GSTAT

State Bench Cuttack

Division Bench Court No. Court II

APL/5/CTT/2026

SANJEEB KUMAR DEHURI **.....Appellant**

Versus

MUKESH KUMAR KAKANI, PROPRIETOR, MAIN ROAD
MAIN ROAD JHARSUGUDA ODJHA 768201 **.....Respondent**

Quorum

Hon'ble Suchismita Misra, Member(Judicial)
Hon'ble Ananda Satpathy, Member (Technical)

Counsel for Appellant
MANIKANT

Counsel for Respondent

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. : ZN620271026000060H **Date of order :** 29/10/2026

1.	GSTIN/Temporary ID/UIN - 21ADEPK8556A1ZY	
2.	Appeal Case Reference no. - APL/5/CTT/2026	Date - 14/01/2026
3.	Name of the appellant - Sanjeeb Kumar Dehuri , sanjeeb.dehuri-od@nic.in , 9861084824	
4.	Name of the respondant - 1. MUKESH KUMAR KAKANI , kakanibgs@gmail.com , 9437255559	

5.	Order appealed against - AD210524014663I	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - ZD2101250013937	Date - 02/01/2025
6.	Personal Hearing - 29/10/2026 15/10/2026 08/10/2026 17/09/2026	
7.	Order in brief - Demand has been confirmed under Section 74 for failure to file seven consecutive returns. Pending returns filed a day after enforcement action under Section 67. Net Tax liability to be discharged in cash constitutes 1.30% of the gross liability. No issue raised in regard to taxable turnover, rate of tax or ITC availed in the returns filed after inspection under Section 67. Estimated cash liability amount was reportedly deposited much before the date of visit. Proceeding under Section 74 concluded with NIL demand on account of tax and interest, but penalty levied under Section 74 by treating the filing of the delayed returns after enforcement action, as an act of suppression. In the impugned Appeal Order legality of invoking Section 74 by the adjudicating officer has not been upheld. The impugned order holds it a fit case for invoking Section 73. With such observation, the impugned order proceeded further to determine the penalty amount under Section 73. Appeal preferred seeking restoration of the demand confirmed under Section 74 of the Act. On Appeal, justiciability of invoking of Section 74 was not found due to complete absence of the statutory conditions required to be present for invoking Section 74, thus finding no ground to interfere with the findings in the First Appeal Order to the extent of not upholding invocation of Section 74. The second part requires interference in view of the provisions of Section 75(2) of the Act which confers the jurisdiction for fresh determination of demand under Section 73 on the proper officer, or the Original Adjudicating Authority in this case. In the result, the impugned Appeal order is set aside and remanded back to the Adjudicating Authority for fresh determination of liability, if any, under Section 73 of the Act.	

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

Filing of seven consecutive returns after inspection under Section 67 has been held as suppression. Proceeding completed under Section 74 demanding penalty only and with no demand on account of Tax and Interest.	Mere filing of seven consecutive returns after inspection under Section 67 has not been held as suppression. Invocation of Section 74 was not upheld. Penalty demand modified and determined under Section 73.	Mere filing of seven consecutive returns after inspection under Section 67 has not been held as suppression. Invocation of Section 74 is not found justifiable. As per Section 75(2), once invocation of Section 74 not found justified, demand has to be determined afresh under Section 73 by the Proper Officer only. Appeal set aside and remanded to the Adjudicating Authority for determination of demand afresh under Section 73.
10.	If remanded with directions:	
	a) Remanded to: Adjudicating Authority	
	b) Directions subject to which remanded, if any: To determine afresh liability, if any, under Section 73 of the Act.	

