GSTAT

State Bench Bengaluru

Division Bench Court No. Court II

APL/29/BUR/2026

SHRIKRISHNA SUBRAY HEGDE **.....Appellant**

Versus

PAVITRA ASSOCIATES, PARTNER, 73 KUSUGAL ROAD HUBBALLI KADHA 580023 **.....Respondent**

Quorum

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

Counsel for Appellant
PRABHAT KUMAR ACAR CGST
RAHUL , SUPTD AR , CGST

Counsel for Respondent
SARFARAZ KHAZI, EMPLOYEE OF OR RESPONDENT
VENKATESH

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. : ZN570171026000155H **Date of order :** 29/10/2026

1.	GSTIN/Temporary ID/UIN -	
2.	Appeal Case Reference no. - APL/29/BUR/2026	Date - 06/05/2026
3.	Name of the appellant - Shrikrishna Subray Hegde , shrikrishnsh.g029001@gov.in , 9448463600	
4.	Name of the respondant - 1. PAVITRA ASSOCIATES , pavitra061210@gmail.com , 9845220058	
5.	Order appealed against -	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - BGM-JJ-ADC-118-2023-24-GST	Date - 08/03/2024
6.	Personal Hearing - 29/10/2026 13/10/2026 06/10/2026 17/09/2026	

7.	Status of Order under Appeal - Reject - Order under Appeal is annulled
8.	Order in brief - Core Legal Issue: Whether Section 76 of the CGST Act, 2017 applies to a registered taxpayer who collected Goods and Services Tax (GST) from service recipients under valid invoices but failed to deposit/remit those public monies to the State exchequer (instead filing suppressed/nil returns or unfiled returns). Rival Contentions Department's Stand: Section 76(1) explicitly targets "every person who has collected from any other person any amount as representing the tax... and has not paid the said amount to the Government". The phrase concludes with "irrespective of whether the supplies... are taxable or not," meaning it is not restricted to unregistered persons and covers registered entities withholding collected public funds. Respondent's Stand: Section 73 and 74 are the exclusive provisions for registered taxpayers, whereas Section 76 is an anti-unjust-enrichment measure akin to legacy excise provisions (Section 11D) meant solely for collections made without legal authority. Tribunal's Analysis & Findings Scope of "Every Person": The Tribunal held that the Respondent's attempt to restrict Section 76 only to unauthorized collections is textually flawed. The term "every person" is all-encompassing and universally includes registered taxpayers who collect tax under the color of law but fail to deposit it. Judicial Precedent: Relying on the Jharkhand High Court's ruling in M/s R.K. Transport & Constructions Ltd. v. State of Jharkhand, the Tribunal affirmed that Section 76 applies directly when a person receives GST but fails to file returns and remit the funds. It also referenced the principles in GAIL (India) Ltd. and the Supreme Court's fiduciary doctrine (Solar Pesticides), emphasizing that an indirect tax collector acts as a custodian/trustee of public revenue. Rejection of Immunity: Shielding registered defaulters who issue legal invoices and collect money from clients while skipping return filings would create an absurd statutory immunity, rewarding registration status over actual compliance. Final Order Departmental Appeal: Allowed. Penalty Restored: The Appellate Authority's order setting aside the penalty under Section 76 of the CGST Act is reversed. Reinstatement: The equivalent penalty of ?25,18,205/- imposed under Section 76 by the Adjudicating Authority is fully restored and confirmed.

Summary of Order

9.	If demand order then whether demand quantified: Yes

Section-I

Particulars	Central tax		State/UT tax		Integrated tax		Cess		Total	
	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount
1	2	3	4	5	6	7	8	9	10	11
(a) Tax	0	0	0	0	0	0	0	0	0	0
(b) Interest	0	0	0	0	0	0	0	0	0	0
(c) Penalty	1259102.5	1259102.5	1259102.5	1259102.5	0	0	0	0	2518205	2518205
(d) Fees	0	0	0	0	0	0	0	0	0	0
(e) Others		0		0		0		0		0
(f) Refund	0	0	0	0	0	0	0	0	0	0

