GSTAT

State Bench Cuttack

Court No. Court I

APL/4/CTT/2026

PRIYA GUPTA **.....Appellant**

Versus

AVAY VINCENT MINZ, THE JOINT COMMISSIONER OF STATE TAX, O/O THE ADDITIONAL COMMISSION OF CT & GST SUNDARGARH ROURKELA & ORS. **.....Respondent**

Quorum

Hon'ble Suchismita Misra, Member(Judicial)
Hon'ble Ranjan Kumar Sahoo, Member (Technical)

Counsel for Appellant	**Counsel for Respondent**
MANISHA AGGARWAL, ADVOCATE	ANAND DAS, ADVOCATE

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. : ZA210271026000056H **Date of order :** 28/10/2026

1.	GSTIN/Temporary ID/UIN - 21ABDPG9324M1ZQ	
2.	Appeal Case Reference no. - APL/4/CTT/2026	Date - 14/01/2026
3.	Name of the appellant - PRIYA GUPTA , nidhiind1@gmail.com , 9438063616	
4.	Name of the respondent - 1. Commissionerate of CT GST , sunil.barik@odisha.gov.in , 8895447232 2. Avay Vincent Minz	

5.	Order appealed against - AD210822008400U	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - ZD210724030364T	Date - 31/07/2024
6.	Personal Hearing - 28/10/2026 29/09/2026 08/09/2026 24/08/2026 05/08/2026	
7.	Status of Order under Appeal - Reject - Order under Appeal is annulled	
8.	Order in brief – The notice under Section 74 of CGST/OGST Act was found unsustainable. The orders of the original adjudicating authority and the first Appellate Authority are quashed and set aside, with consequential benefit to the Appellant. The proper officer shall determine the issue of availability of input tax credit, if any, deeming the notice issued under Section 74(1) of the CGST/OGST Act to be a notice issued under 73(1) in accordance with Section 75(2) of the Act.	
	Summary of Order	
9.	If demand order then whether demand quantified: No	

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
Denied input tax credit, imposed penalty and demanded interest	Upheld the order of the Adjudicating authority.	Quashed both the original and Appellate orders, with consequential benefit to the Appellant. Ordered Section 74 notice to be deemed as Section 73 notice and proper officer to determine input tax credit eligibility as per law.

ORDER

Per: Shri Ranjan Kumar Sahoo, Technical Member

1.The present appeal has been filed by the Appellant Smt. Priya Gupta under Section 112 of the CGST/OGST Act, 2017 challenging the order passed by the first Appellate Authority dated 31.07.2024. The appellate order has confirmed disallowance of input tax credit of Rs.8,95,252/, demand of interest of Rs.9,15,364/- and penalty of Rs.8,95,252/-. The appeal is seeking to set aside the said order.

FACTUAL MATRIX:

2. The Appellant is engaged in the manufacture of ferrous waste, sheet piling of iron or steel, tubes, pipes and hollow profiles, of cast iron. On the basis of Tax Evasion report of the Respondent department, it was alleged that the tax payer had availed and utilized input tax credit (ITC) amounting to a sum of Rs.8,95,252/- passed on by non-existing business entity M/s Annapurna Enterprises, having GSTIN-21AUGPS4997L1ZX (the supplier) during the tax period January 2018. The non-existent supplier had filed the statement of outward supply in GSTR-I which also included some supply transactions with the Appellant, who availed input tax credit of Rs.8,95,252/- and claimed in GSTR-3B on the strength of the allegedly fake invoices and without actual supply of goods, which is not admissible in terms of section 16(2)(b) of CGST /OGST Act (the Act). Accordingly, the Show Cause Notice in Form GST DRC-01 dated 27.12.2021 (SCN) under Section 74 of the Act was issued to the Appellant to pay the tax, interest and applicable penalty. The original adjudicating authority issued demand orders in Form GST DRC-07 dated 31.05.2022. Being aggrieved, the appellant filed appeal before the first Appellate Authority, who by his Order dated 31.07.2024 disallowed the appeal holding that the Appellant has contravened Section 16(2)(b) of the Act. Against the order of the first Appellate Authority, the Appellant has filed the present appeal before the Tribunal.

SUBMISSION ON BEHALF OF THE APPELLANT:

3. The Appellant submitted appeal memorandum and the Learned Counsel representing them made oral and written submissions during personal hearing. They are registered taxpayer, have filed GST returns regularly and maintained proper books of accounts. They procured goods during January 2018 from their regular supplier, M/s. Annapruna Enterprises. The Appellant received the goods, made payments through banking channels and made proper accounting entries supported by delivery documentation. They have availed ITC in accordance with Section 16(1) and 16(2) of the Act. The supplier had issued proper tax invoices as per Section 31 of the Act, filed its GSTR-I for January 2018 and discharged its output tax liability through GSTR- 3B. These invoices were then automatically reflected in the Appellant's GSTR-2A confirming that the subject transaction was genuine.
4. After nearly eighteen months of the subject supplies made to the Appellant, their supplier's GST registration was cancelled by the Respondent department on 06.07.2019. The GST portal showed their supplier was an active and compliant taxpayer during 2018 and much of 2019 and they had no reason to suspect any

irregularity. The cancellation was done without any prior warning to the Appellant or any public disclosure or otherwise by issuing risk alerts. Despite the alleged non-functioning or non-traceability of their supplier, the Respondent did neither issue blocking order under Rule 86A nor suspension order under Rule 21A of the CGST Rules, 2017 (the Rules) or upload on the common GST portal REG-30 as mandated under Rule 25 of the Rules.

