GOODS AND SERVICES TAX APPELLATE TRIBUNAL

BENGALURU BENCH

DIVISION BENCH – COURT NO. 3

APPEAL NO. APL/126/BUR/2026

M/s. Radikan Engineers & Consultants

1st Floor, 12/64, 2nd Cross, 1st Main, Maruthi Nagar, Madivala, Bengaluru – 560 068 **…Appellant**

Versus

The Commissioner of Commercial Taxes, Government of Karnataka, Bengaluru **…Respondent**

Counsel for the Appellant	**Counsel for the Respondent**
Shri Jatin Christopher	Shri Tippa Nayak
Chartered Accountant	State Representative

CORAM

Hon'ble Shri Prabhakaran P.M., Judicial Member

Hon'ble Shri Ravi Jesuraj S., Technical Member (State)

FORM GST APL-04A

[See rules 113(1) & 115]

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Summary of the order and demand after issue of order by the Goods and Services Tax Appellate Tribunal

Whether remand order: No

Order reference no.: _____

1.	GSTIN	29ACNPK9832H1Z0
2.	Appeal Case Reference No.	APL/126/BUR/2026
	Appeal Date	19-03-2026
3.	Name of the Appellant	M/s. Radikan Engineers & Consultants (Proprietor: Sri Bangalore Veeraswamy Kamalanathan), 1st Floor, 12/64, 2nd Cross, 1st Main, Maruthi Nagar, Madivala, Bengaluru – 560 068, through Shri A. Krishnan, Advocate, Ms. Sowmya, Chartered Accountant, and Shri Jatin Christopher, Chartered Accountant, Authorised Representatives
4.	Name of the Respondent	The Commissioner of Commercial Taxes, Karnataka, Bengaluru, through Shri Tippa Nayak, State Representative

5.	Order Appealed Against	Order-in-Appeal (GST.AP.686/24-25) passed by the Joint Commissioner of Commercial Taxes (Appeals)-4, Bengaluru, Government of Karnataka
	Order Type	Order-in-Appeal under section 107 of the KGST Act, 2017, affirming the demand order passed by the Commercial Tax Officer (Audit)-4.7, DGSTO-4, Bengaluru, in Order No. CTO(Audit)-4.7/DGSTO-4/S-73-3044(19-20)/23-24 dated 06-08-2024 under section 73 (DRC-07 Ref. ZD290824025411H). Tax period: April 2019 to March 2020
	Reference No.	ZD2902260374385
	Order Date	03-02-2026 (APL-04 dated 09-02-2026)
6.	Personal Hearing	22-09-2026, 01-10-2026, 07-10-2026 and 14-10-2026

7.	Order in Brief	Section 73 is a self-contained machinery of determination. It does not draw its jurisdiction from section 61 or section 65. Neither a scrutiny nor an audit is a condition precedent to it. Section 65(7) enables action under section 73. It does not restrict it. The officer to whom that function was assigned under section 2(91) had jurisdiction. The plea that the proceedings were without jurisdiction for want of Form GST ASMT-10 or ADT-02 is rejected. On merits, the excess of tax in GSTR-1 over GSTR-3B is one supply of Rs.18,59,000 reported twice. The deductors' GSTR-7 returns, relied on by the Revenue, prove this. Tax on that supply was paid in GSTR-3B for December 2019. The demand under Issue No. 2, with interest and penalty, is set aside. Appeal allowed on merits.
Summary of Order		
8.	If Demand order then whether Demand Quantified	Yes. Demand under Issue No. 2 set aside. Demand after this order: Nil
9.	For Other Orders and Demand Orders which are Not Quantified	

Issues as raised by the Proper Officer	Issues as determined by the Appellate / Revisional Authority	Order by the GST Appellate Tribunal

Short declaration of output tax compared with TDS turnover and turnover reported in GSTR-3B. Difference between taxable outward supplies/tax declared in GSTR-1 and GSTR-3B. The proceedings were initiated under section 73 of the CGST/KGST Acts, 2017. The demand confirmed in the DRC-07 dated 06.08.2024 was Rs.4,55,936, including tax, interest and penalty.	**Issue No. 1** – Difference between TDS turnover and turnover reported in GSTR-3B: the appellate authority accepted that the appellant had discharged the tax in the subsequent period and paid the interest. The appeal was allowed on this issue. **Issue No. 2** – Difference between GSTR-1 and GSTR-3B: the appellate authority rejected the explanation that a B2C entry had been reported twice in GSTR-1. It held that the statutory correction mechanism had not been used and dismissed the appeal on this issue.	**Jurisdiction:** Section 73 is an independent machinery for determination of tax not paid or short paid. Scrutiny under section 61 or audit under section 65, and Forms ASMT-10 or ADT-02, are not conditions precedent to it. The challenge to jurisdiction is rejected. **Issue No. 1:** Not challenged. The interest of Rs.5,947 each under CGST and SGST, already paid, remains unaffected. **Issue No. 2:** The difference arose from one supply of Rs.18,59,000 reported twice in GSTR-1. The deductors' GSTR-7 returns support the

		The Order-in-Appeal dated 03.02.2026 thus modified the original order, allowing the first issue and sustaining the demand on the second.	explanation, and tax on that supply was paid through GSTR-3B for December 2019. The demand cannot be sustained merely because the returns were not amended. The demand, with interest and penalty, is set aside and reduced to Nil. The appeal is allowed on merits.
10.	If remanded with directions	Not applicable	

Date of order: 27-10-2026 **Place: Bengaluru**

ORDER

Per: Shri Ravi Jesuraj S., Technical Member (State)

I. INTRODUCTION

1. The question involved in this appeal is whether tax can be demanded merely because the tax shown in the appellant's Form GSTR-1 exceeds the tax he paid through Form GSTR-3B. The appellant says the excess arose because one supply was reported twice in GSTR-1. To prove this, he relies on the GSTR-7 returns of the deductors. Those returns are held by the Revenue itself.

2. Before the merits, the appellant challenges the jurisdiction of the proper officer. He says the officer could not act under section 73 at all, because the notice was preceded neither by a scrutiny of returns under section 61 nor by an audit under section 65. He also says that section 65(7) allows an officer of the Audit wing to proceed under section 73 only after an audit. If he is right, the proceedings fail at the threshold. We therefore decide this objection first.

3. Two related questions also call for an answer. The first is whether a discrepancy noticed in a scrutiny or an audit binds the officer who later adjudicates under section 73. The second concerns an officer who doubts the explanation of the registered person. May he confirm the demand on that doubt alone? Or must he test the explanation against the material before him and record his reasons?

4. The appellant challenges Order-in-Appeal No. ZD2902260374385 (GST.AP.686/24-25) dated 03.02.2026. It was passed by the Joint Commissioner of Commercial Taxes (Appeals)-4, Bengaluru, and communicated on 09.02.2026. That order upheld a demand of CGST Rs.1,11,540 and SGST Rs.1,11,540 for April 2019 to March 2020, with interest and penalty. The demand had been confirmed by the Commercial Tax Officer (Audit)-4.7, DGSTO-4, Bengaluru, in Order No. CTO(Audit)-4.7/DGSTO-4/S-73-3044(19-20)/23-24 dated 06.08.2024 (Form GST DRC-07, Ref. ZD290824025411H). That order was passed under section 73 of the Central Goods and Services Tax Act, 2017 and the Karnataka Goods and Services Tax Act, 2017.

5. The provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act) and the Karnataka Goods and Services Tax Act, 2017 (the KGST Act) that arise here are identical. We also call them the Central Act and the State Act. We refer to either as "the Act". A reference to a provision of one includes the same provision of the other. The Central Goods and Services Tax Rules, 2017 and the Karnataka Goods and Services Tax Rules, 2017 are called "the Rules". The Commercial Tax Officer who passed the order-in-original is "the adjudicating authority". The Joint Commissioner who passed the order-in-appeal is "the first appellate authority". The show cause notice dated 02.03.2024 is "the notice". Forms GSTR-1, GSTR-3B and GSTR-7 are called GSTR-1, GSTR-3B and GSTR-7.

II. FACTS OF THE CASE

A. The appellant and his business

6. Sri Bangalore Veeraswamy Kamalanathan, now about eighty years old, is the sole proprietor of M/s. Radikan Engineers & Consultants. He is registered under GSTIN 29ACNPK9832H1Z0, with M/s. Radikan Engineers & Consultants as the trade name, on the files of LGSTO-016, DGSTO-4, Bengaluru. In 2019-20 he executed works contracts for Government departments. These departments are registered under the Act only to deduct tax at source. They deducted tax under section 51 when they paid him. They reported the deductions in their GSTR-7 returns. Two of them matter in this appeal: Garrison Engineer (I) R&D West (GSTIN 29BLRG07286G1DM) and Garrison Engineer (I) R&D East (GSTIN 29BLRG07228E1D0).

B. The assignment and the pre-notice intimation

7. On a reference from the Service and Analysis Wing, the Joint Commissioner of Commercial Taxes (Admn.), DGSTO-4, issued Assignment No. 3044 dated 20.01.2024. The notice and the order-in-original both refer to it. The notice, issued by Sri Rangaswamy Manjunath, Commercial Tax Officer (Audit)-4.7, records that the assignment authorised him "to conduct the proceedings under section 73 of KGST Act". The order-in-original records that it authorised him "to initiate appropriate action under Section 73 of KGST/CGST Act, 2017, for the

year 2019-20". On either description, the function assigned was action under section 73. In his grounds of appeal, the appellant calls the assignment a mandate to conduct an audit. His own index of dates, however, records that it was issued on a referral "to verify the correctness of the returns filed by the taxpayer".

8. The officer examined the appellant's returns on the common portal. On 05.02.2024 he issued an intimation in Form GST DRC-01A under rule 142(1A) (File No. CTO(Audit-4.7)/DRC-01A/A.3044(19-20)/2023-24; Ref. ZD290224007664G). Under each Act, it quantified tax of Rs.60,000 on the first discrepancy and Rs.1,11,540 on the second, with interest. It invited the appellant to pay, or to reply in Part B of the form within fifteen days. The appellant did neither.

C. The show cause notice

9. The notice followed on 02.03.2024 under the same file number, with a summary in Form GST DRC-01 (Ref. ZD290324005950J). It was issued under section 73(1) of the State Act, read with rule 142 and the corresponding provisions of the Central Act. It recorded that the case had been referred "to verify the correctness of the returns filed by the taxpayer", and that certain discrepancies were noticed on verifying the information on the common portal. It relied on two documents: "GST Portal data" and the DRC-01A. The reply was due by 02.04.2024. A personal hearing was fixed for 15.03.2024 at 3.00 p.m.

10. The notice raised two issues. Under Issue No. 1, the deductors had reported in GSTR-7 a turnover of Rs.64,49,000. The appellant had declared only Rs.54,49,000 in GSTR-3B. The notice proposed tax of Rs.60,000 under each Act on the difference of Rs.10,00,000. Under Issue No. 2, the tax declared in GSTR-1 exceeded the tax declared in GSTR-3B by Rs.1,11,540 under each Act. The summary in Form GST DRC-01 proposed, under each Act, tax of Rs.1,71,540, interest of Rs.1,36,444 and a penalty of Rs.17,154. The total under both Acts came to Rs.6,50,276. The notice set out Issue No. 2 month by month. The CGST figures are these. The SGST figures are the same.

Tax period	**Tax declared in GSTR-3B (Rs.)**	**Tax declared in GSTR-1 (Rs.)**
April 2019	97,200	—
June 2019	—	97,200
September 2019	—	1,11,540
December 2019	1,11,540	1,11,540
January 2020	1,18,200	—
March 2020	—	1,18,200
Total	**3,26,940**	**4,38,480**

D. The appellant's reply

11. The appellant replied in Form GST DRC-06 on 01.04.2024 (ARN ZD290424003377F). On Issue No. 1 he admitted that a turnover of Rs.10,00,000 had been left out of his returns for 2019-20. He called it an unforeseen error. He said he had corrected it and paid the tax in the return for April to June 2020.

12. On Issue No. 2 he stated that "there has been a duplication and erroneous entry and filing made by us, while the payment was received only once". A taxable value of Rs.18,59,000, he said, had been entered in GSTR-1 twice: once for September 2019 and again for December 2019. He supported this with two tables. The first was drawn from Form 26AS for assessment year 2020-21. The second was drawn from the GSTR-7 returns of the same two deductors on the common portal. They read thus:

Source	Deductor (TAN / GSTIN)	Period / date	Amount (Rs.)
Form 26AS (AY 2020-21)	GE (I) R&D West TAN BLRG07286G	Transaction 31.08.2019 Booked 01.11.2019	4,19,000

Source	Deductor (TAN / GSTIN)	Period / date	Amount (Rs.)
Form 26AS (AY 2020-21)	Garrison Engineer (I) R&D East TAN BLRG07228E	Transaction 30.09.2019 Booked 01.11.2019	13,67,850
GSTR-7 (taxable value)	GE (I) R&D West GSTIN 29BLRG07286G1DM	August 2019	4,19,000
GSTR-7 (taxable value)	Garrison Engineer (I) R&D East GSTIN 29BLRG07228E1D0	September 2019	14,40,000
GSTR-7 total			**18,59,000**

13. The GSTR-7 returns show tax deducted at one per cent under each Act: Rs.4,190 on a value of Rs.4,19,000, and Rs.14,400 on a value of Rs.14,40,000. Form 26AS shows both credits booked on 01.11.2019.

E. The hearings

14. Hearings were fixed for 15.03.2024, 30.04.2024, 11.06.2024 and 19.07.2024. The last three were fixed by reminders dated 20.04.2024, 30.05.2024

and 05.07.2024. The appellant attended none of them. He did not seek an adjournment. In his first appeal he later explained that, at the age of seventy-eight, he had not been able to attend.

F. The order-in-original

15. The adjudicating authority passed the order-in-original on 06.08.2024. The officer recorded that the appellant had not replied to the DRC-01A, though he had replied to the notice, and that he had not appeared on any of the four dates. On Issue No. 1, the officer verified on the portal that the tax had been paid in the following year. He accepted the explanation and levied only interest of Rs.5,947 under each Act for the delay.

