GSTAT

State Bench Chandigarh

Division Bench Court No. Court I

APL/58/CHD/2026

TWINKLE PAPERS PVT.LTD. **.....Appellant**

Versus

COMMISSIONER, CGST COMMISSIONERATE, LUDHIANA & ORS. **.....Respondent**

Quorum

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

Counsel for Appellant
MS. PRIYANKA SINGLA, ADVOCATE

Counsel for Respondent
SH. VEER SINGH MEENA, AR
ALONG WITH SMT. VAISHALI CHANDHOK AND SMT. BALVINDER KAUR, SUPERINTENDENTS

Form GST APL-04A

[See rules 113(1) & 115]

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

whether remand order : Yes

Order reference no. : ZN030281026000374H **Date of order :** 28/10/2026

1.	GSTIN/Temporary ID/UIN - 03AAAFT5812D1ZR	
2.	Appeal Case Reference no. - APL/58/CHD/2026	Date - 17/06/2026
3.	Name of the appellant - TWINKLE PAPERS PVT.LTD. , aslam@twinklepapers.com , 9815533333	
4.	Name of the respondant - 1. CGST Commte Chandigarh , prcommr-chd@gov.in , 9810441570 2. Commissioner	
5.	Order appealed against - AD030623001926D	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - ZD030924013152X	Date - 26/09/2024

6.	Personal Hearing - 28/10/2026 13/10/2026 22/09/2026
7.	Order in brief - In view of the foregoing discussion and analysis, we order that: (i) The Appellant is not entitled to the benefit of concessional rate of tax under Notification No. 41/2017 - Integrated Tax (Rate) dated 23.10.2017. (ii) Demand of tax and imposition of penalty under Section 74 of the CGST Act is upheld, in so far as the supplies made to M/s Chandni Overseas Private Limited are concerned. (iii) Demand of tax and imposition of penalty under Section 74 of the CGST Act is not sustainable, in so far as the supplies made to M/s Transwave Exports and M/s Jeetsons Exports Pvt. Ltd. are concerned. (iv) For the supplies made to M/s Transwave Exports and M/s Jeetsons Exports Pvt. Ltd., the proper officer will determine the tax payable under sub-section 75(2) of the CGST Act deeming as if the show cause notice was issued under sub-section 73(1) of the CGST Act. (v) For the supplies made to M/s Transwave Exports and M/s Jeetsons Exports Pvt. Ltd., the Appellant will also be liable to pay penalty as per the provisions of Section 73 of the CGST Act. (vi) The Appellant is entitled to the cum-tax benefit in terms of sub-section 15(2) of the CGST Act read with Rule 35 of the CGST Rules, 2017, and the amount of tax payable by the Appellant will be re-determined accordingly. The appeal is upheld partially and the Impugned Order is modified, to the above extent.

Summary of Order

8.	If demand order then whether demand quantified: No

9.	For Other orders and Demand orders which are not quantified:		
Issues as raised by proper officer		Issues as determined by Appellate/Revisional authority	Order by GST Appellate Tribunal
Short or non-payment of tax		Tax amount upheld by Appellate Authority is 8,06,803/-	
10.	If remanded with directions:		
	a) Remanded to: Adjudicating Authority		
	b) Directions subject to which remanded, if any: In view of the foregoing discussion and analysis, we order that: (i) The Appellant is not entitled to the benefit of concessional rate of tax under Notification No. 41/2017 - Integrated Tax (Rate) dated 23.10.2017. (ii) Demand of tax and imposition of penalty under Section 74 of the CGST Act is upheld, in so far as the supplies made to M/s Chandni Overseas Private Limited are concerned. (iii) Demand of tax and imposition of penalty under Section 74 of the CGST Act is not sustainable, in so far as the supplies made to M/s Transwave Exports and M/s Jeetsons Exports Pvt. Ltd. are concerned. (iv) For the supplies made to M/s Transwave Exports and M/s Jeetsons Exports Pvt. Ltd., the proper officer will determine the tax payable under sub-section 75(2) of the CGST Act deeming as if the show cause notice was issued under sub-section 73(1) of the CGST Act. (v) For the supplies made to M/s Transwave Exports and M/s Jeetsons Exports Pvt. Ltd., the Appellant will also be liable to pay penalty as per the provisions of Section 73 of the CGST Act. (vi) The Appellant is entitled to the cum-tax benefit in terms of sub-section 15(2) of the CGST Act read with Rule 35 of the CGST Rules, 2017, and the amount of tax payable by the Appellant will be re-determined accordingly. The appeal is upheld partially and the Impugned Order is modified, to the above extent.		

