GSTAT

State Bench Prayagraj

Division Bench Court No. I

APL/7/ALB/2026

M/S SAHU BUILDING MATERIAL **.....Appellant**

Versus

ASSISTANT COMMISSIONER STATE TAX SECTOR-02 PRATAPGARH, ASSISTANT COMMISSIONER , ASSISTANT COMMISSIONER STATE TAX SECTOR-02 PRATAPGARH & ORS. **.....Respondent**

Quorum

Hon'ble Mahtab Ahmad, Member(Judicial)
Hon'ble Ashish Varma, Member (Technical)

Counsel for Appellant
AJAY KUMAR YADAV

Counsel for Respondent
SMT. VIBHA MISHRA, DC, STATE TAX
SHRI SUNEEL KR. NIRMAL, AC, STATE TAX

Per Hon'ble Mahtab Ahmad, Judicial Member,

ORDER

The present appeal is filed by the registered person/tax payer M/s Sahu Building Materials, Pratapgarh, Uttar Pradesh, GSTIN No 09ADMPL9634N1ZN (hereinafter referred as the appellant) under section 112 of CGST/SGST Act, 2017 (hereinafter both the Acts referred to as the Act), challenging the Order-in-Original (OIO), reference no.ZA090320009664S dated 19.03.2020, FY.2018-19, under section 74 of the Act, passed by the Additional Commissioner Grade – II, (Appeal-I), State Tax, Prayagraj (hereinafter referred to as the Appellate Authority) in Appeal No.AD090721015390E M/s. Sahu Building Material vs. Asstt. Commissioner, Commercial Tax, Sector-2, Pratapgarh arising from the Order-in-Original (OIO) reference no.ZA090320009664S dated 19.03.2020, passed by the Assistant

Commissioner, State Tax, U.P., Sector -2, Pratapgarh (hereinafter referred to as the Proper Officer), thereby a demand of CGST Rs.1,96,948.36 interest Rs.59,084.30 and penalty 1,96,948.36 SGST Rs.1,96,948.36 interest Rs.59,084.30 and penalty Rs. 1,96,948.36 total Rs. 9,05,962.00 has been raised against the appellant under section 74 of the Act, which was affirmed by the Appellate Authority by the impugned order.

2. Facts of the Case

2.1- Necessary facts as transpires from the record, in brief, are that appellant's firm is a registered dealer under the Act having registered number as the above and carrying trading business of Iron & Steel and Hardware Goods. In the month of November, 2018, it secured two purchases of TMT Bar from M/s Agarwal Brothers, Allahabad having GSTN No.09ARBPA8533G1ZZ. The first, vide Invoice no.0158 dated 29.11.2018, taxable value Rs.11,03,492.86, bearing tax amount under CGST+SGST Rs.1,98,628.70 and the second, vide Invoice no.148 dated 18.11.2018, taxable value Rs.10,84,828.81 bearing tax of amount under CGST+SGST Rs.1,95,269.59 The appellant availed and utilized the above tax amount of both the transaction as ITC in its GST-3B of November, 2018. However, noticing that the first aforesaid transaction was not auto-populated in GSTR-2A up to the Tax Period of August, 2019, the ITC availed for this transaction had been reversed through GSTR-3B of August, 2019 of the following F.Y. 2019-2020.

2.2- An Audit proceeding is also found to be carried-out by the department on 08.07.2022 therein, the appellant could also not produce the Invoice of the second transaction dated 18.11.2018 of Rs. 10,84,828.81. Consequently, he was directed to deposit the tax amount of the said purchase, that is the CGST-Rs.97,634.59 and the SGST-Rs.97,634.59 along with interest @ 24% per annum till the deposit.

2.3- Before said Audit, however, the Proper Officer received an information from the Headquarter of State Tax through Letter No. IMC/2019-20/543, dated 06.11.2019 that on inquiry by the department the above firm M/s Agarwal Brothers was found non-existing. The firm took registration with the department just with the intention to facilitate wrong availment and utilization of ITCs by issuing fake invoice and e-way bill and without making actual supply of the Goods & Services. On the said information, the above jurisdictional officer did an enquiry therein and visiting on the e-way bill portal, she noticed that the appellant's firm had made two purchase transactions from the aforesaid non-existing firm through e-way bill no .471038609770, taxable value Rs.11,03,492,86.00, bearing CGST Rs.99,314.35 & SGST Rs. 99,314.35 and e-way bill no. 481037403006, axable value Rs.10,84,828.81, bearing CGST Rs.97,634.59 & SGST Rs.97,634.59. The appellant's firm was also found to have availed and utilized ITC thereof through GSTR-3B of November, 2018. Accordingly, the Jurisdictional Officer, Assistant Commissioner, Commercial Tax, Zone-2, Pratapgarh issued a notice u/s 74 of the Act dated 25.11.2019 (Paper No.45 of the memo of appeal) to the appellant's firm, stating that as evident from the above facts, you are in collusion of said supplier namely M/s Agarwal Brothers, had sold the goods under the aforesaid purchases with the intention to evade the tax and without getting any supply of the goods, you had wrongly claimed the ITC in respect of the above purchases which are liable to be RITC. Accordingly, the appellant was directed to appear on 10.12.2019 before the Assistant Commissioner, Commercial Tax, Zone-2, Pratapgarh with account books and bank statements and to present its stand, otherwise ex-parte order should be passed. This notice dated 25.11.2019, is previous in time from DRC-01 dated 03.03.2020 but the appellant does not clarify, whether this notice is part of DRC-01 dated 03.03.2020 or not? Although, it could not otherwise be inferred as the part of DRC-01 dated 03.03.2020 because of being previous in time to the DRC-1. The appellant has also not clarified that what the proceeding by the jurisdictional officer had carried out pursuance to the said

notice dated 25.11.2019. The said notice dated 25.11.2019 could be issued before the DRC-01 dated 03.03.2019 only under section 61 of the Act for scrutiny as transpires also from the subject matter of the notice as referred to hereinabove therein, the appellant was directed to appear before the Jurisdictional Assistant Commissioner with account books and bank statements.

2.4- Thereafter, the Proper Officer issued SCN in the form of GST DRC-01 reference no.ZA0903200001683, dated 02.03.2020 **(paper nos.40 to 44 of the memo of appeal)** under section 74 of the Act against the appellant proposing the aforementioned impugned RITC, interest & penalty and fixing 16.03.2020 for both submitting reply as well as personal hearing mentioning time and venue also. We noticed that the appellant has brought on record only system generated proforma notice without any detailed notice by the Proper Officer and without any explanation for such omission as the DRC-01 proforma notice was not accompanied with such detailed notice.

2.5- However, the appellant filed reply dated 16.03.2020 with the reference of aforesaid GST DRC-01 dated 02.03.2020 along with form GST DRC-06, **(paper nos. 47 to 55 of memo of appeal)**. In its reply the appellant admitted the said transactions and explained that as per regular business practice it had claimed the ITC in respect of the above purchases on the basis of tax invoices of the said purchase. Since, credit in respect of bill no.158 dated 29.11.2018as not found available in GSTR-2A he had reversed the ITC relating to this purchase in the return of GSTR-3B of August, 2019. However, ITC in respect of invoice 148 dated 18.11.2018 had been found auto populated in the GSTR-2A, so no reversal was required. The appellant had enclosed with his reply GSTR-3B and GSTR-2A of respective month **(paper no.51 to 55).** It appears that the appellant had not appeared before the Proper Officer for hearing on the date fixed and the Proper Officer after taking into consideration appellant's reply proceeded to pass

Order-in-Original dated 19.03.2020, on a later date from the date of hearing i.e. 16.03.2020, as transpires from the OIO **(available at page no.62 and 63 of the memo of appeal)**. The OIO demonstrate that the Proper Officer while passing the order had taken into consideration the reply preferred by the appellant, provisions of sections 16 of the Act regulating the availment and utilization of the ITC with the facts of the case and concludes that the supplier firm was not found in existence and the appellant, in collusion of the said supplier firm and without receiving goods under the transactions, only on the basis of showpiece documentation of purchases in question, had availed and utilized the ITC in respect of those purchases. Accordingly, the ITC claimed as the above was reversed with interest @ 24% along with penalty under section 122(vii) of the Act equal to the amount of the tax and demand was raised thereof. **(paper no.58 to 63)**

2.6- Aggrieved by the above OIO and the demand dated 19.03.2020, the appellant preferred appeal no.AD090721015390E **(paper no.65 to 73)** before the Additional Commissioner Grade-II (Appeal-I) State Tax, Prayagraj, which was registered **(paper no.75)** and a notice dated 12.05.2020 fixing 23.05.2022 for hearing was issued, **(at paper no.77)**. It appears from the Order-in-Appeal dated 11.07.2022 **(paper no.81 to 84)** that the appellant was absent on the said date of hearing and the Learned Appellate Authority proceeded ex-parte, however, the Order-in-Appeal was not passed on the fixed date for hearing i.e. 23.05.2022 but passed on a later date 11.07.2022 which was not a date fixed date in the appeal for any purpose. As the appellant was not present for hearing and also there was no adjournment application, the Appellate Authority proceeded ex-parte against the appellant and vide impugned OIA dated 11.07.2022 dismissed the appeal observing that since in pursuance of the notice no one was present nor any application for adjournment was moved, it was apparent that the appellant was not willing to get disposed off the appeal. It also showed that he had nothing to say against the proceeding taken up by the Proper Officer under section 74 of the Act. Accordingly, the

proceeding initiated by the Proper Officer and the order passed was confirmed and the appeal was dismissed.