Place :CUTTACK

Date : 29.10.2026

ORDER

Per: Ananda Satpathy (Member Technical, State)

1. The instant Appeal order is being passed under Section 113(1) of the Central Goods and Services Tax Act, 2017, or the Act in short.
2. Appeal has been filed under section 112(3) of the said Act, on the directions of the Commissioner of CGST & Central Excise, Rourkela.
3. The case was listed for hearing on 15-10-2026. Learned Counsel appearing for the Appellant was heard at length and hearing was completed in the absence of the Respondent. The order impugned passed under section 107(11) of the Act, or the OIA in short, the underlying Adjudication order passed under section 74 of the Act, or OIO in short, the grounds of appeal as enumerated in the review note of the Commissioner were examined with reference to the relevant provisions in the Act and the Rules framed there under.
4. As revealed from the submission made in the grounds of appeal and the submissions made in the course of hearing, the OIO, and the OIA, the relevant facts and the background of the case, in brief, are as follows: -

   I. The Respondent, M/s.Bharat Super market, represented by Mukesh Kumar Kakani is registered under the Act for supply of different FMCG goods on retail sale basis.

   II. The Respondent, reportedly, failed to file the periodical Returns required to be filed under the Act for the tax periods(month) from August 2017 to February 2017, on the prescribed due date

III. Due to such prolonged failure on the part of the Respondent to file the aforementioned seven returns, officials of the Anti-Evasion wing of the Commissionerate visited the business premises on 19.04.2018 and reportedly on their persuasion, the pending returns from August 2017 to January 2018 were filed on 20.04.2018. The pending return for February 2018 was filed on 06.06.2018.

IV. Before filing the pending returns, the Respondent, reportedly, estimated the liability of the pending returns to be paid in cash and deposited the estimated cash amount on 31.03.2018, i.e., before the business premises was visited by the officials of the anti-evasion wing.

V. Despite filing of the pending returns with full discharge of the return liability, a show cause notice under section 74 has been issued calling upon the respondent to pay the amount already paid along with the return, together with interest under Section 50(1) of the Act and penalty equal to the amount of tax under Section 74(1) of the Act.

VI. The Respondent did not participate in the adjudication proceeding despite issue of SCN followed by reminders to state his case. Consequently, the following demand was confirmed ex parte, on account of tax, interest and penalty under section 74 (9) of the Act for allegedly suppressing material fact by way of persistently failing to file the periodical returns for more than seven months, thus violating the mandate in Section 39 and hampering the revenue interest of the State.

Tax (CGST+SGST+ Cess)	Interest (CGST+SGST+Cess)	Penalty (CGST+SGST+Cess)	Total (CGST+SGST+Cess)
73,58,992	As per Section 50(1)	73,58,992	1,47,17,984

VII. While confirming the demand as above, an appropriation order has been passed in the OIO to appropriate Rupees 73,58,992/- already paid by the Respondent (at the time of filing the pending returns) implying thereby, there was no effective demand on account of Tax.

VIII. Being aggrieved with by aforementioned penalty demand, the Respondent preferred appeal under section 107(1) of the Act contesting the demand as well as the grounds of demand on account of tax, interest and penalty.

IX. In the OIA passed under section 107(11) of the Act, the demand has been modified to the extent tabulated below by not upholding the maintainability of Section 74 and reducing the penalty amount to ten percent of the tax demand as per Section 73(9) of the Act.

Tax (CGST+SGST)	Interest (CGST+SGST)	Penalty (CGST+SGST)	Total (CGST+SGST)
0	0	7,35,900	7,35,900

X. Being aggrieved with the extent of relief in the OIA, the Appellant preferred the instant appeal seeking restoration of the demand confirmed in the OIO by upholding the legality of invoking Section 74 of the Act for confirming the demand on account of penalty.

