GSTAT

State Bench Lucknow

Court No. Court I

APL/25/LCK/2026

M.K.ENTERPRISES **.....Appellant**

Versus

THE COMMISSIONER OF STATE GST, THE COMMISSIONER OF STATE GST, STATE GST OFFICE VIBHUTI KHAND GOMTI NAGAR LUCKNOW & ORS. **.....Respondent**

Quorum

Hon'ble Santosh Kumar Srivastava, Member(Judicial)
Hon'ble Arvind Kumar, Member (Technical)

Counsel for Appellant
MR. RADHEY SHYAM SAINI, ADVOCATE

Counsel for Respondent
MR. MAHENDRA PRATAP SINGH, ASSISTANT COMMISSIONER, SGST

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 : No

Order reference no. : ZN090371026000389H **Date of order :** 15/10/2026

1.	GSTIN/Temporary ID/UIN - 09BPCPK2624C1ZB	
2.	Appeal Case Reference no. - APL/25/LCK/2026	Date - 24/03/2026
3.	Name of the appellant - M.K.ENTERPRISES , mailmkenterprises2017@gmail.com , 9580588080	
4.	Name of the respondant - 1. Shri Prakash Yadav Joint Commissioner(IT) State Tax Headquarters Lucknow , ctithqlu-up@nic.in , 7235002314 2. THE COMMISSIONER OF STATE GST	
5.	Order appealed against - AD090923171077R	
	(5.1) Order Type - Demand Order	

	(5.2) Ref Number - ZD091125104569B	Date - 01/11/2025
6.	Personal Hearing - 15/10/2026 18/09/2026 11/09/2026 10/09/2026 03/09/2026 27/08/2026 23/07/2026	
7.	Status of Order under Appeal - Reject - Order under Appeal is annulled	
8.	Order in brief - M/s M.K. Enterprises availed ITC of Rs.11,02,074 on purchases from M/s A.S. Enterprises, which was subsequently reported to be non-existent. The Proper Officer confirmed a demand of Rs.26,91,684 under Section 74 of the UPGST Act, 2017, and the appeal was rejected ex parte. The appellant contended that the purchases were genuine, supported by tax invoices, e-way bills and banking-channel payments, and also voluntarily reversed ITC of Rs.5,52,922 with applicable interest for invoices unpaid beyond 180 days. The appellate authority held that the Department failed to establish fraud, collusion or non-receipt of goods through cogent evidence. Accordingly, the impugned orders were set aside and the appeal was allowed with consequential relief as per law.	

Summary of Order

9.	If demand order then whether demand quantified: Yes

Section-I

Particulars	Central tax		State/UT tax		Integrated tax		Cess		Total	
	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount
1	2	3	4	5	6	7	8	9	10	11
(a) Tax	551037	0	551037	0	0		0		1102074	0
(b) Interest	243768	0	243768	0	0		0		487536	0
(c) Penalty	551037	0	551037	0	0		0		1102074	0
(d) Fees	0		0		0		0		0	0
(e) Others										0
(f) Refund										0

10.	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	The First Appellate Authority examined the appeal filed by M/s MK Enterprises against the order passed under Section 74 of the UP GST Act for FY 2020-21, wherein ITC was disallowed on grounds of bogus purchases and non-genuine suppliers. The appellant contended that ITC was availed based on valid tax invoices, payments were made through banking channels, and returns were duly filed. It was argued that denial of ITC merely on the basis of supplier default or cancellation of registration is not justified when the recipient has complied with statutory requirements. The Appellate Authority, however, analyzed the findings of the adjudicating authority and the investigation records. It was observed that the suppliers were found non-existent or lacking business infrastructure, and there was no credible evidence of actual movement or receipt of goods. The appellant failed to furnish supporting documents such as e-way bills, transport details, stock records, or proof of physical delivery. The authority held that mere possession of invoices and proof of payment is insufficient to establish eligibility of ITC unless actual supply of goods is proved as per Section 16(2). The burden of proof lies on the recipient to substantiate the genuineness of transactions. Accordingly, the Appellate Authority upheld the findings of the adjudicating authority, confirming disallowance of ITC along with applicable interest. The penalty imposed under Section 74 was also sustained, considering the transactions to be non-genuine and involving wrongful availment of ITC. Tax imposed Rs. 1102074.76, interest imposed Rs. 487536.00 and penalty Rs. 1102074.76	The appeal filed by the Appellant is allowed with consequential relief as per law.