16. On Issue No. 2, however, the adjudicating authority rejected the explanation. The officer reasoned that invoices uploaded twice in GSTR-1 would appear twice in the recipient's GSTR-2A, "thereby making room for the recipient to claim ITC at multiples". He noted that "no evidence are adduced to the effect that the recipient ... has not claimed set off of ITC against the second set of invoices". On that footing, he confirmed tax of Rs.1,11,540, interest of Rs.99,326 and a penalty of Rs.11,154 under each Act. Taking both issues together, the operative paragraph and Form GST DRC-07 (Ref. ZD290824025411H) show the total interest as Rs.1,05,274 under each Act. The demand so determined is set out below:

Head	CGST (Rs.)	SGST (Rs.)
Tax (Issue No. 2)	1,11,540	1,11,540
Interest (Issues No. 1 and 2)	1,05,274	1,05,274
Penalty (Issue No. 2)	11,154	11,154
Total	**2,27,968**	**2,27,968**
Total demand (CGST + SGST)		**4,55,936**
Due date for payment (DRC-07)		04.11.2024

G. The first appeal

17. The appellant filed an appeal online in Form GST APL-01 on 04.11.2024 (ARN AD2911240024596) and a physical copy on 13.11.2024. It was acknowledged in Form GST APL-02 on 27.11.2024 (Ref. ZD2911241493957). On 04.11.2024 he paid the interest of Rs.5,947 under each Act on Issue No. 1 (CPIN 24112900004208). On 13.11.2024 he made the pre-deposit of Rs.11,154 under each Act, being ten per cent of the tax in dispute (ARN AD291240220263). In his grounds he said that the supplies had been reported as B2C supplies in Table 7 of GSTR-1. No recipient, therefore, could take credit. He added that Form 26AS for the year showed a turnover of Rs.62,69,850. That was Rs.1,79,150 less than the GSTR-7 turnover of Rs.64,49,000. Notice of hearing was served on 10.03.2025. At the hearing on 25.03.2025 he appeared with his son, Sri Dinesh Shankar. He produced his outward supply register for 2019-20, a reconciliation

of turnover, Form 26AS, bank statements, a pre-final running account receipt, the second running account receipt and a payment receipt.

III. FINDINGS IN THE IMPUGNED ORDER

18. The Joint Commissioner of Commercial Taxes (Appeals)-4, Bengaluru, decided the first appeal. The order was pronounced on 03.02.2026 and digitally signed on 09.02.2026. The appeal was "partly allowed". On Issue No. 1, the first appellate authority found that the tax had been paid in the following year and that the interest for the delay had since been paid. The appeal on that issue was allowed. That part of the order is not challenged before us.

19. The first appellate authority dismissed the appeal on Issue No. 2, though for reasons of its own. Without adopting the reasoning on double credit, the authority held:

(a) that GSTR-1 and GSTR-3B are self-assessed statutory returns, and that a mismatch between them "is a recognized statutory trigger for scrutiny, verification, and demand proceedings";

(b) that since the appellant had not amended GSTR-1, "the original returns continue to retain full legal force and evidentiary value";

(c) that a "mere assertion of duplication, without portal-level correction, has no legal sanctity";

(d) that "Tax liability arises from declaration of outward supplies, not from availability or non-availability of ITC to recipients"; and

(e) that bank statements and Form 26AS "do not displace the evidentiary value of statutory GST returns".

20. The order recorded the appellant's explanation. The same B2C entry, he had said, was reported twice in Table 7, in September 2019 and again in December 2019. The tax on that supply had already been paid through GSTR-3B. The order made no finding on whether this was true. The summary in Form GST APL-04 added that the law provides for amendment in later months, that "Other alternative documents cannot override the statute", and that no amendment or reduction of B2C turnover had been declared in GSTR-1 for later periods. In narrating the case, the order also said that the officer "has initiated Audit" for 2019-20.

21. The summary in Form GST APL-04 shows the interest determined as Rs.1,38,867 under each Act, against Rs.1,05,274 shown as disputed. It shows a total of Rs.5,23,123 under both Acts. The order-in-original had calculated interest only up to its own date, 06.08.2024. It added that interest would run till the date of payment. The higher figure may reflect interest for the later period. But the order-in-appeal does not say so, and gives no working. Nor does it show whether the figure includes the interest of Rs.5,947 under each Act on Issue No. 1. The appeal on that issue had been allowed, and that interest had already been paid.

IV. PROCEEDINGS BEFORE THE TRIBUNAL

22. The appellant filed this appeal in Form GST APL-05 on 19.03.2026, with the pre-deposit required by section 112(8). The memorandum names three respondents: the Commissioner of Commercial Taxes; the Joint Commissioner of Commercial Taxes, DGSTO-4, described in the online form as "JCCT (e-Audit)"; and the Commercial Tax Officer (Audit)-4.7. The appeal arises under both Acts. The appellant is administered by the State. The Commissioner of Commercial Taxes is therefore shown as the respondent in the cause title. The other two officers named in the memorandum are also parties to the appeal.

23. The Commercial Tax Officer, the third respondent, filed para-wise remarks for the Revenue. The appellant filed additional written submissions. With them came an index of dates, a summary of the demand, a synopsis and a compilation of eleven authorities and administrative instructions. He also filed a rejoinder dated 06.10.2026 to the para-wise remarks, relying on two further authorities, *Amritha Marketing* and *Boilla Venkataramana Reddy*. The learned State Representative filed written submissions dated 10.10.2026 for all the respondents.

24. We heard Shri Jatin Christopher, Chartered Accountant, the learned Authorised Representative, for the appellant, and Shri Tippa Nayak, the learned State Representative, for the Revenue. We have considered the records of the authorities below, the written submissions, the rejoinder and the authorities cited.

V. SUBMISSIONS OF THE APPELLANT

25. The submissions made on behalf of the appellant by the learned Authorised Representatives may be summarised thus.

25.1 It was submitted that the objection to jurisdiction goes to the root and must be decided first. Reliance was placed on *Fastenex (P.) Ltd. v. State Tax Officer*, [2026] 188 taxmann.com 219 (Madras), para 828.

25.2 It was further submitted that the proceedings were, in substance, a scrutiny of returns. The demand was raised on data in the GST Prime and BoWeb portals. It rested on a mismatch thrown up in the "Tax liabilities and ITC Comparison Report", without any finding on facts. The DRC-01A and the notice spoke of verifying "the correctness of the returns", which are the words of section 61. They also spoke of "discrepancies", a word the Act uses only in section 61. Yet no notice in Form GST ASMT-10 was issued under rule 99. The scrutiny was therefore vitiated, and no demand could rest on it. Reliance was placed on *Mandarina Apartment Owners Welfare Association v. Commercial Tax Officer*, [2024] 164 taxmann.com 803 (Madras), para 14, and on *Fastenex*, paras 680, 693, 714 and 723 to 726. In any event, scrutiny lay with the jurisdictional officer, LGSTO-016, and not with an officer of the Audit wing.

25.3 It was submitted that CBIC Instruction Nos. 02/2022-GST and 02/2023-GST treat a difference between GSTR-1 and GSTR-3B as a parameter for scrutiny, to be put to the taxpayer in ASMT-10. The Commissioner's Circular No. GST-14/2020-21 treats it as a risk factor for selecting cases for audit. It is not a ground for a direct demand. Instruction No. 02/2023-GST applies the sequence of ASMT-10, ASMT-11 and ASMT-12 to returns for 2019-20 onwards. Instructions issued under section 168 bind the officers. "It does not lie in the mouth of the Revenue to repudiate a Circular issued by the Board" (*Paper Products Ltd. v. Commissioner of Central Excise*, (1999) 7 SCC 84). A power given to be exercised in a certain way must be exercised in that way or not at all (*Nazir Ahmad v. King-Emperor*, AIR 1936 PC 253). Reliance was also placed on CBIC Instruction No. 01/2022-GST, Circular No. 26/26/2017-GST and the Commissioner's Circular Nos. 10/2020, GST-05/2023-24 and GST-18/2022.

25.4 It was further submitted that the assignment mandated an audit, and that the officer belongs to the Audit wing. Under section 65(7), such an officer may initiate action under section 73 only where an audit under section 65(1) "results in detection" of tax not paid or short paid. Here no authorisation for audit was issued. No audit was conducted.

No report in Form GST ADT-02 was issued. The Revenue's own remark that the case "warranted auditing of books of accounts" confirms this. The objection is one of subject-matter jurisdiction under section 65(7), not of administrative jurisdiction under section 6. The notice and the order are therefore without authority of law.

25.5 It was submitted that natural justice is not satisfied merely by fixing dates of hearing. The notice proposed a short payment of output tax. The order-in-original confirmed the demand on a different ground, a possibility of double credit at the recipient's end. The first appellate authority did not notice the divergence. Section 160(2), on which the Revenue relies, concerns the service of notices and has nothing to do with an appeal.

25.6 On merits, it was submitted that the Revenue accepted the GSTR-7 turnover of Rs.64.49 lakh under Issue No. 1. The demand under Issue No. 2 taxes a further Rs.18.59 lakh, which is exactly the amount reported twice. The demand rests on a linear comparison of two returns. That is guesswork. A proper officer acting under section 73 or section 74 has no power to make a best judgment assessment (*Amritha Marketing v. Joint Commissioner of CGST & Central Excise*, [2026] 182 taxmann.com 574 (Madras)).

25.7 It was further submitted that the supplies were reported in Table 7 of GSTR-1 as B2C supplies. The recipients are Government departments registered under the Act only to deduct tax at source. They are not entitled to take credit on these supplies. No credit could pass to any of them. The ground of double credit also travels beyond the notice, contrary to section 75(7).

25.8 It was also submitted that the outward supply register, the reconciliation, Form 26AS, the bank statements and the running account receipts produced before the first appellate authority were not considered.

25.9 It was submitted that section 75(12) opens with the words "Notwithstanding anything contained in section 73". Tax declared in GSTR-1 but not paid could be recovered, if at all, only under that provision read with section 79. No such recovery was attempted.

25.10 It was submitted in the alternative that the amount received should be treated as inclusive of tax, and the tax worked out under rule 35. It was further submitted that this computation is mandatory and need not be pleaded. Reliance was placed on *Boilla Venkataramana Reddy v. Shivenari Canteen Services*, APL No. 149 (HYD) of 2026, [2026] 190 taxmann.com 676 (GSTAT, Hyderabad).

25.11 It was submitted that the memorandum of appeal also raises time and place of supply, timing differences between the two returns, adjustments permitted by section 37(3) and by Circular No. 26/26/2017-GST, the absence of mala fides and section 126, besides grounds on reverse charge, input tax credit, section 76 and limitation.

25.12 Lastly, it was submitted that the para-wise remarks were filed by the Commercial Tax Officer who passed the order-in-original. His own order is under challenge. He is therefore an interested party and cannot speak for the other respondents. The para-wise remarks also defend the order-in-original. They do not answer the grounds raised against the order-in-appeal, which is the order under appeal.

VI. SUBMISSIONS OF THE RESPONDENT

26. The submissions made on behalf of the Revenue by the learned State Representative, at the hearing and in the written submissions dated 10.10.2026, may be summarised thus. The written submissions answer the grounds of appeal one by one.

26.1 It was submitted that both orders below are reasoned orders. They were passed after a show cause notice, a reply and an appeal. They call for no interference.

26.2 It was further submitted that the principles of natural justice were followed at every stage. The appellant received an intimation in Form GST DRC-01A before the notice. He filed a detailed reply to the notice. He was heard in full by the first appellate authority. The ground is a bare assertion. It does not point to any document relied on but not supplied, or to any request for a hearing that was refused.

26.3 It was submitted that section 73 is an independent power to determine tax not paid or short paid. It does not depend on a prior audit under section 65, a prior scrutiny under section 61 or any other proceeding. It may be exercised whenever the proper officer finds, from any source, that tax has been short paid.

26.4 It was further submitted that the Commercial Tax Officer (Audit)-4.7 is a proper officer under section 2(91), assigned under sections 4 and 5. He acted under the assignment issued by the Joint Commissioner (Admn.) on discrepancies noticed from an analysis of returns. Cross-empowerment under section 6 is also available. The appellant has not shown any notification or order that bars this officer from issuing a notice under section 73 for 2019-20.

26.5 It was also submitted that the words "discrepancy" or "scrutiny" in intermediate communications do not turn the notice into one under section 61. Section 160 saves a proceeding from any mistake, defect

or omission in a notice that is in substance and effect in conformity with the Act. The appellant's own statement of facts records that the demand arose from an analysis of data on the common portal. That is a legitimate basis. No prejudice has been shown.

26.6 It was submitted that the demand does not rest on guesswork. It rests on the appellant's own returns. According to the Revenue, he declared outward supplies of Rs.73.08 lakh in GSTR-1 but paid tax on only Rs.64.49 lakh through GSTR-3B. The invoices, books of account and bank records are in his hands. It is therefore for him to show why the tax he declared should not be paid.

26.7 It was further submitted that the memorandum of appeal lists several reasons for the mismatch: amendments under section 37(3), liability discharged earlier or reversed later, and net-value reporting under Circular No. 26/26/2017-GST. None is supported by any reconciliation, invoice-level working, credit note or amendment record. They are also inconsistent with the plea of a single duplicated entry. No amendment of GSTR-1 for 2019-20 is on record. No credit note satisfying section 34 is shown. The Circular relates to the first return periods under GST. The appellant's turnover as per his financial statements, Rs.62.69 lakh, differs from both returns. He has given no reconciliation of the three figures.

26.8 It was submitted that Instruction No. 01/2022-GST does not override section 73. The appellant has not shown which paragraph of it is breached. Section 75(12) applies to self-assessed tax in a return under section 39. The shortfall here is tax on supplies declared in GSTR-1 but not paid through GSTR-3B. It was rightly determined under section 73.

26.9 It was further submitted that the nature, value, time and rate of the supply are as the appellant himself declared them in GSTR-1. The Revenue need not prove them again. In column 7 of Form GST APL-05 the appellant has struck out "Yes" against the question whether place of supply is involved. No inter-State supply has been pleaded.

