GSTAT

State Bench Chandigarh

Court No. Court I

APL/13/CHD/2026

R L C R 7SUPER MARKET **.....Appellant**

Versus

SUNIL N RANOTE , ADDITIONAL COMMISSIONER (APPEALS), PLOT NO. 19, CR BUILDING, SECTOR-17C, CHANDIGARH & ORS. **.....Respondent**

Quorum

Hon'ble Jatinder Pal Singh, Member(Judicial)
Hon'ble Pradeep Kumar Goel, Member (Technical)

Counsel for Appellant
SH. NEERAJ JAIN, CA

Counsel for Respondent
SH. VEER SINGH MEENA, AUTHORISED REPRESENTATIVE

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the GST Appellate Tribunal

whether remand order : Yes

Order reference no. : ZN040281026000291H **Date of order :** 16/10/2026

1.	GSTIN/Temporary ID/UIN - 04ABAPG5420H1ZB	
2.	Appeal Case Reference no. - APL/13/CHD/2026	Date - 13/05/2026
3.	Name of the appellant - R L C R 7SUPER MARKET , rlcr7c@gmail.com , 9216644777	
4.	Name of the respondant - 1. CGST Commte Chandigarh , prcommr-chd@gov.in , 9810441570 2. SUNIL N RANOTE	
5.	Order appealed against - AD041224000119S	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - ZD0402260010919	Date - 18/02/2026
6.	Personal Hearing - 16/10/2026 16/09/2026 25/08/2026	

7.	Order in brief - We refer the case back to the original adjudicating authority for a fresh adjudication or decision after taking additional evidence if necessary. The original adjudicating authority will determine the tax payable, if any, under Section 75(2) of the Act deeming as if the show cause notice was issued under sub-section (1) of Section 73 of the Act. The interest and penalty will also be re-worked accordingly.

Summary of Order

8.	If demand order then whether demand quantified: No

9.	For Other orders and Demand orders which are not quantified:	
Issues as raised by proper officer	Issues as determined by Appellate/Revisional authority	Order by GST Appellate Tribunal
Short or non-payment of tax	As per separate brief issue of the case attached	
10.	If remanded with directions:	
	a) Remanded to: Adjudicating Authority	
	b) Directions subject to which remanded, if any: We refer the case back to the original adjudicating authority for a fresh adjudication or decision after taking additional evidence if necessary. The original adjudicating authority will determine the tax payable, if any, under Section 75(2) of the Act deeming as if the show cause notice was issued under sub-section (1) of Section 73 of the Act. The interest and penalty will also be re-worked accordingly.	

Place :CHANDIGARH

Signature

Date : 16.10.2026

CHANDIGARH Jatinder Pal Singh

Designation : Member

Jurisdiction :Chandigarh

ORDER

FINAL ORDER

In the present case, the appeal has been filed by M/s RLCR 7 Super Market, SCO No. 7A, Madhya Marg, Sector 7C, Chandigarh (hereinafter referred to as "the Appellant") against Order-in-Appeal No. CHD-CGST-001-APPL-ADC-376-2025-26 dated 16.02.2026 (hereinafter referred to as the "Impugned Order"). The CGST Department is the Respondent herein.

2. In brief, the facts of the case are as follows. The Appellant is registered under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act" or "the Act") holding GSTIN 04ABAPG5420H1ZB. The officers of CGST Audit Commissionerate, Chandigarh conducted audit of the records of the Appellant pertaining to the period July 2017 to March 2022 under Section 65 of the Act and raised certain issues/observations. Subsequently, a show cause notice dated 30.9.2023 was issued to the Appellant. The show cause notice was decided by the Assistant Commissioner CGST Division I, Chandigarh vide Order-in-Original No. 11/GST/AC/CHD-1/2024-25 dated 22.10.2024 confirming tax demand of Rs. 3,46,343/ - on various counts under Section 74 of the CGST Act, and ordering recovery of interest under Section 50 of the Act, apart from imposing penalty of equal amount under Section 74 of the Act and related provisions of the UTGST Act/IGST Act. The Appellant filed an appeal before the Appellate Authority. Vide the Impugned Order dated 16.02.2026, the Additional Commissioner (Appeals) allowed the appeal in respect of an amount of Rs. 4,370/- and dismissed the appeal for the balance amount. The Appellant has filed the present appeal against the Impugned Order passed by the Appellate Authority.