Place :CHANDIGARH

Signature

Date : 28.10.2026

CHANDIGARH Jatinder Pal Singh

Designation : Member

Jurisdiction :Chandigarh

ORDER

The present appeal has been filed by M/s Twinkle Papers Private Limited ("the Appellant") against Order-in-Appeal No. LUD-GST-001-APP-116/2024 dated 22.04.2024 ("the Impugned Order") passed by the Additional Commissioner (Appeals), CGST, Ludhiana ("the Appellate Authority"). Vide the Impugned Order, the Ld. Appellate Authority has upheld demand and recovery of tax amounting to Rs. 8,06,803/- (CGST Rs. 3,09,600/-, SGST Rs. 3,09,600/- & Rs. 1,87,603/- IGST) for the period from April 2018 to March 2019, under Section 74 of the Central GST Act, 2017 ("the CGST Act") / the Punjab GST Act, 2017 ("the PGST Act") read with Section 20 of the Integrated GST Act, 2017 ("the IGST Act"), along with recovery of interest under Section 50 of the CGST Act/PGST Act read with Section 20 of the IGST Act. The Appellate Authority has also upheld imposition of penalty equal to the tax demand (i.e. amounting to Rs. 8,06,803/-) on the Appellant under Section 74 of the CGST Act/PGST Act read with Section 20 of the IGST Act.

BRIEF FACTS

2. The Appellant, an entity registered under GST laws with GSTIN 03AAAFT5812D1ZR, is engaged in the supply of HDPE Barrels/Drums falling under Heading 3923. The tax demand relates to HDPE Drums supplied by the Appellant claiming concessional rate of IGST @ 0.1% under Notification No. 41/2017 - Integrated Tax (Rate) dated 23.10.2017 ("the Notification dated 23.10.2017"), to three parties: (i) M/s Transwave Exports, Hyderabad; (ii) M/s Jeetsons Exports Pvt. Ltd., Pune; (iii) M/s Chandni Overseas Private Limited, West Bengal.

3. Regarding the supplies effected to M/s Transwave Exports and M/s Jeetsons Exports Pvt. Ltd., the Appellant has claimed that intimations were filed with the jurisdictional GST authorities that they had received purchase orders for supply of HDPE drums from these two parties, and that the HDPE drums would be dispatched from the Appellant's factory to M/s Patiala Distillers and Manufacturing Ltd., Patiala and Haryana Distillery Ltd., Yamuna Nagar. As regards HDPE drums supplied to M/s Chandni Overseas Pvt. Ltd. under one invoice (Invoice No. B1487 dated 22.09.2018), the Appellant has stated at Para 6 of the Appeal Memo that no such intimation was submitted to the jurisdictional GST authorities.

4. An intimation of tax ascertained as being payable was issued to the Appellant by the Superintendent, CGST, Malerkotla vide Form GST DRC-01A dated 04.04.2022, which

ascertained tax amount of Rs. 8,06,803/- as payable by the Appellant. A Show Cause Notice dated 14.05.2022 ("the SCN") was then issued to the Appellant, proposing to demand tax amounting to Rs. 8,06,803/- under Section 74 of the CGST Act / PGST Act, read with Section 20 of the IGST Act, along with interest under Section 50 of the CGST Act / PGST Act, and seeking to impose equivalent penalty under Section 74 and Section 122(2)(b) of the CGST Act / PGST Act.

5. In the SCN, it was alleged that the IGST rate of 0.1% under Notification No. 41/2017-Integrated Tax (Rate) was applicable to supply of goods by the registered supplier to the registered recipient subject to the condition that the registered recipient shall move the said goods from the place of the registered supplier directly to: (i) the Port, Inland Container Deport ("ICD"), Airport or Land Customs Station ("LCS"); or (ii) directly to a registered warehouse, from where the said goods shall move to the Port, ICD, Airport or LCS from where the said goods are to be exported. It was further alleged that perusal of the documents filed by the Appellant indicated that the goods cleared by the Appellant had not moved directly to the port from where the said goods were to be exported. Accordingly, the conditions laid down in the said Notification did not appear to have been fulfilled. It was also alleged that the goods cleared from the registered premises of the Appellant were HDPE barrels / drums falling under HSN 3923, which were subsequently filled with Extra Neutral Alcohol ("ENA") falling under HSN 22071099. Accordingly, the exported goods were ultimately ENA, and thus there was a mis-declaration on the Appellant's part with intent to avail undue benefit of the Notification dated 23.10.2017 and evade payment of tax. Hence, invoking Section 74 of the CGST Act, it was alleged in the SCN that the Appellant was liable to pay GST @ 18%.