26.10 It was submitted that section 75(7) limits the amount and the grounds of a demand to those in the notice. It does not prevent the authority from examining the taxpayer's defence, including the plea that a duplicated B2C entry is not creditable to the recipient. That inquiry answered the appellant's own plea. It did not enlarge the demand.

26.11 It was also submitted that interest under section 50 is compensatory and follows the short payment. The penalty under section 73(9) needs no guilty mind. It is exactly ten per cent of the tax, Rs.22,308 on Rs.2,23,080. It became payable because the tax was not paid within thirty days of the notice. Section 126 does not displace it.

26.12 It was submitted that cum-tax valuation does not arise. The GSTR-1 entries state tax separately from value. The appellant has not shown that he did not collect tax from the recipients.

26.13 Lastly, it was submitted that the choice of section 73 rather than section 74 means only that no fraud or suppression is alleged. It does not make the tax non-payable. Grounds 17 and 24 are general. Ground 17 speaks of input tax credit, which is not in issue. It appears to have been carried over from another matter.

27. The para-wise remarks filed earlier had relied on section 160(2). They had described the case as one that "warranted auditing of books of accounts". They had also recorded that "a conclusion is drawn that the appellant has not reported true and correct turnovers in the returns filed".

28. The Revenue prays that the appeal be dismissed. In the alternative, if any issue needs further verification, it prays that the appellant be directed to produce a month-wise and invoice-wise reconciliation of GSTR-1, GSTR-3B, the books of account and the annual return, and that the Revenue be allowed to examine it and respond. It also prays that the appeal be held not maintainable if it is out of time or lacks the full pre-deposit under section 112(8).

VII. ISSUES FOR CONSIDERATION

29. The following issues arise for decision:

(i) Whether the para-wise remarks filed by the Commercial Tax Officer can be read as the stand of the Revenue.

(ii) Whether the principles of natural justice were followed in the proceedings below.

(iii) Whether the proceedings are without jurisdiction because they were not preceded by a scrutiny under section 61 with a notice in Form GST ASMT-10, or by an audit under section 65 ending in Form GST ADT-02; and whether section 65(7) bars an officer of the Audit wing from proceeding under section 73 without an audit.

(iv) Whether the appellant has shown that the excess of tax in GSTR-1 over GSTR-3B is one supply reported twice; on whom the burden lay; whether the authorities below dealt with his explanation as the law requires; and whether the Revenue's alternative prayer for further verification should be granted.

(v) Whether the alternative pleas of the appellant, on cum-tax value, time and place of supply, and recovery under section 75(12), call for a different result.

(vi) Whether the interest and penalty can survive.

30. Some grounds in the memorandum of appeal need no separate issue. The grounds on reverse charge and input tax credit have nothing to do with this

demand. It is a demand of output tax on forward charge. The ground under section 76 does not arise, because no one says that the appellant collected tax and kept it. The ground of limitation appears in the summary of grounds. It was neither developed in writing nor argued at the hearing, and we do not examine it. The remaining grounds are dealt with where they arise.

VIII. DISCUSSION AND FINDINGS

Preliminary: Date of filing

31. The order-in-appeal was communicated on 09.02.2026. The appeal was filed on 19.03.2026, within the three months allowed by section 112(1). Neither party disputes that it is within time, or that the pre-deposit under section 112(8) has been made. The Revenue's plea on maintainability therefore does not arise.

Issue (i): The para-wise remarks

32. The appellant himself named the Commercial Tax Officer (Audit)-4.7 as a respondent in Form GST APL-05. A party to an appeal is entitled to answer it. The officer has no personal stake in the result. He acts for the Revenue, whose interest is that the tax lawfully due, and no more, is collected. His remarks are therefore read as the stand of the Revenue. They gain no added weight because they come from the officer who passed the order. Nor do they lose any. The objection that he could not speak for the other respondents no longer survives.

The learned State Representative filed written submissions dated 10.10.2026 for all the respondents and relied on them at the hearing.

33. The appellant says that remarks aimed at the order-in-original cannot answer an appeal against the order-in-appeal. On Issue No. 2, however, the first appellate authority confirmed the order-in-original. It was held by the Hon'ble Supreme Court in *Kunhayammed v. State of Kerala*, (2000) 6 SCC 359, that where an appellate authority affirms, modifies or reverses the decision under appeal, the decision of the lower forum merges in the appellate decision. The Revenue may therefore support the demand on the reasons given in either order. Whether those reasons hold is a question for the merits.

34. It was submitted by the appellant that the remarks describe one of his grounds of appeal as a "farce". In his rejoinder he added that the remarks appear to have been prepared with the help of an AI tool. How a party prepares its pleadings is its own choice. It may use any aid it finds useful. What matters is the content. The content must rest on the record and the law. The other side must know the case it has to meet. It was held by the Hon'ble Supreme Court in *Ram Sarup Gupta v. Bishun Narain Inter College*, (1987) 2 SCC 555 : [1987] 2 SCR 805, at page 814, that "it is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered." Read for their substance, the para-wise remarks state the Revenue's answer to each ground. The appellant has met that answer in his rejoinder. The word "farce" was not apt. Still, it adds

nothing to the Revenue's case. Nor does the way the remarks were prepared take anything from it.

35. Issue (i) is answered in favour of the Revenue. The para-wise remarks are taken as the stand of the Revenue.

Issue (ii): Natural justice

36. The appellant contends that the principles of natural justice were not followed. The record shows otherwise. He received an intimation in Form GST DRC-01A dated 05.02.2024. He received the notice dated 02.03.2024. He filed a reply on 01.04.2024. Hearings were fixed on four dates. He attended none. The first appellate authority heard him on 25.03.2025. His age may explain why he did not appear before the adjudicating authority. It does not explain why he did not seek an adjournment. Nor does it explain why he did not appear through an authorised representative, as section 116 permitted. A person who is given an opportunity and does not use it cannot later say that he was denied it. As the learned State Representative rightly submitted, the appellant has not pointed to any document relied on but not supplied to him. Nor has he pointed to any request for a hearing that was refused.

37. The Revenue relied on section 160(2), which reads:

> "(2) The service of any notice, order or communication shall not be called in question, if the notice, order or

> communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication."

38. The provision protects the service of a notice, order or communication from a belated challenge. The appellant does not dispute service. Section 160(2) therefore does not answer his grievance.

39. The appellant is right on one point. Natural justice requires more than fixing dates of hearing. The noticee must be told the case he has to meet. His reply must be considered before a decision is taken against him. The appellant raises two grievances of this kind. First, his explanation was rejected for a reason never put to him. Second, the documents he produced in appeal were not considered. Both concern the way his explanation was dealt with. We examine them under Issue (iv). On Issue (ii), we hold that the appellant was given an opportunity of hearing at every stage.

Issue (iii): Jurisdiction

A. The approach

40. The objection to jurisdiction rests on a single premise. It treats section 73 as the last step in a sequence that must begin with a scrutiny under section 61 or

an audit under section 65. An officer who has not taken the earlier step, it says, cannot take the last. Whether that premise is sound depends on the words and the structure of the Act. We therefore examine what each provision does, where it begins and where it ends.

B. The scheme of self-assessment

41. The Act rests on self-assessment. Section 59 reads:

> "59. Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39."

42. The registered person assesses his own tax. The Revenue does not assess it in the first instance. It was held by the Hon'ble Supreme Court in *Union of India v. Bharti Airtel Ltd.*, (2022) 4 SCC 328, that the scheme of the Act is one of self-assessment. The registered person must work out his liability from his own books and records. Those books and records are within his knowledge. Form GSTR-2A, generated on the common portal, only facilitates that exercise. The Court also held that a return can be corrected only in the manner and within the time that the Act prescribes.

43. The Act gives the Revenue several tools to keep self-assessment honest. Each has its own purpose. The Revenue may scrutinise a return under section 61. It may audit the books and records behind the return under section 65. It may

direct a special audit under section 66. It may inspect, search and seize under section 67. It may summon persons to give evidence or produce documents under section 70. Where tax appears to have been short paid, it may determine the tax in adversarial proceedings under section 73 or section 74. The first group of tools is for finding out. The last is for deciding. They occupy different fields.

C. Section 61: scrutiny of the return

44. Section 61 reads:

> "61. Scrutiny of returns.— (1) The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.
>
> (2) In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.
>
> (3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in

> which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74."

45. Rule 99(1) of the Rules reads, so far as relevant:

> "(1) Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same in accordance with the provisions of section 61 with reference to the information available with him, and in case of any discrepancy, he shall issue a notice to the said person in FORM GST ASMT-10, informing him of such discrepancy and seeking his explanation thereto ..."

46. Four features of section 61 stand out. First, its object is to "verify the correctness of the return". Second, its material is "the return and related particulars". Third, it ends in an intimation of discrepancies and a request for an explanation. Under rule 99, that intimation is made in Form GST ASMT-10. Fourth, it decides nothing. It has no power to determine tax, interest or penalty. It has no power to pass an enforceable order. Even when the explanation fails, section 61(3) does not let the officer determine tax under section 61. It sends him elsewhere. Section 73 is one of the places to which it sends him. Section 61 is a mechanism of verification, not of determination.

47. Section 61 is also permissive. The officer "may" scrutinise a return. Rule 99(1) states when a duty arises. Once a return is "selected for scrutiny", the officer must scrutinise it. If he then finds a discrepancy, he must issue a notice in Form GST ASMT-10. Section 61(3) states what may follow when no satisfactory explanation is given. The officer may take appropriate action, including action under sections 65, 66 or 67, or he may proceed to determine the tax under section 73 or section 74. Section 61(3) thus opens one road to section 73. It does not say that it is the only road. Nothing in section 61 makes a scrutiny a condition of action under section 73.

48. Section 61(2) gives a closed scrutiny a limited finality. When the explanation is accepted, "no further action shall be taken in this regard". The words "in this regard" fix the reach of that closure. It covers the discrepancy noticed and explained, on the material then before the officer. Within that field the closure has real force. The registered person cannot be called upon again to explain the same discrepancy on the same material. Outside that field it has no effect. It is not a determination of tax. It does not certify that the return is correct in every other respect. It does not bar proceedings under section 73 on another discrepancy, for another period, or on material the scrutiny never saw.

49. The converse is equally true. A discrepancy noticed in a scrutiny and left unexplained does not, by itself, establish a liability. The officer who then acts under section 73 must still prove his case. He must determine the tax himself.

50. The law of income tax draws the same line between processing a return and assessing it. It was held by the Hon'ble Supreme Court in *Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers (P) Ltd.*, (2008) 14 SCC 208, that "the intimation under Section 143(1)(a) cannot be treated to be an order of assessment". Such an intimation did not stand in the way of later proceedings under section 147 of the Income-tax Act, 1961. The Hon'ble Supreme Court took the same view in *Deputy Commissioner of Income Tax v. Zuari Estate Development and Investment Co. Ltd.*, (2015) 373 ITR 661. An intimation under section 61 of the Act is of the same character. It processes a return. It does not assess it.

D. Section 65: audit of the records

51. Section 2(13) defines audit:

> "(13) "audit" means the examination of records, returns and any other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder;"

52. Section 65, so far as relevant, reads:

> "65. (1) The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.
>
> ...
>
> (6) On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.
>
> (7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74."

53. Rule 101(5) of the Rules reads:

> "(5) On conclusion of the audit, the proper officer shall, within thirty days, inform the findings of audit to the registered person in accordance with the provisions of sub-section (6) of section 65 in FORM GST ADT-02."

54. Audit is wider than scrutiny. Scrutiny looks at the return. Audit looks at the books, records and documents behind it. But audit, too, is a mechanism of

verification. It ends in "findings" and "reasons", which are communicated in Form GST ADT-02. A finding is not a determination. Section 65 contains no power to determine or recover tax. Where an audit detects a short payment, section 65(7) says that the officer "may initiate action under section 73 or section 74". Audit detects. Adjudication determines.

55. Section 65 has no provision like section 61(2). Nothing in it closes a matter. An audit that finds nothing does not bar a later notice under section 73 on other material. An audit that finds a short payment does not bind the officer who adjudicates. Its findings are information. They may be useful, even weighty. Their weight depends on the reasons and evidence behind them. The noticee is entitled to meet that evidence.

56. In *M/s. SVS Aqua Technologies LLP v. Superintendent, Range IV, Division I (Shivajinagar), CGST Pune II Commissionerate & Ors.*, W.P. No. 11359 of 2026, 2026:BHC-AS:35547-DB, decided on 31.08.2026, the petitioner feared that tax would be recovered directly on the findings of an audit, without adjudication under section 73 or section 74. The Revenue stated that the communication was "just an administrative action" which "shall obviously culminate into a show cause notice for adjudication". The Hon'ble High Court of Bombay accepted that statement. It held that "on conclusion of audit, the proper officer has informed the findings of audit to the registered person in accordance with the provisions of sub-section 6 of Section 65 in Form GST ADT-02. The apprehension of the petitioner

that the recovery will be effected on the basis of such information is misconceived. It is obvious that the GST Department shall take further action in accordance with the provisions of the CGST Act." (paras 3 to 5). A communication in Form GST ADT-02 thus tells the registered person what the audit found. It does not determine tax.

57. It was held by the Hon'ble High Court of Madras in *ABT Ltd. v. Additional Commissioner of GST and Central Excise*, W.P. No. 1756 of 2024, decided on 30.01.2024, that section 65 does not require the audit report to record findings of fraud, wilful misstatement or suppression before a notice under section 74 can issue. Those allegations may be made in the notice itself. The notice stands on its own feet. It does not borrow its content, or its validity, from the audit report.

E. Section 73: a self-contained machinery of determination

58. Section 73(1) reads:

> "73. (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the

refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder."

59. Section 73(9) reads:

"(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order."

60. Section 75(4) reads:

"(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person."

61. Rule 142(1A) of the Rules reads:

"(1A) The proper officer may, before service of notice to the person chargeable with tax, interest and penalty, under sub-

section (1) of section 73 or sub-section (1) of section 74, as the case may be, communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A."