5. The cancellation of the supplier's registration cannot retrospectively invalidate genuine transactions of 2018. The Appellant relied on the decision in Suncraft Energy Pvt. Ltd. (Calcutta HC, 2023), Shanti Kiran India Pvt. Ltd. (2023 TIOL) and Singhal Iron Traders v. State of UP (2022) *(no citation)*. Relying on decisions in Arise India (Delhi HC, 2018), Sonam Clock (Calcutta HC, 2022), Eicher Motors (1999), Dai Ichi Karkaria (1999), D.Y. Beathel Enterprises (Madras HC, 2021*) (no citation),* it was contended that ITC cannot be denied to them.
6. The Appellant became aware of any scrutiny by the Respondent department only upon receipt of the SCN, alleging that their supplier was found non-existent at the time of visit of the Respondent's Enforcement wing during 2019. The Respondent sought to deny the ITC availed by the Appellant, but they did not supply a copy of the said report of the Enforcement wing to the Appellant. The Appellant requested for cross-examination of the officers who allegedly found the supplier non-traceable, but the same was not granted, which amounted to a gross violation of principles of natural justice as laid down in Andaman Timber Industries (SC) *(no citation)*.
7. The Respondent invoked Section 74 of the Act in the SCN, which is unwarranted, illegal and void *ab initio*, as there was no allegation of any fraud, wilful misstatement, or suppression on the part of the Appellant. The SCN has not alleged any connivance or collusion on their part. It has neither established that they had knowledge of any wrongdoing by their supplier, nor substantiated any fraudulent conduct by the Appellant. Their supplier's supposed non-existence cannot be stretched to infer fraud on their part. The Appellant relied on the decisions by the Courts in R.S. Industries (2021), Singhal Iron Traders (2022), and D.Y. Beathel (2021) *(no citation)* which held that without explicit proof of connivance, the recipient cannot be penalised under Section 74.
8. The adjudicating authority passed a non-speaking order merely reproducing the allegations in the SCN without following the statutory mandate under Section 75(4) of the Act. The Appellant had filed tax invoices, e-way bills, bank payment proofs, stock records, GSTR- 2A/2B reconciliations, and proof of actual receipt of goods, but these evidences were not examined during adjudication. The Respondent department did not conduct verification of movement of goods, investigation of the supplier's filings from 2005—2019, inquiry at the Appellant's premises, verification of purchase records or stock, transport documents, e-way bills and banking records. The Respondent has sought to retain tax collected from their supplier without refunding or reversing the same, while simultaneously denying ITC to the Appellant resulting in double taxation, contrary to settled law in Mafatlal Industries, Arise India, D.Y. Beathel Enterprises, Singhal Iron Traders, Suncraft Energy, and Shanti Kiran India, Kay Kay Industries (2016) (no citation given***).***
9. The first Appellate Authority passed a non-reasoned order which is a reproduction of the original adjudication order, without analysing the documentary evidence, judicial precedents, or statutory provisions cited by the Appellant in violation of Section 75(6) of the Act. The Appellant relied on decisions by the Courts in Vodafone Essar South Ltd. (2014) and Mohinder Singh Gill (1978) *(no citation)* which held that non-speaking appellate orders are unsustainable.

10. The denial of ITC is arbitrary, contrary to Statutory provisions, unsupported by evidence, and violative of constitutional protections under Articles 14, 19(1)(g), and 300A. It was contended that silence by the Respondent for years has created legitimate expectation by the Appellant, which is recognised in the decided case State of Punjab v. Nestle (2004) and GST cases such as Suncraft Energy (2023) (no citation).
11. The Appellant as a follow up to their arguments during hearing on 29.09.2026, uploaded written submission stating the details of quantity and date wise transportation, stock summary and item and date wise details during the period in question from their Stock item Register. They explained that after the goods were transported by truck to their warehouse, they entered in the stock register on receipt and each sale was then entered in the same register. The ten invoices are traced through transport, stock inward and payment Bill numbers. The truck numbers and quantities are identical in the invoices, the transporter's quantity-wise statement, the stock register and the supplier's ledger. In the stock register each bill is booked as a purchase inward on its invoice date with the same quantity and taxable value. The records maintained by them, the transporter's invoices, the ledgers and the proof of freight payment, establish the physical movement and receipt of the goods discharging the burden of proof under Section 155 of the Act and satisfying the condition under Section 16(2)(b) of the Act. They contended that all these evidences were never investigated or verified by the Respondent. The Appellant prayed that this Tribunal may to take on record and consider the documents produced under Section 112 of the Act.