5. The Appellant contests the impugned appeal on the following grounds: -

i. That the Additional Commissioner (Appeals) has erred in law and facts by holding that the provisions of Section 74 of the CGST Act were not invokable on the ground that the non-filing of returns and payment of tax after investigation do not constitute "suppression of facts" or "wilful misstatement".

ii. That the adjudicating authority had rightly invoked Section '74, having observed that the respondent failed to file GSTR-3B and GSTR-1 returns for the period August 2017 to February 2018 and discharged tax liabilities only after search was conducted under Section 67. The delayed compliance was clearly a result of departmental action, and not voluntary. In the case of Union of India v. Rajasthan Spinning & Weaving Mills, 2009 (238) E.L.T. 3 (S.C.), the apex court has held that Wilful suppression and evasion exist if the assessee complies with the law only after being caught. In the instant issue, Bharat Super Market filed GSTR-3B and paid GST only after the anti-evasion search, which reflects lack of bona fides and invocation of Section 74 is valid.

iii. That the Additional Commissioner (Appeals) failed to appreciate that the very essence of suppression and intent to evade is established when a taxable person fails to file statutory returns and pays tax only upon being subjected to enforcement action. The timing of tax payment—immediately after search—demonstrates reactive and not bona fide conduct.

iv. That reliance placed by the respondent and the Additional Commissioner (Appeals) on Supreme Court decisions under erstwhile Central Excise laws was misplaced in the context of the GST regime, where filing of returns is central to tax administration, and non-compliance thereof disrupts revenue flows and undermines the self-assessment mechanism. Burden of proof for absence of suppression lies on assessee once defaults are evident. In the case of Kaur & Singh v. CCE (1997 (94) E.L.T. 289 (S.C.),the apex court has held that, when facts such as non-filing are admitted, the burden shifts to assessee to rebut presumption of suppression. In the instant case, Bharat Super Market failed to provide any reasonable explanation for non-compliance for such a long period.

v. That Section 74 Explanation (2) clearly includes cases of non-filing of returns as a species of "suppression', when accompanied by intent to evade, which was rightly presumed in this case considering the tax amount involved (₹73.58 lakhs), the duration (7 months), and the absence of any proactive disclosure or intimation.

vi. That the assertion that tax was deposited in the cash ledger on 31.03.2018 does not absolve the respondent from liability under Section 74, as mere ledger credits without filing returns or disclosing tax liability in GSTR-3B hold no legal validity. No self-assessed tax was reported until after the search.

vii. That the Additional Commissioner (Appeals) exceeded jurisdiction by reclassifying the nature of the offence and reducing penalty under Section 73(9), despite clear facts warranting invocation of Section 74 as correctly done by the original authority. It is settled law that benefit of doubt cannot be extended when suppression of facts is established.

6. In the course of hearing, the Learned AR appearing for the appellant, while reiterating the averments made in the grounds of appeal, drew the attention of the Tribunal to section 75(2) of the Act and contested the modification of the penalty amount by the appellate authority even while section 75(2) of the Act confers such power to determine the demand amount under section 73 of the Act on the proper officer who confirmed the original demand under section 74 of the said Act.

7. No cross objection (CO) has been filed by the Respondent.

8. Examination of the grounds of appeal vis-à-vis the grounds in the impugned OIA and the underlying OIO, reveals the following –

i. The impugned OIA does not uphold the maintainability of invoking 74 of the Act on the only ground of filing of the pending returns and payment of tax after investigation by holding that, such delayed filing of the pending returns after enforcement action, does not constitute "suppression of facts" or "wilful misstatement".

ii. In the grounds of appeal, it is contended that, filing of the pending periodical returns for the periods from Aug, 2017 to February, 2018

after enforcement action by the department is an act of suppression with intent to evade tax.

iii. Filing of returns is central to tax administration, and non-compliance thereof disrupts revenue flows and undermines the self-assessment mechanism.

iv. Burden of proof for absence of suppression lies on the assessee, once defaults are evident.

v. That, Section 74 Explanation (2) clearly includes cases of non-filing of returns as a species of "suppression', when accompanied by intent to evade, which was rightly presumed in this case considering the tax amount involved (₹73.58 lakhs), the duration (7 months), and the absence of any proactive disclosure or intimation.

vi. That, the assertion that tax was deposited in the cash ledger on 31.03.2018 does not absolve the respondent from liability under Section 74, as mere ledger credits without filing returns or disclosing tax liability in GSTR-3B hold no legal validity. No self-assessed tax was reported until after the search

9. For deciding the issues enumerated above, the statutory scheme governing filing of returns including action against non-filers, and determination of tax not paid/short paid for demand and recovery is required to be examined with reference to the facts revealed from the record. As per the statutory scheme,

(i) Section 39 of the Act read with rule 61 of the rules framed there-under, mandates filing of returns by normal registered taxpayers every month in Form GSTR-3B by the twentieth day of the succeeding month.