3. The grounds of appeal taken by the Appellant are as under:

(a) That the Ld. Additional Commissioner (Appeals) is not justified in confirming the issuing of a consolidated SCN and passing of a consolidated order by the adjudicating authority for multiple years i.e. for the period from July 2017 to 31 March 2022, as it contravenes the provisions of the CGST Act and established legal precedents.

(b) That the Appellant disputes the quantum of tax demand pertaining to the period 2018-22 being clubbed in 2017-18, and even without issuing DRC-07 for the relevant years 2018-19, 2019- 20, 2020-21 & 2021-22 respectively, which is in clear violation of the explicit provisions of the CGST Rules, 2017.

(c) That the Ld. Additional Commissioner (Appeals) is not justified in confirming the order passed by the Ld. adjudicating authority invoking the provisions of Section 74 of the CGST Act.

(d) That the Ld. Additional Commissioner (Appeals) is not justified in confirming the demand on account of difference in GSTR 3B vs. GSTR 2A amounting to Rs. 77,097/- (CGST) and Rs. 77,097/- (SGST) for multiple years, even when the same is allowable.

(e) That the Ld. Additional Commissioner (Appeals) is not justified in confirming the demand of Rs. 1,52,088/- on account of credit notes.

(f) That the Ld. Additional Commissioner (Appeals) is not justified in confirming the demand of Rs. 28,474/- on account of ITC claimed under wrong heads.

(g) That the Ld. Additional Commissioner (Appeals) is not justified in confirming the penalty imposed under Section 74 of the CGST Act.

4. We have heard Sh. Neeraj Jain, Ld. CA, who has made detailed arguments for the Appellant's case on the questions of law and factual issues involved. We have also heard Sh. Veer Singh Meena, Ld. AR for the Respondent CGST Department, who has addressed arguments for the Respondent's case and in support of the Impugned Order. In rejoinder, Sh. Jain has reiterated that the Impugned Order is liable to be set aside and has prayed that the appeal be upheld.

5. We have gone through the grounds of appeal and the case records and have carefully considered the arguments advanced by both sides. The issues involved for determination in the present appeal are:

(I) Whether issuing of a consolidated show cause notice and passing of a consolidated order for multiple years (i.e., for the period from July 2017 to March 2022) are legally tenable?

(II) Whether demand of tax of Rs. 3,31,035/- (as per APL-04 and APL-05, which actually adds up to Rs. 3,34,756/) on the three counts involved in the case is payable by the Appellant?

(III) Whether the demand of tax and imposition of penalty on the confirmed demand is sustainable under Section 74 of the CGST Act?

(IV) Whether the Appellant is liable to pay interest under Section 50 of the CGST Act?

Issue I

6. At the outset we would like to examine the contention of the Appellant that issuance of one consolidated show cause notice and one consolidated Order-in-Original for multiple years is not permissible under the CGST/UTGST Act. We will discuss herein the relevant provisions of the CGST Act as the provisions of the UTGST Act are similar.

7. The provisions relating to issuance of show cause notice for demand of tax under Section 74 of the Act are contained in sub-section 74(1). The time limit for issuance of the order for a show cause notice issued under sub-section 74(1) has been provided under sub-section 74(10). As per sub-section 74(10), the order has to be issued by the proper officer within a period of five years from the due date for furnishing of Annual Return for the financial year to which the demand relates. It is further provided in sub-section 74(2) that the notice for demand of tax under sub-section (1) has to be issued at least six months prior to the time limit specified under sub-section 74(10).