62. Section 73 is a complete code for determining tax in cases that do not involve fraud. It has its own trigger. It must "appear" to the proper officer that tax has not been paid or has been short paid. It has its own pre-notice intimation under rule 142(1A), its own notice and its own opportunity to reply. It provides a hearing under section 75(4). It ends in a determination and an appealable order under sub-section (9). Every step needed to fix a liability is found within section 73. It needs nothing from section 61 or section 65 to work.

63. The link between these provisions runs one way. Section 61(3) points to section 73. Section 65(7) points to section 73. Section 73 points back to neither. It does not say "where, on a scrutiny under section 61". It does not say "where, on an audit under section 65". It says "where it appears to the proper officer". A Tribunal cannot add words that the legislature did not use.

64. The words "where it appears to the proper officer" do not prescribe the source of the officer's information. It may come from a scrutiny or an audit. It may equally come from an inspection, from the returns of a deductor or a recipient, from e-way bill data, or from another department. It may also come from the registered person's own returns read together. What the words do require is

material. The appearance must rest on facts on record. The notice must disclose those facts. Suspicion or surmise is not enough. That is the true safeguard. A taxpayer is better protected when this safeguard is strictly enforced than when a condition the legislature did not enact is read into the Act.

F. The guidance of the Hon'ble Supreme Court

65. The Hon'ble Supreme Court has examined the structure of the Act and the place of the show cause notice in it. The principles it has laid down support the view we take.

66. It was held by the Hon'ble Supreme Court in *Armour Security (India) Ltd. v. Commissioner, CGST, Delhi East Commissionerate*, 2025 INSC 982, decided on 14.08.2025, that "Under the GST regime, issuance of a show cause notice is a mandatory precondition for raising a demand" (para 65). The Court held that "proceedings stand initiated when a show cause notice is issued with regard to a subject matter" (para 82). It described a summons under section 70 as a means of gathering material: "A summons is not the culmination of an investigation, but merely a step in its course" (para 57). It also recognised that "An assessee may be held liable to pay tax along with interest pursuant to an audit, scrutiny, or investigation" (para 68).

67. Three things follow. First, the precondition that the Act prescribes for a demand is the show cause notice. The Court did not treat an audit or a scrutiny as

a further precondition. Second, the Court named audit, scrutiny and investigation side by side. They are different routes by which a liability may come to light. None is a gateway through which the others must pass. Third, proceedings for determination begin with the notice. What goes before it is the gathering of material. It may be an audit, a scrutiny, an inspection or a summons. This is the same line we have drawn between the tools of verification and the machinery of determination.

68. It was held by the Hon'ble Supreme Court in *Radhika Agarwal v. Union of India*, 2025 INSC 272, decided on 27.02.2025, that the power of arrest under section 69 may be exercised even before tax is determined under section 73 or section 74. Credible material gathered in the investigation is enough. The Court declined to read into section 69 a condition that the statute did not contain. The question there was different. The method is the same. Each power under the Act carries its own conditions. A court or tribunal applies those conditions faithfully. It does not carry into one provision a condition taken from another.

69. By order dated 04.04.2025 in SLP (C) Diary No. 5881 of 2025 (*Additional Commissioner v. Vijay Trading Company*), the Hon'ble Supreme Court declined to interfere with the judgment of the Hon'ble High Court of Allahabad in Writ Tax No. 1278 of 2024. The High Court had held that where excess stock is found during a survey or inspection, the tax must be determined under section 73 or section 74. We bear in mind that an order declining special leave does not by itself

declare the law (*Kunhayammed*, cited in paragraph 33). We refer to it only for what the judgment of the High Court illustrates. The High Court followed that judgment in *Vivek Kumar Gupta v. State of U.P.*, Writ Tax No. 60 of 2024, decided on 06.11.2025, where the stock had been found in an inspection under section 67. It observed (para 8): "The GST Act is a complete Code in itself. A specific provision has been contemplated that if the goods are not recorded in the books of account, then the proper officer shall proceed as per the provisions of Section 73/74 of the GST Act." Proceedings under sections 73 and 74 may thus rest on material found in an inspection. No audit under section 65 is needed.

70. The law of income tax follows the same approach. There the Hon'ble Supreme Court has long examined provisions that turn on the belief or satisfaction of an officer. It was held in *Income Tax Officer v. Lakhmani Mewal Das*, (1976) 3 SCC 757, that the reasons for the belief must have a rational connection with, or a relevant bearing on, its formation. It was held in *Phool Chand Bajrang Lal v. Income Tax Officer*, (1993) 4 SCC 77, that the officer may act on "specific, reliable and relevant information" that comes into his possession. The court examines only "whether there was any material available on the record from which the requisite belief could be formed by the Income-tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief" (para 27). In that case the information came from another officer, who assessed a different person in another city. It was held in *Raymond*

Woollen Mills Ltd. v. Income Tax Officer, (1999) 236 ITR 34 (SC) : (2008) 14 SCC 218, that "We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage." The Court added: "It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous." Both stages have their place. Material is needed to begin a proceeding. Proof is needed to decide it.

71. The words "where it appears to the proper officer" in section 73(1) call for the same test. Was there material? Does it bear rationally on the short payment alleged? It does not matter which wing of the department gathered the material. Nor does it matter which tool was used.

G. The three provisions compared

72. The three provisions may be compared as follows:

	Section 61	**Section 65**	**Section 73**
Nature	Scrutiny of returns	Audit of records	Determination of tax
Object	To verify the correctness of the return	To verify turnover, tax, refund and credit, and to assess compliance	To determine tax not paid or short paid, with interest and penalty

	Section 61	**Section 65**	**Section 73**
Material	The return and related particulars	Records, returns and documents of the registered person	Any material on which short payment appears
Ends in	Intimation of discrepancies in ASMT-10; acceptance of the explanation or a choice of further action	Findings and reasons in ADT-02	A determination and an order under section 73(9)
Power to determine tax	None	None	Yes
Effect on later proceedings	Closure bars further action only "in this regard"	No closure; findings are material, not binding	An appealable order which fixes the liability

73. Two consequences follow. First, the power under section 73 does not depend on a prior notice in Form GST ASMT-10 under section 61. Nor does it depend on an audit report in Form GST ADT-02 under section 65. A proper officer may proceed under section 73 directly. Second, what is reported in a scrutiny or an audit does not bind the officer who adjudicates under section 73. It

binds him neither for nor against the registered person. The second consequence needs explanation.

H. Why findings in a scrutiny or an audit do not bind the adjudicating authority

74. Five reasons lead us to that conclusion.

75. First, there is nothing to bind. A scrutiny ends in an intimation. An audit ends in findings. Neither determines a liability. Only a determination can carry the finality that the appellant's argument assumes.

76. Second, res judicata and estoppel do not work that way in tax proceedings. It was held by the Hon'ble Supreme Court in *Instalment Supply (P) Ltd. v. Union of India*, AIR 1962 SC 53, that res judicata does not apply to assessments. Each assessment is final only for the year it concerns. In *Radhasoami Satsang v. Commissioner of Income Tax*, (1992) 1 SCC 659, the Hon'ble Supreme Court restated the rule and its limit: "strictly speaking res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year." The limit rests on a finding of fact, reached in an

assessment and accepted by both sides. An intimation in a scrutiny or a finding in an audit is not such a finding. It was held by the Hon'ble Supreme Court in *Mathra Prasad & Sons v. State of Punjab*, AIR 1962 SC 745, that there can be no estoppel against a statute. Even an assessment does not bind beyond its own field. A mere intimation cannot do more. The closure in section 61(2) is the only finality that the Act gives to a scrutiny. We have explained its limits in paragraph 48.

77. Third, section 73(9) casts the duty of determination on the proper officer himself. He must perform it "after considering the representation" of the noticee. That is a quasi-judicial duty. In *Orient Paper Mills Ltd. v. Union of India*, AIR 1969 SC 48, the Collector had rejected an appeal only because a direction of the Central Board of Revenue covered the question. The Hon'ble Supreme Court held that the power of the Collector was a quasi-judicial power and "cannot be controlled by the directions issued by the Board. No authority however high placed can control the decision of a judicial or a quasi judicial authority." The Court added that such authorities "cannot be said to act independently if their judgment is controlled by the directions given by others. Then it is a misnomer to call their orders as their judgments; they would essentially be the judgments of the authority that gave the directions". An adjudicating authority that treats an audit finding as settling the matter does not exercise its own judgment. It adopts the judgment of the auditor. The law requires it to apply its own mind.

78. Fourth, the adjudicating authority must come to the notice with an open mind. It was held by the Hon'ble Supreme Court in *Oryx Fisheries (P) Ltd. v. Union of India*, (2010) 13 SCC 427, that "a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show cause proceeding" (para 24). The Court added that a notice does not begin a fair procedure if the noticee is left with the feeling "that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion" (para 31). It was held by the Hon'ble Supreme Court in *Siemens Ltd. v. State of Maharashtra*, (2006) 12 SCC 33, that a notice issued "with pre-meditation" is open to challenge. The Court said: "If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show cause notice." An officer who regards an earlier intimation as binding has made up his mind before hearing the noticee. The hearing then becomes a formality.

79. Fifth, the rule works both ways. That is why it is fair. The registered person is not bound by the discrepancies reported against him in ASMT-10 or ADT-02. He may dispute them in reply to the notice. The officer must deal with his reply. In the same way, the Revenue is not bound by a favourable audit or a closed scrutiny when it acts under section 73 on other material. Findings of a scrutiny or an audit may supply the material on which it "appears" to the proper officer that

tax is short paid. They may also be relied on as evidence. But the determination is made afresh under section 73(9). It is made on the whole of the evidence, after hearing the noticee.

I. The view of the High Courts and of this Tribunal

80. Several High Courts have taken the same view.

81. It was held by the Hon'ble High Court of Andhra Pradesh in *Devi Traders v. State of Andhra Pradesh*, W.P. No. 3659 of 2023, 2023-TIOL-743-HC-AP-GST, that sections 73 and 74 are not controlled by section 61, and that "the word 'appears' has a wider amplitude subsuming in it not only Section 61 and 65 but also any other credible information from a different source."

82. It was held by the Hon'ble High Court of Allahabad in *Nagarjuna Agro Chemicals (P) Ltd. v. State of U.P.*, 2023-TIOL-561-HC-ALL-GST, decided on 15.05.2023, that scrutiny of returns and proceedings under section 74 are "two separate and distinct exigencies", and that a notice under section 61(3) is not a condition precedent for action under section 74.

83. It was held by the same Court in *Neelkanth Entrepreneurs (P) Ltd. v. State of U.P.*, Writ Tax No. 1024 of 2026, (2026) taxcode.in 1537 HC; 2026 LLBiz HC (ALL) 72, decided by a Division Bench at Lucknow on 09.09.2026, that section 61 "is not, as a matter of law, an invariable jurisdictional precondition to issuance of every Section 74A notice" (para 37). The Court observed that "Section 61 and

Section 74A lacks commutative property, as Section 61 may lead to Section 74A but the reverse is not true" (para 32). It also held that the word "appears" subsumes "not only Section 61 or 65/66/67 but also any other credible information from a different source" (para 28). The Court added that "Section 61 does not constitute the sole or exclusive gateway through which the Department must necessarily pass, before it can proceed under Section 73 or Section 74A of the Act" (para 25). Section 74A governs demands for 2024-25 onwards. It does not apply to this appeal. We refer to the decision for its reading of the words "where it appears". Sections 73 and 74A share those words.

84. It was held by the Hon'ble High Court of Madras in *Mandarina Apartment Owners Welfare Association v. Commercial Tax Officer* and *Gani Fashion v. Assistant Commissioner (ST)*, W.P. Nos. 15307 and 15330 of 2024, decided by a common order on 16.07.2024, [2024] 164 taxmann.com 803 (Madras), that there is "no indication in either provision that scrutiny of returns and the issuance of notice in Form ASMT-10 constitute a mandatory pre-requisite for adjudication" (para 17). The appellant relies on this decision. We refer to it as *Mandarina*. In *Fastenex*, also relied on by the appellant, the same Court held (para 690) that "even if scrutiny of the self-assessment returns filed under Section 59 is not undertaken, there are other avenues which may justify issuance of Notices under Section 73 or Section 74".

85. This Bench decided *N. R. Builders v. Commissioner of Commercial Taxes, Karnataka*, Appeal No. APL/2/BUR/2026. There the proper officer had issued a DRC-01A and a notice directly under section 73. This Bench held that scrutiny under section 61 and proceedings under section 73 are independent. It held that the absence of a notice in Form GST ASMT-10 does not by itself invalidate proceedings initiated directly under section 73. We see no reason to take a different view.

86. The earlier indirect tax laws were built on the same plan. Under the Customs Act, 1962, the assessment and clearance of goods did not shut out a later notice for duty short levied. It was held by the Hon'ble Supreme Court in *Union of India v. Jain Shudh Vanaspati Ltd.*, (1996) 10 SCC 520, that a notice under section 28 of that Act for duty short levied is issued after the goods have been cleared. The clearance does not stand in its way. The demand provision there carried its own jurisdiction and its own procedure. Section 73 does the same here.

J. The decisions relied on by the appellant

87. The appellant relies on *Mandarina* and *Fastenex*. He contends that without ASMT-10 the demand has nothing to stand on. *Mandarina* (para 14) deals with a case where returns were selected and scrutinised and discrepancies were noticed. It holds that the failure to issue ASMT-10 in such a case "vitiates the scrutiny process", and that "the scrutiny under Section 61 cannot be relied upon for adjudication." The same judgment holds in paragraph 17 that ASMT-10 is not a

mandatory pre-requisite for adjudication. Paragraph 14 therefore operates only where there was a scrutiny and the demand rests on it. *Fastenex* (para 680) describes ASMT-10 as the "substratum" of the proceedings where the scrutiny route is taken. In paragraph 690, the same judgment recognises the other avenues to section 73.