SUBMISSION ON BEHALF OF THE RESPONDENT:

12. The Respondent department submitted their memorandum of cross-objection and the Learned Counsel for the Respondent made written and oral submissions during hearing. For availing ITC under Section 16(2)(b) of the Act, the Appellant must have actually received the goods, irrespective of whether their supplier possessed a GST registration or whether invoices were uploaded in GSTR-1. Reliance was placed on State of Karnataka v. M/s Ecom Gill Coffee Trading Private Limited, Civil Appeal No.230 of 2023, where the Apex Court held that the burden of proving the correctness of claim of input tax credit lies on the purchasing dealer by establishing actual transaction and physical movement of goods.
13. The Respondent denied that the Appellant had produced before the authorities or even before the Tribunal, any documentary evidence establishing actual movement and physical receipt of the disputed goods despite having been give opportunities. They emphasised that the burden lies on the Appellant to prove the genuineness of transaction to be eligible to credit under Section 155 of the Act. In support, they relied on M/s Malik Traders v. State of U.P., WRITTAX No. - 1237 of 2021 and Trendships Online Services Private Limited v. Commissioner, Commercial Taxes, U.P. WRIT TAX No. - 501 of 2023.
14. The filing of GSTR-1 by the supplier M/s Annapurna Enterprises and reporting of invoices on the GST portal though establishes that such transactions were declared by the supplier, but it does not conclusively prove that the goods covered by such invoices were physically supplied to the Appellant. Reliance was placed on M/s Rajshi Processors, Raebareli v. State of U.P., WRIT TAX No. - 128 of 2024, where it was held that merely because the supplier's GST registration existed on the date of the transaction, it could not be said that the department was bound to allow ITC when subsequent investigation revealed that the supplier itself was non-existent and could not have made any actual supply.

15. The registration of the supplier continues to remain cancelled and has not been revoked. The supplier had not sought revocation of cancellation of their registration. Sufficient opportunity was afforded to the supplier during the course of investigation, but they did not appear in response to the summons. This supports their finding that the said supplier was non-existent and that the transactions in question were not genuine.
16. The Respondent distinguished Shanti Kiran India Pvt. Ltd.and D.Y.Beathel Enterprises (supra) mentioned by the Appellant from the present proceedings. They placed reliance on Maruti Enterprise vs. Union of India (2026) 42 Centax 256 (Guj.)/2026(109) G.S.T.L. 97 (Guj.) [01-05-2026] R/Special Civil Application Nos.18080 of 2023 and M/s Bhandari Scrap Traders vs. Union of India (2026) 44 Centax 356 (S.C.) stating that parity cannot be drawn between the provisions VAT and GST to treat a purchasing dealer under the CGST Act on par with a purported bona fide purchasing dealer under the VAT Act in relation to ITC, when the supplier-dealer fails to pay the requisite tax.
17. The contention regarding non-supply of the investigation report is not sufficient to invalidate the proceedings. The SCN recorded the wilful claim and connivance with the said fake registrant, thereby informing the Appellant of the fraud alleged against it. The Appellant was granted opportunity to furnish clarification under Section 155 of the Act and to appear personally and defend the case. The Appellant was therefore duly informed of the substance of the investigation and the allegations arising therefrom.
18. The submission regarding denial of cross-examination is without merit as no specific request for cross-examination was made. It was contended that the Appellant could claim ITC through documentary evidence relating to the actual movement and receipt of goods. The requirement of cross-examination was not necessary to establish the genuineness of its own transactions.
19. Regarding invocation of Section 74 of the Act, it was submitted that the proper officer found that transactions with a non-existent supplier could not take place without conscious involvement of the Appellant claiming ITC. The Respondent has verified that Plot No. 5/B, Kalunga Industrial Estate, Rourkela had never been allotted to the supplier since 1989, establishing that the supplier was not functioning from its declared place of business. The Appellant availed ITC without establishing actual receipt of goods, provide sufficient basis for invoking the provisions of Section 74 on account of fraud and wilful misstatement/suppression of facts.
20. The reliance placed by the Appellant upon Section 29 and Section 168, Rules 21A, 25 and 86A and the instructions/notifications issued thereunder is misplaced, as these provisions do not dispense with the statutory conditions for availing input tax credit under Section 16 of the Act. The absence of earlier departmental action against the supplier cannot establish the genuineness of the disputed supplies.
21. With respect to above para 11, the Respondent raised objection that no petition has been filed by the Appellant to consider additional evidence that was not produced during original adjudication and first Appellate proceedings. The Tribunal passed ‘daily order’ on 29.09.2026 that the documents in question cannot be incorporated as additional evidence at this stage. The Respondent submitted that if the Tribunal finds the SCN under Section 74 does not stand, then directions may be issued in terms of Section 75(2) for determination of the tax liability by the proper officer deeming the subject notice to have been issued under Section 73 of the Act. The Respondent emailed their written submission incorporating the same, which is taken on record, considering that they were unable to upload on the Portal.