8. It is thus seen that sub-section 74(2) read with sub-section 74(10) provides for the time limit for issuance of show cause notice for demand of tax. Neither in the said sub-sections 74(2) and sub-section 74(10), nor in any other provisions of the CGST Act, 2017, is there any stipulation or condition that the show cause notice under sub-section 74(1) has to be issued financial-year wise. There are no provisions in the CGST Act to the effect that a separate show cause notice has to be issued for each financial year for which the tax demand has been raised. Thus, there is no statutory bar or prohibition for issuance of a common show cause notice covering multiple tax periods or financial years.

9. Therefore, in our view, so long as the entire period for which the tax demand has been raised under the show cause notice is covered by the time limit provided in sub-section 74(10) read with sub-section 74(2), clubbing of more than one financial year in one show cause notice will not adversely affect the rights of the noticee. Further, the rights of the parties to file an appeal before the Appellate Authority would be governed with reference to the date of communication of the Order-in-Original. Sub-section 107(1) of the CGST Act

refers in this regard. As such, issuance of a consolidated DRC-07 for the tax demanded in the Order-in-Original would not in any way affect the rights of the parties to the order.

10. We also find that the issue regarding legality of one consolidated show cause notice for multiple years has been decided recently in favour of the Department by the Division Bench of Hon'ble Karnataka High Court, vide the judgment & order dated 23.04.2026 in *The Commissioner of Central Tax, Bengaluru and others v/s M/s Chimney Hills Education Society and others 2026 (5) TMI 125*. After elaborately considering the relevant provisions of the CGST Act and decisions of other High Courts, the Hon'ble Karnataka High Court has held as follows:

"57. For the foregoing discussion and the reasons assigned while analyzing the scheme of the Act, we conclude that show cause notices issued under Sections 73/74 do not prohibit coverage of multiple financial years. Such notices are neither tax period–specific nor financial year–specific. There is no statutory bar to issuance of a common show cause notice covering multiple tax periods or financial years. Any interpretation to the contrary would amount to rewriting the language of Sections 73/74, which is impermissible.

58. In the light of the reasons assigned hereinabove, we find ourselves in agreement with the views expressed by the High Courts of Delhi, Allahabad, and Jammu & Kashmir. Accordingly, we concur with the view taken by the said High Courts.

59. For the reasons assigned hereinabove, we are not inclined to concur with the view taken by the High Courts of Bombay, Kerala, Madras, Andhra Pradesh, and Himachal Pradesh. Accordingly, we respectfully decline to follow the said judgments."

11. In arriving at our findings on this issue, we are also fortified by the judgment and order dated 17.04.2026 rendered by a Division Bench of the Hon'ble Bombay High Court in the case of *M/s Rollmet LLP & Others Vs. Union of India & Others 2026 (4) TMI 1218.* In this case, the Hon'ble Bombay High Court carefully deliberated upon and considered the relevant statutory provisions and judicial precedents, to doubt the correctness of the earlier judgment rendered by another Division Bench of the Hon'ble Bombay High Court in the case of *Milroc Good Earth Developers vs. Union of India [2026] 104 GSTL 45 (Bombay).* In *M/s Rollmet LLP (supra),* the Hon'ble Bombay High Court has held that:

"17. On a plain reading of the provisions, we find it difficult to accept that the intention of the legislature in providing for sub-section (1) of Section 73/74 was to confine the authority of the proper officer to issue show cause notice not for the different periods but for a specific period for which one return could be filed. This prima facie is clear from the plain language of the provisions and more importantly, from the conjoint reading of sub-sections (1), (2) and (3). Sub-section (3) specifically uses the word "for any period under sub-section (1)". Further, compounded by using the words "such periods other than those covered under sub-section (1) ....", when sub section (3) permits issuance of a statement for a period other than the period of the notice under sub-section (1), deeming it to be a notice as provided for in sub-section (4), it gives a credence to the respondents contention of it being permissible for the proper officer to issue a notice for different periods under sub-section (1), as permissible under sub-section (3) and (4).