88. *Fastenex* also holds (paras 714 and 715) that the jurisdictional or foundational fact for section 73 must be "discernable from the records". The words "where it appears" imply the "existence of information" and the exercise of a rational mind upon it. The later paragraphs relied on by the appellant hold that mere suspicion or conjecture is not enough. We respectfully agree with both propositions. Both are met here. The foundational fact is the excess of tax in GSTR-1 over GSTR-3B. It appears on the face of the appellant's own returns. It was quantified in the DRC-01A and set out month by month in the notice. That is definite information, not suspicion. The information may have reached the officer through the GST Prime or BoWeb portal, or through a report generated on either. That does not matter. Those reports display the appellant's own returns. *Fastenex* itself holds (para 829) that challenges to notices on grounds of natural justice "cannot be countenanced when the reasons are traceable from supplementary Reports / Notices viz., ASMT-10, ADT-02, ADT-4, INS-02, DRC-01A, as there is no real prejudice caused to the taxpayer."

89. The common order in *Mandarina* decided two cases. In *Mandarina*'s own case, the Court could not find that the returns had been selected for scrutiny. It held that "such scrutiny was not the foundation for adjudication under Section 73" (para 15). In *Gani Fashion*, the returns had been scrutinised without an ASMT-10. The Court held that the scrutiny was vitiated. But the petitioner had been served with a show cause notice. The Court therefore held that "it cannot be said that the adjudication was based only on the scrutiny under Section 61" (para 16). It also found that the petitioner had suffered no prejudice.

90. These decisions apply rule 99 only where a scrutiny was in fact undertaken. Where there was none, as in *Mandarina*'s own case, they do not require it. They are consistent with the view we take. In *Neelkanth* (paras 30 to 34), the Hon'ble High Court of Allahabad examined decisions of the High Courts of Gauhati, Calcutta, Rajasthan and Orissa on the same question. It found that in each of them a scrutiny had in fact been undertaken, or was not in dispute. It was held by the Privy Council in *Nazir Ahmad v. King-Emperor*, (1936) 63 IA 372 : AIR 1936 PC 253, that "where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden." The principle is well settled. But it must be applied to the power the officer actually uses. In *Nazir Ahmad* itself, the Magistrate was "manifestly acting under Part V of the Code". He had disregarded the procedure laid down in that very Part. The Act provides three separate powers, each with its

own procedure. An officer who scrutinises a return must follow section 61 and rule 99 to the end, including a notice in Form GST ASMT-10. An officer who conducts an audit must follow section 65 and rule 101. An officer who proceeds directly under section 73 must follow section 73 and the provisions that govern adjudication. Here the officer used the power under section 73. He followed its procedure. He issued an intimation in Form GST DRC-01A and then a show cause notice. He fixed four dates of hearing. He passed an order under section 73(9). That is what *Nazir Ahmad* requires. It does not require him to follow the procedure of a power he did not use.

91. The present case is not one of undisclosed scrutiny. The returns were not selected for scrutiny under rule 99. No scrutiny was conducted. The officer acted under section 73, on an assignment made on a reference from the Service and Analysis Wing. The position is the same as in *Mandarina*'s own case. There too, scrutiny was not the foundation of the adjudication under section 73. One feature of the present case, however, calls for care. The demand under Issue No. 2 rests only on a difference between two of the appellant's own returns. Two decisions speak to such a case. It was held by the Hon'ble High Court of Rajasthan in *Goverdhandham Estate (P) Ltd.* that "Where show cause notice is based on discrepancies found in the return and not on any other independent material, the proper officer is obliged under the law to follow the mandate of Section 61 before invoking jurisdiction under Section 73 of the Act." The special leave petition filed

by the Revenue against that judgment was dismissed by the Hon'ble Supreme Court on 14.10.2024 (*Joint Commissioner v. Goverdhandham Estate (P) Ltd.*, SLP (C) Diary No. 37824 of 2024, (2025) 26 Centax 401 (SC)). Following it, the Hon'ble High Court of Gauhati in *PepsiCo India Holdings (P) Ltd. v. Union of India*, WP(C) No. 6960 of 2023, decided on 19.09.2025, set aside a notice under section 73 that rested on a discrepancy in the returns and was not preceded by a notice in Form GST ASMT-10. We have read both decisions with respect. In *Goverdhandham Estate*, a notice in Form GST ASMT-10 had been issued. The explanation had been accepted in Form GST ASMT-12. A notice under section 73 was still issued on the same discrepancy (see the extract in *PepsiCo*, paras 29 to 32). That is the closure under section 61(2) which we have recognised in paragraph 48 above. In *PepsiCo*, the Court found that "there was no opportunity granted to the petitioner to explain before the proper officer in respect of the discrepancies" (para 28). It also found that "The revenue, without calling for any explanation from the assessee proceeded to initiate proceeding" under section 73 (para 38). In each case the registered person was charged on a discrepancy in his returns without a fair chance to explain it, or after his explanation had been accepted. We respectfully share the concern behind those decisions. Where the only material is a discrepancy in a person's own returns, fairness calls for him to be told of it and allowed to explain it before he is charged with tax on it. We need not decide whether the want of such an opportunity would, by itself, defeat a notice. The question here is whether the opportunity was given.

92. It was given. The DRC-01A dated 05.02.2024 came before the notice. It identified the discrepancy. It quantified it. It invited the appellant to explain it or to pay. A notice in Form GST ASMT-10 would have done exactly that. The appellant did neither. He has not shown what he could have said in reply to an ASMT-10 that he could not have said in reply to the DRC-01A. He later explained the discrepancy in his reply to the notice. That explanation was before the adjudicating authority. The concern that moved the Hon'ble High Courts in *Goverdhandham Estate* and *PepsiCo* is therefore met on the facts of this case. Those decisions may be read as requiring a notice in Form GST ASMT-10 itself, even where no scrutiny was taken up and the discrepancy was put to the registered person in another statutory form. To that extent, we respectfully prefer the view of the Hon'ble High Courts of Andhra Pradesh, Allahabad and Madras set out in paragraphs 81 to 84 above. A procedural safeguard is honoured when its purpose is served. It was held by the Hon'ble Supreme Court in *State Bank of Patiala v. S.K. Sharma*, (1996) 3 SCC 364, that, except in cases of "no notice", "no opportunity" and "no hearing", a complaint of violation of a procedural provision must be examined from the point of view of prejudice. In the words of the Court, "the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things." The appellant had a fair opportunity of meeting the case against him at every stage. No prejudice has been shown.

K. The wording of the DRC-01A and of the order-in-appeal

93. The appellant points out that the DRC-01A and the notice used the words "correctness of the returns" and "discrepancies". These, he says, are the words of section 61. But the same idea appears in the definition of audit in section 2(13), which speaks of verifying "the correctness of turnover declared". Every inquiry under the Act aims to verify the correctness of a return. "Discrepancy" is the ordinary word for a figure that does not agree with another. Nor is the word peculiar to section 61. Rule 101(4) uses it for observations made in an audit. Section 42(3), as it stood in 2019-20, used it for a mismatch in credit. These words describe what the officer is looking for. They do not identify the power he is using. That power is found in the authority under which he acts and in the notice he issues. Here the notice and the order proceed under section 73. Both describe the assignment as one made under section 73.

94. The Revenue also relies on section 160(1), which reads:

> "160. (1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-

> assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law."

95. The provision supports what we have said. Words borrowed from section 61 in the DRC-01A or the notice do not change the nature of the proceeding. In substance and effect, it is a proceeding under section 73. We add one caution. Section 160(1) cures a mistake of form. It cannot supply a jurisdiction that the law does not give. Had jurisdiction been absent, the provision would not have saved the notice. For the reasons that follow, jurisdiction was not absent.

96. The order-in-appeal says that the officer "initiated Audit". The para-wise remarks say that the case "warranted auditing of books of accounts". Neither statement shows that an audit under section 65 was undertaken. No authorisation for audit under section 65(1) is on record. No notice in Form GST ADT-01 was issued. No books were called for. The appellant himself says that no audit was conducted. His own list of documents records Form GST ADT-02 as "Not Available". The character of a proceeding is judged by what was in fact done, not by the label later used to describe it. What was done here was a proceeding under section 73.

L. The competence of the officer and the objection founded on section 65(7)

97. We now take up the objection founded on section 65(7), summarised in paragraph 25.4 above. In short, the argument reads section 65(7) as a bar. On this reading, an officer of the Audit wing may reach section 73 through an audit or not at all. It was also submitted that a scrutiny of returns lay only with the jurisdictional officer, LGSTO-016. In oral argument, section 65 was described as the umbilical cord of section 73.

98. The argument raises two questions. The first is the source of the officer's power to issue a notice and to determine tax under section 73. The second is whether section 65(7) cuts down that power. We take them in turn.

(i) The source of the power

99. Section 73 confers its power on "the proper officer". Section 2(91) of the Karnataka Goods and Services Tax Act, 2017 defines that expression:

> "(91) "proper officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the State tax who is assigned that function by the Commissioner;"

100. The corresponding definition in the Central Act speaks of an officer of central tax who is assigned the function by the Commissioner. Section 6(1) brings an officer of State tax within the Central Act. It reads:

> "6. (1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify."

101. These provisions answer the first question. The power to issue a notice and to determine tax under section 73 is attached to a function, not to a designation. Whoever is assigned the function of the proper officer under section 73 may exercise it. His office may be described as "Audit", "Enforcement" or by the name of a Local GST office. That does not matter. The designation tells us where the officer is posted. The assignment tells us what he may do.

102. It was held by the Hon'ble Supreme Court in *Commissioner of Customs v. Canon India (P) Ltd.*, 2024 INSC 854, that a customs officer to whom the Board or the Commissioner has assigned the functions of assessment and reassessment is a "proper officer". Such an officer is competent to issue a notice under section 28 of the Customs Act, 1962. The Court looked to the function assigned to the officer, not to the wing of the department to which he belonged. Section 2(91) calls for the same test.

103. The administrative scheme of the State rests on the same footing. The appellant himself relies on the Commissioner's Circular No. GST-14/2020-21

dated 19.12.2020. It lays down the procedure for "Audit, Assessment and Adjudication (AAA) proceedings". It speaks of "audit and assessment proceedings required to be undertaken under Section 65, 73 and 74 of KGST Act" (paragraphs 2 and 3). It treats them as three proceedings, not one. It provides its own route for an audit. The Audit Officer recommends the case. The Joint Commissioner (Admn.) and the Additional Commissioner (Audit) accept it. The Commissioner approves and assigns it. The Audit Officer then issues Form ADT-01 and ends the audit with Form ADT-02 (paragraphs 4 to 10). Nothing on record shows that this route was ever set in motion here. Paragraph 12 of the Circular goes further. Even where an audit detects a short payment, the Audit Officer must proceed under section 73 or section 74 "by seeking separate assignment for the same". The Circular thus treats an assignment for action under section 73 as a distinct authority. On the record before us, such an assignment is what was issued here. The power to adjudicate flows from it. It does not depend on an audit that was never begun.

104. In the present case, the Joint Commissioner of Commercial Taxes (Admn.), DGSTO-4, issued Assignment No. 3044 dated 20.01.2024. As recorded in the notice and the order-in-original, it authorised the Commercial Tax Officer (Audit)-4.7 to take action under section 73 for 2019-20 (paragraph 7). Nothing was placed before us to show otherwise. Nor was anything placed to suggest that the Commercial Tax Officer is not an officer of State tax, or that the function

under section 73 was not validly assigned to him. The objection rests only on the word "Audit" in his designation and on section 65(7). A word in a designation cannot take away a function that the law has assigned. It was held by the Hon'ble Supreme Court in *N. Mani v. Sangeetha Theatres*, (2004) 12 SCC 278, that the exercise of a power is not vitiated merely because a wrong provision is cited. It is enough that the power exists and can be traced to a source in law. A wrong label does not defeat a power that exists. A correct description of an officer's posting cannot do so either.

(ii) What section 65(7) does

105. Section 65(7) has been extracted in paragraph 52. Three features of the sub-section decide the question.

106. First, it is conditional. It opens with the words "Where the audit conducted under sub-section (1) results in detection". It speaks to a case in which an audit has been conducted and has detected a short payment. Where no audit has been conducted, the sub-section has nothing to act upon. A provision that does not apply to a case cannot forbid anything in it.

107. Second, it does not create the power to determine tax. It points to that power. The words are "may initiate action under section 73 or section 74". The action is taken under section 73. The officer who takes it must be the proper officer under that section and must satisfy every requirement of it. If section 65(7) were

removed from the statute, the power under section 73 would remain exactly as it is. A provision that does not give a power cannot be the only key to it.

108. Third, it is enabling. The word used is "may". It was held by the Hon'ble Supreme Court in *Bachahan Devi v. Nagar Nigam, Gorakhpur*, (2008) 12 SCC 372, that the word "may" is ordinarily permissive. It is read as mandatory only where the context and object of the statute require it. Nothing in section 65 requires it. Section 65(7) ensures that an audit which detects a short payment does not end in findings without a remedy. It says nothing about cases where there is no audit.

109. These features also answer the submission that section 65 is the umbilical cord of section 73. The image does not fit the statute. An umbilical cord is the only source of life for what it sustains. Section 73 does not draw its life from section 65. It draws it from its own words, extracted in paragraph 58. The power arises where "it appears to the proper officer" that tax has not been paid or has been short paid. Those words make no reference to an audit. Section 65(7) allows the results of an audit to be carried into a proceeding under section 73. It does not make an audit a condition of every such proceeding. Section 61(3) builds a similar bridge from scrutiny. A provision that can be reached from two different places is not tied to either. Section 65 is one source of the information on which section 73 may act. It is not the source of its power.

110. The sub-section contains no negative words. Where the legislature wished to bar a proceeding under this Act, it said so plainly. Section 61(2) says that "no further action shall be taken in this regard". Section 75(7) says that "no demand shall be confirmed on the grounds other than the grounds specified in the notice". Section 6(2)(b) reads:

> "(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter."