10.	For Other orders and Demand orders which are not quantified:

Issues as raised by proper officer	Issues as determined by Appellate/Revisional authority	Order by GST Appellat Tribunal
Short or non-payment of tax	The appellate authority examined the appeal against an order dated 21.11.2022, which the appellant claimed to have received on 06.04.2023. However, evidence showed it was served via speed post on 25.11.2022 at the registered address, making this the valid date of communication under Section 169 of the CGST Act. Since the appeal was filed on 27.07.2023, it exceeded the prescribed limitation period of 3 months plus a condonable 1-month extension under Section 107. However, Notification No. 53/2023-CT (02.11.2023) allows extended time for appeals against orders under Sections 73/74 passed before 31.03.2023, subject to conditions. The core issue was whether the case fell under Section 76 (tax collected but not paid) or Section 73/74 (non/short payment of tax). The authority clarified that Section 76 applies only where tax is collected without authority of law. In this case, the taxpayer was duly registered and authorized to collect GST, and the issue was non-payment of legitimately collected tax. Thus, the case falls under Section 73/74, not Section 76. The taxpayer had provided services worth Rs.1.70 crore, collected GST of Rs.30.60 lakh, but paid only Rs.5.42 lakh, leaving Rs.25.18 lakh unpaid. This liability was later admitted and paid via DRC-03. Since the case rightly falls under Section 73/74, the taxpayer qualified for the benefit of Notification No. 53/2023, making the appeal admissible despite delay. On merits: â?¢ The penalty under Section 76 (equal to tax) was held incorrect and set aside. â?¢ The tax demand of Rs.25.18 lakh was upheld (already paid). â?¢ Interest under Section 50 at 18% was upheld, as it is compensatory for delayed payment. Final outcome: appeal admitted; penalty deleted; tax and interest sustained.	Revenue Appeal allowed

Place :BENGALURU

Signature

Date : 29.10.2026

BENGALURU Sudha Koka

Designation : Member

Jurisdiction :Bengaluru

ORDER

Order Per: Sudha Koka, Member Technical (Centre)

TABLE OF CONTENTS

Section Description

1. Introduction

2. Chronology of Events

3. Brief Facts of the Case

4. Department's Grounds of Appeal

5. Respondent's Reply & Additional Submissions

6. Department's Rebuttal & Counter-Arguments

7. Tribunal's Reasoning & Analysis

8. Conclusion

9. Order

I. INTRODUCTIONpage1image4236432 page1image4241632 page1image4242672 page1image4238512 page1image4236640 page1image4228112 page1image4238928 page1image4239760 page1image4408336 page1image4411456page1image4411664 page1image4412288 page1image4413744 page1image4407920 page1image4312320 page1image4311696

1. At the heart of this dispute lies a simple yet fundamental question of commercial integrity and statutory interpretation: When a registered commercial entity collects money from its service recipients under the explicit banner of the Goods and Services Tax, but chooses to pocket or withhold those public monies instead of remitting them to the State exchequer, does the conduct fall within the punitive and remedial sweep of

Section 76 of the CGST Act, 2017? The respondent-taxpayer would have us believe that Section 76 is a narrow, esoteric provision reserved exclusively for unauthorized actors or shady fly-by-night

operators who collect taxes without legal standing, leaving registered defaulters safely tucked away under general assessment provisions. This Tribunal is called upon to examine whether the text, texture,and teleology of Section 76 permit such an artificial immunity. An indirect tax regime is built on trust,transparency, and a strict fiduciary compact between the citizen and the state. When that compact is broken by collecting tax and filing nil or suppressed returns, the law must speak with clarity and firmness.It is through this prism that we examine the competing arguments of the Revenue and the Respondent.

II. CHRONOLOGY OF EVENTS

- April 2018 – September 2021: The Respondent provided taxable output services (train report data entry, crew management system, dietary food supply) to South Western Railway (SWR), Hubballi, issued valid tax invoices charging GST, and collected GST of Rs. 30,60,658/-, but short-declared turnover in GSTR-3B up to October 2019 and failed to file GSTR-3B returns thereafter (registration cancelled on 01.11.2019),withholding Rs. 25,18,205/- of collected GST.