DISCUSSION AND FINDINGS:

22. We have considered the facts on record, the written and rival submissions of the Learned Counsel representing the Appellant and the Respondent. The following issues arise for determination by us in this Appeal:

    i) Whether ITC can be denied to the Appellant solely on the ground that the GST registration of its supplier was cancelled retrospectively on the grounds of its non-existence?

    ii) Whether ITC can be denied without independently examining the genuineness of the supplies and the Appellant's compliance with the applicable conditions under Section 16 of the Act?

    iii) Whether denial of cross examination violates principle of natural justice, where a report of non-existence of supplier has been made the sole basis of denial of ITC?

    iv) Whether notice issued under Section 74 of the Act is a valid notice without foundational facts and without proving fraud, collusion or suppression of fact with the intent to avail ITC?

    v) Whether there is a case to consider the notice under Section 74 to be a deemed notice under Section 73 by virtue of Section 75(2) of the Act?

ISSUE OF RETROSPECTIVE CANCELLATION

23. The Respondent department's primary contention is that the supplier is found non-existent and hence they could not have supplied the goods. Consequently, the Appellant could not have received the same, and hence the ITC is denied to them. Section 29 of the Act deals with cancellation or suspension of registration by the proper officer. The Sub-Section 2 of Section 29 empowers the proper officer to cancel registration, including with retrospective effect, where the statutory circumstances warrant cancellation. Rule 21 of the Rules identifies circumstances in which registration may be liable to cancellation, including specified cases of non-functioning at the declared place of business and issuing invoices without actual supply, subject to the applicable text of the Rule. The Appellant's contention is that they received the goods in January 2018 from their supplier, who had valid GST Registration on the date of supply, supported by invoices. The Respondent department cancelled their supplier's GST registration on 06.07.2019 denying them ITC, simply on the basis of a report of non-existence of the supplier, without conducting any investigation of supply chain.

24. We find from the SCN and the subsequent orders passed by the original adjudicating and the first Appellate authorities that the Respondent department has treated the retrospective cancellation on the basis of a report submitted by their Enforcement wing as conclusive proof of the Appellant's ineligibility to avail ITC. The whole proceedings are on the presumption that since the registration of the supplier has been cancelled retrospectively as it did not exist, the supplies made by them were fake and therefore the Appellant could not have received the goods. The existence of the power to cancel

registration retrospectively does not mean that every consequence of such cancellation can automatically be imposed on every recipient who purchased goods or services from that supplier. It needs thorough investigation of transaction between the supplier and the recipient to arrive at any conclusion.

25. In Himalaya Communication Pvt. Ltd. vs. Union of India (2025) 31 Centax 329 (H.P.)/2025 (99) G.S.T.L. 332 (H.P.) [06-06-2025], the sole ground on which ITC claim had been denied to assessee was that supplier's GST registration had been cancelled with retrospective effect. It was observed in para 2 of the order, which reads as, *"The sole ground on which the input tax credit claimed has been denied to the petitioner is that the supplier GST registration has been cancelled with retrospective effect. However, there is no material on record indicating that either the Assessing Officer or the Appellate Authority has considered whether the transaction in question was genuine and straightaway notice under Section 16(2) of the CGST Act has been issued."* The Respondent therefore cannot deny ITC based on retrospective cancellation of supplier's GST registration, without examining genuineness of transaction. In Jyoti Tar Products Pvt. Ltd. vs. Deputy Commissioner, State Tax, Shibpur Charge (2025) 26 Centax 444 (Cal.)/2025 (95) G.S.T.L. 392 (Cal.) [14-01-2025], an adjudication order was passed under Section 74 of CGST/WBGST Act, 2017 alleging that assessee had claimed input tax credit against supply received from non-existent suppliers whose registration had been cancelled. The Hon'ble Court observed that the adjudicating authority had not dealt with issues as to what would be effect of retrospective cancellation of supplying dealer on ITC claim made by purchasing dealer and the aspect as to whether the purchaser had proved movement of goods.

26. The fact on record is that the supplier had valid VAT and GST registration for over a decade, had paid the required tax on supplies made, issued invoices and submitted statutory returns. The supplier's registration has been cancelled retrospectively does not, without further examination, establish that the recipient never received the goods, that the transaction was fictitious, or that the recipient participated in any wrongdoing. The supplier's misconduct should not automatically be attributed to the recipient without examining the recipient's own transactions and compliance. Therefore, retrospective cancellation of supplier's registration alone cannot be treated as sufficient proof to deny credit to the Appellant without adequate examination by the Respondent department of the underlying transactions and the applicable conditions for availing ITC.

ISSUE OF COMPLIANCE OF STATUTORY CODITIONS UNDER SECTION 16(2) AND BURDEN OF PROOF

27. Having observed that the retrospective cancellation of supplier's registration alone cannot be the sole ground for denial of ITC, we would like to emphasize that the entitlement of the Appellant to avail ITC is subject to strict compliance of requirements of the applicable conditions and restrictions prescribed under the Statute, and that availing ITC is not an absolute right of the Appellant.
28. The relevant extract of Section 16 of the Act governing eligibility to avail and utilise credit reads as below:

"Section 16. Eligibility and conditions for taking input tax credit.-

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]

(b) he has received the goods or services or both.

[Explanation.- For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;]

[(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;]

(c) subject to the provisions of [section 41], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be [paid by him along with interest payable under section 50], in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him [to the supplier] of the amount towards the value of supply of goods or services or both along with tax payable thereon.

……..”