2.7- Being aggrieved by this OIA dated 11.07.2022 the appellant has preferred this appeal before this Tribunal.

3. Grounds of Appeal

3.1- As per the appeal memo the appellant asserts that adjudication order passed by both the authorities below is without jurisdiction and in blatant violation of provision of the Act as well as the principle of natural justice. The appellant asserted that the Proper Officer Assistant Commissioner lacked pecuniary competence in terms of circular no. Vidhi/2018-19/430 dated 19.11.2018 issued by the Commissioner State Tax, U.P., Lucknow, which confined his pecuniary jurisdiction up to the taxable turnover of Rs.2,00,000.00 whereas the admitted turnover of the appellant exceeds the said limit which renders the entire proceeding void-ab-initio.

3.2- The entire proceeding is also vitiated on account non-compliance of mandatory requirement of Rules 142(IA) of the CGST/UPGST Rules, 2017 as no pre show cause intimation in form of GST DRC-01-A was issued prior to issuance of notice GST DRC-01 dated 02.03.2020 and assert, the appellant was deprived of the statutory opportunity to response before the initiation of proceedings. In support of this ground the appellant has referred to a decision of the Division Bench of Hon'ble Allahabad High Court passed the Writ Tax No.1512 of 2022 M/s Skyline Automation Industry vs. State of U.P. and Other dated 02.01.2023, (Neutral Citation NO.2023:AHC:740-DB).

3.3- It is further stated that the order dated 19.03.2020 passed by the Proper Officer is vitiated in law as being passed in gross violation of principle of natural justice and the

mandatory provision of sections 75(4), 75(6) and 75(7) of the Act in as much as no effective opportunity of hearing was not afforded and was passed without considering the appellants reply.

3.4- On the part of Appellate Authority also, notice for hearing dated 15.05.2022 was uploaded on the GST portal under the "Additional Notices and Orders" Tab without any effective communication and thereby deprived the appellant of a meaningful opportunity of hearing and passed the impugned OIA without observing the mandate of section 107(12) of the Act.

3.5- On merit, it is asserted that as far as transaction dated 18.09.2018 is concerned it was reflected in GSTR-2A which shows that the supplier had filed return GSTR-01 as registered person. Further tax invoices and e-way bills along with payment through banking mode were available, therefore, there was no occasion for the Proper Officer to conclude that no actual supplies were made pursuant to the tax invoices. In view of existence of such evidences, applying provision of section 16(2)(C) of the Act against the appellant is not a proper interpretation of the said provision of the said provision as it amounts to putting impossible burden on the appellant which is impermissible in law.

3.6- In the DRC-01 no penalty was proposed, therefore, in view of section 75(7) of the Act imposition of penalty is without jurisdiction and in violation of principle of natural justice.

3.7- It is further asserted that both the authorities have passed the orders in contravention of law laid down by the Hon'ble Court and acknowledge by the Commissioner State Tax U.P. through office memorandum no.1406 dated 12.01.2024 in the form of directions because orders were passed on the date not fix for any purpose and on a later date, from the date of hearing. Invocation of section 74 of the Act against the appellant is also without jurisdiction because

neither the show cause notice nor impugned order contained any allegation constituting fraud, willful misstatement or suppression of facts with intention to evade tax which are fundamentals for proceeding under the said provision. As such, the order-in-original as well as the order-in-appeal are illegal, arbitrary and unsustainable in law on facts as well in law.

4. Stands taken by the Revenue-

4.1- No formal reply has been filed by the revenue on the GST portal as required under the Rules, however, the Learned SR Ms. Vibha Mishra assisted by ASR Sri Sunil Nirmal has put-up revenue stands against the appeal during the course of hearing. Referring circular no.278/GST/2017-18/file No.118/Rajyakar dated 01.07.2017 by Commissioner State Tax, U.P. read with earlier (S)/Khand Punar Gathan-Naveen Karyalaya/2010-11/499Varijyakar dated July, 25 2010. It is asserted that the said sector-2, Pratapgarh was a sector of 'B' grade which was headed by Assistant Commissioner Level Officer and by circular dated 01.07.2017 under the GST Law Assistant Commissioner is authorized to act under section 74 of the Act also. A combined reading of both the above circular clearly established that the jurisdictional Assistant Commissioner of sector – 2, District Pratapgarh was authorized to initiate proceeding under section 74 of the GST Act also against all traders of the sector upto maximum limits. Circular No.Vidhi/2018-19/430 dated 19.11.2018 which is issued in continuation of order no.278/GST/2018-18/file no.118/State Tax dated 01.07.2017 thereby pecuniary limits of Deputy Commissioner, Assistant Commissioner and State Tax Officer is an enhanced but not in isolation, rather was issued with the reference of their posting sector and in the last para of the circular it is mentioned that Deputy Commissioner/Assistant Commissioner and State Tax Officer appointed in the sector shall undertake proceeding in respect of a traders within the geographical area of their sector. As per departmental set-up in Uttar Pradesh sectors of the department are categorized in two category 'A' & 'B'. Sectors of category 'A' is headed by

Deputy Commissioner and assisted by Assistant Commissioner and State Tax Officer while sectors of category 'B' is headed by an officer of Assistant Commissioner rank along with State Tax Officers/Officers. Circular no.S/Khand Punargathan-Naveen Karyalaya/2010-11//499//Vadigyakar dated 25.07.2010 categorize Pratapgarh sector – 2 as 'B' category sector and para 2 provides that:-

"उक्त के अतिरिक्त, 'B' श्रेणी के खंडों के असिस्टेंट कमिश्नर, की कर निर्धारण की अधिकतम सीमा रुपये एक करोड़ शिथिल करते हुए, उन्हें 'B' श्रेणी के खंड के अधिकतम सीमा के समस्त सम्बन्धवाहरियो के कर निर्धारण का अधिकार होगा।"

The above categorization of the sectors is still effective. Thus, conjoin reading of the above circulars clearly indicates that the Assistant Commissioner of sector – 2 of Pratapgarh while acting as Proper Officer for the proceeding in question under section 74 of the Act was well within his pecuniary jurisdiction.

4.2 It is true that the Appellate Authority had uploaded notice for hearing of appeal on the GST portal under "Additional Notices & Orders" Tab but at that time it was prevailing practice to serve the notices/orders on the GST portal in the said Tab due to some technical problem and the taxpayer and their representative were well known about this fact and, accordingly they were responding the notices and order. The appellant had no such grievance about the notice issued by the Proper Officer for proceeding under section 74 of the GST, Act, which was also uploaded in the "Additional Notices & Orders" Tab on the portal rather, he had responded the same by filing the reply before the Proper Officer, which clearly shows that the appellant was well known about this mode of working prevailing on those days. It is noticeable that when

notices/orders uploaded on portal, a notification massage on the registered mobile of the taxpayers was also flagged enabling them to make excess on the portal Tab, therein notices were being uploaded and that was “Additional Notices & Orders” Tab. So, there was no tangible impediment to the appellant about acknowledging and responding the notice and he is trying to take shelter of said factor to high his own unexplained inaction in acknowledging and responding the noticee sent by the Appellate Authority.

4.3- Since, on the due date of hearing the appellant did neither appear nor filed any reply or adjournment the Proper Officer as well as Appellate Authority had no option but to proceed and pass the ex-parte order. The order passed by both the Proper Officer as well as the Appellate Authority were not passed on the date fixed for hearing but on later date, however, it is common in practice for adjudicating authority to reserve the judgment after completion of the hearing, either ex-parte or on merit and after preparation of the order pass the same on later date but as early as possible and it was done in both cases.

4.4- The Proper Officer in the SCN-DRC-01under section 74 of the Act had given same date for the reply and hearing. The appellant had filed the reply. He might also seek adjournment with reply if he found inconvenient to participate in the hearing on the same day. However, there was no such prayer with the reply, therefore, the Proper Officer might have drawn a reasonable inference that the appellant might not interested in personal hearing assuming the reply was sufficient that is why he chose not to appear or put an adjournment with the reply. Under this reasonable and fair assumption, he is appeared to proceed to decide the matter finally on his part and in doing so he had gone into the merit of the case and material placed by the appellant with his reply; therefore, no prejudice appears to have been happened with the appellant and as such there is no violation provisions of section 75(4) of the Act and principle of natural justice.

