GSTAT

State Bench Bengaluru

Court No. Court II

APL/74/BUR/2026

NEEDS MANPOWER SUPPORT SERVICES PVT LTD **.....Appellant**

Versus

THE COMMISSIONER OF CENTRAL TAXES VANIJYA THERIGE KARYALAYA GANDHI NAGAR KALIDASA ROAD BENGALURU â?? 560009, THE COMMISSIONER, THE COMMISSIONER OF CENTRAL TAXES VANIJYA THERIGE KARYALAYA GANDHI NAGAR KALIDASA ROAD BENGALURU â?? 560009 & ORS. **.....Respondent**

Quorum

Hon'ble Sudha Koka, Member (Technical)
Hon'ble Srikanth Venkatraman, Member(Judicial)

Counsel for Appellant
AKBAR BASHA

Counsel for Respondent
PRABHAT KUMAR AC CGST

Form GST APL-04A

[See rules 113(1) & 115]

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

whether remand order : No

Order reference no. : ZN290171026000138H **Date of order :** 28/10/2026

1.	GSTIN/Temporary ID/UIN - 29AACCN4867B1ZE	
2.	Appeal Case Reference no. - APL/74/BUR/2026	Date - 14/05/2026
3.	Name of the appellant - NEEDS MANPOWER SUPPORT SERVICES PVT LTD , kirann@needs.co.in , 9449507145	
4.	Name of the respondant - 1. Sandeep Banga , p.sandeep88@gov.in , 9667595988 2. The Commissioner of Central Taxes Vanijya Therige Karyalaya Gandhi Nagar Kalidasa Road Bengaluru â?? 560009	
5.	Order appealed against -	
	(5.1) Order Type - Demand Order	

	(5.2) Ref Number - OIA No ADC/JC(A)-262/2025-26-GST dated 02.12.2025	Date - 02/12/2025
6.	Personal Hearing - 28/10/2026 13/10/2026 06/10/2026 05/10/2026 21/09/2026	
7.	Status of Order under Appeal - Reject - Order under Appeal is annulled	
8.	Order in brief - Section 74 was invoked only because the returns did not include the value of supplies. The authorities did not consider the appellant's explanations. The authorities alleged non-compliance only after verifying the appellant's records. The authorities did not dispute the genuineness of the records. The appellant had no intention to evade tax. The penalty imposed under Section 74(1) does not meet the test laid down by the Supreme Court in Tata Steel (supra) and the Board's instructions (cited supra). We hold that the imposition of penalty under Section 74(1) is unjustified and hence is set-aside.	

Summary of Order

9.	If demand order then whether demand quantified: Yes

Section-I

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

10.	For Other orders and Demand orders which are not quantified:	
Issues as raised by proper officer	Issues as determined by Appellate/Revisional authority	Order by GST Appellate Tribunal
Levy of Penalty	1. Penalty on GST under RCM basis on legal fee and sponsorships	IMPOSITION OF PENALTY SETASIDE
Levy of Penalty	2. Penalty on GST on Non-payment of URP under RCM	
Levy of Penalty	3. Penalty on GST under RCM basis on rent-a-cab	
Levy of Penalty	4. Penalty on Non-reversal of ITC - written off	

Place :BENGALURU

Signature

Date : 28.10.2026

BENGALURU Srikanth Venkatraman

Designation : Member

Jurisdiction :Bengaluru

ORDER

Per: Srikanth Venkatraman, Member (Judicial)

(1) The appellant, M/s. Needs Manpower Support Services Private Limited, has filed this appeal assailing the order of the Additional Commissioner (Appeals), Mysuru ('the Appellate Authority') passed in order-in-appeal No. MYS-ADC/ JC(A)-262 /2025-26-GST dated 02.12.2025. The appellate authority partly confirmed the order passed by the Assistant Commissioner of Central Tax, Division – 4, Bengaluru West ('the Adjudicating Authority') in order-in-original No. 15 / 2023 /WD4 / GST dated 28.06.2023.