(ii) In the event of returns not filed by any registered taxpayer, notice is required to be issued under section 46 of the Act in form GSTR-3A.

(iii) If the return in default is not filed after issue of notice under section 46 0f the Act, there is provision for best judgement assessment of the tax liability of the return defaulter for the period of default.

(iv) As evident from the OIO, there is no mention of any such action having been taken as per the statutory scheme for the returns in default for the periods from August, 2017 to February, 2018.

(v) Instead of the statutory process envisaged in the Act and the rules framed there-under to enforce filing of the returns in default, inspection under section 67 of the Act has been preferred and undertaken on 19.04.2018.

(vi) The taxpayer or the respondent in this case, filed the pending returns with full discharge of the return liability. Even interest payable on the amount of liability discharged in cash, has also been reportedly paid as is evident from no allegation on that account.

(vii) In spite of full discharge of the return liability on 20.04.2018, and even while no tax amount apparently remained outstanding for recovery, proceeding under section 74 of the Act has been initiated on 27.12.2022 alleging “wilful mis-statement”, or “suppression of fact” with an intent to evade tax.

(viii) The proceeding so initiated under section 74 of the Act has been concluded *ex parte* by confirming the tax demand as was admitted and paid in the returns filed by the respondent, thus implying that, no

amount remained outstanding for recovery on the day the proceeding was initiated as well as on the day the proceeding was concluded so as to justify any action under section 74 or for that matter, under section 73 as well. However, the maintainability of section 74 being the only disputed issue in the instant appeal, the scope of the appeal is kept limited to that only.

(ix) The relevant portions of Section 74 of the Act, as has been relied upon by the appellant, reads as follows :-

"***Section 74. Determination of tax 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.

xxx xxxx xxx

Explanation 2.- *For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer*."

As evident from the reading of Section 74, as above, it can be invoked only when the amount of tax allegedly not paid is caused by an act of

Fraud, or

Willful mis-statement, or

Suppression

with an intent to evade tax, implying thereby it is mandatory to bring on record, commission of a fraud or instance (s) of willful mis-statement of any specific information, or suppression of any material fact with an intent to evade tax. Now, putting the mandatory conditions required to be fulfilled to the case in hand to examine the sustainability of the proceeding, it is found that-

i. **The taxpayer (the respondent in this case) has to discharge the return liability mandated in section 39 of the Act in time.**

ii. **Nevertheless, the estimated return liability required to be discharged in cash has been deposited on 31.03.2018 whereby the revenue interest of the administration has been safe guarded to**

some extent and the act of such deposit having been occasioned of own volition, it, at least, is inclined towards the good conduct of the taxpayer.

iii. **As evident from the table at Para 6.4 of the OIO, the respondent taxpayer discharged the full return liability amounting to Rs 73,58,992.00 out of which, the amount paid from the cash ledger was Rs 96,012.00 only, which is a miniscule 1.30% of the total liability. It needs no elaboration that, the cash component of the return liability, or the net tax liability, is the amount actually available for appropriation by the Government, on filing of the return.**

iv. **It is further revealed from Para-7 of the OIO that, the interest liability arising out of the delayed discharge of return liability in cash has been paid by the respondent before commencement of the proceeding under section 74 of the Act.**

v. **As revealed from form the impugned OIA, the respondent reportedly deposited Rs** 1,10,673/- [SGST: 85,573 + Late Fee: 25,100] **on 31.03.2018 i.e., on the closing date of the ongoing financial year as per estimated liability to be discharged in cash, thus implying that the revenue interest, as apprehended by the appellant, of the Government is secured.**

vi. **With such deposit before the commencement of any inspection or audit, the intent of the taxpayer of not withholding the net tax liability is well demonstrated. Contrary to the assertion of the**

appellant, the amount deposited under any head of GST goes directly in to the revenue account of the respective Government; whether or not the amount is debited against any return liability or any other liability. With the filing of return by debiting the cash/credit ledger as per the statutory scheme, the return liability is only settled. It has no implication on the credit of the amount deposited in to respective Government account.