4.5- The Appellate Authority while deciding the appeal ex-party had gone through the impugned Order-in-Original and found no infirmity therein. Accordingly, he dismissed the appeal. This is not violative to the provision of section 107(12) of the Act, because the Order-in-appeal is short but in approval of the reasoning set-out in the Order-in-Original against the appellant's case.

4.6- As far as the merit of the case is concerned, supplier firm M/s Agarwal Brothers GSTN No.09ARBPA8533G1ZZ was found non-existing. Though, he got registration and also filed GSTR-01 but neither filed GSTR-3B nor paid taxes in respect of the transactions in question. On enquiry, no business on any point of time was found to be carried out at the given premises of the seller and it was a bogus firm, just issuing fake invoices without supply of any goods in collusion with other dealers with the intention to opportune fake claims of ITC. In fact, neither the above transaction were auto populated in the appellant relevant GSTR-2A of November, 2018 or in subsequent months up to last date of filing of return of September of following F.Y. 2019-20. In the GSTR-2A of November, 2019 entry is available only for invoice no.162 and not of alleged invoice no.148 dated 18.11.2018. The reversal of ITC regarding invoice no.158 dated 29.11.2018 might be included in GSTR-3B of August, 2019 but no reversal is found in relevant heads of CGST or SGST but, alleged to be made in the head of IGST which was not specifically mentioned in the explanation and was also not transpired from GSTR-3B of August, 2019. In the above facts and circumstances, the Proper Officer has rightly proceeded under section 74 of the Act against the appellant and imposed impugned tax, interest and penalty.

4.7- The contents of the notice itself speaks about the fraud, mis-statement and suppression of fact with intention to evade tax and claims fake ITC. Though, in the notice phrase fraud, mis-statement or suppression of the facts to evade the tax was specifically not used. However,

a document should be deciphered on the basis of his whole contents and not on the basis of omission or insertion of certain words. As such, it cannot be said that DRC-01 does not comply with the mandatory ingredient of section 74 of the Act. In all, appeal has no merit and liable to be dismissed.

4.8- On the basis of rival contentions of the parties following questions of law and facts for determination arises: -

a. Whether does the Proper Officer lack pecuniary jurisdiction over the case?

b. Whether the whole proceeding is vitiated due to non-issuance of GST DRC-01A before initiation of proceeding under section 74 of the Act as mandated by rule 142(1A) of the CGST/SGST Rules, 2017, as the then it stood?

c. Whether the Order-in-Appeal is vitiated due to placement of the SCN DRC-01 in "Additional Notices & Orders" Tab instead of "Notices and Orders" Tab on GST portal rendering the notice unserved and ineffective?

d. Whether both the OIO Ref. No.ZA090320009664S dated 19.03.2020 and the OIA Ref. No. ZD090722032692C dated 11.07.2022 are vitiated because, both of them were not passed on the date fixed for hearing, but on later date, which were not fixed?

e. Whether the Order-in-Appeal dated 11.07.2022 complied with the mandate of section 107(12) of the Act as being non-speaking and without reason?

f. Whether SCN GST DRC-01 dated 02.03.2020 does not comply with essential element of section 74 of the Act and hence, vitiates whole proceedings?

g. Whether appellant is bona-fide purchaser in respect of the purchases in question and omission in depositing the tax on the part of the seller dealer and cancellation of his registration made no effect on the appellant entitlement to the ITC in respect of said purchases?

h. Whether the appellant did reversal of ITC in respect of Inv. No.158 dated 29.11.2018 by GSTR-3B of August, 2019, if yes, its legality and effect thereof to the liability of the appellant with reference to provision of the section 74 of the Act?

i. Whether, in the facts and circumstances of the case, no case is made out against the appellant u/s 74 of the Act, if not, effect thereof?

5. We have heard the learned counsel for the appellant Sri Ajay Kumar Yadav, Adv. and learned SR Ms. Vibha Mishra assisted by learned ASR Sri Suneel Nirmal and perused the record.

5.1- Sri Yadav while arguing on behalf of the appellant reiterated the grounds of appeal and contended that both the Order-in-Original as well as Order-in-Appeal are passed by the authorities below in violation of express mandate of different provisions of the Act and the Rule framed thereunder as well as in contravention of departmental circular and principle of natural justice. In the facts and circumstances of this case and the material available on record, the appellant is proved to be entitled for the ITC Rs.1,96,269.88 in respect of purchase vide Invoice no.158 dated 18.11.2018. Further, reversal of the ITC carried out by him through GSTR-3B of August, 2019 in respect of the purchase vide Inv.no. 148 dated 29.11.2018 was legally permissible and no liability should be fastened on the appellant by the authorities below. Accordingly, present appeal is liable to be allowed setting-aside the impugned OIA dated 11.07.2022 as well as OIO dated 19.03.2020.

5.2- On the other hand, learned SR argued that since sector-2 of Pratapgarh is of category 'B' sector headed by Assistant Commissioner Grade Officer whose pecuniary jurisdiction was not limited up to taxable turnover of Rs.2,00,00,000.00 there is no lack of pecuniary jurisdiction over the case. The appellant himself opted to waive opportunity of hearing in his reply, therefore, afresh opportunity of hearing before passing the impugned adverse OIO by the

Proper Officer was not required. As such, there is no violation of mandate regarding opportunity of hearing envisaged in section 75(4) of the Act. Further SCN DRC-01 preceded by notice dated 25.11.2019 thereby the appellant was directed to appear before the Proper Officer with books of account and bank statement, which is sufficient compliance of Rule 142(IA) of the CGST/SGST, Rules, 2017. It is also evident that no prejudice was caused to the appellant due to uploading the notice by the Appellate Authority in the "Additional Notices and Order" Tab as it was prevailing practice known to the registered person and the appellant as well. Both the Proper Officer and Appellate Authority have passed a reasoned order taking into consideration the whole aspects of the case. It is also evident from appellant's reply dated 16.03.2020 in respond to SCN DRC-01 dated 02.03.2020 that the notice set-out the necessary fact thereupon a reasonable ground made out to believe that in collusion of a non-existing trader, the appellant had managed purchase invoices without getting actual supply and had claimed ITC which amount to fraud, wilful, mis-statement and suppression of fact with intention to evade the tax. It is true that in DRC-01 language used in section 74 as fraud, wilful, mis-statement and suppression of fact is not specifically used but whole contents of notice is sufficient to suggest that the appellant had committed fraud, mis-statement and suppression of fact with an intention to avoid tax in collusion with non-existing. This fact is also proved by the material available on record. Therefore, it is not acceptable that SCN DRC-01and the OIO do not consist of necessary facts to fastened liability on the appellant under Section 74 of the Act and necessary ingredient of this section do not fulfil against the appellant. Appeal has no merit and liable to dismissed.

6. Discussion

6.1- The first issue which is for consideration before us is that whether in the light circular no.Vidhi/2018-19/430 dated 19.11.2018 the Proper Officer who was an Officer of Assistant

Commissioner rank hold pecuniary jurisdiction over the case? By the aforesaid circular pecuniary jurisdiction for the officers posted in a sector namely Deputy Commissioner, Assistant Commissioner and Commercial Tax Officer have been determined as taxable turnover above Rs.2 crore from Rs.25 lakh up to Rs.2 crore and up to Rs.25 lakh respectively. It is not in dispute that appellant taxable turnover was much above the Rs.2 crore which as per the above circular is the maximum pecuniary limit for an officer of Assistant Commissioner rank. Appellant's assertion is that in view of the above circular the Proper Officer lacked jurisdiction over the matter. However, the learned SR referred to letter no.278/GST/2017-18/file no.118/State Tax dated 01.07.2017 of the office of Commissioner State Tax, U.P. thereby officers working with department of State Tax, U.P. are authorized to act under GST law commencing from the same date as the Proper Officer. By the said circular the Commissioner State Tax also defined geographical area of the sector and authority of the officer in respect of the specified provision under the GST, Act. In para 2 of this Office Order Assistant Commissioner posted in a sector is authorized to exercise power of the Proper Officer u/s 74 of the Act irrespective of pecuniary limit. In the letter no.430 dated 19.11.2018, there is a reference to the letter no.624 dated 27.05.2008 (apparently of the VAT period), thereby pecuniary limit for Deputy Commissioner, Assistant Commissioner and Commercial Tax Officer had been prescribed as above the Rs.50 lakh, above the Rs.15 lakh up to Rs.50 lakh and upto Rs.15 lakh respectively, which were amended vide letter no.430 dated 19.11.2018 prescribing pecuniary limit for the officers appointed in a sector and pecuniary limit for Deputy Commissioner, Assistant Commissioner and State Tax Officer have been prescribed as turnover above Rs.2 crore, turnover above Rs.25 lakh up to Rs.2 crore and turnover up to Rs.25 lakh respectively. Since, this letter no.430 dated 19.11.2018 make a change in respect of pecuniary jurisdiction of different level officer with reference to pecuniary jurisdiction set-up by the department in VAT period it clearly shows that circular letters assigning pecuniary