6. The Appellant filed a reply to the SCN vide letter dated 22.05.2022, denying the allegations levelled under the SCN. The SCN was adjudicated upon by the Superintendent, CGST, Malerkotla Range ("the Adjudicating Authority"), vide Order-in-Original No. 01/SUPT/GST/Range-MLK/2023 dated 27.03.2023 ("the OIO"). The Adjudicating Authority held that the goods exported by Appellant were not moved directly to a port or registered warehouse, and the goods ultimately exported were ENA. Hence, the conditions of the Notification dated 23.10.2017 were not fulfilled. It was further held that the Appellant had suppressed material facts from the knowledge of the Department as it chose to apply for the benefit of the Notification despite being aware about the goods it was required to export. The Adjudicating Authority dropped the imposition of penalty under Section 122 of the CGST Act.

7. The Appellant challenged the OIO by filing an appeal before the Appellate Authority, which was dismissed by the Appellate Authority vide the Impugned Order dated 22.04.2024. The Ld. Appellate Authority inter alia held that:

(i) The goods were exported from other premises instead of the registered warehouse of the Appellant, and the goods that were ultimately exported were ENA and not HDPE drums. Thus, the Appellant was not eligible for the benefit of the Notification dated 23.10.2017.

(ii) A simultaneous reading of Sections 85, 89 and 94 of the CGST Act established that the recovery of liability is clearly defined under law and the Appellant cannot take recourse to the Income Tax Act and the judgements given thereunder.

8. The Appellant has filed the present appeal against the Impugned Order, on the following grounds:

(i) The Impugned Order is non-speaking and has been passed with a pre-determined mind, and is hence liable to be set aside.

(ii) Denial of the benefit of the Notification dated 23.10.2017 is incorrect, when the substantive condition of export of goods is not in dispute; hence the demand is liable to be set aside.

(iii) Without prejudice to the above, the Appellant is entitled to cum-tax benefit.

(iv) Invocation of Section 74 of the CGST Act is liable to be set aside.

(v) The demand of interest and imposition of penalty are liable to be set aside.

9. The appeal was heard on 22.09.2026, when Ms. Priyanka Singla, Advocate very ably made detailed arguments on the Appellant's behalf. On 13.10.2026, Ms. Singla completed and summarized her arguments. For the Respondent CGST Department, Shri Veer Singh Meena, Ld. AR, assisted by Smt. Vaishali Chandhok and Smt. Balvinder Kaur, Superintendents, reiterated the findings as per the OIO and the Impugned Order. They submitted that the concessional rate of tax was not admissible in the present case, as an essential condition of the Notification dated 23.10.2017 was not fulfilled by the Appellant.

DISCUSSION & ANALYSIS

10. We have given careful consideration to the facts of the case, the documents on record and the respective contentions advanced by both sides. The issues for determination in the present

appeal are as follows:

I. Whether the benefit of the Notification dated 23.10.2017 has been correctly denied on merits

II. Whether invocation of Section 74 is justified in the facts of the case

III. Whether the Impugned Order is liable to be set aside as a non-speaking order

IV. Whether demand of interest and imposition of penalty are justified and sustainable

V. Whether the Appellant is entitled to cum-tax benefit

Issue I: Whether the benefit of the Notification dated 23.10.2017 is admissible on merits

11. On merits, the dispute is regarding whether the Appellant is entitled to the benefit of concessional rate of tax under the Notification dated 23.10.2017 in respect of the supplies in question. The Adjudicating Authority and the Appellate Authority have denied the benefit on the ground that the supplies in question did not fulfill the conditions laid down in condition (vi) in the Notification, in as much the goods were neither moved from the Appellant's premises directly to the Port, ICD, Airport or LCS from where the goods were exported, nor were the goods moved from the Appellant's premises directly to a registered warehouse for further movement to the Port, ICD, Airport or LCS for export.