29. Section 16 of the Act stipulates that ITC is available to taxpayers when they meet the requirements which links ITC eligibility to procedural and documentary compliance.

Section 37 deals with furnishing details of outward supplies by registered persons in GSTR-1 electronically. Section 39 deals with the furnishing of GST returns, including GSTR-3B for taxpayers. As per Section 41, a registered person is entitled to avail the eligible self-assessed input tax credit in his return, subject to conditions and restrictions. Section 49 governs the payment of tax, interest, penalty, fees and other amounts by crediting to the electronic cash ledger and how ITC is credited and utilized through the electronic credit ledger. The conditions and restrictions for the purpose of Section 16 have been prescribed under Rule 36 of the Rules, which deals with documentary requirements and conditions for claiming input tax credit, such as tax invoices, debit notes, bills of entry, and ISD documents. The Rule 36 reads as below:

“*Rule 36. Documentary requirements and conditions for claiming input tax credit.-*

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,-

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;

(c) a debit note issued by a supplier in accordance with the provisions of section 34;

(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;

(e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document:

[Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.]

(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts [under section 74].

[(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under subsection (1) of section 37 unless,-

(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 [, as amended in FORM GSTR-1A if any,] or using the invoice furnishing facility; and

(b) the details of [input tax credit in respect of] such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60.]"

30. As per the Section 16(2), no registered person is entitled to ITC unless the prescribed conditions are satisfied such as possession of a tax invoice or other prescribed document, receipt of goods or services, tax charged in respect of such supply having been actually paid to the Government, and furnishing of return by the claimant. Rule 36 of the Rules deals with required documents for availing ITC such as tax invoice, debit note, bill of entry, or other prescribed tax-paying documents. Rule 56 requires maintenance of accounts by the registered person, including records of inward and outward supplies, stock, tax payable and paid, and other business records. Rule 138 and the e-way bill mechanism become relevant where transport of goods is involved. When the recipient claims ITC, the burden to prove eligibility falls primarily on the recipient, who is required to substantiate the claim through appropriate documents and evidence. The relevant Section 155 of the Act governing burden of proof reads as under:

"Section 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."

31. However, it does not mean that the department can reject the claim merely by pointing to retrospective cancellation without examining the evidence by simply citing Section 155 of the Act. The question is whether the recipient has produced evidence and whether that evidence establishes compliance with the applicable statutory requirements. The Hon'ble Patna High Court in Gobinda Construction vs. Union of India (2023) 10 Centax 196 (Pat.)/2023 (77) G.S.T.L. 483 (Pat.) [08-09-2023], while dealing with constitutional validity of section 16(4) of the Central Goods and Services Tax Act and section 16(4) of the Bihar Goods and Services Tax Act, 2017, observed in para 23 of the order, which reads as, *"Sub-section (2) of Section 16 is a non obstante clause and clearly states that no registered person shall be entitled to the credit of input tax in respect of any supply of goods or services or both unless he fulfills the requirements and satisfies the existence of other conditions prescribed in clauses (a) to (d) thereof"*. The Hon'ble Court has further observed in para 26 of the order that *"ITC is not unconditional and a registered person becomes entitled to ITC only if the requisite conditions stipulated therein are fulfilled and the restrictions contemplated under sub-section (2) of section 16 do not apply"*.

32. Section 155 speaks of burden of proof as required under statutory conditions. Once the burden of proof is discharged by the Appellant by submitting evidence, it is the prime responsibility of the Respondent to examine whether it satisfies the statutory conditions for availing credit. In Shyamalmay Paul vs. Assistant Commissioner of State Tax (2025) 32 Centax 375 (Cal.) [08-04-2025], the issue under challenge before the Hon'ble Calcutta High Court was that the petitioner claimed ITC in respect of supplies though the supplier was found to be non-existent and non-operational at the declared place of business. While quashing and setting aside the orders of the appellate authority and adjudicating authority, the Court observed in Para 10 of the order, which read as under:

"The original authority as well as the appellate authority only laid emphasis on the documents with regard to payment of freight charges, toll tax receipt etc. without making any endeavour to look into the materials available on records with regard to movement of goods and also failed to enquire into as to whether the requirements for availing Input Tax Credit as prescribed in the statute has been complied with or not. Though the registration of the supplier may have been cancelled subsequently but it is not in dispute that at the relevant point of time such registration was valid. The revenue has also not returned any finding whether the stand of the petitioner that the supplier has complied with the provisions under the GST Act to enable the petitioner to avail of the input tax credit is correct or not before arriving at a finding that the petitioner is liable to pay ineligible ITC claimed and availed by him along with interest and penalty."