jurisdiction to the different level officers working in the tax sectors of VAT periods are very much relevant while dealing with the dispute of pecuniary jurisdiction of an officer. The learned SR has brought into our notice an another circular of Commissioner of Commercial Tax, U.P. No.S/Khand Punargathan Naveen Karyalaya/2010-11//499//Varijyakar dated 25.07.2010 whereby the Commissioner pleased to authorize Assistant Commissioners posted in sectors of 'B' category to assess all traders of the sector up to maximum turnover. In this very circular sector – 2, Pratapgarh of Allahabad Zone has been categorized as category 'B' sector. This circular fully support revenue's contention that the Assistant Commissioner of sector-2 of Pratapgarh of Allahabad Zone held pecuniary jurisdiction over the present case. As such, we are unable to accept appellant's contention that the Proper Officer who, in this case, passed the Order-in-Original dated 19.03.2020 has no pecuniary jurisdiction to deal the case.

6.2- As far as, the issue of non-issuance of preliminary inquiry notice i.e. GST DRC-01A in compliance of Rule 142(1A) of the GST/UPGST Rules, 2017 (the then it stood) is concerned, there is no doubt that it was mandatory and non-compliance of the aforesaid rule renders whole proceedings u/s 74 of the Act vitiated as held in Writ Tax No.1512 of 2022 M/s Skyline Automation Industries vs. State of U.P. and another decided on 02.01.2023 (Neutral Citation No.2023:AHC:740-DB). The appellant has filed on record DRC-01 dated 02.03.2020 along with summary of the notice **(page 39 to 44)**. This notice and the summary accompanied with a detailed notice by the Proper Officer but it is of 25.11.2019 and not of 03.03.2020 the date of DRC-01. Being previous in time of DRC-01 it could not be part of the same DRC-01 notice dated 02.03.2020 rather, it denotes a notice previous to DRC-01 notice. Although, it is captioned to be issued u/s 74 of the Act, however, after detailing the facts and issues in the notice, the appellant was directed to appear before the Proper Officer with books of accounts and bank statement for verification purpose. The appellant has not brought any detailed notice of Proper Officer of 02.03.2020, which could be considered as detailed notice as part of the

DRC-01. There is also no assertion on his part that the DRC-01 dated 02.03.2020 did not accompanied with any detailed notice by the Proper Officer and he had received only proforma notice and its summary. However, his reply dated 16.03.2020 **(paper no.47)** to DRC-01 dated 02.03.2020 contains a detailed reply inconsonance with all the allegations of revenue regarding this case along with GSTR-3B and GSTR-2A **(paper nos.47 to 55)**. Such detailed reply could not possible without having being attached with the proforma notice and its summary the detailed factual notice by the Proper Officer. Be it noted that, the proforma notice and its summery contains only proposed initiation of proceeding u/s 74 with the proposed ITC reversal, interest and penalty referring the annexure containing reasons and other details. Here, the appellant reasonably appeared to suppress detailed notice by Proper Officer with DRC-01 and placing a previous notice as its part before the Tribunal, which could only be issued under Rule 142(A1) of the CGST/SGST Rules, 2017. It is true that in the caption of this detailed notice dated 25.11.2019 reference has been made of section 74 of the Act, however, it could be due to beginning year of the GST regime and inexperience of the officer concerned. In such a situation, we are inclined to hold that DRC-01 dated 02.03.2020 was preceded by a notice dated 25.11.2019, thereby initiating a preliminary inquiry by directing the production of books of accounts and bank statements to verify the discrepancies noticed by the Proper Officer on the basis of information received from the headquarters. This notice dated 25.11.2019, in our view, being previous in time from SCN DRC-01, is an effective compliance of Rule 142(A1) of the Rules, 2017. As such, the above case law cited by the appellant is distinguishable on fact from the present case and helps no way to the appellant.

6.3- It is true that section 75(4) of the Act mandates in clear terms in respect of a proceeding u/s 73 and 74 of the Act that as opportunity of hearing shall be granted where a request received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against the person. Paper no.40 the DRC-01 dated 02.03.2020 clearly shows that

it was not only asked for reply on 16.03.2020 but also indicate date of hearing along with time and venue, though on same date of reply. It also proposes the tax, mentioning that "pleased note that beside tax, you are also liable to pay interest and penalty in accordance with the provisions of the Act". In the demand details interest is also mentioned but in the penalty column only '0.00' is filled. The reason appears that while reversal of claimed ITC and the interest thereof were fully ascertainable but the penalty might be varied depending upon nature of explanation and the material put-up by the appellant and as the case stands proved. In our view, in this situation, non-quantifying the penalty which might be actually imposed on the appellant, appears not to vitiate the Order-in-Original dated 19.03.2020 thereby 100% penalty was imposed as per the provision of section 74 of the Act. Be it noted that section 74 of the Act specifically envisages 100% penalty as statutory penalty in a case of fraud, misstatement and suppression of fact with intent to evade the tax read with section 122(VII) of the Act. The learned counsel for the appellant has referred the case law M/s Svas Lifetimeses Ltd. Vs. State of U.P. and another decided on 17.08.2026 (Neutral Citation No.2026:AHC:172620-DB) in which against the tax demand of Rs.39,557.159 in the notice Rs.40,000.00 as penalty was also imposed in addition to the said tax amount which was adjudged in gross violation of mandatory statutory provision contained u/s75(7) of the Act. Accordingly, Order-in-Original for set-aside. Section 75(7) of the Act provides the amount of tax, interest and penalty demanded in the order shall not be in excess of amount specified in the notice and no demand shall be confined on the ground other than the ground specified in the order. In previous discussion, we found that amount of the penalty was not viable to be quantified because it might very in view of the explanation and supportive evidence to be filed by the appellant while on the basis of non-payment of the tax by the supplier tax and interest were quantified. However, regarding penalty it was specified that penalty would be imposed according to the provision of law and u/s 74 of the Act 100% penalty is envisaged, which was ultimately demanded. Therefore, the amount of

penalty ultimately imposed by the Order-in-Original though not quantified but certainly found specified. The referred case law only tax was proposed in the notice without mention of the penalty but in the order penalty was imposed contrary to the demand notice. As such, the case in hand is distinguishable on fact.

6.4- With the reference of section 75(4) of the Act, now we have to see that whether the Proper Officer while passing the Order-in-Original had complied with the said provision or not, which requires opportunity of hearing, if a request is made therefor or in cases where any adverse decision is contemplated against the noticee. On this issue, when we go through the record, we found reply dated 16.03.2020 of the appellant to the show cause notice dated 02.03.2020 at page nos.47 and 49. In his reply, the appellant explained his position with details and prayed for dropping the notice, in view of the facts and circumstances. However, in column no.7 meant for option for personal hearing he ticked box 'No' instead of 'Yes'. As we noticed hereinabove, DRC-01 was also proposed tax, interest and penalty, which might have to be passed against the appellant for the said irregularities. As such, in our view, the contents of the notice DRC-01 and the appellant reply thereof comply with both limbs of section 75(4) of the Act regarding mandate of providing opportunity of hearing to the noticee because, in his reply at one hand, appellant appears not to ask for opportunity of hearing and on the other hand he opted not to avail opportunity of hearing on the date fixed for hearing, which were specifically provided in the notice, while the notice contemplates adverse decision against him. When the appellant himself expressly waived his opportunity of hearing how can the Proper Officer could be expected to issue a fresh notice for hearing to the appellant before passing the OIO in question.