12. In this regard there is no dispute on facts. Neither before the authorities below nor in the present appeal, has the Appellant contended that the HDPE drums were moved directly from the Appellant's premises to the Port, ICD, Airport or LCS from where the drums were exported, or that the HDPE drums were moved from the Appellant's premises directly to a registered warehouse for further movement to the Port, ICD, Airport or LCS from where the drums were exported. It is an undisputed fact that the HDPE drums were moved from the Appellant's premises to the premises of M/s Patiala Distillers and Manufacturing Ltd., Patiala and Haryana Distillery Ltd., Yamuna Nagar.

13. The Appellant has contended that the benefit of the Notification dated 23.10.2027 is not liable to be denied as the substantive condition of export of the drums has been fulfilled. The Appellant has further contended that the substantive benefit cannot be denied on procedural grounds.

14. Hence, the dispute turns around whether condition (vi) of the said Notification is a substantive condition which is mandatorily required to be fulfilled, or whether the said

condition is procedural in nature non-compliance of which can be ignored for the purpose of the concessional rate under the Notification.

15. In this regard, we are of the view that the terms and provisions of the Notification are very clear, and do not leave much room for interpretation or ambiguity. On a bare reading of the opening Para of the Notification, it is abundantly clear that the concessional rate of tax of 0.1% has been granted subject to fulfilment of the conditions (i) to (ix) enumerated in the Notification. This is clear from the words *"subject to fulfilment of the following conditions, namely:- "* employed in the Notification.

16. Condition (vi), which has not been fulfilled in this case, reads as follows:

"(vi) the registered recipient shall move the said goods from place of registered supplier –

(a) directly to the Port, Inland Container Deport, Airport or Land Customs Station from where the said goods are to be exported; or

(b) directly to a registered warehouse from where the said goods shall be moved to the Port, Inland Container Deport, Airport or Land Customs Station from where the said goods are to be exported;"

17. It is seen that the said condition allows only two options, as regards movement of the goods on which the concessional rate of tax is claimed. The registered recipient is required to move the goods in question from the place of the registered supplier (i.e. the supplier who claims the concessional rate of tax under the Notification) either: (a) directly to the port of export (Port / ICD / Airport / LCS) from where the goods are to be exported; or (b) directly to a registered warehouse from where the said goods shall be moved to the port of export (the Port / ICD / Airport / LCS) from where the said goods are to be exported.

18. It is significant to note that the word "directly" has been employed in both clauses (a) and (b) of condition (vi). Usage of this word clearly indicates that an 'indirect' movement is not permitted. Hence, if the goods are moved by the registered supplier to the premises of a third party, from where the goods are subsequently moved to the port of export, the benefit of the Notification is not admissible. Again, if the goods are moved by the registered supplier to the premises of a third party, from where the goods are subsequently moved to a registered warehouse for further movement to the port of export, the benefit of the Notification is not admissible.

19. It is also important to note that the said condition (vi) also uses the word "shall". It is a well-settled rule of statutory interpretation that usage of the word "shall" ordinarily indicates that the relevant provision or condition is mandatory rather than directory in nature.

20. In any case, we find that further discussion and analysis on this aspect is not necessary, in view of the judgment and order dated 11.03.2026 rendered by the Hon'ble Karnataka High Court in *M/s Time Technoplast Ltd. vs. The Union of India 2026 (3) TMI 899*. The said judgment is squarely applicable to the present case, on facts as well as in law. In that case also, the benefit of the Notification dated 23.10.2017 was claimed in respect of HDPE drums which were sent to a third-party manufacturer of ENA, from where the drums filled with ENA were sent to the port of export

21. The relevant extract from the said judgment is as follows:

"8.3.2 Condition No.(vi) stipulates that the registered recipient shall move the said goods from the place of the registered supplier directly to the Port, Inland Container Depot, Airport or Land Customs Station from where the goods are to be exported. In the alternative, the registered recipient may move the said goods from the place of the registered supplier directly to a registered warehouse, from where the goods shall thereafter be moved to the Port, Inland Container Depot, Airport or Land Customs Station for export.

8.3.3 Condition No.(vii) carves out a limited exception to Condition No.(vi). It provides that where the registered recipient intends to aggregate supplies from multiple registered suppliers and thereafter export the same, the goods from each such registered supplier shall first be moved to a registered warehouse, and upon such aggregation, the registered recipient shall move the goods to the Port, Inland Container Depot, Airport or Land Customs Station from where they shall be exported.