Factual matrix

(2) The Appellant is engaged in providing manpower supply and support services. The audit officers of the Commissioner of Central Tax, Mysuru, audited the company for the period July 2017 to March 2020. The audit allegedly identified nine (9) non-compliances with revenue implications. Out of the 9 non-compliances, the dispute before the Tribunal relates to the penalty levied under Section 74 of the Central Goods and Services Tax Act/Karnataka Goods and Services Tax Act (the CGST/KGST Act) on the following non-compliances:

(i) GST under RCM basis on legal fees and sponsorship;

(ii) non-payment of GST under RCM on receipt of services from unregistered persons;

(iii) GST under RCM on rent-a-cab;

(iv) non-reversal of ITC on written-off amount payable to vendor in terms of Section 16 of the Act;

(3) Regarding the aforesaid items, the Adjudicating Authority had issued a show-cause notice dated 10.2.2023 invoking Section 74 of the Act. The Adjudicating Authority invoked Section 74 for the first 3 non-compliances on the ground that payment was made only after audit officers verified it. Regarding the 4 th non-compliance, the show cause notice stated that the appellant was liable to pay tax of Rs. 31,585/-, recoverable under Section 73 of the Finance Act, 1994, read with Rule 14 of the CENVAT Credit Rules, 2004, read with Section 74 of the CGST Act.

(4) After hearing the appellant, the Adjudicating Authority passed the order-in-original, justifying the invocation of Section 74. Regarding the aforesaid first 3 non-compliances, the Adjudicating Authority justified the order under Section 74 on the ground that the value of services was not shown in Form GSTR-3B and would fall within the meaning of "suppression" as defined in Explanation 2 to Section 74. Regarding the 4th non-compliance, namely, non-reversal of ITC on the written-off amount payable to the vendor under Section 16 of the Act, the adjudicating authority will state that the appellant paid the tax amount along with interest and penalty. The Adjudicating Authority imposed a penalty of Rs. 31585/- @ 100% of the tax and appropriated Rs. 4738/- of the penalty payment against the penalty of Rs. 31585/-.

(5) The Appellate Authority confirmed the imposition of penalty under Section 74 for all 4 aforesaid non-compliances. The Appellate Authority granted relief in respect of the other non-compliances; hence, they are not the subject matter of this appeal. The revenue has not filed any appeal challenging the Appellate Authority's order. The imposition was confirmed on the ground that the appellant had not disclosed the value of supplies in the return in Form GSTR 3B and paid taxes thereon. The Appellate Authority was of the view that non-declaration of such transactions, when the statutory returns require disclosure of the same, amounts to suppression, and penalty was rightly imposable under Section 7 4 of the CGST / SGST Act, 201

7. With regard to the 4th non-compliance, namely, non-reversal of ITC on the written-off amount payable to the vendor under Section 16 of the Act, the Appellate Authority, on page 10 of his order, would state that the appellant had paid the tax of Rs. 31585/- along with interest of Rs. 23,737/- and 15% penalty of Rs. 4738/- but confirmed the 100% penalty imposed by the Adjudicating Authority. Hence, the present appeal before the Tribunal.

(6) Mr Akbar Basha, learned authorised representative for the appellant, reiterated the contentions raised in the grounds of appeal. Arguments were advanced only with reference to the imposition of penalty under section 74(1) of the Act. The following submissions were advanced: -

(a) With regard to RCM on legal services and sponsorship services, it was submitted that due to inadvertent clerical error, there was a delay in remitting the taxes under the reverse charge mechanism in relation to expenses incurred on payments for legal services and sponsorship. The services were provided not to the appellant but to their clients. The appellant pays the advocates on behalf of the client as a business obligation and at the client's specific request. The amount paid to advocates and reimbursed by clients later has no nexus to the manpower placement business carried on by the appellant and, therefore, cannot be treated as mixed supplies. The appellant is not engaged in the business of providing legal services as an advocate. The amount paid and received back is a method of settlement of financial dues and accounts, but does not form part of the taxable value of any services provided or received. The amount so paid at actuals is received by the appellant from the clients subsequently by way of Debit Note;

(b) With regard to RCM on supplies received from unregistered dealers, it was submitted that the companies employed around 30,000 employees across factories and offices spread over towns and cities. The site supervisor incurred these expenses in case of 3-shift workings. The amounts were meagre, and the companies reimbursed them to the appellant. Such reimbursements did not exceed Rs. 5,000 per day. However, the appellant duly remitted the applicable taxes and interest.

(c) Regarding GST under RCM on rent-a-cab, it was submitted that the services were provided by M/s. UM Car Rentals, who submitted invoices with GST at 5%/9%, and the appellant paid them. The appellant was under the bona fide impression that invoices issued by a large cab operator included the tax amount; payment of the invoices to the vendor discharged the RCM liability, and the case did not fall under RCM. The appellant had paid the tax amount once again to avoid litigation.