- 23.03.2022: Intelligence authorities issued Show Cause Notice (SCN No. 65/2021-23- GST) proposing recovery of unremitted GST of Rs. 25,18,205/- under Section 76, interest under Section 50, and an equivalent penalty under Section 122(2)(b) read with Section 76 of the CGST Act.

- 21.11.2022: The Adjudicating Authority passed Order-in-Original (BEL-CGST-000- HBL-AC-SD-18-2022-GST) confirming the demand of GST of Rs. 25,18,205/- under Section 76, interest under Section 50, and an equivalent penalty of Rs. 25,18,205/- under Section 76.

- 05.04.2023 & 14.07.2023: The Respondent discharged the admitted GST liability of Rs. 25,18,205/- in full via four Form GST DRC-03 voluntary payments totaling Rs. 25,18,206/-.

- 08.03.2024: The First Appellate Authority passed Order-in-Appeal (No. BGM-JJ-ADC- 118-2023-24-GST),accepting condonation of delay under Notification No. 53/2023-CT, upholding tax and interest under Section 50, but setting aside the penalty of Rs. 25,18,205/- under Section 76 on the premise that Section 76 applies only to collections made without authority of law.

- 05.09.2024: The Principal Commissioner of Central GST & Central Excise, Belagavi, passed Order-in-Review directing the filing of an appeal before this Tribunal against the deletion of the Section 76 penalty.

- October 2026: The Department filed the present appeal (GST Appeal No. APL/29/BUR/2026) before this Tribunal, followed by written submissions, rebuttals, and final hearings.

III. BRIEF FACTS OF THE CASE

3. The Respondent, M/s Pavitra Associates, Hubballi, is a registered taxpayer under the CGST Act, 2017 (GSTIN: 29AAMP3473A2Z5), engaged in supplying taxable services relating to Combined Train Report data entry in the Crew Management System and supplying dietary food to hospital patients of South Western Railway (SWR), Hubballi. For the period spanning April 2018 to September 2021, the Respondent rendered taxable services valued at Rs. 1,70,03,655/- and charged/collected GST amounting to Rs. 30,60,658/- from SWR under valid tax invoices. However, in its GSTR-3B returns for April 2018 to October 2019, the Respondent declared a taxable value of only Rs. 30,13,628/- and paid GST of Rs.5,42,453/-, suppressing turnover of Rs. 1,39,90,027/-, and failed to file returns from November 2019 onwards (leading to cancellation of

registration on 01.11.2019), thereby collecting and retaining unremitted GST of Rs. 25,18,205/-.

4. Departmental intelligence (Hubballi-Dharwad Preventive Unit) detected the anomaly by cross-verifying GSTR-7 (TDS) returns filed by SWR against the Respondent's suppressed/unfiled GSTR-3B returns.Consequently, a Show Cause Notice dated 23.03.2022 was issued under Section 76 of the CGST Act.

5. During adjudication, the Adjudicating Authority passed Order-in-Original dated 21.11.2022, confirming the tax demand of Rs. 25,18,205/-, interest under Section 50, and an equivalent penalty of Rs. 25,18,205/- under Section 76. The Respondent did not dispute the tax liability and subsequently deposited the entire admitted GST liability of Rs. 25,18,205/- via four Form GST DRC-03 challans in April and July 2023. On appeal, the First Appellate Authority passed Order-in-Appeal dated 08.03.2024, maintaining the tax and interest, but setting aside the penalty under Section 76 on the ground that Section 76 is inapplicable to registered taxpayers who defaulted on admitted tax collections. Aggrieved by the deletion of the penalty,the Department is in appeal before this Tribunal pursuant to Order-in-Review dated 05.09.2024.

IV. DEPARTMENT'S GROUNDS OF APPEAL

- Misinterpretation of Section 76(1): The Appellate Authority erred in law by reading down Section 76(1) to exclude registered taxpayers who have collected tax under valid invoices but failed to deposit it.

- Textual Mandate Ignored: Section 76(1) explicitly employs the words "every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not." The statute does not condition the operation of Section 76 on the collection being unauthorized or performed by an unregistered person.