33. The Respondent relied on the judgment of Maruti Enterprise, M/s Bhandari Scrap Traders and Ecom Gill Coffee Trading Pvt. Ltd. *(supra)* contending that the burden is on the Appellant to satisfy genuineness of transaction. The Ecom Gill case pertains to denial of ITC under Karnataka VAT as genuineness of purchase transaction was doubted on the ground that selling dealers were either de-registered or had filed nil returns or had denied sale, however the observation of the Apex Court regarding genuineness of transaction to claim ITC resonates under the Act governing GST. The Respondent has relied on various court rulings to justify their case. In Trendships Online Services Private Limited (*supra*), the Court found that the Petitioner apart from tax invoice could not bring any document before taxing authorities in pursuance to show-cause notice to demonstrate that supplier had supplied goods and had deposited tax with Government as mandated under Section 16(2)(c). In Malik Traders (supra), the Court found that the actual physical movement of goods and genuineness of transportation as well as transaction could not be established and no proof of filing of GSTR 2A had been brought on record. In Rajshi Processor Raebarely (*supra*), documentary evidence produced by the petitioner found to be dubious and unworthy of credence and the condition of 'actual receipt of goods' under Section 16(2)(b) was not met. Hence, in the present proceedings, the Respondent denied ITC without conducting any scrutiny of evidence and verification of genuineness of transaction.

34. The fact before us is that the supplier had issued tax invoices as per Section 31, filed GSTR-I for January 2018 and discharged output tax liability through GSTR- 3B to satisfy requirement under Section 16(2)(c) of the Act. The invoices were reflected in the Appellant's GSTR-2A. It is the case of the Appellant that they have filed tax invoices, e-way bills, bank payment proofs, stock records, GSTR- 2A/2B

reconciliations, and have submitted all required documents to prove that the goods were supplied by the supplier and received by them to prove genuineness of transaction, but the Respondent neither verified nor investigated the matter. Per contra, the Respondent Department submits that the Appellant has not produced any document evidencing receipt of goods covered by the invoices as required under Section 16(2)(b) and Section 155 of the Act. The Appellant submitted written statements before this Tribunal additional evidences showing documentary trail in order to prove that they have actually received the goods. These vital evidences should have been submitted before the department for verification at the time of adjudication, or even at the first Appellate stage.

35. Once the Appellant have submitted proof that the transaction is genuine and the goods have been received by them to satisfy Section 16(2)(b) in order to claim ITC, the burden then shifts to the Respondent department to conduct necessary verification to allow or disallow credit. There cannot be superficial or vague approach by the department to arrive at either of the conclusion. In the present proceedings, it is evident from the SCN, the original adjudication order and the first Appellate order that no such verification has been done and ITC has been denied purely on the basis of a report indicating non-existence of the supplier leading to retrospective cancellation of its registration. Even a copy of the said report was not supplied to the Appellant. Such non-speaking orders of the adjudicating and Appellate authorities cannot be sustained in law.

ISSUE OF DENIAL OF CROSS EXAMINATION

36. The Appellant contended that their request for cross examination of officers was denied, which is violation of principle of natural justice, though this was refuted by the Respondent. The Act does not specifically provide for cross-examination during adjudication under Section 73 or Section 74 of the Act. Section 75(4) of the Act mandates that 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. Section 136 of the Act governs the relevancy of statements made and signed before a Gazetted Officer during the course of any inquiry or proceeding. However, neither provision creates any right of cross-examination during adjudication proceedings. The right to cross-examine has been shaped by judicial pronouncements. In Andaman Timber Industries v. Commissioner of Central Excise 2015 (324) E.L.T. 641 (S.C.) [02-09-2015]**,** the Hon'ble Supreme Court held that failing to allow an assessee to cross-examine witnesses whose statements form the basis of an order is a serious flaw that voids the decision. The Apex Court observed in para 6, which reads as under:

"According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected…"

37. Various Court rulings align with the developing line of jurisprudence that the right of cross-examination in GST adjudication is fact-dependent and not absolute. The position

emerging from these decisions is that where the adjudication rests substantially on a witness statement without independent corroboration, denial of cross-examination would vitiate the order. Even though the Respondent relied only on the report of non-existence of the supplier, in disputes involving ITC, the documents speak for itself. Cross-examination is a valuable natural justice safeguard, but it is not a substitute for proving receipt of genuine supplies through primary records. Where the case is built upon documentary evidence such as invoices, e-way bills and transportation records which the assessee can independently rebut, mere denial of cross-examination does not by itself amount to a violation of natural justice. In MNS Enterprises vs. Additional Commissioner of GST and Central Excise, Chennai (2026) 43 Centax 173 (Mad.) [03-06-2026], the relevant extract of the order in para 5 reads as follows:

*"**5.** In quasi-judicial proceedings, the right of cross-examination is not absolute. In the case at hand, the allegation against the respective petitioner was that ITC was availed without a genuine supply being made. This could have been countered by filing an appropriate reply enclosing documents such as invoices, e-way bills, transportation receipts and the like. In this factual context, mere denial of right of cross-examination does not vitiate proceedings against the respective petitioner….."*

38. The allegations relating to fraudulent ITC can be effectively rebutted by the Appellant producing documentary evidence demonstrating genuineness of transaction, which the Appellant claims that they have. Since the present dispute is capable of resolution through independent documentary proof, mere denial of cross-examination to the Appellant does not vitiate the proceedings.

ISSUE OF VALIDITY OF NOTICE ISSUED UNDER SECTION 74

39. Section 74 of the Act governs the determination of tax short-paid, not paid, erroneously refunded, or Input Tax Credit wrongly availed/utilized specifically in cases involving fraud, willful misstatement, or suppression of facts with an intent to evade tax. Sub-section (1) of Section 74 is relevant which reads as:

"Section 74. Determination of tax [, pertaining to the period up to Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful- misstatement or suppression of facts.-

(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 by 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 equivalent to the tax specified in the notice.