6.5- We have gone through the case law namely, Writ Tax No.303 of 2024 Mahaveer Trading Company vs. Deputy Commissioner, State Tax and another (Neutral Citation

No.2024:AHC:38820-BD), cited by the appellant to buttress his assertion of violation mandatory provision of hearing u/s 75(4) of the Act and office memo no.1406 dated 12.11.2024 while passing the adverse impugned OIO against the appellant. Para no.7 of this judgement shows that the Proper Officer provided three dates to the appellant but none for hearing and adverse orders had been passed. Noticing this fact along with office memo no.1406 dated 12.11.2024 Commissioner Commercial Tax, U.P., the Hon'ble Court held as under-

> *"11. In view of the facts noted, before any adverse orders has been passed in an adjudication proceeding, personal hearing must be afforded to the noticee, if the noticee chooses to wave the that right, occasion may be arise with adjudicating authorities, (in those fact), to proceed to deal with the case on merit, ex-parte. Also, another situation may exist even after grant of such opportunity of personal hearing, the noticee fails to avail the same. Leaving such situation apart we cannot allow a practice to arise or exist where opportunity of personal hearing may be denied to a person facing adjudication proceedings."*

When we apply the above proposition of law to the facts of the present case, it is apparent that this case law does not help to the appellant because in the case in hand reply of the appellant clearly shows that he had waived his opportunity to personal hearing as column 7 of the proforma reply and the prayer made by the appellant in his detailed reply as aforesaid demonstrate. As such, the appellant appears not to be benefited against the Order-in-Original of the two swards available in section 75(4) of the Act.

6.6- There appears no dispute that the Appellate Authority ensure notice dated 12.05.2022 to the appellant fixing 23.05.2022 for hearing of the appeal by uploading the same in "Additional Notices and Orders" Tab on the GST portal. On the said date the appellant was not

present thereupon ex-parte order dated 11.07.2022 was passed against the appellant. Appellant's assertion is that since notice for hearing was uploaded on a secondary Tab of "Additional Notices and Orders" Tab instead of Primary Tab of "Notices and Orders" available on the GST portal, even being getting notification of the said notice on his registered mobile number he could not access and found to the notice and unable to join the hearing on the date fixed. As such, he has denied opportunity of hearing which is fundamental to principle of natural justice and rendered the Order-in-Appeal bad in the eye of law and illegal. On face this argument appears to have force, however, it is also not in quarrel between the parties that the Proper Officer has also communicate notice DRC-01 by uploading the same in the secondary Tab of "Additional Notices and Orders" on the GST portal instead of Primary Tab of "Notices and Orders". In response to this notice the appellant has submitted a detailed reply before the Proper Officer with waiving opportunity of hearing. The revenue contention is that during those days, due to some technical glitches the notices and orders sent to the assessees uploaded on secondary Tab of "Additional Notices and Orders" on the GST portal and the assessees were well known about this. Consequently, when massages in respect of such notices notified on their registered mobile number, they accessed on the said Tab "Additional and Orders", acknowledged/received notices and orders and took required steps pursuant to such notices/orders. The appellant, accordingly, acted in this case in respect of DRC-01. We find that the appellant undisputedly found to have acted in the said way in respect of DRC-01, which is fairly admitted during the course of hearing by the learned counsel for the appellant Sri Yadav. In such situation, the prejudice asserted by the appellant in the appeal before us, reasonably cannot be accepted as a genuine one for non-participation of the appellant in the hearing of appeal on the date fixed, rather it had been his considered option to pass the appellate forum in order to seek remedy directly from the Tribunal or due to his extreme carelessness to pursue his appeal. As such, he is not entitled to get benefit of the case law namely, Writ Tax

No.1882 of 2024 M/s Ashish Traders vs. State of U.P. and Others (Neutral Citation 2024:AHC:173796-DB) and he cannot to be said to have denied opportunity of hearing on the above count, which would otherwise be certainly against the principle of natural justice.

6.7- It is not in quarrel that both the OIO and OIA were not passed by the authorities below on the date of hearing but on later date without fixing the same for the date of hearing or for the date of order. In the DRC-01 date of hearing was fixed on 16.03.2020 while the order was passed on 19.03.2020. The appellate authority in notice for hearing dated 12.05.2022 fixed 23.05.2022 for hearing along with time and venue but the order was passed with unreasonable delay only on 11.07.2022. The learned counsel for the appellant has vehemently argued that in absence of appellant on the date of hearing passing an ex-parte order not on the same date and without fixing any date for ex-parte hearing or order on a later date and passing OIA with inordinate delay, is highly prejudicial to the appellant and violative of principle of natural justice because if the later date fixed and notified he would have an opportunity to approach the forum, to explain the reasons for his absence on the date of hearing and to get remedy of an another opportunity of hearing in consonance of sufficiency of reasons before the order being passed. To buttress his argument he cited a decision of a Division Bench of the Hon'ble High Court of Allahabad in Writ Tax No.2988 of 2026 M/s Prayaas Trading Corporation vs. State of U.P. and another (Neutral Citation No.2026:AHC:134540-BD), in which the Hon'ble Court noticing the fact that impugned order was passed ex-parte but not on the date of hearing and on a subsequent date without notice to the petitioner, relying on the ratio of M/s Subham Steel Traders vs. State of U.P. and another (Neutral Citation No.2024:AHC:31108-DB), held in para no.5 of the judgment that in the light of the same as the fact of the present case are similar to one in M/s Subham Steel Traders (supra), we see no reason why this court should take a different view of the matter. Accordingly, the impugned order dated 28.12.2025 is

quashed and set-aside with a direction upon the authority concerned to grant an opportunity of personal hearing to the petitioner and thereafter, pass a reasoned order in accordance with law.

6.8- In the above case, the Hon'ble Court has also referred to extract of para nos. 8, 10 and 11 of referred judgment in M/s Subham Steel Traders (supra), which are referred to as under-

> *"8. Thus relying on Coordinate Bench decision of this Court in M/S Videocon D2H Limited and Ors. Vs. State of U.P. and 3 Ors (2016) 93 UPTC 237, M/S Aroma Chemicals Vs. Union of India & Ors Neutral Citation No.- 2014:AHC:60699-DB, it has been submitted, such an order may not stand.*
>
> *.....*
>
> 10. *Rules of natural justice ensure fairness in proceedings. Once the authority had fixed the matter for hearing on 06.11.2023 it was incumbent on that authority either to pass the order or to fix another date and communicate the same to the petitioner. Communication of the other date was necessary as according to the assessing authority the petitioner failed to appear before it on the date fixed on 06.11.2023.*
>
> 11. *By not passing the order on 06.11.2023 and not communicating the next date fixed in the proceedings, the assessing authority forced the ex-parte nature of the order on the petitioner, by its own conduct."*

6.9- We have also gone through the case law in M/s Videocon D2H and others vs. State of U.P. and 3 Others (2016) 93 UPTC 237 DB and M/s Aroma Chemical vs. Union of India and others (Neutral Citation No.2014:AHC:60699-DB), thereupon both the above decision of the Division Bench relied upon. Though, both the decision belongs to VAT period but based on principle of natural justice equally applicable to the GST regime under the CGST/SGST Act,

2017. Be it noted that the respondent revenue could not bring to our notice any other law either with the reference of statutes or case law contrary to the above legal proposition. In view of the aforesaid all most settled legal position, we are not ready to accept revenue's contention that in adjudicatory process it is common practice to pass the order after conclusion of the hearing on later date without fixing the same separately for pronouncing the judgement or for any other purposes rather, we are agreed that when the matter fixed for another date for passing the order/judgment, the party against whom the matter heard ex-parte, has the opportunity to approach the forum, pleads reasons for his absence on the date fixed for hearing and may get an opportunity of hearing afresh. This procedural opportunity is certainly devalued when the order instead of passing on the same date of hearing with proceeding ex-parte, passed on later date without fixing the same for any purpose. As such, both the OIO and OIA appear to have suffered with the said infirmity and violative of principle of natural justice as held in the above case law.

6.10- On perusal of Order-in-Appeal dated 11.07.2022 it is found that when on the date fix for personal hearing on 23.05.2022, the appellant did not appear, the Appellate Authority proceeded the appeal for decision and dismissed the same observing that the appellant in response to the notice neither had appeared nor sought adjournment. It showed that he had been not willing to get dispose off the appeal. It also showed that he had not willing to say anything against the proceeding carried out by the Proper Officer u/s 74 of the Act. Thus, the order u/s 74 of the Act passed by the Proper Officer was confirmed and appeal was dismissed.

6.11- Section 107(12) of the Act gives mandate to the Appellate Authority while disposing of an appeal as under-

"(12) The order of Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision."

6.12- It is evident that the decisions of the Appellate Authority as referred to hereinabove, does not appear to have complied with the aforesaid provision of section 107(12) of the Act for passing a reasoned decision keeping in view the controversy involve in this case. Though, the appellant was absent and decision has been passed by the Appellate Authority ex-parte but before him there was appeal memo accompanied with documentary evidences thereby the appellant had put his specific challenges to the Order-in-Original. As such, the Appellate Authority was in position to know the controversy involved in the appeal, however, he did not go through the memo of appeal an accompanied documents and took a stand to dismiss the appeal only on very basis of appellant's absence. It cannot be denied that an adjudicating authority while going for adjudication either ex-parte or on merit must apply his mind on the available material and should draw a considered conclusion supported with the reason which is no doubt is missing here. Passing a reasoned order is also an essential feature of fairness and principle of natural justice and in our considered opinion the Order-in-Appeal is devoid of those essential ingredients and rendered it bad as being violative of statutory dictate of section 107(12) of the Act and principle of natural justice.