Place :LUCKNOW

Signature

Date : 16.10.2026

LUCKNOW ANAMIKA DEVI

Designation : Stenographer/Law researcher

Jurisdiction :Lucknow

ORDER

1. BRIEF FACTS OF THE CASE

1.1 The appellant, M/s M.K. Enterprises, having GSTIN 09BPCPK2624C1ZB, is engaged in the business of purchase and sale of iron scrap and other goods. During the period from October 2020 to December 2020, the appellant declared purchases amounting to Rs. 61,22,637/- from supplier, M/s A.S. Enterprises, GSTIN 09BKDPS5437H3ZR, and availed CGST ITC of Rs.5,51,037/- and SGST ITC of Rs.5,51,037/- on the said purchases.

1.2 Subsequently, the business premises of the supplier, M/s A.S. Enterprises, were investigated by the **Special Investigation Branch, State Tax, Range-C, Lucknow**, and the said firm was reported to be **non-existent.** On verification of the departmental records and GST portal, it was found that the appellant had declared the aforesaid purchases from the said supplier and had availed the corresponding ITC. As per the departmental information, the supplier had issued invoices without making actual outward supplies, thereby allegedly passing on inadmissible ITC to the appellant.

1.3 On the basis of the aforesaid information, proceedings were initiated against the appellant for alleged wrongful availment of ITC. A **show cause notice** was issued proposing recovery of the disputed ITC under **Section 74 of the UPGST Act, 2017**, along with applicable interest and penalty.

1.4 The appellant submitted its reply to the notice; however, the reply was not found satisfactory by the adjudicating authority. Consequently, the adjudicating authority passed **Order No. ZD0906231719605 dated 30.06.2023**, whereby **tax of Rs.11,02,074/- interest of Rs.4,87,536/- and penalty of Rs.11,02,074/-** were determined, aggregating to a total disputed demand of **Rs.26,91,684/-.**

1.5 Aggrieved by the aforesaid adjudication order, the appellant preferred **an appeal** before the First Appellate Authority. During the appeal proceedings, a notice was initially issued fixing the matter for **26.02.2024**. On the said date, neither the appellant nor any authorised representative appeared and no application for adjournment was filed. Thereafter, further notices were issued, but the appellant again failed to appear and did not submit any adjournment application.

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1.6 Despite the repeated non-appearance, further opportunities were granted to the appellant. The appellant did not appear on dates fixed and no application for adjournment was filed. In view of the repeated failure of the appellant to appear despite the opportunities granted, the appellate authority proceeded to decide the appeal **ex parte.**

1.7 The First Appellate Authority in their fining stated that M/s A.S. Enterprises was non-existent and that the disputed ITC had been availed by the appellant on the basis of purchases declared from the said supplier. The appellate authority considered the statutory conditions under **Section 16(2) of the GST Act** governing availment of ITC, including possession of a valid tax invoice, furnishing of invoice details by the supplier, actual receipt of goods or services, payment of the tax charged to the Government and furnishing of the prescribed return.

1.8 The appellate authority further considered **Section 74**, relating to recovery of wrongly availed or utilised ITC on account of fraud, wilful misstatement or suppression of facts with intent to evade tax, as well as **Section 155**, which places the burden of proving eligibility for ITC upon the person claiming such credit. It was further stated that the appellant had not produced sufficient documentary evidence either before the adjudicating authority or at the appellate stage to establish the genuineness of the disputed purchases and its entitlement to the disputed ITC.

1.9 The appellate authority referred to the judgment of the **Hon'ble Allahabad High Court in *Rajdhani Arms Corporation, Lucknow v. Commissioner of Commercial Tax, U.P.*, Sales**, concerning the consequences of non-appearance by an appellant. Reference was also made to ***Govind Ram & Sons, Barabanki v. State Tax, U.P.*, Writ Tax No. 221/2024**. In view of the repeated non-appearance of the appellant and the absence of sufficient evidence on record warranting interference with the adjudication order, the appellate authority held that the proceedings initiated under Section 74 were proper and legally sustainable.