111. Section 65(7) uses no such language. The appellant's reading needs the word "only". The sub-section would then say: "Only where the audit conducted under sub-section (1) results in detection of tax not paid or short paid ... may the proper officer initiate action under section 73 or section 74." That word is not in the statute. It cannot be supplied by interpretation. The appellant draws a distinction between subject-matter jurisdiction and administrative jurisdiction. The distinction does not help him. The subject matter of section 73 is tax not paid or short paid. That is the subject matter of this proceeding.

112. It was held by the Hon'ble Supreme Court in *Mathuram Agrawal v. State of Madhya Pradesh*, (1999) 8 SCC 667, that "the intention of the legislature in a taxation statute is to be gathered from the language of the provisions particularly

where the language is plain and unambiguous". The Court held that words cannot be added to such a statute to give effect to what is supposed to be its spirit. It was held by the Hon'ble Supreme Court in *Padma Sundara Rao v. State of Tamil Nadu*, (2002) 3 SCC 533, that "The question is not what may be supposed and has been intended but what has been said", and that "a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself". No such necessity exists here. The rule of strict construction binds both sides. It does not allow the Revenue to add a liability or to relax a condition that the statute imposes. Equally, it does not allow the taxpayer to add a condition that the statute does not contain.

113. The argument rests, in truth, on the maxim *expressio unius est exclusio alterius*. Section 65(7) mentions action under section 73 after an audit. The appellant reads this as excluding action under section 73 without an audit. It was held by the Hon'ble Supreme Court in *Mary Angel v. State of Tamil Nadu*, (1999) 5 SCC 209, that this maxim is "often a valuable servant, but a dangerous master". It is not applied where it would lead to inconsistency or injustice. Nor is it applied where the scheme of the statute points the other way. Here the scheme points the other way. Section 61(3) leads to section 73 after a scrutiny. Section 65(7) leads to section 73 after an audit. Applied to each, the maxim would make section 61(3) exclude action after an audit, and section 65(7) exclude action after a scrutiny. Both cannot be true. The maxim would make the Act contradict itself.

114. Nor can the appellant draw support from the rule that a special provision prevails over a general one. That rule resolves a conflict. It was held by the Hon'ble Supreme Court in *J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. State of U.P.*, AIR 1961 SC 1170, that the rule *generalia specialibus non derogant* applies to resolve a conflict between a general and a special provision. The court must first try to read the two together. The same principle was applied in *Commercial Tax Officer, Rajasthan v. Binani Cements Ltd.*, (2014) 8 SCC 319. There is no conflict here. Section 65(7) and section 73 point to the same place. Section 65(7) is one of the doors into section 73. It is not the only door.

115. The consequences of the appellant's reading confirm that it cannot be right. An audit under section 65 is the most searching inquiry that the Act provides. It examines the books, records and documents of the registered person. It may be conducted at his place of business. It has its own notice and procedure under rule 101. A difference between two returns filed by the registered person himself can be seen on the common portal. No book need be opened to see it. On the appellant's reading, the Revenue could not call upon him to explain that difference under section 73 until it had first put him through a full audit. The law would require the longer road to reach the shorter destination. The taxpayer would bear the cost of the journey. It was held by the Hon'ble Supreme Court in *K.P. Varghese v. Income Tax Officer*, (1981) 4 SCC 173, that "a statutory provision

must be so construed, if possible that absurdity and mischief may be avoided". The construction urged leads to both.

116. We have also considered two decisions of the Hon'ble High Court of Karnataka. In *Sumukha Ventures v. Joint Commissioner of Commercial Taxes (Admn.), DGSTO-3*, W.P. No. 7772 of 2026, decided on 24.04.2026, the petitioner contended that the officer who had conducted the audit could not adjudicate, since he would be guided by his own findings in the audit. The Court did not decide that question. Noting that "this identical question is often raised by assessees", it set aside the order-in-original and kept all contentions open. It directed the authority to "record a finding of their aspect of jurisdiction" before proceeding on merits, and left it "open for the authority to obtain necessary orders on the administrative side from the authority which assigns i.e., the Joint Commissioner of Commercial Taxes (Administration)" (paras 7 to 9). The decision lays down no rule on the question. It does show that an objection to the officer's jurisdiction is to be answered by reference to the assignment made by the Joint Commissioner (Admn.). That is the approach we have taken in paragraphs 99 to 104 above. In *M.S. Service Station v. Union of India*, W.P. No. 13322 of 2024, the Court, by an interim order dated 22.06.2024, stayed an order under section 74. That order had been passed on a notice issued while an audit was still pending. It is an interim order. It lays down no law. Both cases concern an audit that had in fact been undertaken. Where an audit is begun, it must be carried to its end under section

65(6) and rule 101 before its results are made the basis of a notice. The present case is different. No audit was begun. The officer recorded no findings in any audit. He came to the adjudication with no view formed in advance. The concern raised in those cases does not arise here.

117. The absence of Form GST ADT-02 must be seen in the same light. Where a demand is founded on an audit, the findings of that audit must first be communicated in Form GST ADT-02. That is not this case. The notice does not claim to arise from an audit. It rests on the returns on the common portal. It identifies the difference between GSTR-1 and GSTR-3B. The report of an audit that never took place cannot be a condition of a proceeding that never relied on one.

118. We therefore hold that section 65(7) enables a proper officer, to whom the function under section 73 has been assigned, to act under that section on the results of an audit. It does not confer the power under section 73. Nor does it confine that power to cases that arise from an audit. The power is drawn from section 73, read with the assignment of that function under section 2(91). The function was assigned to the Commercial Tax Officer (Audit)-4.7. He had jurisdiction to issue the notice and to determine the tax. The objection fails.

M. The instructions and circulars

119. Section 168(1) of the Central Act reads:

> "168. (1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions."

120. The corresponding provision of the State Act vests the power in the Commissioner. The instructions and circulars relied on by the appellant do not alter our conclusion.

121. Instruction No. 02/2022-GST is headed "Standard Operating Procedure (SOP) for Scrutiny of returns for FY 2017-18 and 2018-19". It is addressed to officers of Central Tax. Paragraph 6.2 calls its parameters "only indicative, and not exhaustive". It does not govern 2019-20. Nor does it govern a State officer.

122. Instruction No. 02/2023-GST does cover returns for 2019-20 onwards, as the appellant points out. But it applies to GSTINs "registered with the Central Tax authorities" whose returns are selected for scrutiny by the Directorate General of Analytics and Risk Management (paragraph 3.1). The appellant is administered by the State. His returns were not selected under this instruction. The instruction lays down how a scrutiny is to be conducted. It does not bar adjudication.

123. Circular No. GST-14/2020-21 lists "R1>R3B" among the risk factors for selecting cases for audit for the year 2017-18. A criterion for selection does not limit the power to adjudicate. As we have seen in paragraph 103 above, the same Circular treats audit, assessment and adjudication as distinct proceedings.

124. Instruction No. 01/2022-GST concerns recovery of self-assessed tax. It bears on the merits, not on jurisdiction, and we consider it under Issues (iv) and (v).

125. Circular No. GST-18/2022 deals with differences in credit between GSTR-3B and GSTR-2A for 2017-18 and 2018-19. Circular No. 26/26/2017-GST deals with returns for July 2017 to March 2018. Circular No. 10/2020 concerns the e-Enforcement module. Circular No. GST-05/2023-24 concerns the procedure for search and seizure. None of them bears on jurisdiction under section 73 for 2019-20.

126. It was held by the Hon'ble Supreme Court in *Paper Products Ltd. v. Commissioner of Central Excise*, (1999) 7 SCC 84, that circulars of the Board bind the Department. That principle is not in doubt. An officer conducting a scrutiny must follow the instructions that govern it. But a circular cannot impose on a statutory power a restriction that the Act does not contain. None of these circulars tries to do so. A parameter for scrutiny tells the officer what to look for when he scrutinises a return. It does not tell him that he may act only through scrutiny.

N. Conclusion on Issue (iii)

127. We therefore hold as follows. Sections 61, 65 and 73 occupy different fields. Section 73 does not draw its jurisdiction from section 61 or section 65. Section 65(7) is an enabling provision. It neither confers the power under section 73 nor confines it to cases arising from an audit. An officer to whom the function of the proper officer under section 73 has been assigned may exercise it, whatever the designation of his office. Where a scrutiny or an audit is in fact undertaken, its prescribed procedure must be followed. Where the conditions of section 73 are met, a proper officer may proceed under it directly. The absence of Form GST ASMT-10 and Form GST ADT-02 does not, by itself, invalidate the present proceedings. Issue (iii) is answered against the appellant.

Issue (iv): Burden, the merits and the treatment of doubt

A. The nature of the liability

128. Jurisdiction being upheld, we turn to the demand itself. Section 9(1) charges the tax. It reads:

> "9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not

exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person."

129. Article 265 of the Constitution reads:

"265. No tax shall be levied or collected except by authority of law."

130. Tax is charged on a supply. A return does not create a supply. It reports one. A return is important evidence of a taxable transaction. But it cannot by itself bring into existence a supply that never took place. Tax collected on such an entry would be collected without the authority of law.

131. Section 37, as it stood in 2019-20, reads so far as relevant:

"37. (1) Every registered person ... shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period ...

(3) Any registered person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon

> discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:
>
> Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier."

132. GSTR-1 is the registered person's own statement of his outward supplies. Sometimes the tax declared in it is not matched by the tax paid through GSTR-3B. The difference is then legitimate material. On that material it may appear to the proper officer under section 73(1) that tax has been short paid. The difference is a lawful foundation for the notice. But it is not conclusive proof that a further taxable supply was made.

B. The burden of proof

133. It was held by the Hon'ble Supreme Court in *Union of India v. Garware Nylons Ltd.*, (1996) 10 SCC 413, that "the burden of proof is on the taxing

authorities to show that the particular case or item in question, is taxable in the manner claimed by them. Mere assertion in that regard is of no avail." The Revenue must therefore show a taxable supply. Here it points to the appellant's own return. That return is an admission. An admission is evidence of the fact admitted.

134. Once the Revenue relies on the return, the burden of explaining it moves to the appellant. Section 106 of the Indian Evidence Act, 1872, now section 109 of the Bharatiya Sakshya Adhiniyam, 2023, states the principle:

> "106. Burden of proving fact especially within knowledge.— When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

135. The Evidence Act does not in terms govern these proceedings. Its principle does. Whether an entry in a return records a supply, or repeats one already reported, is a fact within the appellant's knowledge. It is recorded in his own books. As *Bharti Airtel* reminds us (paragraph 42), those books are the foundation of self-assessment. Section 155 does not decide the point. The Revenue did not invoke it. It reads:

> "155. Burden of proof.— Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person."

136. This is a demand of output tax. It is not a claim of credit. But one who seeks to go behind his own admission must show why. An admission is not conclusive. It was held by the Hon'ble Supreme Court in *Pullangode Rubber Produce Co. Ltd. v. State of Kerala*, (1973) 91 ITR 18, that "An admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the person who made the admission to show that it is incorrect." In that case the assessee's own books recorded the expenditure as capital. The Court held that the assessee should have been given an opportunity "to show that the books of accounts maintained by them do not disclose the correct state of facts". It added that if the Tribunal "had examined the plea of the assessee that their account books do not correctly disclose the real facts and thereafter rejected that contention then the finding of the Tribunal would have been a finding of fact". The plea had to be examined. It could not be brushed aside because the books said otherwise. It was held by the Hon'ble Supreme Court in *Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi*, AIR 1960 SC 100, that an admission "is the best evidence that an opposing party can rely upon, and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous."

137. The burden therefore moves in stages. The Revenue discharges its initial burden by pointing to the return. The registered person must then show, by specific and credible material, that the entry does not represent a further taxable supply. If he does so, the burden returns to the Revenue. The Revenue cannot

answer a specific explanation by repeating the return that the explanation challenges. It must verify the explanation, or it must point to material that contradicts it. The legal burden of establishing taxability never leaves the Revenue. Only the evidential burden of explaining an entry shifts. The final determination remains that of the adjudicating authority under section 73(9) of the Act.

C. The evidence

138. Four features of the record are significant. Each comes from the Revenue's own data.

138.1 The month-wise figures in the notice reveal a pattern. The June 2019 entry in GSTR-1 matches the April 2019 payment in GSTR-3B. The March 2020 entry matches the January 2020 payment. The December 2019 entry matches the December 2019 payment. Only the September 2019 entry has no matching payment. It carries the same figure, Rs.1,11,540, as the December entry.

138.2 At six per cent under each Act, Rs.1,11,540 represents a taxable value of Rs.18,59,000. The GSTR-7 returns of the two deductors show deductions on Rs.4,19,000 for August 2019 and Rs.14,40,000 for September 2019. Together they make Rs.18,59,000. Each deduction appears once. The adjudicating authority reproduced these

figures in its order. It did not question them. The Revenue has not questioned them at any stage.

138.3 The appellant paid tax in GSTR-3B on Rs.54,49,000. In the next year he paid tax on a further Rs.10,00,000. That makes Rs.64,49,000. This is exactly the GSTR-7 turnover on which the Revenue founded Issue No. 1. The first appellate authority accepted it. What the deductors reported has thus been taxed once.

138.4 The appellant's GSTR-1 turnover of Rs.73,08,000 (tax of Rs.4,38,480 at six per cent), less the one repeated entry of Rs.18,59,000, equals his GSTR-3B turnover of Rs.54,49,000.

139. The reconciliation may be shown in figures:

Particulars	**Taxable value (Rs.)**	**CGST at 6% (Rs.)**
Turnover declared in GSTR-1 for 2019-20	73,08,000	4,38,480
Less: value reported twice (September 2019 entry)	18,59,000	1,11,540
Balance	**54,49,000**	**3,26,940**
Turnover on which tax was paid in GSTR-3B for 2019-20	54,49,000	3,26,940

Particulars	Taxable value (Rs.)	CGST at 6% (Rs.)
Add: turnover taxed in April–June 2020 (Issue No. 1)	10,00,000	—
Turnover taxed in all	**64,49,000**	
Turnover reported by the deductors in GSTR-7	64,49,000	

140. These are not isolated coincidences. The figures reconcile with one another, with the deductors' returns and with the tax paid through GSTR-3B. They match the specific explanation the appellant gave. They do not rest on his word. The GSTR-7 returns were filed by Government departments with no interest in the outcome. The Revenue itself accepted those returns to decide Issue No. 1 in the same order. The same evidence cannot be accepted for one purpose and disregarded for another without reasons. No reasons were given.