8.4 Paragraph 2 of the Notification deals with disqualification. It provides that if the registered recipient fails to export the said goods within a period of 90 days from the date of issuance of the tax invoice, the registered supplier shall not be eligible for the exemption or the concessional rate of tax under the Notification.

8.5 On a reading of the aforesaid conditions, it is evident that the scheme of the Notification contemplates only two persons, namely, the "registered supplier" and the "registered recipient". The placement of the order for supply of goods must be by the registered recipient, and the supply must be effected by the registered supplier. Further, the goods are required to be moved directly from the place of the registered supplier either to the port, Inland Container Depot, Airport or Land Customs Station for export, or to a registered

warehouse from where they are to be exported. It is this compliance that is in dispute.

8.6 In the case on hand, the exporter is Retail Detailz India Pvt. Ltd., and the goods exported are ethyl alcohol manufactured by the chemical manufacturer. The merchant exporter, who is the registered recipient, placed the order for supply of HDPE drums. However, the place of supply was the premises of the chemical manufacturer engaged in the manufacture of ethyl alcohol. The chemical manufacturer packed the ethyl alcohol in the drums supplied by the registered supplier, namely, the petitioner, and thereafter supplied the same to the merchant exporter, i.e., the registered recipient.

8.7 Condition No.(vi) of the Notification requires that the registered recipient shall move the said goods from the place of the registered supplier. In strict terms, the movement of goods must be from the registered supplier to the registered recipient or to a registered warehouse, as stipulated. The pleadings on record indicate that the supply of goods was made to the premises of the chemical manufacturer at the instance of the registered recipient, namely, the merchant exporter.

8.8 The Notification not only mandates that the order for supply of goods be placed for the purpose of export, but also requires that both the order and the supply be between the registered supplier and the registered recipient. Neither placement of the order nor supply of goods to or by any person other than the registered recipient is contemplated so as to avail the benefit under the Notification.

8.9 We find no ambiguity in the language of the Notification. On a plain reading, the text is clear and unambiguous in prescribing the above requirements

9. As the Minutes of the GST Council, placing on record the background to the issuance of the Notification, have been relied upon, we have examined the same. The recommendation of the GST Council clearly indicates that the supply of goods is to be made to a registered merchant exporter, i.e., the registered recipient.

9.1 Any interpretation placed upon the Notification to the contrary would amount to altering or diluting the stipulated conditions. It is not permissible either to omit any words from the Notification or to read into it words that are not expressly provided. When the Notification grants a concessional rate subject to strict compliance with specified conditions, the question of compliance must be tested strictly in terms of those conditions. In such a case, recourse to external interpretative aids to vary or expand the plain language of the Notification is impermissible."

22. In the said judgment, the Hon'ble High Court has also considered the Minutes of the 22nd GST Council Meeting held on 06.10.2017 to understand the background for issuance of the Notification dated 23.10.2017. The High Court has noted that in so far as merchant exporters are concerned, the GST Council resolved to recommend that:

"(ii) For Merchant Exporters (ME)-

a. Supplies of goods to a ME registered with EPC/Commodity Boards) shall be on payment of nominal 1% GST.

b. Adequate safeguards such as requiring export goods to be aggregated in export warehouses etc. to prevent misuse." (emphasis added)

23. The said judgment was challenged before the Hon'ble Supreme Court. Vide their order dated 07.08.2026 reported at 2026 (8) TMI 586, the Hon'ble Supreme Court held:

"1. We do not find a good ground to interfere with the impugned judgment in exercise of our jurisdiction under Article 136 of the Constitution of India. Accordingly, the special leave petition is dismissed.

2. Pending application(s), if any, shall stand disposed of."

24. In the present appeal, the Appellant has relied upon the Hon'ble Supreme Court's judgment in *Mangalore Chemicals and Fertilizers Ltd. vs. Deputy Commissioner [1991 (55) ELT 437 (S.C.)],* in support of the contention that a distinction has to be drawn between a substantive condition and a procedural condition. The Appellant has argued that the condition of export of goods within a period of 90 days is a substantive condition, and the denial of consequential benefit under the Notification dated 23.10.2017 is not warranted for non-fulfillment of the procedural condition (vi) laid down therein.