18. In our view when the legislature has used such specific words, it is difficult to accept a proposition that the legislature was not aware or would not be conscious, that a show cause notice can be issued for different periods and/or vice-versa, it could be issued only for a limited period. The legislature hence has not confined the operation of sub-section (1) read with sub-sections (2) and (3) for the specific period when the definition clause defines the expressions as noted by us (supra). Thus, to read the provision in the manner the petitioners would suggest, that there would be no authority with the proper officer to issue a show cause notice by clubbing of different periods, in our opinion, would amount to reading something in the provisions which the legislature has avoided to provide, and in fact would amount to re-writing of the provision, which is neither permissible for the assessee to canvass nor permissible for the Court to accept.

19. In such context, the question therefore is whether the provisions of sub-section (10) which prescribe limitation in any manner restrict the operation of sub- section (1) read with sub-sections (2) and (3). On a plain consideration, there is no such indication that sub-section (10) which confines itself to an order being passed under sub-section (9), when providing for limitation in that regard, in any manner controls, restricts or creates an embargo on the proper officer exercising jurisdiction to issue a show cause notice by clubbing the different periods, which in our opinion is wholly available and permissible under sub-section (1). In other words, we do not find that there is any legislative indication that sub-section (10) would restrict the operation of sub-section (1).

20. Therefore, there is a grave doubt on the tenability of such contentions of the petitioners that the show cause notice under sub-section (1) of Sections 73 and 74 would be required to be issued, keeping in mind the period of limitation as prescribed under subsection (10) and/or it is wholly impermissible to club different periods in a show cause notice issued

under subsection (1). This prima facie would in fact be a wrong reading of provisions of sub-section (1) of Sections 73 and 74."

12. At Para 30 of the judgment in *M/s Rollmet LLP (supra)*, the Hon'ble Bombay High Court has held that in their considered view certain questions of law need consideration of the Larger Bench. One of the said questions of law has been framed as follows:

"2) Whether the provisions of sub-section (10) of Section 73/74 of the CGST Act per se prohibits the issuance of single consolidated show cause notice for multiple financial years/tax periods?"

13. It is also important to note that while arriving at the said conclusions in *M/s Rollmet LLP (supra)*, the Hon'ble Bombay High Court placed reliance upon the judgment of a Division Bench of the Hon'ble High Court of Delhi in *Mathur Polymers v. Union of India 2025 SCC OnLine Del 6892*. In Para 24 of the judgment in *M/s Rollmet LLP (supra)*, the Hon'ble Bombay High Court has noted that after considering the judgment of Hon'ble Madras High Court in *Titan Company Ltd. vs. JC, GST & Central Excise [(2024) 15 CENTAX 118 (Mad.)]* as also the earlier Delhi High Court judgment in *Ambika Traders v. Commr. (2025) 148 GSTR 1*, the Delhi High Court has held, having fully considered the statutory scheme also the legislative history of the CGST Act, that issuance of consolidated notice for multiple financial years would be permissible and tenable.

14. At Para 26 of the judgment in *M/s Rollmet LLP (supra)*, the Hon'ble Bombay High Court has further noted that it is of immense significance that the decision of the Delhi High Court in *Mathur Polymers (supra)* was assailed before the Hon'ble Supreme Court by way of a Special Leave Petition, which was dismissed by the Hon'ble Supreme Court by a speaking order dated 07.11.2025 *[2025 (11) TMI 1184 – SC]*.

15. Vide the aforesaid order dated 07.11.2025, the Hon'ble Supreme Court has expressly held that:

"2. However, we find no good ground and reason to interfere with the impugned judgment/order passed by the High Court.