(d) Regarding the non-reversal of ITC on the written-off amount payable to the vendor under Section 16 of the Act, it was submitted that the transaction was a money transaction and did not fall within the ambit of supply, which the adjudicating authority failed to consider. Hence, the imposition of the penalty is incorrect.

(e) The Appellant has discharged the tax liability along with applicable interest before issuance of the SCN in respect of the issues under consideration. Mere non-declaration of the said transactions in returns cannot, by itself, amount to suppression of facts, and the penalty

(f) The term "suppression", as defined under Explanation 2 to Section 74, sets out four separate instances of non-declaration or non-furnishing of information, including "any other document" furnished under this Act or the rules made thereunder. The appellant maintained its "Books of Account" under Rule 56 of the CGST Rules, 2017, which the Department verified during the audit. The aforesaid Explanation requires the non-declaration or non-furnishing of information in any one of the specified instances. The Appellant satisfies the fourth limb, namely "any other document" furnished under this Act or the rules made thereunder.

(g) Reliance was placed on the decision of the Supreme Court in the case of *Tata Steel Limited Vs. Union of India [(2026) 45 Centax 361]* in support of his contention that imposition of penalty under Section 74 was unjustified;

(7) The learned authorised representative for the revenue, Mr Prabhat Kumar, Assistant Commissioner, relied on the Appellate Authority's findings and prayed for dismissal of the appeal. The learned authorised representative submitted that the payment was made only pursuant to audit verification and having regard to the meaning of "suppression" as defined in explanation 2 to Section 74, the invocation of Section 74 was justified.

Findings

(8) Heard the rival contentions and perused the connected records. The following question arises for our consideration: ***whether the imposition of the penalty under Section 74 of the Central Goods and Services Tax Act, 2017, is justified on the facts and circumstances of the case?***

(9) The question for consideration is not merely whether the appellant omitted to discharge the tax liability within the prescribed time, but whether the circumstances of the omission satisfy the statutory requirements for invoking Section 74(1) of the CGST Act.

(10) Section 73 applies in cases where tax has not been paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or wilful mis-statement or suppression of facts. Section 74 applies where tax was not paid or short paid, or erroneously refunded, or ITC wrongly availed or utilised due to fraud or wilful mis-statement or suppression of facts on the part of the registered taxpayer.

(11) The appellant's stand is that the penalty was not warranted because the payment was made before the issue of the show cause notice and the information was available in the books of account. Moreover, the appellant had no intention to evade taxes. The authorities' stand is that the payment was made pursuant to the investigation and, therefore, Section 74 was rightly invoked. The appellant did not disclose the value of supplies in the return; hence, Section 74(1) was attracted.

(12) Section 73(5) and Section 74(5) permit the person chargeable with tax to pay the tax along with interest before issue of a show cause notice. Both the provisions adopt the same language – "*on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment*". The term "the tax as ascertained by the proper officer" recognises the fact that the proper officer can point out the omission during an audit or verification. The invocation of Section 73 or Section 74 depends on the existence of the intention to evade tax payment.

(13) The term "suppression" is defined in Explanation 2 in section 74 as meaning non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer. The non-disclosure is not restricted only to returns but also extends to any statement, report or any other document furnished under the Act or the rules or in the event of failure to furnish any information to the proper officer. The authorities confirmed the levy under Section 74(1) solely on the ground that the return did not include the value of supplies. The mere omission in a statutory return, or the subsequent payment of tax pursuant to audit verification, cannot, without examining the relevant circumstances, be treated as conclusive of the ingredients of Section 74(1). Similarly, the mere fact that a transaction or its particulars are recorded in the books of account cannot, by itself, conclusively establish either the absence or the existence of suppression. For instance, recording transactions involving the issue of invoices without an actual supply of goods in the books of account does not, by itself, establish compliance with the statutory disclosure requirements or prevent the invocation of Section 74

(14) The Supreme Court, in *(2026) 45 Centax 361 (Tata Steel Limited v. Union of India)*, laid down the principles to keep in mind when invoking Section 74. The Court held as follows:

"11. At the outset, we have to notice that the proceedings under Section 73/74 can be initiated only on the satisfaction of the Assessing Officer. Even if observations/objections are made on audit, the Assessing Officer should enter his satisfaction before a notice is issued. Insofar as a notice under Section 74, the satisfaction should be not only of mismatch of ITC and short payment of tax having occurred, as is alleged in this case, the Officer should be satisfied that either fraud/willful misrepresentation/suppression had led to such mismatch or short payment of tax."