25. The judgment in *Mangalore Chemicals and Fertilizers Ltd. (supra)* is of no assistance to the Appellant's case, as the condition regarding movement of the goods directly to the port of export or a registered warehouse has to be interpreted as a substantive condition which is mandatorily required to be satisfied for claiming the benefit of the Notification dated 23.10.2017.

26. We also note that the judgment in *Mangalore Chemicals and Fertilizers Ltd. (supra)* was also cited and relied upon before the Hon'ble Karnataka High Court by the petitioner therein. This is evident from Para 4.3 of the judgment. However, at Para 9.2 of their judgment, the Hon'ble Karnataka High Court cited and followed the judgment of the Constitution Bench of

the Hon'ble Supreme Court in *Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company (2018) 9 SCC 1* to hold that an exemption notification should be interpreted strictly and the burden of proving its applicability would be on the assessee.

27. Furthermore, at Para 9.3 of their judgment, the Hon'ble Karnataka High Court has relied upon the Hon'ble Supreme Court's judgment in *Krishi Upaj Mandi Samiti v. Commissioner of Central Excise and Service Tax, Alwar (2022) 5 SCC 62*, wherein it was held:

"8. The exemption notification should not be liberally construed and beneficiary must fall within the ambit of the exemption and fulfil the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise at all by implication.

8.1. It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. An exception and/or an exempting provision in a taxing statute should be construed strictly and it is not open to the court to ignore the conditions prescribed in the relevant policy and the exemption notifications issued in that regard." *(emphasis supplied)*

28. Accordingly, we hold that the Appellant was not entitled to the benefit of the Notification dated 23.10.2027, and denial of the concessional rate under the said Notification is justified and liable to be sustained.

Issue II: Whether invoking of Section 74 for demand of tax and imposition of penalty is justified

29. To challenge invoking of Section 74 for demand of tax and imposition of penalty, the Appellant has referred to and relied upon the following intimations submitted to the Department:

(i) Letter No. Tppl/2018-19/05 dated 09.08.2018, vide which the Appellant filed a copy of the Purchase Order No. TE-HYD/05/2018-19 placed by M/s Transwave Exports, Hyderabad for supply of 800 drums;

(ii) Letter No. Tppl/2018-19/06 dated 09.08.2018, vide which the Appellant filed a copy of Purchase Order No. JEPL/16 placed by M/s Jeetsons Exports Pvt. Ltd., Pune for supply of 2,000 drums;

(iii) Letter No. Tppl/2018-19/08 dated 16.01.2019, vide which the Appellant filed a copy of Purchase Order No. JEPL/18 placed by M/s. Jeetsons Exports Pvt. Ltd., Pune for supply of 748 drums.

30. As correctly pointed out by the Appellant, the said letters are in fact mentioned in Para 2 of the SCN dated 14.05.2022 issued to the Appellant. What is more, these letters have been made 'Relied Upon Documents' (RUD-1, RUD-2, and RUD-3, respectively) in the said SCN. In Para 2 of the SCN, it is also recorded that: *"They also mentioned that the goods shall be dispatched from their factory to M/s Patiala Distillers and Manufacturing Ltd., Patiala under Purchase order TE-HYD/05/2018-19 & JEPL/16 and in case of purchase order No. Jepl/18 the goods shall move to Haryana Distillery Ltd. Yamuna Nagar."*

31. We have perused the copies of these three letters placed on record. The subject is clearly mentioned in each of these letters as follows: "*Re: Supply of Goods (Deemed export) Notification no. 4l/2017 integrated tax (Rate) Dated 23.10.2017"*. Furthermore, in the second para of two letters, it is clearly stated that the goods shall be dispatched from the Appellant's factory to Patiala Distillers and Manufacturing Ltd. Patiala. In the second para of the third letter, it is clearly stated that the goods shall be dispatched from the Appellant's factory to Haryana Distillery Ltd., Yamuna Nagar.

32. In view of these letters, we find that invoking of Section 74 for demand of tax and imposition of penalty is not justified, in so as far as the drums covered by these letters are concerned.

33. The grounds for invoking Section 74 are stated in Paras 6 and 8 of the SCN. In Para 6 of the SCN, it is stated that there appears to be a mis-declaration to avail undue benefit of the Notification and an attempt to evade payment of tax, as the goods supplied by the Noticee were HDPE drums and the goods exported by the exporter were ENA. In Para 8 of the SCN, it is again stated that it appears that the Noticee has made an attempt to evade payment of tax by wrongful availment of the Notification dated 23.10.2017. It is further stated that there appears to be a mis-declaration on the part of the Noticee in as much as they never intimated the department that the goods to be exported are ENA.