……."

40. The foundational fact on which the Respondent has invoked Section 74 of the Act in the SCN is, *'as the supplier is non-existent, the amount of ITC availed by the taxpayer*

under report is fake and fabricated for the above period which attracts proceeding under Section 74 of the OGST Act'. We find that Section 74 has been invoked by the Respondent in a very mechanical manner without indicating grounds and without making any real effort to ascertain the deliberateness on the part of the Appellant to avail the credit of input tax wrongfully. The Appellant has made elaborate submissions that they have followed due diligence in availing credit and had no means to know the misconduct on the part of the supplier, as alleged by the Respondent. It is undisputedly clear that the malafide intent on the part of the Appellant needs to be proved, based on actual evidence, and not on presumption. The onus is on the Respondent to lay out facts and give appropriate and cogent reasoning while alleging fraud or willful misstatement or suppression of facts.

41. The Appellant has placed reliance on M/s G.R. Infra Projects Limited Ratlam Vs The State of Madhya Pradesh & Ors (Civil Appeal No.11277 of 2026 (@ Special Leave Petition (C) No.33594 of 2025). We find Para 10 of the order of Hon'ble Supreme Court is relevant which reads as follows:

"A bare reading of the notice would indicate that but for a bland statement of 'fraud or concealment of facts' nothing is stated as to how fraud was inferred or concealment of facts were detected. In fact, the 'or' employed indicates that even the assessing officer was not sure that the assessment was proceeded by reason of fraud or on the ground of concealment of facts. What is required for the extended time to be applied are the allegations, which lead to the inference of a fraud or the concealment as attempted by the assessee resulting in suppression of facts, should emanate from the notice itself. It cannot be a mechanical use of the words 'fraud, willful misstatement or suppression of facts' without listing out the aspects which persuades the assessing officer to conclude that there has been employed either of these surreptitious devices by the assessee"

42. In Additional Commissioner vs. Safecon Lifesciences Pvt. Ltd. (2026) 45 Centax 232 (S.C.) [17-07-2026], the Hon'ble Supreme Court has dismissed the Revenue's Special Leave Petition affirming the Allahabad High Court ruling in Safecon Lifescience Pvt. Ltd. vs. Additional Commissioner Grade 2 (2025) 35 Centax 152 (All.) [09-09-2025], that a genuine, bona fide purchaser cannot be denied Input Tax Credit or have Section 74 proceedings invoked against them solely due to a supplier's retrospective registration cancellation. Paragraph 15 of the High Court's order reads as follows:

"GST regime has been brought by the Central Government for ease of business in the country but the revenue officers are bend upon to act against the very theme/ intend of it. When it was noticed by the Government that under the garb of Section 74 of the Act various dealers are being harassed, issued a Circular dated 13.12.2023 where it has specifically been stated that proceedings under Section 74 of the Act can be initiated if there is a fraud or willful mis-statement or suppression of fact to evade payment of tax and not otherwise." The Hon'ble Court in para 16 of the order relied on its own decision in Khurja Scrap Trading Company v. Additional Commissioner Grade-2 (Appeal) 2025: AHC 151783 = 2025 (102) G.S.T.L. 107 (All.) = (2025) 34 Centax 280 (All.), where the relevant extract of the Circular was discussed as follows:

"11. Further, paragraph nos. 3.2 & 3.3 of the Circular dated 13.12.2023 read as under:-

"3.2 In this regard, Section 74 (1) of CGST Act reads as follows:

(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 utilized by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax.

3.3. From the perusal of wording of Section 74(1) of CGST Act, it is evident that Section 74(1) can be invoked only in cases where there is a fraud or wilful misstatement or suppression of facts to evade tax on the part of the said taxpayer. Section 74(1) cannot be invoked merely on account of non-payment of GST without specific element of fraud or wilful mis-statement or suppression of facts to evade tax. Therefore, only in the cases where the investigation indicates that there is material evidence of fraud or wilful mis-statement 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. "

12. *On perusal of the aforesaid paragraphs, it is apparent that proceedings under Section 74 can only be invoked when there is a fraud, wilfull mis-statement or suppression of fact to evade tax on the part of the taxpayer. Since the benefit of this circular has been given in view of the judgement of the Apex Court in Suraj Impex (India) Private Limited (supra) and the judgement of this Court in S/s Agrawal Rolling Mills (supra), strict compliance of the Circular is required by the State authorities. The record shows that no finding has been recorded at any stage that there is a fraud or willful mis-statement or suppression of fact to evade payment of tax.*

……"

43. In Tata Steel Ltd. vs. Union of India (2026) 45 Centax 361 (S.C.) [25-08-2026], the Hon'ble Supreme Court has set aside the Order-in-Original consequence to notice issued under Section 74 of the Act. The Court's observation in Para 14 of its order reads as follows:

"*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."*

44. We find that the SCN issued under Section 74 of the Act is without any prima facie verification and without establishing that the Appellant has committed the act intentionally through fraud or willful misstatements or suppression of fact. The Respondent has not discharged the burden of proof to show that these elements exist. The foundational fact on which the SCN is based is vague, mechanical and devoid of any corroboration making the impugned notice invalid. The original adjudicating authority and the first Appellate authority have not travelled the extra mile to examine any evidence, rather they have mechanically passed orders in denying the ITC. We

come to the conclusion that the entire proceedings are unsustainable and the orders are liable to be quashed.