3. The special leave petition is, accordingly, dismissed."

16. Two benches of this Tribunal have also arrived at the same finding on this issue:

(i) *Atanu Mondal for the Commissioner CGST & CX, Kolkata North Commissionerate Vs. Partner Jay Technical Services 2026 (9) TMI 287*: In this case, the Kolkata Bench of GSTAT has held that:

"[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."

(ii) *Council for the Indian School Certificate Examinations Vs. CGST Delhi East, Commissioner & Others 2026 (9) TMI 273:* In this case, the Delhi Bench of GSTAT has held that:

"45. In view of dictum in cited case laws we are of considered opinion that in the absence of any demonstrated prejudice, confusion, denial of opportunity, or jurisdictional incompetence, such consolidation remains a matter of procedural form. Where, therefore, a consolidated notice under Section 73 or Section 74 of the Act 2017 has been issued and the appellant has been afforded a full and fair opportunity to respond to the allegations therein, the mere fact of consolidation, in the absence of demonstrable prejudice, cannot vitiate or invalidate the proceedings under the GST regime. The appellant has not demonstrated any prejudice flowing from the consolidated format.

46. Issue No. I is decided accordingly with decision that the proceedings in this particular matter are not vitiated solely on the ground of the issuance of a consolidated SCN and order passed for a consolidated period covering July 2017 to November 2023."

17. Accordingly, we reject the contention of the Appellant that the present proceedings are vitiated by issuance of a combined show cause notice and order-in-original for multiple financial/tax years.

Issue II

18. We will now examine the Impugned Order as regards sustainability of demand of tax / disallowance of ITC. We find that the present appeal involves demand of tax / disallowance of ITC on three counts:

(i) Firstly, demand of Rs. 1,54,194/- (Rs. 77,097/- CGST and Rs. 77,097/- SGST) has been raised on the ground that the Appellant has allegedly taken excess ITC in FY 2021-22 as seen from the difference between Form 3B and 2A. The Appellant has contended that this excess credit pertains to the previous financial year and is permissible as per sub-section 16(4) of the Act. In the Impugned Order the Appellate Authority has not disputed the

admissibility of this amount on legal grounds. Rather, the Appellate Authority has observed that the Appellant did not bring anything on record to prove that this adjustment was not taken into account by the adjudicating authority while calculating the difference, and as such it was not possible to accord any benefit to the Appellant at this stage.

(ii) Secondly, regarding the demand of Rs. 1,52,088/- (IGST), the Appellant has disputed the quantum of demand confirmed after appropriation. The adjudicating authority confirmed demand of Rs. 9,81,924/- (IGST - Rs. 1,61,975/-, CGST - Rs. 4,09,885/- and SGST - Rs. 4,09,885/-) and appropriated an amount of Rs. 8,49,805/- (IGST - Rs. 9,887/-, CGST - Rs. 4,19,814/- and SGST - Rs. 4,19,814/-) as deposited by the Appellant. The Appellant contended that after making the required deposit, liability of Rs. 1,32,119/- (Rs. 9,81,924 – Rs. 8,49,805) remained instead of Rs. 1,52,088/- as confirmed. The Appellate Authority observed that the Appellant deposited Rs. 9,887/- as their liability under the head IGST, against tax liability of Rs. 1,61,975/- under the same head. The Appellate Authority has further observed that accordingly, the adjudicating authority, after appropriating the amount, confirmed the remaining amount i.e. Rs. 1,52,088/- (Rs. 1,61,975 – Rs. 9,887), as the amount deposited in one head cannot be appropriated or adjusted against the liability in another head.

(iii) Thirdly, regarding demand of Rs. 28,474/-, the Appellant has admitted to have availed and utilized ITC under wrong heads but has contended that there is no loss to the Revenue. The Appellate Authority has observed that combined reading of Section 49 along with Rule 88A puts restrictions on cross utilization of ITC under different heads. The Appellate Authority has further observed that the Appellant did not produce anything on record that after availing ITC under different heads, the same has been utilized considering the restrictions/conditions mentioned under Section 49 when read with Rule 88A, and in the absence of this, no benefit can be accorded to the Appellant at this stage.