34. We find these grounds to be rather specious, as ENA by its very nature as a liquid can only be exported filled in containers such as HDPE drums / barrels. Furthermore, in the copies of Shipping Bills filed with the present appeal, the HDPE drums are clearly mentioned with the numbers thereof. Also, against the entry for "Marks and Nos." in these Shipping Bills, the name of the Appellant is mentioned with the Appellant's invoice number under

which the drums were supplied.

35. Incorrect availment of the benefit of an exemption notification by a taxpayer cannot ipso facto be equated to an attempt to evade tax, unless the ingredients of *"fraud, or any wilful-misstatement or suppression of facts"* laid down in sub-section 74(1) of the CGST Act are established and proved against the Appellant. For Section 74 to be attracted, the non-payment or short-payment must be *"by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax" (emphasis added).*

36. There is a plethora of judicial precedents, including those rendered by the Hon'ble Supreme Court, which clearly enunciate the ingredients for demand of tax and imposition of penalty in cases involving fraud or any wilful-misstatement or suppression of facts to evade tax. It has been consistently held that the words 'wilful' and 'suppression' signify conscious, deliberate and intentional withholding of information with mala fides. Many of those judgments are cited and discussed in the Hon'ble Supreme Court's judgment in the case of *Uniworth Textiles Ltd. vs. CCE Raipur [2013 (288) E.L.T. 161 (S.C.)* relied upon by the Appellant. In this case, as also in the case of *Union of India vs. Ashok Kumar & Ors., (2005) 8 SCC 760* cited by the Appellant, the Hon'ble Supreme Court has held that the burden of proving any form of mala fide lies on the shoulders of the one alleging it. In the present case, we find that this burden has not been discharged by the Revenue adequately.

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

"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."

38. We do not, therefore, find any reason to justify demand of tax and imposition of penalty under Section 74 of the CGST Act, in so far as the supplies made to M/s Transwave Exports and M/s Jeetsons Exports Pvt. Ltd. are concerned. Accordingly, we set aside confirmation of demand and imposition of penalty under Section 74, for the said supplies. The proper officer will determine the tax payable thereon as per sub-section 75(2) of the CGST Act deeming as

if the show cause notice was issued under sub-section 73(1) of the CGST Act.

39. In Para 3 of the SCN, it is stated that the Appellant had also issued Invoice No. B1487 dated 22.09.2018 for supply of drums having taxable value of Rs. 2,04,480/- at concessional rate of tax of 0.1% to M/s. Chandni Overseas Private Limited, West Bengal, for which no intimation was submitted. In Para 8 of the SCN, it is stated that for this supply the Noticee has not fulfilled the condition regarding intimation regarding purchase order or supply invoices to the jurisdictional tax officer for availing the benefit of the said Notification. This allegation has not been contested or controverted by the Appellant before the authorities below. In fact, in Para 6 of the Appeal Memo, the Appellant has accepted that this Invoice was issued for supply to M/s Chandni Overseas Private Limited, for which no intimation was submitted. Therefore, invoking of Section 74 is justified and warranted, in so far as the demand of tax and imposition of penalty for the goods covered by this Invoice is concerned.

Issue III: Whether the Impugned Order is liable to be quashed as a non-speaking order

40. The Appellant has contended that the Impugned Order is non-speaking and is liable to be set aside for gross violation of the principles of natural justice, as the Appellate Authority has completely failed to give any finding in respect of the submissions made by the Appellant.

41. In Para 6 of the Impugned Order, the Ld. Appellate Authority has discussed and given his clear finding regarding whether the Appellant is entitled to the benefit of concessional rate of tax under the Notification dated 23.10.2017. The Ld. Appellate Authority has held that the Appellant is not eligible for the said benefit. The Ld. Appellate Authority has also recorded reasons for arriving at this conclusion. He has noted that the conditions of the Notification were not fulfilled as the HDPE drums were moved by the Appellant from its premises to M/s Patiala Distilleries & Manufacturing Ltd, Patiala and M/s Haryana Distillery Ltd, Yamuna Nagar. Hence, the Appellant's contention that the Impugned Order is a non-speaking order is without merit in so far as the admissibility of the concessional tax rate under the Notification is concerned.

