGST Act, 2017 in the given facts situation.

[8]. We have heard Mr. Muskesh Kumar Shaw, Superintendent, CGST appearing for the appellant-revenue as well as CA Mayank Agarwal appearing for the respondent-taxpayer and considered their submissions.

[9]. Mr. Shaw, the authorised representative of the revenue has vehemently contended that belated payment of tax and short payment of interest amounts to fraud contemplated under Section 74, CGST Act, 2017. Therefore, Mr. Shaw urges this Tribunal for setting aside the impugned order passed by the first appellate authority by restoring the order of the adjudicating authority.

[10]. Mr. Mayank Agarwal, CA, appearing for the taxpayer, on the other hand, contended that none of the ingredients contemplated under Section 74(1) of the CGST Act, 2017 has been fulfilled in this case to justify invocation of Section 74(1) of the CGST Act, 2017. Mr. Agarwal has further contended that Section 74 of the CGST Act, 2017 cannot be invoked for belated filing of tax and return. Mr. Agarwal, therefore, submits that the appeal has no merit and there is no ground to interfere with the order passed by the first appellate authority.

[11]. We have made a detailed discussion in the case of **M/s Powertech Global Private Limited, reported in (2026) 1 GSTAT E Journal 51 (Kolkata)** as to the application of Section 74(1), CGST Act, 2017 with reference to various judgments of the Hon'ble Supreme Court in paragraph 58 to 64 which is reproduced as under :-

> *"[58]. Now, the issue which we are going to decide is whether Section 74(1) of the CGST Act, 2017 under which the SCN No.8/SC/GST/Chow/Kol-N/2024-25 dated 01.089.2024 was issued against the taxpayer could be invoked in the given facts and circumstances of the case. In order to decide this question, we need to have a look at the provision of law at the outset. Section 74(1) of the CGST Act, 2017 reads as under :*
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> > ***Section 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 wilful- 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.

[italics supplied by us]

[59]. From a plain reading of Section 74(1) it would appear that the circumstances in which Section 74(1) can be invoked are fraud and wilful- misstatement or suppression of facts which requires an intention to evade tax by unfair or illegal means. After Section 74, Section 74-A has been inserted in the CGST Act, 2017 by Notification No.15 of 2024 and the Explanation 2 to sub-section (12) of Section 74-A defines "suppression" which reads as under :

> ***"Explanation 2.**—For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.]"*

[60]. This definition of "suppression" in Explanation 2 to sub-section (12) of Section 74-A, thus provides that "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in his return, statement, report or any other document furnished under this Act. There is no dispute that the taxpayer duly filed his monthly return in GSTR Form-3B as well as in his annual returns. We have gathered from the documents uploaded on behalf of the taxpayer that he filed his monthly GSTR returns in Form No.3B almost regularly for the assessment period. Even there is no allegations against the taxpayer that he did not submit his annual returns. The taxpayer has also uploaded his annual returns on the portal. There is, therefore, no act of non-submission or non-declaration of facts or information on the part of the taxpayer. He also produced the invoices to bring to light the fact that he used to sell duty credit scrips. Therefore, no malafide intention could be attributed to the taxpayer.

*[61]. Pursuant to the direction of the Hon'ble Supreme Court in the case of **Northern Operating Systems Private Limited (NOS) in Civil Appeal No.2289-2293 of 2021**, an instruction bearing No.05/2023-GST was issued by CBIC vide F.No.CBIC-20004/3/2023-GST, dated 13th December, 2023 stating therein that Section 74(1) can be invoked only in cases where there is a fraud or wilful mis-statement or suppression of facts to evade tax on the part of the said taxpayer. The said instruction contains that Section 74(1) cannot be invoked merely on account of non-payment of GST, without specific element of fraud or wilful mis-statement or suppression of facts to evade tax. It also provides that only in the cases where the investigation indicates that there is material evidence or fraud or wilful mis-statement or suppression of fact to evade tax on the part of the taxpayer, provisions of Section 74(1) of*

CGST Act may be invoked for issuance of show cause notice, and such evidence should also be made a part of the show cause notice. It would be appropriate to reproduce paragraph 3.1, 3.2 & 3.3 of the said Instruction reads as under :-

> *3.1 It has also been represented by the industry that in many cases involving secondment, the field formations are mechanically invoking extended period of limitation under section 74(1) of the CGST Act.*
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> *3.2 In this regard, section 74 (1) of CGST Act reads as follows:*
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> > *"(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 utilized by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax."*
>
> *3.3 From the perusal of wording of section 74(1) of CGST Act, it is evident that section 74(1) can be invoked only in cases where there is a fraud or wilful mis- statement or suppression of facts to evade tax on the part of the said taxpayer. Section 74(1) cannot be invoked merely on account of non-payment of GST, without specific element of fraud or wilful mis-statement or suppression of facts to evade tax. Therefore, only in the cases where the investigation indicates that there is material evidence of fraud or wilful mis statement or suppression of fact to evade tax on the part of the taxpayer, provisions of section 74(1) of CGST Act may be invoked for issuance of show cause notice, and such evidence should also be made a part of the show cause notice.*