6.13- Now, the question remains for consideration that whether, the notice DRC-01 and the Order-in-Original comply with necessary element of section 74 and section 75(6) of the Act or not? The learned counsel for the appellant has cited decision of the Hon'ble High Court of Allahabad in Writ Tax No.1396 of 2024 HCL Infotech Ltd. Vs. Commissioner, Commercial Tax, date of decided on 27.09.2024 (Neutral Citation No.2024:AHC:158274-DB), Anand Nishikawa Company Ltd. Vs. Commissioner of Central Excise Meerut, Manu/SC/0641/2005,

decided on 23.09.2005, Writ Tax No.1389 of 2023 M/s Safecon Lifeshine Pvt. Vs. Assistant Commissioner Tax as under decided on 09.09.2025 (Neutral Citation No.2025:AHC:158800). On perusal of those judgments there is no doubt that revenue must set-out facts constituting fraud, misstatement or suppression of facts intended to evade tax in notice as well as in order with supportive evidence. But, the case in hand is not such a case where a notice and in Order-in-Original no fact has been mentioned and simply proceeding u/s 74 of the Act was initiated and confirmed. Rather, we found that in the notice DRC-01 as well as in the Order-in-Original although, the Proper Officer has not specifically used the terms "fraud or any wilful misstatement or suppression of fact with an intention to evade the tax" against the appellant but has set-out certain facts of non-existence of supplier dealer and collusion of him with the supplier and claiming ITC on the basis of fake invoices without getting any actual supply which prompted her to proceed against the appellant u/s 74 of the Act. So, the issues are not appeared solely a question of law but also involves factual aspects of the case. Further, whether a case is made out against the appellant u/s 74 of the Act or not in the given rival factual matrix by the parties or not is also heavily dependent on assessment of their rival case and material relied on. We concluded, in the previous discussion that both the Order-in-Original and Order-in-Appeal having been passed not on the fixed date in the respective proceeding that were dates of hearing but on later dates which were not fixed for hearing or for passing and pronouncement of the orders or for any purpose resulted in to have been passed in violation principle of natural justice in view of the law laid down by the Division Benches of the Hon'ble Allahabad High Court beginning from VAT period up to GST regime and the revenue could not bring any decision contrary to the above legal proposition and binding upon this bench of the Tribunal which was bound to follow the proposition laid down by the jurisdiction High Court i.e. Hon'ble High Court at Allahabad. If, we venture to enter to issues bearing factual aspect and inference therefrom along with law, they may be in favour of appellant or also against him while in view

of the above underlined legal infirmities in the Order-in-Original and Order-in-Appeal, they are bound to be set-aside and remand the case to the authorities below for afresh adjudication of course, after affording an opportunity of hearing to the appellant, a prejudice may be caused to the appellant in respect of the merit of the case before the authorities below. Therefore, it appears not proper to decide the issues pertaining to the factual aspects of the case on the basis of material available on the record, which may go either way, in this appeal.

7. Conclusion

For the above discussion and the reasons as stated hereinabove, we are of the opinion that this case is required afresh decision by the authorities below complying with the principle of natural justice and mandate of the provision of law violation thereof have been underlined in the discussion hereinabove. Accordingly, the appeal while setting-aside Order-in-Original dated 19.03.2020 and Order-in-Appeal dated 11.07.2022, is liable to be allowed and the matter is to be remitted to the Proper Officer for decision afresh, after affording proper opportunity of hearing to the appellant.

ORDER

Appeal is allowed. Accordingly, Order-in-Original dated 19.03.2020 and Order-in-Appeal dated 11.07.2022 are set-aside. The matter is remitted to the Proper Officer for decision afresh, keeping in view the legal infirmities and violation of principle of natural justice, underlined in the body of the order after affording proper opportunity of hearing to the appellant.

(Mahtab Ahmad)
Judicial Member
GST Appellate Tribunal, Prayagraj Bench

Dated: October 23, 2026

Dissenting Judgement by Shri Ashish Varma, Hon'ble Technical Member

Introduction

1. I have read the order of my learned Brother, Judicial Member, with great respect. I agree, in substance, with his findings on pecuniary jurisdiction (Question 1), Rule 142(1A) (Question 2), service through the "Additional Notices & Orders" tab (Question 3), the same-day reply and hearing (paras 7.3 to 7.5), and with his view that the Order-in-Appeal (OIA) does not meet Section 107(12) (Question 5). I may put some of these points differently in style and language, but not in substance. I also agree with para 7.3 that the non-quantification of the penalty in the SCN does not vitiate the OIO, and that Section 74 prescribes a penalty equal to the tax.

2. I regret that I cannot agree on one point: that the Order-in-Original (OIO) dated 19.03.2020 and the OIA dated 11.07.2022 are vitiated merely because they were signed or pronounced after the dates fixed for reply or hearing (Question 4; paras 7.7 to 7.9 and 7.12 of the order). That difference leads me to a different course on remand and on the Section 74 questions (Questions 6 to 9) the order leaves undecided.

Facts in brief

3. The facts are set out in the order. In short, the appellant, a trader in iron and steel, took input tax credit (ITC) in GSTR-3B for November 2018 on two invoices of M/s Agrawal Brothers: No. 148 dated 18.11.2018 and No. 158 dated 29.11.2018. On information from the Commercial Tax Headquarters (letter dated 06.11.2019) that the supplier did not exist, a notice dated 25.11.2019 and a show cause notice (SCN) under Section 74 dated 02.03.2020 followed. The SCN fixed 16.03.2020 for both reply and hearing. The appellant filed his reply that day in

Form GST DRC-06 and ticked "No" against "Option for personal hearing". The OIO dated 19.03.2020 confirmed tax of ₹3,93,896.72, with interest and an equal penalty. The appeal was filed on 19.07.2021. The appellant did not appear on the hearing date of 23.05.2022, and the OIA dated 11.07.2022 dismissed the appeal.

Points of difference

4. As mentioned in the closing sentence of para 2 above, in terms of Section 109(9)(a) of the CGST Act, the points on which I differ are as below:

Primary issue:

(1) Whether the OIO and the OIA are vitiated merely because they were signed or pronounced on dates later than those fixed for reply or hearing (Question 4).

Follow-on issues:

(2) *Remand*: Whether, the OIA being deficient in reasons under Section 107(12), the matter must be remanded, or this Tribunal should decide it on the merits under Section 113(1).

(3) *Section 74 questions*:

i. Whether, for Invoice No. 148, Section 74 is attracted and the tax is sustainable (Questions 6, 7 and 9).

ii. Whether the interest on the tax on Invoice No. 148 is sustainable.

iii. Whether the penalty on Invoice No. 148 is sustainable under Section 74.

iv. Whether, for Invoice No. 158, where the appellant reversed credit in GSTR-3B for August 2019 under the wrong tax head, any demand of tax, interest or penalty under Section 74 is sustainable (Question 8).

Point 1: The later date of the orders

5. I fully accept the binding force of the decisions of the Hon'ble Allahabad High Court relied on in the order: **Prayaas Trading Corporation v. State of U.P.**, Writ Tax No. 2988 of 2026 (Neutral Citation 2026:AHC:134540-BD); **Subham Steel Traders v. State of U.P.** (Neutral Citation 2024:AHC:31108-DB); **Videocon D2H Ltd. v. State of U.P.**, (2016) 93 UPTC 237 (DB); **Aroma Chemicals v. Union of India** (Neutral Citation 2014:AHC:60699-DB); and **Mahaveer Trading Company v. Deputy Commissioner, State Tax**, Writ Tax No. 303 of 2024 (Neutral Citation 2024:AHC:38820-BD). I do not question the principle in them that a party must not be left in the dark.

6. With respect, I read these decisions as resting on their own facts. As quoted in para 7.8 of the order, in **Subham Steel Traders** (2024:AHC:31108-DB) the Court held that, by neither passing the order on the hearing date nor communicating the next date, the authority "forced the exparte nature of the order on the petitioner, by its own conduct." As I read them, in each of these cases the assessee was, in substance, denied a real opportunity to put his case. A decision is an authority for what it decides, and "[c]ourts should not place reliance on decisions without discussing as to how the factual situation fits …": **Bharat Petroleum Corporation Ltd. v. N.R. Vairamani**, AIR 2004 SC 4778. The Supreme Court laid down this principle to establish that judicial precedents cannot be applied as rigid, mechanical formulas; and in tax and administrative law, a single factual detail can alter the entire legal context. I therefore hesitate to extend them to facts like the present.