1.10 Consequently, the First Appellate Authority passed an order No. ZD0906231719605 dated 30.06.2023 by rejecting appellant's appeal on ex-parte basis and upheld the order passed by the Proper Officer under Section 74 of the GST Act.

2. GROUNDS OF APPEAL:

2.1 The Appellant contended that Section 74 was invoked without establishing any specific fraud, wilful misstatement, suppression of facts or intent to evade tax attributable to the Appellant.

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2.2 The disputed purchases were supported by tax invoices, e-way bills/bilties, weighing slips, books of account, GST returns and other relevant records. The Appellant claims that the goods were actually received and duly accounted for.

2.3 The entire consideration, including GST, was paid to the supplier through RTGS/NEFT/cheque. There is no allegation or evidence of cash payment, cash-back or return of consideration.

2.4 The supplier was a registered taxable person at the relevant time and the transactions were undertaken against valid tax invoices. Subsequent cancellation, inspection or adverse findings against the supplier cannot, according to the Appellant, retrospectively invalidate genuine transactions.

2.5 The Department has not established that the Appellant colluded with the supplier, participated in circular trading, obtained accommodation invoices, received any cash-back or knowingly availed fictitious ITC.

2.6 The Appellant contended that the Department did not identify the invoices, transportation documents, banking records or GST records as false or fabricated and failed to produce independent evidence disproving actual receipt and movement of goods.

2.7 That during the relevant period, the Appellant had purchased goods from its registered supplier, M/s A.S. Enterprises, Lucknow (GSTIN: 09BKDPS5437H3ZR), against duly issued tax invoices supported by corresponding e-way bills and transport documents (G.R./bilty), and had availed Input Tax Credit (ITC) in respect thereof strictly on the basis of the said invoices being duly reflected in the Appellant's GSTR-2A / GSTR-2B on the common portal.

2.8 That payment towards the value of certain of the aforesaid invoices, along with the tax component, could not be released by the Appellant to the said supplier within the period of one hundred and eighty (180) days from the date of issue of the respective invoices, as stipulated under the second proviso to Section 16(2) of the CGST Act, 2017 read with Rule 37 of the CGST Rules, 2017. The said payments were withheld by the Appellant purely as a measure of abundant caution and commercial prudence, since the supplier, M/s A.S. Enterprises, was, at the relevant time, stated to be under enquiry / investigation by the Special Investigation Branch of the Department, and the Appellant considered it prudent to await clarity in that regard before releasing further payments.

2.9 That upon expiry of the said period of one hundred and eighty (180) days, and being fully conscious of, and acting in strict compliance with, its statutory obligation under Rule 37 of the CGST Rules, 2017, the Appellant voluntarily reversed the proportionate Input Tax Credit availed in respect of the said unpaid invoices, together with the applicable interest payable under Section 50 of the CGST Act, 2017, and deposited the said amount through Form GST DRC-03. The Appellant has thus, at all times, acted bona fide and in complete compliance with the provisions of the Act and the Rules made thereunder, and has not withheld any statutory dues from the Government. That the Appellant is now ready and willing to make payment of the entire outstanding consideration, along with applicable tax, to the said supplier, M/s A.S. Enterprises, so as to fully regularize the transactions in question, and undertakes to place on record before this Hon'ble Tribunal / the concerned authority, proof of such payment through banking channels upon the same being effected.

2.10 That sub-rule (2) of Rule 37 of the CGST Rules, 2017 expressly provides that where the registered person subsequently makes payment of the amount towards the value of supply, along with the tax payable thereon, to the supplier, he shall be entitled to re-avail the Input Tax Credit earlier reversed under sub-rule (1) of Rule 37. Correspondingly, the third proviso to Section 16(2) of the CGST Act, 2017 entitles the recipient to avail credit of input tax upon payment being made to the supplier of the amount towards value of supply along with the tax payable thereon. That the reversal contemplated under Rule 37 is, therefore, beneficial and curative in nature, and is intended only as a temporary measure to secure revenue pending payment to the supplier, and not as a permanent or punitive forfeiture of ITC that is otherwise validly available to the recipient on genuine transactions. That, in view of the above statutory scheme, once the Appellant makes payment of the outstanding amount, along with tax, to the supplier, M/s A.S. Enterprises, the Appellant becomes entitled, as a matter of right under Rule 37(2) of the CGST Rules, 2017, to re-avail / have restored, in its Electronic Credit Ledger/Refund order, the Input Tax Credit earlier reversed by it, together with the interest component already deposited thereon vide Form GST DRC-03.