ISSUE OF DEEMED NOTICE UNDER SECTION 75(2)

45. The Respondent seeking recourse to Section 75(2) of the Act, submitted that if the SCN under Section 74 does not stand, then this Tribunal may direct to determine the tax liability deeming the subject notice to have been issued under Section 73 of the Act. We have come to the conclusion in the foregoing para that the SCN issued under Section 74(1) of the Act cannot be sustained for reasons elaborated therein. Now we discuss the issue of applicability of Section 75(2) of the Act, the relevant extract of which is as under:

"Section 75. General provisions relating to determination of tax.-

…….

(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.

……"

46. We now examine whether the provision of Section 75(2) can be applied to present case in the light of time limits prescribed in Section 73 of the Act, the relevant extract of which reads as under:

"Section 73. Determination of tax [, pertaining to the period up to Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.-

(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.

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

…….

(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.

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

……."

47. On this very issue, the Central Board of Indirect Taxes and Customs has issued a Circular 185/17/2022-GST, dated 27 December 2022, clarifying redetermination by the proper officer under Section 73(1), in accordance with the provisions of Section 75(2) of the Act. In cases which do not involve fraud or willful misstatement or suppression of facts to evade tax, Section 73(1) of the Act provides for issuance of a notice by the proper officer for tax not paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized. Section 73(2) of the Act provides that such notice shall be issued at least three months prior to the time limit specified in Section 73(10) for issuance of order. Section 73(9) of the Act stipulates that the proper officer is required to determine the tax, interest and penalty due and issue an order. Section 73(10) of the Act mandates that an order under Section 73(9) is required to be issued by the proper officer within three years from the due date for furnishing of annual return for the financial year. Thus, it logically follows that if the notice issued under Section 74(1) is deemed to have been issued under Section 73(1) of the Act, then the date of issuance of such notice must be within the limitation provided under Section 73(2) of the Act.

48. The Hon'ble Supreme Court's COVID-19 orders and the subsequent notifications concerning Section 73(10) of the Act have effectively extended limitation periods. The Notification 13/2022-Central Tax New Delhi, the 5th July. 2022, extended the time limit specified under sub-section (10) of section 73 for issuance of order under sub section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, in respect of a tax period for the financial year 2017-18, up to the 30th September, 2023. The Notification 09/2023- Central Tax New Delhi, dated the 31st March, 2023 further extended the said time limit for the financial year 2017-18 up to the 31st day of December, 2023. Therefore, the due date for issuance of notice for the financial year 2017-18 under Section 73 (2) is 30th September 2023 (Extended). The Hon'ble Supreme Court in M/s G.R. Infra Projects Limited Ratlam Vs State of Madhya Pradesh & Ors (*supra*) and the Hon'ble Patna High Court in Barhonia Engicon Pvt. Ltd. vs. State of Bihar (2024) 25 Centax 55 (Pat.)/2025 (93) G.S.T.L. 4 (Pat.) [27-11-2024] has extensively examined applicability of COVID time extension of limitation periods. In the present proceedings, the invoices were issued by the supplier during January 2018 which falls in the financial year 2017-18. The notice was issued by the Respondent under Section 74(1) of the Act on 27.12.2021 which is well before the extended date 30th September 2023 under Section 73(2) and within the limitation period prescribed for considering deemed notice under Section 73 of the Act. Accordingly, Section 75(2) of the Act, 2017 is attracted.

49. We, therefore, hold that the eligibility of input tax credit shall be determined by the proper officer in accordance with Section 75(2) of the Act, deeming the SCN dated 27.12.2021 issued under Section 74(1) to have been issued under Section 73(1) of the Act. In undertaking such determination, the proper officer shall consider all evidences including the additional evidence produced by the Appellant regarding genuineness of transaction after affording the Appellant an appropriate opportunity of hearing. The Respondent shall not treat retrospective cancellation of the supplier's registration, by itself, as conclusive proof that the appellant did not receive the goods. The Appellant's entitlement to input tax credit shall be determined on the basis of evidence and applicable statutory conditions.

ORDER

50. In view of the foregoing discussion and findings, we order the following:

i) The order of the adjudicating authority dated 31.05.2022, and the order of the first Appellate authority dated 31.07.2024 are hereby quashed and set aside, with consequential benefit to the Appellant.

ii) In terms of Section 75(2) of the Act, the impugned show cause notice issued under Section 74(1) of the Act will be deemed to be a notice issued under Section 73(1) of the Act, and the proper officer shall determine the issue of availability of input tax credit, if any, in accordance with law.

iii) The appeal is allowed and stands disposed of in aforesaid terms.

Order pronounced in open Court on 28th October 2026.

(Ranjan Kumar Sahoo) (Suchismita Misra)

Dated: 28.10.2026