42. However, the contention that the Impugned Order is non-speaking has some force, though only to the extent that the Impugned Order is utterly bereft and devoid of any discussion or findings regarding whether invoking of Section 74 is warranted in this case. The Appellant is correct in contending that the Appellate Authority has not dealt with the Appellant's submissions that the ingredients laid down under Section 74 were not satisfied in the present case.

Issue IV: Whether demand of interest & imposition of penalty is justified

43. Regarding the liability to pay interest under Section 50 of the CGST Act on the amount of tax determined as payable, we find that the law is well settled on this issue, and that interest will be payable under Section 50 on the tax determined as payable. Section 50 clearly stipulates that 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 interest at the rate notified by the Government on the recommendations of the GST Council.

44. It is a well-settled position in law that interest is compensatory in character and is payable when an assessee has not paid or has short paid any tax as and when it is due and payable. As held by the Hon'ble Supreme Court in *M/s Pratibha Processors Vs. UOI [1996 (88) ELT 12 (SC)*, interest is compensatory in character and is imposed on an assessee who has withheld any tax as and when it is due and payable. The Hon'ble Supreme Court held that levy of interest is geared to the actual amount of tax withheld and the extent of the delay in paying the tax on the due date.

45. In *Indodan Industries Ltd. Versus State of UP. and others 2009 (10) TMI 516*, the Hon'ble Supreme Court has held that interest is compensatory in nature in the sense that when the assessee pays tax after it becomes due, the presumption is that the Department has lost the revenue during the interregnum period (the date when the tax became due and the date on which the tax is paid). The assessee enjoys that amount during the said period. It is in this sense that interest is compensatory in nature and in order to recover the lost revenue, the levy of interest is contemplated.

46. As regards penalty, we have held that invoking of Section 74 for demand of tax and imposition of penalty is not sustainable, for the supplies made to M/s Transwave Exports and M/s Jeetsons Exports Pvt. Ltd. However, if any amount is determined as payable under Section 73 of the CGST Act in respect of these supplies, penalty equivalent to ten percent of the tax will also be payable under sub-section 73(9). From the provisions of Section 73, it is abundantly clear that the said section is applicable precisely where any tax has not been paid or short paid for any reason other than fraud or any willful-misstatement or suppression of facts. Hence, imposition of penalty equivalent to ten percent of the tax will also be attracted under sub-section 73(9), if any tax is determined as payable under Section 73.

Issue V: Whether the Appellant is entitled to cum-tax benefit

47. In this regard, we hold that the Appellant will be entitled to the cum-tax benefit in terms of Section 15(2) of the CGST Act read with Rule 35 of the CGST Rules, 2017. The amount of tax payable by the Appellant is liable to be re-determined accordingly.

CONCLUSION AND ORDER

48. In view of the foregoing discussion and analysis, we order that:

(i) The Appellant is not entitled to the benefit of concessional rate of tax under Notification No. 41/2017 - Integrated Tax (Rate) dated 23.10.2017.

(ii) Demand of tax and imposition of penalty under Section 74 of the CGST Act is upheld, in so far as the supplies made to M/s Chandni Overseas Private Limited are concerned.

(iii) Demand of tax and imposition of penalty under Section 74 of the CGST Act is not sustainable, in so far as the supplies made to M/s Transwave Exports and M/s Jeetsons Exports Pvt. Ltd. are concerned.

(iv) For the supplies made to M/s Transwave Exports and M/s Jeetsons Exports Pvt. Ltd., the proper officer will determine the tax payable under sub-section 75(2) of the CGST Act deeming as if the show cause notice was issued under sub-section 73(1) of the CGST Act.

(v) For the supplies made to M/s Transwave Exports and M/s Jeetsons Exports Pvt. Ltd., the Appellant will also be liable to pay penalty as per the provisions of Section 73 of the CGST Act.

(vi) The Appellant is entitled to the cum-tax benefit in terms of sub-section 15(2) of the CGST Act read with Rule 35 of the CGST Rules, 2017, and the amount of tax payable by the Appellant will be re-determined accordingly.

49. The appeal is upheld partially and the Impugned Order is modified, to the above extent.

(Jatinder Pal Singh)

(Pradeep Kumar Goel)

Dated: 28.10.2026