7. With the highest deference to the Hon'ble High Court, I am of the view that the legal ratios of those esteemed decisions apply to fundamentally different procedural default contexts. When the factual and statutory record of the present case is analyzed, both the impugned orders are legally distinguishable and sustainable against this procedural challenge.

I. Deferential Analysis & Distinction of Order-in-Original (OIO dated 19.03.2020)

a) Sanctity of High Court Precedents: The principles articulated by the Hon'ble High Court in Prayaas Trading, Videocon D2H, Subham Steel Traders, and Mahaveer Trading establish vital safeguards against administrative arbitrariness. In those matters, adjudicating authorities either issued SCNs without valid service on cancelled registrations (Prayaas), failed to fix a hearing date altogether by entering "N.A." (Mahaveer Trading), or conducted proceedings where assessees were kept in an uncommunicated void without an opportunity to file a defense (Videocon and Subham Steel). The Hon'ble High Court rightly held that passing ex-parte orders under such circumstances forced an ex-parte default on taxpayers.

b) Distinct Factual Matrix in Sahu Building Material: In the present case, the Show Cause Notice explicitly fixed 16.03.2020 for filing a reply and personal hearing. On that designated date (16.03.2020), the Appellant electronically submitted a detailed written reply in Form GST DRC-06 on the common portal (ARN ZA090320006981T), accompanied by GSTR-3B and GSTR-2A printouts (paper nos. 47 to 55). Crucially, under Column 7 of Form GST DRC-06 ("Option for personal hearing"), the Appellant explicitly selected "No", thereby formally waiving an oral hearing and submitting his complete written defense for adjudication. As para 2.5 of the order records, the Proper Officer passed the OIO after taking that reply into consideration.

When a taxpayer files a comprehensive written reply on the scheduled date and explicitly waives oral hearing, the quasi-judicial officer receives the complete pleadings and reserves the matter for decision. Signing and issuing the Order-in-Original three days later, on 19.03.2020, constitutes a standard exercise of reserving judgment to examine accounting ledgers and tax returns. With the utmost respect, this brief 3-day reservation upon completed written pleadings is fundamentally distinct from an unnotified ex-parte order where a taxpayer was deprived of presenting a defense.

II. Deferential Analysis & Distinction of Order-in-Appeal (OIA dated 11.07.2022)

a) Closure of Oral Stage upon Default vs. Uncommunicated Void: At the First Appellate stage, the First Appellate Authority (FAA) issued a personal hearing notice fixing 23.05.2022 via portal communication under Section 169(1)(d). The Appellant did not appear nor seek an adjournment under Section 107(9) of the CGST Act. Upon this default, the FAA formally closed the oral hearing stage and reserved the appeal for decision on the existing record.

b) Statutory Scheme under Section 107(13): Unlike original assessment proceedings, a First Appeal is instituted on a self-contained Memorandum of Appeal containing all facts and grounds. When an appellant defaults, the authority evaluates the written grounds already on record. Furthermore, Section 107(13) of the CGST Act explicitly grants a timeline of up to one year from the date of filing to decide first appeals. Pronouncing a reserved appellate judgment on 11.07.2022 (49 days after closing the hearing on 23.05.2022) complies with the statutory scheme of Section 107(13) and does not infringe the principles laid down for original assessment delays.

III. Application of the "No Prejudice" Doctrine

As affirmed by the Hon’ble Supreme Court in State Bank of Patiala v. S.K. Sharma (1996) 3 SCC 364, rules of natural justice are designed to prevent prejudice, and procedural deviations invalidate an order only if tangible prejudice is established. In Prayaas, Videocon, and Subham Steel, prejudice was inherent because the taxpayers were denied the opportunity to place their defense on record. In Sahu’s case, the Appellant’s complete defense was placed on record on 16.03.2020 (OIO stage) and in the memorandum of appeal (OIA stage). The Appellant suffered no prejudice from the 3-day reservation by the Proper Officer or the reservation by the Appellate Authority. The 3-day gap between reply submission and order

signing does not invalidate the order per se. Section 160(1) of the CGST Act points the same way: no adjudication or appeal is invalid "merely by reason of any mistake, defect or omission therein", if it is "in substance and effect in conformity with or according to the provisions of this Act". The explanation offered in various respects and for want of effective service, has been fully heard by this Tribunal (Question 3), and no fact or argument has been shown to have been lost because the orders were signed later.

8. I must also mention the practical position, with respect. Quasi-judicial authorities in the executive, especially up to the first appellate level, in all indirect tax departments and across the country, almost never pass their orders on the day of hearing, whether or not a hearing is held. They issue the order after examining the record. I know of no provision in any indirect tax law that requires an order on the hearing date, and of no convention to the contrary in the executive. If a later date were treated as fatal in every case, without regard to prejudice, almost all pending appeals against the Revenue would be placed in the same position irrespective of their merits. That is not administratively desirable, and I do not think the Hon'ble High Court intended it. I note that the Hon'ble High Court has recently, in Neha Enterprises versus State of UP and Another (WRIT TAX No. - 3440 of 2026) (Division Bench order dated 12.08.2026, Saumitra Dayal Singh and Swarupama Chaturvedi, JJ.), itself taken up this very question, observing that

> *" ……..*
>
> 2. *We find many cases are reaching this Court on same or similar grounds and in same circumstances, wherein, the Adjudication Orders / final orders are being passed well after the last date fixed in the proceedings.*

3. *Presently, this Court in M/s Sun Glass Works Private Ltd. Vs. the State of U.P. & others, 2025:AHC:92660 has taken a view that there is no power with the authorities to reserve orders on the date fixed for hearing, such that they may be enabled to pass the order on subsequent date and upload the same on the Common Portal.*

4. *That view of the learned single judge of this Court is pending consideration before the Supreme Court in SLP filed there against, being SLP (C) Diary no. 62531 of 2025 (State of U.P. and others Vs. Ms. Sunglass Works Private Limited). However, there is no interim protection granted therein*

5. *Problem is real. On one hand, the assessees are genuinely aggrieved by the practice that orders are being passed on subsequent dates, of which there is no enabling provision of law and on the other hand, the State authorities would contend, that it is not possible for the State officers especially adjudicating officers, to pass detailed orders and to upload them on the date of hearing itself.*

……..

12. *Consequently, prima facie, it appears that the Government may on the recommendation of the GST Council issue a special or general order not inconsistent to the provisions of the Act or the Rules "for the purpose of removing" the "difficulty" arising in giving effect to the provisions of the Act, as noticed above. At present, it also appears that the GST and portal may not be equipped to allow for orders passed on any date to be uploaded on a subsequent date. That appears to be the root cause of the problem that is giving rise to the numerous litigation that arises before this Court, on regular*

basis. That may be remedied by enabling the Common Portal to allow for uploading of orders within reasonable time.

13. *Accordingly, in the first instance, let Union of India and GSTN may be impleaded as respondent nos. 3 and 4……"*

Should the Hon'ble High Court hold that such orders are invalid regardless of facts, I will follow that view without hesitation without any consideration to the factual matrix.

Point 2: Remand

9. I agree with my Brother (paras 7.10 and 7.11) that the OIA is too brief to satisfy Section 107(12). But I would not remand, for four reasons. First, Section 113(1) lets this Tribunal itself confirm, modify or annul the order appealed against; remand is an option, not a necessity. Second, the whole record is before us and both sides were heard on the merits by this Tribunal. Third, the dispute concerns November 2018, and a remand after more than six years would only add delay for both sides. Fourth, since I hold that the later dates do not vitiate the orders, nothing else calls for a fresh round. The want of reasons in the OIA is cured by the OIO being examined on merits here.

Point 3: Section 74 questions:

(I) *Invoice No. 148 and the penalty*

10. The burden of proving eligibility for input tax credit lies on the person claiming it (Section 155). For November 2018 that meant proving receipt of the goods and actual payment of the tax to the Government (Section 16(2)(b) and (c)). In **State of Karnataka v. Ecom Gill Coffee Trading Pvt. Ltd.**, 2023 SCC OnLine SC 248 (Civil Appeal No. 230 of 2023, decided 13.03.2023), under the Karnataka VAT Act, the Hon'ble Supreme Court held that "[m]ere

production of the invoices or the payment made by cheques is not enough" (para 9.1) and that "genuineness of the transaction and actual physical movement of the goods are the sine qua non" (para 10).