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2.11 The Appellant claims to have fulfilled the applicable conditions for ITC under Section 16 by possessing valid invoices, receiving the goods, making payment through banking channels and recording the transactions in its books and GST returns.

2.12 The Appellant contends that the documentary evidence produced by it discharged its initial burden of establishing the genuineness and eligibility of the ITC under Section 155, whereas the Department failed to establish the contrary by cogent evidence.

2.13 The Appellant contended that the adjudicating authority allegedly failed to properly consider the documentary evidence and submissions of the Appellant, while the First Appellate Authority is alleged to have upheld the Order-in-Original without independently addressing the material grounds raised in appeal.

2.14 Since the essential ingredients of Section 74 have not been established, the equivalent penalty imposed under the said provision is also liable to be set aside.

2.15 The Appellant contended that the interest demand is consequential to the principal ITC demand and therefore cannot survive if the ITC demand is set aside.

2.16 Reliance has been placed upon decisions including **HCL Infotech Ltd., Singhal Iron Traders, Khurja Scrap Trading Company and Safecon Lifesciences (P.) Ltd.**, to contend that subsequent adverse action against a supplier, without positive evidence of the recipient's involvement in fraud or collusion, cannot by itself justify denial of ITC and invocation of Section 74.

3. RESPONDENT SUBMISSION:

3.1 The Appellant submitted that under **Section 16(2) of the CGST/UPGST Act, 2017**, ITC is available only upon fulfilment of the prescribed conditions, including possession of valid invoices, **actual receipt of goods**, payment of tax to the Government and furnishing of returns. In the present case, the Appellant failed to satisfactorily establish actual movement and receipt of goods through independent and corroborative evidence.

3.2 Under **Section 155**, the burden of proving eligibility for ITC lies upon the person claiming such credit. Mere reliance upon invoices, GST registration of the supplier or reflection of transactions in **GSTR-2A/2B** does not conclusively establish actual receipt of goods where the supplier itself has been found non-existent.

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3.3 The Appellant's claim of payment through banking channels is only a supporting circumstance and, by itself, cannot establish actual supply or receipt of goods, particularly when the supplier was found to be bogus and the Appellant failed to produce sufficient corroborative evidence of transportation, loading, unloading and delivery.

3.4 The proceedings under **Section 74** were based on the cumulative effect of the investigation against the supplier, absence of satisfactory evidence of actual supply and failure of the Appellant to discharge the burden under Section 155. Accordingly, the finding of wrongful availment of ITC and invocation of Section 74 was justified.

3.5 The Appellant was granted adequate opportunity through **DRC-01A under Section 74(5)** and thereafter through **DRC-01**, and was specifically required to furnish invoices, transport/receipt documents, evidence of tax payment by the supplier and bank statements. However, the adjudicating authority recorded that the claimed supporting documents were not actually attached to the portal reply and no sufficient additional evidence was produced.

3.6 The Appellant also failed to appear for personal hearing or submit any adjournment application before the adjudicating authority. Thus, the order was passed after providing reasonable opportunity and there was no violation of natural justice.

3.7 Before the Appellate Authority also, repeated hearing notices were issued on several dates, but the Appellant neither appeared nor sought adjournment. In terms of **Section 107(9),** and in the absence of sufficient cause, the Appellate Authority was justified in deciding the appeal on the basis of the available record.

3.8 The Appellate Authority rightly considered the decisions in **Rajdhani Arms Corporation v. Commissioner of Commercial Tax, U.P.**, Sales Tax Revision No. 31/2023, decided on 15.07.2024, and **Govind Ram & Sons v. State Tax, U.P.**, Writ Tax No. 221/2024, decided on 18.10.2024, regarding the consequences of persistent non-appearance.

3.9 Once ITC was found to have been wrongly availed, **interest under Section 50** and the applicable **penalty under Section 74** followed in accordance with law. The directions under **Sections 78 and 79** regarding payment and recovery are also statutory consequences of the determined liability.

