IN THE GOODS AND SERVICES TAX APPELLATE TRIBUNAL
KOLKATA BENCH
COURT NO. 1
Appeal No. APL/1//KLK/2026

SANTOSH JAISWAL **…… Appellant**

Versus

ANAND SURANA **….. Respondent**

In appearance :
For the appellant : MR. WANLAMBOR , SUPERINTENDENT, CGST
For the respondent : MR. CHERIAN PUNNOOSE, LD. ADVOCATE

CORAM :

Shri Satya Gopal Chattopadhyay : Hon'ble Judicial Member
Shri Anindya Mitra : Hon'ble Technical Member

FINAL ORDER

Date of Hearing: 08.10.2026
Date of Order : 13.10.2026

Per Anindya Mitra (TM):

[1]. This appeal under section 112(3) of CGST Act,2017 has been preferred by the Deputy Commissioner (Appeal & Review), Siliguri CGST & CX Commissionerate against the appeal order (No. 216/SLG-GST/2022-23 dated 20.03.2023) passed by the Additional Commissioner (Appeal) CGST, Siliguri Appeal Commissionerate under section 107(11) of CGST Act, 2017 in the appeal filed by M/s

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Micro Labs Limited., Mamring, South Sikkim Namthang Road, Mamring, Sikkim-737132 holding GSTIN-11AABCM2131N1ZV.

[2]. In course of scrutiny of transitional credit availed under Table 5(a) of the TRAN-1 return, it was observed that the respondent availed transitional credit of Rs.65,59,997/- whereas the closing balance of ER-1 Return for the month of June-17 was Rs.43,87,501/-. The taxpayer replied that they inadvertently missed to report an amount of Rs. 21,72,496/- of input service credit in the column for 'credit taken on input services'. Due to technical error in the ACES portal the revised ER-1 return was not accepted. The reply was not found satisfactory and the Adjudicating Authority was of the opinion that transitional credit of Rs. 21,72,496/- had been claimed in excess which is not eligible as transitional credit. An SCN under section 74(1) of CGST Act, 2017 was issued which culminated in a demand order for wrongly availed transitional credit of Rs. 21,72,496 /- along with interest under the provisions of section 50 and penalty under Section 122(2)(b) of the CGST Act, 2017.

[3]. Aggrieved by the impugned order dated 10.02.2022 passed by the Adjudicating Authority, the taxpayer preferred an appeal before the Additional Commissioner (Appeals), Siliguri Appeal Commissionerate. The Appellate Authority took the view that "it is crystal clear from the above that there was a procedural lapse on the part of the appellant. This being a procedural lapse cannot be ground for denying the substantial benefit to the appellant. there is procedural lapse on the part of the Appellant and procedural lapse cannot be the ground for denying the substantial benefit to the Appellant." The Appellate Authority allowed the appeal, set aside the Order dated 10.02.2022 passed by the

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Adjudicating Authority with "all consequential relief to the appellant subject to verification/scrutiny and exact quantification of ITC pertaining to balance credit of input services, to which Appellant is rightfully entitled on the strength of relevant documents and records in their possession."

[4]. In the grounds of appeal, the appellant has contended that as per the provisions of section 140(1) of CGST Act,2017, a taxpayer is entitled to take only CENVAT credit carried forward in the last return under the erstwhile tax regime to their electronic credit ledger under GST regime. Therefore, the taxpayer was entitled to avail transitional credit of Rs.43,87,501/- while he actually availed Rs. 65,59,997/-. The wrongly availed transitional credit of Rs.21,72,496/- and utilised by him is recoverable under section 74 of CGST Act along with appropriate interest u/s 50 and penalty u/s 122(2)(b) of the CGST Act, 2017

[5]. We have heard Mr. Wanlambor, Superintendent, CGST appearing for the appellant and Mr. Cherian Punnoose, Ld. Advocate and also gone through the records including the impugned first appellate order and the OIO. It remains undisputed that while the amount of CENVAT credit shown in Table 5(a) of TRAN-1 was 65,59,997/-, the closing balance of CENVAT credit as per ER-1 and ST-3 return filed under the 'existing law' was Rs. 43,87,501/-.

[6]. Evidently, the difference requires a thorough verification by the authorities concerned. Therefore, we remand the case to the Proper Officer/Adjudicating Authority only for this limited purpose and for passing a reasoned order on the basis of the verification. M/s Micro

Labs Ltd is also directed to produce all relevant records before the authorities without any delay. The Adjudicating Authority should complete the whole exercise within a period of six months from the date of communication of this order.

[7]. We also find notice issued under sub-section (1) of section 74 not sustainable. It was observed in the OIO

> *"It is to be noted that the assessee themselves admitted that they filed the return three times on 09.07.2017, 10.07.2017 and then again on 12.07.2017. Surprisingly in none of the above instances the assess found out the mistake and it was only on 28.07.2017 they informed the department. Hence it appears the assess wilfully supressed the information with malafide intention to evade payment of tax. ……Further, the wilful mis-statement by the assessee in their TRAN-1 returns clearly shows an intention to misguide the department with intention to evade their GST liabilities".*

But mere wrong or incorrect information does not, ipso facto, establish charges of wilful mis-statement.

The Kolkata Bench of GSTAT has explained in the case of Commissioner CGST &CX Kolkata North vs M/s Power Tech Global Private Limited (2026) 1 GSTAT E- Journal 51 (Kolkata))

> *"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.CBIC20004/3/2023-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.

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 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."

Applying the ratio of the above judgements, we are of the considered opinion that the charges of wilful mis-statement or suppression of facts against the respondent has not been established.

[8]. Consequently, we direct the authorities to act in accordance with the directions of paragraph 6. We have also held that the notice issued under sub-section (1) of section 74 is not sustainable. The matter is thus decided and the appeal is disposed of. Communicate this order to the

appellant as well as the respondent by delivering certified copy of the same immediately.

S.G. Chattopadhyay
Judicial Member

Anindya Mitra
Technical Member