19. We find that the demand of Rs. 1,54,194/- on the first count relates to mismatch between ITC taken in Form GSTR-3B vis-a-vis credit available as per Form GSTR-2A. The difference has arisen in FY 2021-22 but the Appellant claims that the credit taken in excess in FY 2021-22 pertains to the earlier year which is permissible by law. The Appellant submitted before the Appellate Authority copy of GSTR 9 for FY 2020-21 wherein the said entries are mentioned under Pt. III (Table 8 at C) and Pt. V at Sr. No. 13 under the respective headings “ITC on inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs) received during the financial year but availed in next financial year upto specified period” and “ITC availed for the previous financial year”. The Appellate Authority has recorded a finding in the Impugned Order that “the said entries point towards availing ITC pertaining to the year 2020-21 in the year 2021-22 but the appellant did not bring anything on record to prove that this adjustment was not

taken into account by the adjudicating authority while calculating the difference."

20. Regarding demand of Rs. 1,52,088/- (IGST) on the second count, the Appellant has disputed the amount of demand confirmed but the learned Appellate Authority has disallowed the appeal on this count, on the ground that the amount deposited in one head cannot be appropriated or adjusted against the liability in another head.

21. Regarding demand of tax on the third count, the dispute relates to ITC being taken under wrong head. The learned Appellate Authority has disallowed the appeal on this count, on the ground that the Appellant did not produce anything on record that after availing ITC under different heads, the same had been utilized considering the restrictions/conditions mentioned under Section 49 when read with Rule 88A.

22. After examining the issues involved and upon going through the Impugned Order, we find that the learned Appellate Authority has not disputed the admissibility of excess credit on legal grounds, as regards the demand on the first count. The Appellate Authority has rejected the Appellant's contention for lack of documentary evidence that the original authority had not already allowed the benefit. In this regard, we find that it is the original adjudicating authority who will be best placed to verify whether this benefit has already been allowed to the Appellant or not. We see no convincing reason as to why the Appellant should not be afforded the opportunity to produce documentary evidence in support of their claim, if so required, before the adjudicating authority.

23. Regarding the demand of Rs. 1,52,088/- (IGST) on the second count, we are again of the view that the Appellant should be allowed the opportunity to demonstrate before the original adjudicating authority that there was no prejudice to, or loss of, revenue merely because they had deposited liability in the wrong head. The facts in this regard are, therefore, required to be verified by the original authority in this light, keeping in view the relevant legal provisions.

24. Regarding the demand of Rs. 28,474/- on the third count, the Appellate Authority has observed in Para 6.4 of the Impugned Order that: *"The appellant did not produce anything on record that after availing ITC under different heads, the same have been utilized considering the restrictions/conditions mentioned under Section 49 when read with Rule 88A. In absence of this, no benefit can be accorded to the appellant at this stage and I uphold the demand confirmed by the adjudicating authority on this account."* In this regard, we see no reason as to why the Appellant should not be afforded the opportunity to produce documentary evidence in support of their claim, if so required, before the adjudicating authority. Needless to add, the adjudicating authority will verify the contention of the Appellant in accordance with the relevant statutory provisions.

25. Accordingly, we are of the view that the matter needs to be remanded to the original authority for ascertaining the facts and deciding the matter afresh in the light of the above observations.

Issue III

26. Coming to the issue of whether the demand of tax and imposition of penalty under Section 74 of the Act are sustainable, we find that the principles for invoking Section 74 for demanding tax and imposition of penalty under extended period of limitation in cases of non-payment / short-payment of tax or erroneous refund or wrong availment of ITC by reason of fraud or any wilful-misstatement or suppression of facts to evade tax, are laid down in law very clearly.