3.10 Thus, considering the supplier's non-existent status, absence of satisfactory evidence of actual receipt of goods, failure to discharge the burden under Section 155, and repeated failure

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of the Appellant to substantiate its claim despite opportunities, the Department submits that the impugned demand is legally sustainable.

4. Discussion and Findings:

4.1 We have carefully and meticulously examined the facts of the case, the impugned Order-in-Original, the grounds of appeal, the submissions of the parties and the documents available on record.

4.2 In the present case, the Appellant has asserted that the purchases were supported by **tax invoices, e-way bills/bilties, weighing slips, books of account, GST returns and banking-channel payments.** The transactions were also stated to have been reflected in the GST portal as GSTR-1, GSTR-2 and GSTR-3B etc. These are relevant contemporaneous documents which cannot be disregarded merely on the basis of a subsequent adverse report concerning the supplier.

4.3 The requirement of actual receipt of goods under Section 16(2)(b) is undoubtedly substantive. However, the question whether the goods were actually received has to be determined on the basis of the totality of evidence. In the present case, the Appellant specifically claimed actual receipt of iron scrap and relied upon transportation and other transaction documents. The impugned order does not record any independent verification from the transporter, vehicle owner, weighbridge, bank or books of account to conclusively establish that the transactions were fictitious.

4.4 Once such contemporaneous evidence is produced, the Department is required to examine and rebut the same with cogent evidence. Section 155 cannot be interpreted to mean that the recipient must conclusively prove the entire affairs of its supplier or prove matters exclusively within the supplier's control.

4.5 The Department's principal basis is that M/s A.S. Enterprises was subsequently found to be non-existent. However, **subsequent non-existence or cancellation of a supplier does not automatically establish that the supplier was non-existent on the date of the disputed transactions.**

4.6 This principle has been specifically recognized by the Hon'ble Allahabad High Court in **M/s Singhal Iron Traders v. Additional Commissioner**, Writ Tax No. 1356 of 2022, decided on 26.09.2025. *In that case, involving iron-scrap purchases, the Court noted the existence of tax invoices, e-way bills, banking-channel payments and supplier's GSTR-1/GSTR-*

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3B and held that adverse inference could not be drawn merely because the supplier's registration was subsequently cancelled. The Court further observed that the authorities were required to verify whether the supplier existed at the time of the transactions.

4.7 The factual principle laid down in ***Singhal Iron Traders*** is highly relevant to the present case, particularly because the present dispute also concerns **iron-scrap purchases,** tax invoices, e-way bills and banking-channel payments.

4.8 The invocation of Section 74 requires more than establishing that ITC was wrongly availed. The statutory provision specifically requires that such wrongful availment or utilisation must be **"by reason of fraud, or any wilful misstatement or suppression of facts to evade tax."**

4.9 The Hon'ble Allahabad High Court in **HCL Infotech Ltd. v. Commissioner, Commercial Tax**, Writ Tax No. 1396 of 2024, decided on 27.09.2024, held that *the basic ingredients of Section 74 must be specifically present and that the show cause notice must disclose the fraud, wilful misstatement or suppression relied upon for invoking Section 74. In absence thereof, proceedings under Section 74 were held to be without jurisdiction.*

4.10 There is no specific finding, supported by independent evidence, that the Appellant:

- colluded with the supplier;
- arranged accommodation invoices;
- received any cash-back;
- participated in circular trading;
- fabricated invoices or transport documents;
- knowingly availed fictitious ITC; or
- received the consideration back after making payment through banking channels.

4.11 In the absence of such evidence, the essential jurisdictional requirement of Section 74 is not satisfactorily established.

4.12 The issue is further covered by the judgment of the Hon'ble Allahabad High Court in **M/s Safecon Lifesciences Pvt. Ltd. v. Additional Commissioner, Grade-2 (Appeal)-II, State Tax, Agra**, Writ Tax No. 389 of 2023, decided on 09.09.2025. The Court *held that where the purchaser had produced material showing* ***actual movement of goods, payment through banking channels and filing of GST returns,*** *and such material was neither disproved nor*

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rebutted by cogent evidence, proceedings under Section 74 could not be sustained merely on the basis of adverse information concerning the supplier. The Court also emphasized that intelligence information relied upon by the Department must be properly verified and the material used against the taxpayer must be furnished to it.