141. We therefore find, on a preponderance of probability, that the September 2019 entry did not record a separate supply. It recorded the same supply that was reported again, and taxed, in December 2019. The appellant's error was to report one supply twice in GSTR-1. The question is not whether he failed to pay tax on a supply. He paid it. The question is whether the same supply can be taxed a second time because it was reported twice. On this record, the answer is no.

D. The answers of the Revenue

142. One statement in the Revenue's written submissions must first be corrected. The submissions say that the appellant declared Rs.73.08 lakh in GSTR-1 but paid tax on only Rs.64.49 lakh through GSTR-3B. That is not what the notice says. The turnover in GSTR-3B for 2019-20 was Rs.54.49 lakh. Rs.64.49 lakh is the turnover the deductors reported in GSTR-7. It is the sum of the GSTR-3B turnover and the Rs.10 lakh taxed in the following year. The demand of Rs.1,11,540 under each Act, at six per cent, corresponds to a difference of Rs.18.59 lakh (Rs.73.08 lakh less Rs.54.49 lakh). It does not correspond to the Rs.8.59 lakh that the Revenue's figures would yield. Read correctly, the Revenue's figures confirm the reconciliation in paragraph 139. The gap between the two returns is exactly the entry said to have been repeated.

143. The Revenue gave several answers on the merits. We have considered each.

144. The first answer is that no invoice or bill was produced. Table 7 of GSTR-1 records B2C supplies in consolidated form, without invoice numbers. The appellant's invoices and running account bills would have been the best evidence. He ought to have produced them. But the fact in issue is whether a second supply of Rs.18,59,000 was made. The deductors' returns answer that fact directly. The Revenue holds the GSTR-1 and GSTR-7 data for the whole year. It has not pointed to any other deduction, recipient or payment that could represent a second supply.

145. The second answer is that Form 26AS does not agree with GSTR-7. Form 26AS shows Rs.13,67,850 for the Garrison Engineer (I) R&D East. GSTR-7 shows Rs.14,40,000. The appellant has not explained the difference of Rs.72,150. That is unsatisfactory. His own figure for the whole year is also lower. In his first appeal he said that Form 26AS showed Rs.62,69,850 for 2019-20. That is Rs.1,79,150 less than the GSTR-7 turnover of Rs.64,49,000. Form 26AS is a record, under the income-tax law, of amounts paid or credited. GSTR-7 is the deductor's return under the GST law. It is the return the Revenue itself relied on. The Revenue describes Rs.62.69 lakh as the appellant's turnover as per his financial statements. Whatever its source, the figure is lower than the Rs.64.49 lakh on which tax has already been paid. A record that shows less turnover than has been taxed cannot support a demand on a further Rs.18.59 lakh. The unexplained difference of about Rs.1.79 lakh may call for a reconciliation in some other proceeding. It is not the subject of this demand.

146. The third answer is that the return was never amended. The first appellate authority held that the entries retained "full legal force" because they were not rectified. The proviso to section 37(3), extracted in paragraph 131 above, did not allow the details for 2019-20 to be rectified after the return for September 2020 or the annual return, whichever was earlier. As *Bharti Airtel* explains, a return can be corrected only in the manner and within the time that the Act allows. The difference was first raised in February 2024, long after that time had run out. The

appellant should have corrected his return while he could. His failure left the admission standing. It cast on him the burden of showing that the admission was wrong. It did not relieve the Revenue of the duty to decide whether the supply in fact took place.

147. The distinction matters. If an unamended return were conclusive proof of every entry in it, the line between evidence and adjudication would vanish. The return would become an assessment beyond correction. The hearing under section 73(9) would serve no purpose. That is not the scheme of the Act. The Hon'ble High Court of Bombay had permitted a registered person to correct a bona fide error in GSTR-1. The Hon'ble Supreme Court declined to interfere with that decision in *Central Board of Indirect Taxes and Customs v. Aberdare Technologies (P) Ltd.*, SLP (C) Diary No. 6332 of 2025, decided on 21.03.2025. It observed that the "right to correct mistakes in the nature of clerical or arithmetical error" flows from the right to do business. The law thus treats a bona fide error in a return as an error, not as a source of tax. *Bharti Airtel* and *Aberdare Technologies* operate in different fields. The first governs how and when a return may be corrected. The second recognises that a bona fide error remains an error. Read together, they lead to two results. A registered person who misses the time for correction must carry the burden of proving his error. But an error once proved does not become a liability.

148. The first appellate authority treated the return as conclusive. It recorded no finding that a second supply had been made. It did not examine the outward supply register, the reconciliation, the bank statements or the running account receipts placed before it. It did not test the alleged second supply against the GSTR-7 returns. The one question of fact that decided the appeal was left unanswered.

149. The Revenue also says that the appellant's pleas are inconsistent. The memorandum of appeal lists four general reasons for a mismatch. His case, however, is that of a single duplicated entry. Grounds of that kind, set out without a single figure, add nothing. Ground 17 speaks of input tax credit, though none is in issue. Parts of the memorandum appear to have been carried over from another matter. But from his first reply onwards the appellant has made one case: the duplication. It is the only case argued before us on the merits. The general grounds do not detract from it. We decide the appeal on the case actually made and proved.

150. The next answer appears in the para-wise remarks. It is that the case warranted examination of the books, and that the appellant had not reported his true turnover. This may be meant to suggest supplies beyond those reported. If so, it was never the case in the notice. The notice made a specific demand on a specific difference between two returns. Section 75(7) does not allow a demand to be confirmed on a ground outside the notice. The suggestion cannot support the demand under appeal.

E. Self-assessed tax and rule 88C

151. The Revenue relied on Instruction No. 01/2022-GST dated 07.01.2022. That instruction explains section 75(12) and the Explanation to it. The Explanation was inserted with effect from 01.01.2022. They read:

> "(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.
>
> Explanation.— For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39."

152. Paragraph 3.1 of the instruction treats tax shown in GSTR-1 but not paid through GSTR-3B as "self-assessed and thus self-admitted liability". We too have treated it as an admission. But paragraph 3.2 of the same instruction recognises that "there may be a genuine reason for difference" between the two returns. A typographical error and a supply wrongly reported are given as examples. Paragraph 3.2 requires that "an opportunity needs to be provided to the concerned

registered person to explain the differences" before recovery. Paragraph 3.3 adds that there may be no need for recovery if the registered person "is able to justify the differences between GSTR-1 and GSTR-3B ... to the satisfaction of the proper officer". The instruction relied on by the Revenue does not treat the GSTR-1 figure as final once an error is shown.

153. The Rules now provide for this very situation. Rule 88C(1) was inserted by Notification No. 26/2022-Central Tax dated 26.12.2022. It reads, so far as relevant:

> "(1) Where the tax payable by a registered person, in accordance with the statement of outward supplies furnished by him in FORM GSTR-1 or using the invoice furnishing facility in respect of a tax period, exceeds the amount of tax payable by such person in accordance with the return for that period furnished by him in FORM GSTR-3B, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in Part A of FORM GST DRC-01B, ... highlighting the said difference and directing him to—
>
> (a) pay the differential tax liability, along with interest under section 50, through FORM GST DRC-03; or

(b) explain the aforesaid difference in tax payable on the common portal,

within a period of seven days."

154. We need not decide whether the rule applies to proceedings for 2019-20. We refer to it because it shows how the law itself regards a difference between GSTR-1 and GSTR-3B. The law treats it as a matter that calls for payment or explanation. It does not treat it as a liability fixed beyond explanation. It was held by the Hon'ble High Court of Gauhati in *ITI Ltd. v. Union of India*, WP(C) No. 150 of 2024, 2026:GAU-NL:149, decided on 20.03.2026, that the liability shown in GSTR-1 cannot be treated as final self-assessed tax by invoking the Explanation to section 75(12) directly. The process of intimation and explanation under rule 88C must come first (paras 24 to 27). The Court also held, following *Aberdare Technologies*, that bona fide errors in GSTR-1 can be rectified (paras 17 and 26).

F. The turnover of Rs.64.49 lakh

155. One contention of the appellant goes too far. He says that the Revenue, by accepting Rs.64.49 lakh under Issue No. 1, accepted it as his entire turnover. It did not. GSTR-7 records only those contracts on which tax was deducted at source. A supply outside that net would not appear in it. The finding under Issue No. 1 shows that the appellant supplied at least Rs.64.49 lakh. It does not show

that he supplied no more. The contention helps him only to the extent stated in paragraph 138.3: what the deductors reported has been taxed once. The Revenue, for its part, has never suggested that the appellant had any other customer. Nor has it identified any supply that could account for the further Rs.18.59 lakh.

G. The ground of double credit

156. The adjudicating authority rejected the explanation on a different ground. It held that the repeated entries would appear in the recipient's GSTR-2A and could be used to take credit twice. It held that the appellant had not shown otherwise. Section 75(7) reads:

> "(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice."

157. The notice charged short payment of output tax. It did not allege that any recipient took credit twice. The demand confirmed was the demand proposed. To that extent, section 75(7) was not breached. The Revenue says that the inquiry into credit only answered the appellant's own plea. The record does not bear this out. The appellant's reply to the notice said nothing about credit. The order-in-original raised the possibility of double credit on its own. His plea that the entries were B2C entries, on which no credit could pass, came later. It came in the first

appeal, in answer to that reasoning. The reason given for rejecting his explanation was thus never put to him. It was held by the Hon'ble Supreme Court in *Commissioner of Central Excise, Bhubaneshwar-I v. Champdany Industries Ltd.*, (2009) 9 SCC 466, that the Revenue cannot travel beyond the case made out in the show cause notice. The same principle underlies the place given to the show cause notice in *Armour Security* (paragraph 66). A noticee must know the case he has to meet. His explanation cannot be rejected on a footing he was never asked to meet. Nor did that footing touch the only question that mattered, namely whether a second supply was made. To this extent, the grievance we deferred under Issue (ii) is well founded.

158. The ground was also contrary to the record. Supplies reported in Table 7 are consolidated. They are not passed to any recipient's GSTR-2A. The Commissioner's own Circular No. GST-18/2022 recognises this in scenario (c) of its table of clarifications. The recipients here are Government departments registered as deductors, with GSTINs of their own. The appellant described them as unregistered, before the first appellate authority and again before us. That was not accurate. Supplies to them ought to have been reported invoice-wise in Table 4. Had the appellant done so, the repetition would have shown on the face of the return. His choice of Table 7 was wrong. But it also means that no credit could pass to any recipient. The officer then required the appellant to prove that the recipients had not taken credit. That was to ask him to prove a negative about the

conduct of others. The Revenue could itself have verified the matter. A mere possibility of double credit cannot take the place of proof of a second supply.

H. How a doubt about the explanation ought to have been tested

159. The authorities were entitled to be cautious. The appellant had not replied to the DRC-01A. He had not attended four hearings. He produced no invoice. His Form 26AS figures did not match. A prudent officer might well have thought the explanation an afterthought. But doubt is a reason to inquire. It is not a reason to tax. It was held by the Hon'ble Supreme Court in *Umacharan Shaw & Bros. v. Commissioner of Income Tax*, (1959) 37 ITR 271, that where there are "many surmises and conjectures", the conclusion "is the result of suspicion which cannot take the place of proof in these matters" (para 20). It was held by the Hon'ble Supreme Court in *State of Kerala v. C. Velukutty*, (1966) 60 ITR 239, that "Though there is an element of guess-work in a 'best judgment assessment', it shall not be a wild one, but shall have a reasonable nexus to the available material and the circumstances of each case" (para 12). There the officer had assumed, from secret accounts found at the head office, that the branch had suppressed its turnover. The Court said that the extent of suppression "could have been ascertained from other materials. The branch office had dealings with other customers." (para 13).

160. A demand under section 73 is not a best judgment assessment at all. It was held by the Hon'ble High Court of Madras in *Amritha Marketing v. Joint*

Commissioner of CGST & Central Excise, [2026] 182 taxmann.com 574, decided on 26.11.2025, that section 74(9) confers no power to assess to the best of judgment. The Court held that "the enabling power must flow from the statute". Noting the deliberations of the GST Council, it held that the Tax Department "could raise demand only to the extent that it had evidence". Section 73(9) is in the same terms as section 74(9). The demand here was not an estimate. It rested on the appellant's own return, which was legitimate material. But once the return was specifically explained, the demand could stand only on evidence that the explanation was false. A possibility is not evidence.

161. The Act gave the authorities ample means to test the explanation. Section 70(1) reads:

> "70. (1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908."

162. Section 151 reads:

> "151. Power to call for information.— The Commissioner or an officer authorised by him may, by an order, direct any

person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form and in such manner, as may be specified therein."

163. Section 107(11) reads, so far as relevant:

"(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against ..."

164. If the adjudicating authority doubted that the September 2019 entry was a repetition, the following steps were open to it, in rising order of effort:

164.1 *Its own data.* The common portal holds the appellant's GSTR-1, including the month-wise Table 7 entries. It holds his GSTR-3B. It also holds the deductors' GSTR-7 returns, with their GSTINs, the values and the months of deduction. A comparison would have shown whether any other deduction could correspond to the September entry. The appellant says that all his customers were Government departments that deduct tax. Deduction under section 51 applies where the value of supply under a contract exceeds two lakh and fifty thousand rupees. A second supply of Rs.18,59,000 to any of them would, in the ordinary course, have left its own trace in

a GSTR-7 return. None has been shown to us. That check needed no summons and no letter.

164.2 *The primary records.* The officer could have required the appellant to produce the invoices, running account bills, work orders, contract agreements and bank credits for the work. If necessary, he could have issued a summons under section 70(1). The appellant was bound to keep these records. Their production would have settled the matter. So would his failure to produce them.