"14. It is not mere lip service to the provisions that is intended when an extended limitation period is provided for recovering an excess benefit availed, short payment or excess refund, from the assessee, especially when the allegation is of fraud/willful misrepresentation/suppression. The foundational facts which led to the inference arrived at of fraud/willful misrepresentation/ suppression should be evident from the notice itself. The mere employment of such words will not indicate an application of mind, upon which alone the satisfaction can be arrived at. The words are not to be mechanically recited in the notice to enable recovery outside the normal limitation provided under the statute".

(15) The Supreme Court has made it clear that even in the case of ITC mismatch, the Adjudicating Authority must be satisfied that the mismatch arose from fraud, wilful mis-statement, or suppression of facts. The mere use of words such as "fraud," "wilful mis-statement," or "suppression" is not enough to confer jurisdiction on the adjudicating authority to invoke the extended period of limitation. The Central Board of Indirect Taxes and Customs had also clarified in Instruction No. 05/2023 – GST dated 13.12.2023, making it clear that *only in the cases where the investigation indicates that there is material evidence of fraud or wilful misstatement or suppression of fact to evade tax on the part of the taxpayer, provisions of section 74(1) of CGST Act may be invoked for issuance of show cause notice, and such evidence should also be made a part of the show cause notice".*

(16) The appellant had submitted reasons for non-payment of tax. The authorities did not consider the reasons. Regarding RCM on legal and sponsorship services, the appellant submitted that it did not receive the services directly. The services were provided directly to its clients. They paid on behalf of the clients. Because it did not receive the services directly, it did not include them in the returns. Without considering the explanation, the proper officer imposed the penalty. The appellant had reasonable cause for not paying the tax within the prescribed period; therefore, there was no intention to evade tax payment.

(17) Regarding RCM from unregistered persons, the payments relate to expenses incurred by site supervisors in connection with 30,000 manpower supplied to various organisations. The site supervisors who handle the Appellant's operations are reimbursed for these expenses. The expenses are meagre and less than Rs. 5000/-. Notification No. 8/2017 – Central Tax (rate) dated 28.6.17 was issued granting exemption from payment of tax under Section 9(4) of the Act in case of supplies received from unregistered persons, provided the value of the supplies received from any or all the unregistered persons does not exceed Rs. 5000/- in a day. This monetary limit was removed vide notification no. 38/2017 – Central Tax (rate) dated 13.10.2017. The exemption was finally cancelled vide notification no. 01/2019-Central Tax (rate) dated 29.1.2019 with effect from 1.2.2019. The authorities did not verify the explanation before passing the order, yet proceeded to impose a penalty under Section 74(1) of the Act. We are of the view that levy of penalty under Section 74(1) is unjustified.

(18) Regarding RCM on rent-a-cab services, the appellant explained that they had received services from M/s. UM Car Rentals, submitted invoices with GST at 5%/9%, and the appellant paid them. The appellant was under the bona fide impression that invoices issued by a large cab operator included the tax amount; that paying the invoices to the vendor discharged the RCM liability; and that the case did not fall under RCM. The appellant had paid the tax amount once again to avoid litigation. The appellant took this stand in the

reply to the show-cause notice, but the authorities did not consider it. The appellant had a reasonable cause for not making the payment; hence, the levy of penalty under Section 74(1) is unjustified.

(19) Regarding the non-reversal of ITC on the written-off amount payable to the vendor under Section 16 of the Act, it was submitted that the transaction was a money transaction and did not fall within the ambit of supply, which the adjudicating authority failed to consider. The information is available in the records made available to the authorities. The appellant failed to pay the tax within the prescribed period but had no intention to evade tax.

(20) To reiterate, Section 74 was invoked only because the returns did not include the value of supplies. The authorities did not consider the appellant's explanations. The authorities alleged non-compliance only after verifying the appellant's records. The authorities did not dispute the genuineness of the records. The appellant had no intention to evade tax. The penalty imposed under Section 74(1) does not meet the test laid down by the Supreme Court in *Tata Steel* (supra) and the Board's instructions (cited supra). We hold that the imposition of penalty under Section 74(1) is unjustified and hence is set-aside.

Order

(i) The appeal is allowed.

(ii) The order of the Additional Commissioner (Appeals), Mysuru passed in order-in-appeal No. MYS-ADC/ JC(A)-262 /2025-26-GST dated 02.12.2025 is set-aside and the penalty cancelled.

(Sudha Koka)

(Srikanth Venkatraman)

Dated: 28.10.2026