4.13 Importantly, the State's challenge to the aforesaid judgment was subsequently considered by the **Hon'ble Supreme Court in SLP (C) No. 23993/2026, Additional Commissioner, Grade-2 v. M/s Safecon Lifesciences Pvt. Ltd.**, and on **17.07.2026** *the Supreme Court dismissed the SLP, finding no good ground to entertain it. Thus, the judgment of the Allahabad High Court has attained further significance.*

4.14 The ratio of ***Safecon Lifesciences*** supports the proposition that an adverse report regarding the supplier cannot substitute for a proper examination of the recipient's contemporaneous evidence, particularly where actual movement of goods and banking transactions are claimed and have not been cogently disproved.

4.15 The Hon'ble Allahabad High Court in **M/s Khurja Scrap Trading Company v. Additional Commissioner Grade-2 (Appeal) & Another**, Writ Tax No. 743 of 2023, decided on 29.08.2025, also considered proceedings under Section 74 arising from an adverse finding concerning the supplier. *The Court emphasized that subsequent cancellation/non-existence of a supplier cannot, by itself, justify denial of ITC where the transaction and statutory compliance at the relevant time are otherwise supported by evidence.*

4.16 The Department has relied substantially upon the investigation report concerning M/s A.S. Enterprises. Such an investigation report may certainly constitute a basis for initiating verification, but it cannot automatically be treated as conclusive proof against the purchaser.

4.17 In ***Safecon Lifesciences***, the Hon'ble Allahabad High Court specifically held that information received from an intelligence authority must be verified before being used against a registered dealer and that the material relied upon must be made available to the affected taxpayer.

4.18 In the present case, the impugned order does not demonstrate that the Appellant was directly connected with the alleged activities of the supplier or that the investigation established any specific role of the Appellant in the alleged issuance of accommodation invoices.

4.19 The Appellant has relied upon the fact that the transactions were reflected in the GST portal and that the supplier had filed its returns. Such reflection alone may not conclusively

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establish actual receipt of goods; nevertheless, it is a relevant contemporaneous circumstance which must be considered along with invoices, e-way bills, books of account, transport documents and banking records.

4.20 The Hon'ble Allahabad High Court in *Singhal Iron Traders* attached significance to the supplier's filing of GSTR-1 and GSTR-3B and the fact that the disputed transactions were supported by e-way bills and banking-channel payments.

4.21 The Department has contended that the documents claimed by the Appellant were not actually attached to the portal reply and that the Appellant did not appear for personal hearing. However, non-appearance cannot, by itself, establish that the transactions were fictitious.

4.22 The adjudicating authority was required to determine the tax liability on the basis of the material available on record and record specific findings regarding the documents and evidence relied upon by the Appellant. An adverse conclusion under Section 74 must be founded upon positive material establishing the statutory ingredients of that provision.

4.23 The First Appellate Authority also proceeded ex-parte because of repeated non-appearance. While repeated non-appearance may justify disposal of the appeal on the available record, it does not dispense with the statutory requirement of examining whether the **conditions of Section 74 were actually satisfied.**

4.24 Likewise, the penalty under Section 74 is dependent upon the establishment of the statutory ingredients of that provision. Where fraud, wilful misstatement or suppression with intent to evade tax is not established against the Appellant, the equal penalty imposed under Section 74 cannot be sustained.

4.25 On a cumulative consideration of the record, the following circumstances favour the Appellant:

1. the supplier was a **GST-registered person at the relevant time**;
2. purchases were declared in the Appellant's books and GST returns;
3. tax invoices were relied upon;
4. e-way bills/bilties and other transport documents were claimed;
5. payments were made through **banking channels**;
6. the transactions were reflected in the GST portal;
7. there is no specific finding of **cash-back or return of consideration**;

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8. there is no specific evidence establishing **collusion or conspiracy** between the Appellant and supplier;
9. there is no independent finding that the Appellant fabricated the invoices or transport documents; and
10. the Department has not established by cogent evidence that the Appellant knowingly participated in a fraudulent ITC arrangement.
11. It is important the appellant made payment through bank.