27. Sub-section 74(1) is very clear in this regard. The said provision can be invoked if and only if the non-payment / short-payment of tax or erroneous refund or wrong availment of ITC, is by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax. Further, the words "to evade tax" employed in sub-section 74(1) are very significant. They clearly indicate that demand of tax under Section 74 requires a positive intent or mens rea to evade tax on the part of the taxpayer.

28. There is a plethora of judicial precedents, including those rendered by the Hon'ble Supreme Court, which clearly enunciate the ingredients for demand of tax and imposition of penalty in cases involving fraud or any wilful-misstatement or suppression of facts to evade tax. It has been consistently held that the words 'wilful' and 'suppression' signify conscious, deliberate and intentional withholding of information with mala fides, and not an unintentional failure or a failure due to inadvertence. The Supreme Court has held in a long line of cases that something beyond mere inaction or failure on the part of assessee has to be established, to allege suppression of facts. Many of those judgments are cited and discussed in *Uniworth Textiles Ltd. vs. CCE Raipur [2013 (288) E.L.T. 161 (S.C.)*. In this case, the

Hon'ble Supreme Court has also held that it is a cardinal postulate of law that the burden of proving any form of mala fide lies on the shoulders of the one alleging it.

29. More recently, in the case of *M/s Tata Steel Limited Versus Union of India [2026 (8) TMI 1587]* relied upon by the Appellant, the Hon'ble Supreme 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."

30. We observe that in the present case the grounds for invoking Section 74 are given in para 15 of the show cause notice as under:

"15. Under the self –assessment procedure prescribed under the Act, it was the statutory responsibility of the Noticee to assess, determine and discharge their tax liability correctly, file their returns correctly and avail the admissible ITC only. The Noticee not only availed the wrong ITC in their GSTR-3B returns but also failed to reverse the inadmissible ITC and also did not discharge their Tax liability correctly. The Noticee never disclosed these facts to the department and this clearly shows that the Noticee has willfully suppressed the material facts pertaining to ITC availment and utilization without authority of law, short/non payment of tax from the knowledge of the department. Had the Audit of the Noticee not been conducted, these facts would have remained undetected."

31. From the facts of the present case, it is evident that the show cause notice does not mention any allegation as to how the Appellant had committed fraud or made wilful mis-statement or suppressed facts to evade tax by availing inadmissible ITC. All amounts on which ITC was availed were duly declared in their statutory returns on the basis of which audit was conducted by the Department. The difference between GSTR 3B and 2A returns was always there in the statutory returns and the Department has not alleged that availment of ITC under wrong head was with a guilty intent to evade tax.

32. We do not, therefore, find anything to justify demand of tax under Section 74 of the Act. Accordingly, we set aside confirmation of demand and imposition of penalty under Section 74 of the Act. As we have remanded the matter to the original authority on merits, the proper officer will determine the tax payable, if any, under Section 75(2) of the Act deeming as if the show cause notice was issued under sub-section (1) of Section 73 of the Act.

Issue IV

33. Regarding liability to pay interest under Section 50 of the CGST Act on the amount of tax determined as payable, we find that the law is well settled on this issue and interest will be payable under section 50 on the tax payable. In Paras 6.5.2 and 6.5.3 of the Impugned Order, the Appellate Authority has correctly placed reliance on the decisions of the Hon'ble Supreme Court in *M/s Pratibha Processors Vs. UOI [1996 (88) ELT 12 (SC)* and *M/s Indodan Industries Ltd. Vs. State of U.P. & Others [2009-VIL-11-SC]*.

Conclusion and Order

34. Accordingly, we refer the case back to the original adjudicating authority for a fresh adjudication or decision after taking additional evidence if necessary. The original adjudicating authority will determine the tax payable, if any, under Section 75(2) of the Act deeming as if the show cause notice was issued under sub-section (1) of Section 73 of the Act. The interest and penalty will also be re-worked accordingly.

35. Ordered accordingly.

(Jatinder Pal Singh)

(Pradeep Kumar Goel)

Dated: 16.10.2026