vii. **On the statutory front, while no fraud has been alleged, there is allegation of both "willful mis-statement" and "suppression" without specifying either. Nevertheless, from the reading of the grounds of appeal in its totality, it appears to be "suppression" only, as evident from the emphasis laid on Explanation 2 of Section 74 of the Act.**

viii. **On analysis of the Explanation2, as above, it is seen that a case for suppression arises only after filing of the statutory returns and statements as evident from the wordings "***the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required* ***to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder".*** As per the Explanation, information not declared in the return, statement, report or document "furnished under this Act or the rules made thereunder" would amount to suppression, implying thereby, a case for suppression would arise only after the filing of the statutory returns and statements, and only if any

material information that ought to have been declared, has not been declared in the statutory returns and statements filed under the Act. In the case in hand, the return turnover and the return liability having been accepted and taken for determining the tax "allegedly not paid", there is no case for any material information relating to the taxable turnover, or rate of tax, or the amount of ITC availed to be "mis-stated" or "suppressed". Besides, there is no allegation of any information having not been furnished on call. Thus, Explanation 2 of Section totally fails in its applicability to the case in the present appeal.

10.1. On analysis of section 74(1) of the Act and the Explanation-2 thereof, with reference to the relevant facts concerning the conduct of the respondent taxpayer, it is evident that, prior to the commencement of the proceeding under section 74 of the Act, the respondent taxpayer had filed the pending seven returns with full discharge of liability (98.7% out of the ITC ledger) leaving no amount remaining outstanding for recovery. As evident from the underlying OIO, the turnover and liability declared in the returns have been accepted as correct and the same turnover and liability have been reiterated in the OIO. This demonstrates correct declaration of the taxable turn-over, rate of tax and the tax liability, thus negating the allegation of mis-statement, much less willfully. It also negates the allegation of suppression in terms of its elucidation in the Explanation -2. Thus, mere failure to file seven monthly returns within the prescribed time without any evidence

establishing the aforesaid statutory ingredients, cannot by itself sustain the invocation of section 74 of the Act.

10.2. Even the amount required for discharge of the net-tax return liability has been reportedly deposited on 31.03.2018, which is prior to the commencement of inspection action on 19.04.2018, thus safeguarding the revenue interest of the Government, apprehended in the grounds of appeal. Such conduct of the taxpayer is rather inclined towards his intent of not to withhold the net amount due to the Government.

10.3. The interest payable on such delayed discharge of return liability in cash has been reportedly paid before commencement of the adjudication proceeding. Such conduct on the part of the respondent further demonstrates his compliant nature. Of course, such observations on deposit of estimated cash liability on 31.03.2018 and full discharge of the interest liability is subject to verification of the payment records. Nevertheless, such conduct of the respondent is heavily inclined towards his compliant nature.

10.4. Accordingly, the order impugned is upheld to the extent it holds that section 74 is not legally invocable against the respondent.

10.5. As regards applicability of Section 75(2) read with section 73, the next part of the impugned appeal order modifying the penalty amount is set aside and remanded back to the original adjudicating authority for determination of liability, if any, under section 73 of the Act and such determination shall be subject to the statutory limit.

10.6. The final order as above is pronounced in the open court today i.e., on 29.10.2026.

10.7. The appeal is, thus, disposed of.

(Ananda Satpathy) (Suchismita Misra)

Dated: 29.10.2026