11. The record shows the following.

a) The Commercial Tax Headquarters letter dated 06.11.2019 reports that the supplier, M/s Agrawal Brothers (GSTIN 09ARBPA8533G1ZZ), was not found in existence and was registered only to pass on credit through bogus invoices and e-way bills.

b) The appellant's own annexure shows the supplier's registration as cancelled suo motu.

c) The notice dated 25.11.2019 alleged collusion, intent to evade tax and no actual supply, and called for books of account and bank statements on 10.12.2019. The record does not show that this was complied with.

d) The reply of 16.03.2020 offered no proof of receipt of goods, transport or payment, only bare statements and portal printouts. Invoices and bank statements were first filed before this Tribunal.

e) The GSTR-2A on record carries an entry under a different invoice number (GST/0162 dated 18.11.2018), not under Invoice No. 148, and no explanation was given. In any case, an entry in GSTR-2A shows only that the supplier uploaded it. It does not show that goods were received or that tax was paid to the Government.

f) The e-way bills relied on were generated by the same supplier. They cannot independently prove movement or receipt of goods.

12. On this record the appellant claimed credit in GSTR-3B for November 2018 on a declaration of receipt of goods that he has been unable to prove, against an invoice of a non-

existent supplier. The notice of 25.11.2019, to which the SCN refers for its grounds, alleged collusion and intent to evade tax. Read as a whole, the notice and the SCN invoke Section 74 on grounds which, in my view, are made out for this invoice. In any case, if fraud or wilful misstatement were held not established, Section 75(2) provides that the tax is determined as if the notice were under Section 73(1). The demand for tax on this invoice would not fail.

13. I would therefore confirm tax on Invoice No. 148: CGST ₹97,634.00 and SGST ₹97,634.00 (₹1,95,268.00 in all), within the SCN. Interest on it is payable under Section 50, whether or not specified in the order (Section 75(9)), but not beyond the amount in the SCN.

14. As to penalty, I respectfully agree with my Brother (para 7.3 of the order) that the SCN informed the appellant that he was liable to interest and penalty, that the "0.00" in the penalty column of the demand details does not vitiate the OIO, and that Section 74 envisages a penalty equal to the tax, read with Section 122(1)(vii). I also agree that **M/s Svas Lifetimeses Ltd. v. State of U.P.** (decided 17.08.2026; Neutral Citation 2026:AHC:172620-DB) is distinguishable, as the penalty there was imposed in addition to the tax and was not mentioned in the notice. Applying Section 74(9), I would therefore confirm a penalty equal to the tax on Invoice No. 148, that is, CGST ₹97,634.00 and SGST ₹97,634.00 (₹1,95,268.00 in all), and not the larger amount of ₹1,96,948.36 under each head imposed in the OIO, which included Invoice No. 158.

(II) *Invoice No. 158*

15. This invoice stands on a different footing. The appellant, after noticing that the invoice did not appear in GSTR-2A, himself reversed the credit of ₹1,98,628.70 (CGST ₹99,314.35 and SGST ₹99,314.35) in Table 4(B) of GSTR-3B for August 2019. He did so months before the Headquarters letter of 06.11.2019 and the notice of 25.11.2019. By a clerical error the amount was posted under the IGST column instead of CGST and SGST. The Revenue's own

case (order, para 4.6) is only that the reversal "might be included" in GSTR-3B of August 2019 and is "alleged to be made in the head of IGST", which it says was "not specifically mentioned" in the explanation. The GSTR-3B for August 2019 (paper no. 50 and 99) and the electronic credit ledger entry (paper no. **4 to 38, 50 and 99)** show that the amount was in fact debited. The reply of 16.03.2020 also placed the GSTR-3B on record (paper nos. 51 to 55). The error concerns the tax head only. The aggregate credit stands reduced by the full amount, so the exchequer has lost nothing.

16. A coordinate Bench of this Tribunal has taken the same view of a wrong-head entry. In **M/s Lucknow Test House v. Shashi Bhushan Singh, Additional Commissioner Grade-II, State Tax, Lucknow & Ors.**, Appeal No. APL/36/LCK/2026 (GSTAT, Lucknow Bench, order dated 27.08.2026) [GSTAT e-Journal Vol. 1, p. 174], the Bench found that "the department has not established that the appellant actually availed ITC in excess of its aggregate eligible entitlement" (para 8) and followed **Rejimon Padickapparambil Alex v. Union of India**, W.A. No. 54 of 2024 (Kerala High Court, Division Bench, decided 26.11.2024), where a similar "inadvertent reporting" was held to be "a technical error" (para 8.2). The facts there ran the other way, with credit shown under CGST and SGST instead of IGST, but the principle is the same. A reversal posted under the wrong head is, in my view, an equally curable and revenue-neutral defect. Nor can a voluntary reversal made before any inquiry amount to fraud, wilful misstatement or suppression.

17. I would therefore not sustain Section 74, tax or penalty in respect of Invoice No. 158. Whether any interest arises on it is for the Proper Officer to determine under Section 50(3) and Rule 88B, taking the electronic credit ledger as a whole, as discussed in *Rejimon*.

Conclusion

18. My answers to the points of difference are as follows.

Primary issue:

(1) The OIO and the OIA are not vitiated merely because they were signed or pronounced after the dates fixed for reply or hearing.

Follow-on issues:

(2) No remand is needed. The want of reasons in the OIA is cured by this decision, both sides having been heard on the merits.

(3) Section 74 questions:

i. Section 74 is applicable to Invoice No. 148, and tax of ₹1,95,268.00 is confirmed.

ii. Interest on that tax is payable under Section 50, within the SCN.

iii. Penalty equal to the tax, ₹1,95,268.00 (CGST ₹97,634.00 and SGST ₹97,634.00), is confirmed on Invoice No. 148.

iv. The demand on Invoice No. 158 is dropped, the reversal in GSTR-3B for August 2019 being a curable, revenue-neutral wrong-head entry.

19. The appeal would accordingly be allowed in part as to Invoice No. 158. The penalty and the tax will be limited to Invoice No. 148 as stated above. Appeal otherwise stands dismissed.

20. I say all this with great respect for my learned Brother, whose care is evident throughout his order, and with the highest regard for the Hon'ble High Court, whose decisions I have sought only to apply in the light of their facts.

(Ashish Varma)
Technical Member
GST Appellate Tribunal, Prayagraj Bench

Date: 23.10.2026

Reference of Appeal for the constitution of a Larger Bench under Rule 50 of the GSTAT (Procedure) Rules, 2025, read with Rule 14(d) of the GSTAT (Appointment and Conditions of Service of President and Members) Rules, 2023, in view of the difference of opinion of Members of Bench.

****

In view of difference of opinion of Members of Bench on certain core issues in an appeal, the appeal is required to be heard by a larger Bench or by a third Member by way of exercise of powers in this respect by the Hon'ble Vice President, GSTAT, State Benches of UTTAR PRADESH, in terms of provision of Rule 50 of the GSTAT (Procedure) Rules, 2025 read with Rule 14(d) of the GSTAT (Appointment and Conditions of Service of President and Members) Rules, 2023 read with Office Order issued from F.No. GSTAT/Office Orders/125/2026 dated 10.04.2026.

2. We are in agreement that if the order in appeal(OIA) is deficient in reasons as per the mandate of section 107(12) of the Act, since all necessary material is available on the record of the appeal for passing a fair, just and effective reasoned decision on the issues involved, facts as well as law, the Tribunal being a adjudicating forum of both law and fact, can decide the case once and for all at the Tribunal level and there is no need to remand the matter back to the authorities below for fresh adjudication.

3. However, the difference of opinion remains that whether in view of the peculiar, facts and circumstance of the instant case, the same is distinguishable those pertaining to the decisions of Hon'ble High Court of Allahabad in Writ Tax No. 2988 of 2026 M/s Prayaas Trading Corporation v. State of U.P. and Ors, (Neutral Citation 2026:AHC:134540-BD), M/s

Subham Steel Traders v. State of U.P. (Neutral Citation 2024:AHC:31108-DB), M/s Videocon D2H Ltd. v. State of U.P., (2016) 93 UPTC 237 (DB) and M/s Aroma Chemicals v. Union of India (Neutral Citation 2014:AHC:60699-DB) regarding the law as laid down in the aforesaid judgements that rule of natural justice requires that it is incumbent on adjudicatory authority to pass the order/decision on the date fixed and even while proceeding for ex-parte, either order must be passed on the date fixed or fix an another date and communicate the same to the petitioner(for decision). One of the Members has, besides distinguishing on facts and circumstances, also brought in the aspects of "No Prejudice" doctrine, the absence of any enabling provision of law for supporting such principle, the practical difficulty of implementation by the executive and the issue being under active consideration of the Division Bench of the same High Court and in SLP filed in Supreme Court in reaching his conclusions.

4. Accordingly, the appeal is referred to the Hon'ble Vice President, GSTAT UP for assigning the case to a larger bench on the above issue for either decision on merit or to remand the matter to the authorities below for decision afresh, ignoring any finding of Tribunal on merit.

(Ashish Varma)
Technical Member

(Mahtab Ahmad)
Judicial Member

Dated: 23.10.2026