164.3 *The deductors.* They are Government departments. The officer could have called for information from them by letter or by an order under section 151. He could have asked how many running account bills they had paid for this work, with their dates and amounts. He could have asked how many certificates of deduction they had issued. Their answer might also have explained the difference of Rs.72,150 between Form 26AS and GSTR-7.

164.4 *A wider inquiry.* The doubt may have gone beyond this entry, to a suspicion of supplies outside the deductors' returns. The Act provides several means of looking into such a suspicion, such as a summons, an inspection or an audit. Whichever means was chosen, the suspicion had to be tested on material. If it was borne out, it had to

be put to the appellant in a notice of its own. It could not be met by confirming a demand on this entry.

164.5 *A finding.* Whatever the result of the inquiry, the authority had to record a reasoned finding on the explanation. It was free to reject the explanation. But it had to say why. It had to identify the evidence that made the explanation unacceptable.

165. None of these steps was taken. The adjudicating authority rested the demand on a possibility of double credit. The first appellate authority had a fuller record before it. Section 107(11) empowered it to make "such further inquiry as may be necessary". It could have tested the documents itself. It could have called for a verification of the deductors' returns. It did neither. It treated the unamended return as conclusive. It thus confused the weight of a return with its finality.

166. A hearing has meaning only when the representation made at it is considered. The principles in *Orient Paper Mills* and *Oryx Fisheries* are discussed in paragraphs 77 and 78. They are not met by fixing dates of hearing. They are met when the authority engages with what the noticee says and decides on the evidence. In *Oryx Fisheries* the order made "no reference ... to the reply of the appellant, except saying that it is not satisfactory". The Court held it to be "totally a non-speaking one", and added that "absence of reasons in the original order cannot be compensated by disclosure of reason in the appellate order" (paras 37 and 42). The steps we have described are neither burdensome nor unusual. Had

they been taken, they would have resolved the dispute at the first stage. Both sides would have been spared two rounds of appeal.

167. Tax follows the supply. It does not follow the conduct of the taxpayer. Yet the appellant must bear his share of responsibility for this litigation. Had he filed his returns with care, and answered the DRC-01A when it came, the dispute would have ended where it began.

I. The Revenue's alternative prayer

168. In the alternative, the Revenue prays that the appellant be directed to produce a month-wise and invoice-wise reconciliation of GSTR-1, GSTR-3B, the books of account and the annual return, and that it be allowed to examine it (paragraph 28). We have considered the request with care. The appellant's own lapses gave the Revenue reason to make it.

169. Section 113(1) empowers the Tribunal, after hearing the parties, to "pass such orders thereon as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against". A direction for further verification is justified where the record leaves a material fact undecided. This record does not. We decline the request for three reasons.

170. First, the question that decides the appeal is narrow. Was a second supply of Rs.18,59,000 made? The deductors' GSTR-7 returns answer it. So do the

Revenue's own figures. The Revenue disputes neither. A reconciliation of a whole year's books would not answer that question better.

171. Second, the material that could contradict the appellant lies with the Revenue. It holds every GSTR-7 return filed in respect of the appellant's GSTIN. It has had his explanation since 01.04.2024, through the adjudication, the first appeal and this appeal. It has not pointed to a single deduction or payment that could represent a second supply. A party that holds the records has had three opportunities to use them. It cannot seek a fourth so that the other side may fill the gap.

172. Third, the request rests in part on the Revenue's misreading of the GSTR-3B turnover. We have corrected that misreading in paragraph 142. Once the figures are read correctly, nothing is left to reconcile on the demand under appeal.

J. Conclusion on Issue (iv)

173. The Revenue was entitled to rely on the appellant's GSTR-1. The appellant was bound to explain it. He has done so. His explanation is supported by the GSTR-7 returns of the deductors. It is also supported by a reconciliation of figures drawn from the Revenue's own records. The Revenue has not identified a second supply. The adjudicating authority rejected the explanation for a reason never put to the appellant. The first appellate authority rejected it on the footing that the return was conclusive. Neither rejection rested on contrary evidence. The

evidential burden lay on the appellant. He has discharged it. Issue (iv) is answered in favour of the appellant. The Revenue's alternative prayer for further verification is declined. The demand of CGST Rs.1,11,540 and SGST Rs.1,11,540 cannot be sustained.

Issue (v): The alternative pleas

A. Cum-tax value under rule 35

174. The appellant urged that, if any tax were payable, the amount received should be treated as inclusive of tax. Rule 35 of the Rules reads:

> "35. Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax.— Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely,— Tax amount = (Value inclusive of taxes X tax rate in % of IGST or, as the case may be, CGST, SGST or UTGST) / (100 + sum of tax rates, as applicable, in %)"

175. The Hon'ble Supreme Court applied the principle that a price which does not show tax separately may be treated as inclusive of tax in *Commissioner of Central Excise, Delhi v. Maruti Udyog Ltd.*, (2002) 3 SCC 547. A coordinate Bench of this Tribunal decided *Boilla Venkataramana Reddy v. Shivenari*

Canteen Services, APL No. 149 (HYD) of 2026, [2026] 190 taxmann.com 676, on 18.09.2026. It held that where the facts are on record, the benefit of rule 35 cannot be denied merely because it was not claimed. The authorities must collect the tax due, "neither more nor less". The Bench followed *Unichem Laboratories Ltd. v. Commissioner of Central Excise*, (2002) 145 ELT 502 (SC). We respectfully agree. The Revenue objects that the plea was not raised below. That objection does not, by itself, answer the plea.

176. But a question of value arises only after a taxable supply is established. We have found that no second supply was made. No value falls to be fixed, and the plea does not arise. We add, as the Revenue rightly points out, that the facts on record would not have supported it. The appellant's own GSTR-1 declared a taxable value and the tax computed on it. The deductors reported the same taxable value in GSTR-7. The Explanation to section 51(1) requires that value to exclude the tax indicated in the invoice. It reads:

> "Explanation.— For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the central tax, State tax, integrated tax and cess indicated in the invoice."

B. Time and place of supply, and timing differences

177. Both sides treated the supplies as intra-State supplies taxable under the two Acts. The place of supply is not in dispute. As the Revenue points out, the appellant himself struck out "Yes" against that question in column 7 of Form GST APL-05. The record shows that the deductions on this work were made in August and September 2019. The appellant paid tax on it only in the return for December 2019. The time of supply could bear only on that interval, and so only on interest for that interval. The notice raised no such demand. The question is outside these proceedings, and we express no view on it. The general ground that the authorities ignored timing differences between the two returns adds nothing. The appellant's own case is not one of timing. It is one of repetition, and we have accepted it.

C. Recovery under section 75(12)

178. Section 75(12) opens with the words "Notwithstanding anything contained in section 73". The appellant urged that, for this reason, tax declared in GSTR-1 but not paid could be recovered only under section 79. On his argument, it could not be recovered by proceedings under section 73. It was held by the Hon'ble Supreme Court in *R.S. Raghunath v. State of Karnataka*, (1992) 1 SCC 335, that "the non-obstante clause is appended to a provision with a view to give the enacting part of the provision an overriding effect in case of a conflict", and that "there should be a clear inconsistency between the two enactments before giving an overriding effect to the non-obstante clause". The Court approved the rule that

"It should first be ascertained what the enacting part of the section provides on a fair construction of the words used according to their natural and ordinary meaning". Read on its own terms, section 75(12) gives the Revenue a summary means of recovering self-assessed tax that remains unpaid. It does not forbid the Revenue to determine that tax by adjudication. There is no conflict for the non obstante clause to resolve. Here the appellant disputes that the amount is payable at all. In such a case adjudication is the fairer course. It gives him a notice, a reply, a hearing and a reasoned order.

179. The Revenue's written submissions put section 75(12) differently. They say that it applies only to tax in a return under section 39, and not to tax declared in GSTR-1 but not paid through GSTR-3B. With respect, that overlooks the Explanation. From 01.01.2022, the Explanation brings exactly that tax within the expression "self-assessed tax". Nothing turns on the point. Whether or not section 75(12) was available, section 73 was.

180. The Revenue chose to proceed under section 73. That choice caused the appellant no prejudice. A registered person cannot complain that he was given the fuller procedure. The ground fails.

Issue (vi): Interest and penalty

181. Section 50(1) reads:

> "50. (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council."

182. Interest under section 50 depends on tax that is due and unpaid. So does the penalty under section 73(9), extracted in paragraph 59. With the demand of tax set aside, the interest and penalty confirmed on it fall with it. There is therefore no need to examine why Form GST APL-04 shows interest of Rs.1,38,867 when the order-in-original determined Rs.1,05,274 (paragraph 21).

183. The appellant relied on section 126, which reads so far as relevant:

> "126. (1) No officer under this Act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.
>
> Explanation.— For the purpose of this sub-section,—

> (a) a breach shall be considered a "minor breach" if the amount of tax involved is less than five thousand rupees;
>
> (b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.
>
> ...
>
> (6) The provisions of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage."

184. The penalty under section 73(9) is fixed by the statute. It is ten per cent. of the tax or ten thousand rupees, whichever is higher. Sub-section (6) of section 126 takes such a penalty outside that section. The plea would not have helped the appellant had the tax been due. It does not arise now.

185. The appellant also pleaded the absence of mala fides. Section 73 applies, by its own terms, only to cases "other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax". The absence of mala fides is the premise of section 73. It is not a defence to it. It was held by the Hon'ble Supreme Court in *Union of India v. Dharamendra Textile Processors*, (2008) 13 SCC 369, that a penalty for the breach of a civil obligation under a taxing statute does not require proof of a guilty mind. Good faith may bear on whether section

74 is attracted. It does not answer a demand under section 73. The plea fails, though it no longer affects the result.

IX. CONCLUSIONS

186. Our conclusions are these:

186.1 Sections 61, 65 and 73 occupy different fields. Section 61 provides for scrutiny of returns. Section 65 provides for audit of records. Both are mechanisms of verification. Section 61 ends in an intimation of discrepancies. Section 65 ends in findings communicated to the registered person. Section 73 is a self-contained machinery for determining tax not paid or short paid in cases not involving fraud, wilful misstatement or suppression of facts.

186.2 Section 73 does not draw its jurisdiction from section 61 or section 65. Neither a scrutiny nor an audit is a condition precedent to a notice under section 73. As the Hon'ble Supreme Court held in *Armour Security*, the precondition for a demand under the Act is the show cause notice. A proper officer may proceed under section 73 directly. He must have material on record from which it appears to him that tax has not been paid or has been short paid. The absence of Form GST ASMT-10 or Form GST ADT-02 does not, by itself, invalidate such a proceeding.

186.3 Where the only material is a discrepancy in the registered person's own returns, fairness calls for him to be told of it and allowed to explain it before he is charged with tax. A pre-notice intimation in Form GST DRC-01A serves that purpose, if it sets out the discrepancy and invites an explanation.

186.4 Section 65(7) enables a proper officer to act under section 73 on the results of an audit. It does not confer the power under section 73. Nor does it confine that power to cases arising from an audit. The power belongs to the officer to whom that function is assigned under section 2(91), whatever the designation of his office.

186.5 Where a scrutiny under section 61 is in fact undertaken, rule 99 must be followed. The discrepancies must be communicated in Form GST ASMT-10. Where an audit under section 65 is in fact undertaken, its findings must be communicated under section 65(6) and rule 101. Only then may they be made the basis of a notice.

186.6 The closure of a scrutiny under section 61(2) bars further action only "in this regard". That means the discrepancy explained and the material then considered. The closure is not a determination of tax.

186.7 Findings of a scrutiny or an audit do not bind the adjudicating authority, for or against the registered person. They are material to

be weighed. The liability is determined afresh under section 73(9), after considering the representation of the noticee.

186.8 A difference between GSTR-1 and GSTR-3B is relevant evidence. It is a lawful foundation for a notice under section 73. It casts on the registered person the burden of explaining it. It is not conclusive proof of a further taxable supply.

186.9 Where the registered person gives a specific and credible explanation, the adjudicating authority must examine it against the records the Department holds and those it can call for. It must record a reasoned finding on it.

186.10 An unamended return remains important evidence. A failure to amend it within time does not turn an erroneous entry into a taxable supply.

186.11 A demand cannot be confirmed on a ground outside the notice. Nor can an explanation be rejected for a reason the noticee was never asked to meet. Suspicion justifies inquiry. Without evidence, it cannot sustain a demand.

186.12 Self-assessment works only if the Revenue can rely on what registered persons declare. It does not follow that an honest error in a return becomes a source of tax for ever. A taxpayer cannot expect

an error to be accepted merely because he calls it one. Equally, the Revenue cannot answer a proven error by pointing to the return that contains it. A fair adjudication does not require either side to be infallible. It requires the authority to examine the material with an open mind. It requires a conclusion supported by evidence.

X. ORDER

187. In the result, we order as follows:

187.1 The challenge to jurisdiction fails. The proceedings were not vitiated because no scrutiny under section 61 or audit under section 65 preceded them. Nor does section 65(7) prevent an officer of the Audit wing, to whom the function under section 73 has been assigned, from proceeding under that section without an audit.

187.2 The appeal succeeds on merits. Order-in-Appeal No. ZD2902260374385 (GST.AP.686/24-25) dated 03.02.2026 is set aside insofar as it upholds the demand under Issue No. 2, which concerns the difference between GSTR-1 and GSTR-3B. The demand of CGST Rs.1,11,540 and SGST Rs.1,11,540 is set aside. So are the interest on that tax and the penalty of Rs.11,154 under each Act. Order No. CTO(Audit)-4.7/DGSTO-4/S-73-3044(19-20)/23-24 dated 06.08.2024 stands set aside to the same extent.

187.3 The decision on Issue No. 1 was not challenged before us, and it remains undisturbed. The interest of Rs.5,947 under each Act already paid on that issue stands.

187.4 The Revenue's alternative prayer for further verification is declined.

187.5 There shall be no order as to costs.

188. The appeal is allowed in these terms.

Pronounced in Open Tribunal on this the 27th day of October, 2026.

(Prabhakaran P.M.)
Judicial Member

(Ravi Jesuraj S.)
Technical Member (State)

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