[62]. In the case in hand no investigation was carried out and no evidence has been brought on record on the part of the revenue to establish fraud, wilful mis-statement or suppression of facts within the meaning of Section 74(1) read with Explanation 2 to sub-section (12) of Section 74 of the CGST Act, 2017. If we go further, suppression of facts cannot be equated with ordinary non-declaration. The wordings of Section 74(1) clearly indicates that there must be a deliberate intention on the part of the taxpayer to evade tax.

[63]. In the present case before us, stand of the taxpayer right from the beginning is that he is entitled to the benefit of clause (d) in Explanation 1 to Rule 43 of CGST Rules, 2017 retrospectively. Under this impression, he made his self-assessment in Form GSTR-3B. He never concealed that he availed ITC on the value of supply of duty credit scrips. The department was not also unaware of the fact that he supplied duty credit scrips during the financial years 2017-20. When both sides were aware of the fact, the taxpayer cannot be accused of fraud or wilful suppression. In the case of ***Anand Nishikawa Co. Ltd. Vs. Commissioner of Central Excise, Meerut, reported in (2005) 7 SCC 749****, the Hon'ble Supreme Court in*

paragraph 26 of the judgment succinctly held that the "suppression of facts" must be construed strictly, it does not mean any omission and the act must be deliberate and wilful to evade payment of duty. The relevant observations of the Hon'ble Supreme Court in para 26 are as under :-

> *26. In Tata Iron & Steel Co. Ltd. vs. Union of India & Ors [1988 (35) ELT 605 (SC)], this Court held that when the classification list continued to have been approved regularly by the department, it could not be said that the manufacturer was guilty of "suppression of facts". As noted herein earlier, we have also concluded that the classification lists supplied by the appellant were duly approved from time to time regularly by the excise authorities and only in the year 1995, the department found that there was "suppression of facts" in the matter of post forming manufacturing process of the products in question. Furthermore, in view of our discussion made herein earlier, that the department has had the opportunities to inspect the products of the appellant from time to time and, in fact, had inspected the products of the appellant. Classification lists supplied by the appellant were duly approved and in view of the admitted fact that the flow-chart of manufacturing process submitted to the Superintendent of Central Excise on 17.5.1990 clearly mentioned the fact of post-forming process on the rubber, the finding on "suppression of facts" of the CEGAT cannot be approved by us. This Court in the case of Pushpam Pharmaceutical Company vs. Collector of Central Excise, Bombay [1995 Supp (3) SCC 462], while dealing with the meaning of the expression "suppression of facts" in proviso to section 11A of the Act held that the term must be construed strictly, it does not mean any omission and the act must be deliberate and wilful to evade payment of duty. The Court, further, held : -*
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> > *"In taxation, it ("suppression of facts") 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 it suppression."*

[64]. We have examined the case in the light of the judgment of the Hon'ble Apex Court in the case of ***Anand Nishikawa Co. Ltd****. (supra) and keeping in view the relevant provisions of CGST Act quoted hereinabove and the Circular dated 13.12.2023 issued by the CBIC as well as in the given facts and circumstances of the case. In our considered view the Revenue could not bring on record any material to prove a deliberate intention on the part of the taxpayer to evade tax and as a result the Revenue was not correct in invoking Section 74(1) of the CGST Act against the taxpayer in this case. Therefore, the SCN issued under Section 74(1) of the CGST Act, is not sustainable in this case."*

[12]. The Hon'ble Supreme Court 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**, in which a demand was created under Section 74, CGST Act, 2017 has 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. In paragraph 14 of the judgment, the Hon'ble Apex Court 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."*

[13]. We have also examined the present appeal in the light of the Hon'ble Apex Court's Judgment in the case of M/s Tata Steel Limited (supra). The SCN in the case in hand is also lacking such foundational facts. Consequently, we are of the considered view that the first appellate authority was correct in holding that this is not a fit case for invocation of Section 74(1), CGST Act, 2017. Thus, we find no reason to interfere with the order of the first appellate authority and, therefore, the instant appeal of the revenue stands dismissed.

The appeal is, thus, disposed off. Communicate the order to the parties by supplying certified copies to both for of them free of cost.

Order pronounced in open Court in presence of the authorised representatives of the parties. The Registry is directed to upload the Final Order on GSTAT Portal immediately.

S.G.Chattopadhyay
Judicial Member

Bijoy Kumar Kar
Technical Member