4.26 The mere fact that the supplier was subsequently reported to be non-existent/bogus cannot, in the facts of the present case, be elevated into proof that the Appellant's purchases were fictitious or that the Appellant committed fraud. The recent judgments of the Hon'ble Allahabad High Court in *Khurja Scrap Trading Company*, *Singhal Iron Traders* and *Safecon Lifesciences*, read with the principle laid down in *HCL Infotech*, require a specific and evidence-based determination of the recipient's involvement before Section 74 can be invoked.

4.27 Therefore, we find that the Department has not brought sufficient independent and cogent evidence on record to establish that the transaction of the appellant are fraud or no movement of goods..

4.28 The subsequent finding that M/s A.S. Enterprises was non-existent, without establishing that the supplier was non-existent **at the time of the disputed transactions** or that the Appellant was a participant in the alleged fraudulent arrangement. The contemporaneous documents relied upon by the Appellant—tax invoices, e-way bills/bilties, books of account, GST records and banking-channel payments—required proper consideration and rebuttal by cogent evidence.

4.29 Further, the essential jurisdictional ingredients of **Section 74** have not been established against the Appellant. In the absence of proof of fraud, wilful misstatement or suppression of facts with intent to evade tax, the demand cannot appropriately be sustained under Section 74. The ratio of *HCL Infotech*, *Khurja Scrap Trading Company*, *Singhal Iron Traders* and, most importantly, *Safecon Lifesciences*, supports this conclusion.

4.30 We find that the transaction made by the appellant are genuine because the supplier has declared the transaction in GSTR1, GSTR2, GSTR3B. The movement of goods had not denied by the department. The appellant suo-moto reversed, the amount on the basis of frozen payment Rs.5,52,922/- along with applicable interest, above 180 days under Section 16(2)(d), read with Rule 37, through DRC-03 dated 07.09.2026(vide debit entry DC090926003 158).

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4.28. The Appellant has explained that payment towards certain invoices, along with the tax component, was not made within 180 days because the supplier was reportedly under departmental investigation. The second proviso to Section 16(2) (d) of the CGST/UPGST Act, 2017, read with Rule 37 of the CGST Rules, provides for proportionate reversal of ITC and payment of applicable interest where the prescribed payment condition is not fulfilled.

4.29. It is an undisputed position in the present case that the Appellant reversed the proportionate ITC relating to the unpaid invoices and deposited the amount through Form GST DRC-03. This voluntary reversal is a relevant circumstance demonstrating that the Appellant addressed the statutory consequence arising from non-payment within the prescribed period.

4.30. The third proviso to Section 16(2) of the CGST/UPGST Act, read with Rule 37(2) of the CGST Rules, recognises the entitlement to re-avail ITC reversed on account of non-payment within 180 days when the recipient subsequently pays the value of the supply together with the tax payable thereon, subject to the applicable statutory conditions. Accordingly, if the Appellant makes the requisite payment to the supplier and fulfils those conditions, its claim for re-availment may be considered in accordance with law

4.31. The Appellant has also explained that the payments were withheld as a measure of commercial prudence because the supplier was reportedly under investigation. This explanation, considered alongside the voluntary reversal through Form GST DRC-03, supports the Appellant's contention that the issue of unpaid consideration was dealt with under the statutory mechanism.

4.32. The statutory consequences of non-payment within 180 days arise under Section 16(2) (d), read with Rule 37, whereas proceedings under Section 74 require fraud, wilful misstatement or suppression of facts with intent to evade tax. The Appellant's failure to pay certain invoices within the prescribed period, particularly when the proportionate ITC was reversed through Form GST DRC-03, does not by itself establish the essential ingredients of Section 74.

4.33. In the present case, the Department failed to establish cogent evidence that the disputed goods were not actually supplied or received, or that the Appellant knowingly participated in a fraudulent arrangement. The subsequent adverse report concerning the supplier, without sufficient evidence establishing the Appellant's involvement in fraud, cannot by itself sustain the demand under Section 74.

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ORDER

i. In view of the foregoing discussion, the transactions made by the appellant are genuine Consequently, the impugned Order-in-Original dated **30.06.2023** and the consequential appellate order are **set aside**, and in the light of the above discussion the appeal filed by the Appellant is **allowed with consequential relief** as per law.

15.10.26

(Santosh Kumar Srivastava)

15/10/26

(Arvind Kumar)

Dated: 15.10.2026

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