• Harmonious Construction Violated: The concluding non-ambiguous phrase "irrespective of whether the supplies... are taxable or not" makes the taxability or the validity of the initial invoice collection non-determinative for the immediate deposit obligation.

V. RESPONDENT'S REPLY & ADDITIONAL SUBMISSIONS

7. **Special Provisions vs. General Provisions:** The Respondent contended that Sections 73 and 74 constitute the specific machinery for "tax not paid or short paid" by a "person chargeable with tax," whereas Section 76 is a special anti-unjust-enrichment code meant for collections made without authority or by persons not authorized to levy tax (akin to Section 11D of the Central Excise Act, 1944 and Section 73A of the Finance Act, 1994).

8. **Distinct Legislative Terminology:** Section 73(11) uses the phrase "amount collected as tax," whereas Section 76(1) uses "amount as representing the tax." This variance proves that Section 76 targets colorable or unauthorized collections, not genuine output tax defaulted by a registered person.

9. **Exclusionary Doctrine:** Relying on doctrines like generalia specialibus non derogant and strict interpretation of fiscal statutes (A. V. Fernandez v. State of Kerala, AIR 1957 SC 657; Nazir Ahmad v. King Emperor, AIR 1936 PC 253; Commercial Tax Officer v. Binani Cements Ltd., (2014) 8 SCC 319; Babu Verghese v. Bar Council of Kerala, (1999) 3 SCC 422; CIT v. Anjum M.H. Ghaswala, (2002) 1 SCC 633),as well as indirect tax jurisprudence (Mafatlal Industries Ltd. v. UOI, (1997) 5 SCC 536; Unison Metals Ltd. v. CCE, 2006 (204) ELT 323; MakeMyTrip v. UOI, 2016 (44) STR 481; G.V. Alurkar v. CCE, 2017 SCC OnLine CESTAT 6383; GAIL (India) Ltd. v. Additional Commissioner,

2026), the Respondent argued that the Department cannot arbitrarily invoke Section 76 when the default pertains to registered output tax squarely covered under Section 74.

VI. DEPARTMENT'S REBUTTAL & COUNTER-ARGUMENTS

13**. Demolishing the "Anti-Unjust-Enrichment Only" Fallacy:** The Respondent attempted to restrict Section 76 of the CGST Act by drawing historical parallels to Section 11D of the Central Excise Act, 1944,and Section 73A of the Finance Act, 1994, arguing that Section 76 is exclusively an anti-unjust-enrichment mechanism meant for collections made without authority of law or by unregistered persons. The Department countered that importing unstated historical or legacy limitations into a completely new,codified statute like the CGST Act is a cardinal rule of misinterpretation. Unlike old excise provisions that hinged strictly on "excess collections" or "exempt goods," the text of Section 76(1) of the CGST Act uses wide, sweeping, and unambiguous language: "Every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount..." The provision does not contain any qualifying words restricting its operation only to "unauthorized" or "illegal" collections. If a registered person collects tax under valid invoices but pockets or withholds the money by filing nil or suppressed returns, the amount collected squarely fits the definition of "an amount representing the tax".

14. Dismantling the Legislative Intent Distinction (Section 73(11) vs. Section 76(1)): The Respondent argued that the legislature used different terminology—employing "amount collected as tax" under Section 73(11) while using "amount as representing the tax" under Section 76(1)—thereby carving out a separate niche where Section 76 excludes genuine output tax. The Department demolished this argument by emphasizing that the linguistic variation actually broadens, rather than restricts, the scope of Section 76.The phrase "representing the tax" encompasses everything collected under the color, label, or guise of tax—whether it is self-assessed tax, wrongly calculated tax, or invoiced output tax that was collected from clients (such as South Western Railway) and subsequently withheld from the exchequer. To read a restriction into the phrase that excludes registered taxpayers would create an absurd statutory immunity:unregistered fraudsters would be caught under Section 76, while registered corporate defaulters who issue legal invoices

and collect lakhs of rupees but fail to file returns would escape it. Tax statutes cannot be interpreted to reward registration status while defaulting on actual remittances.

15. Eradicating the Myth of Mutual Exclusivity (Sections 73/74 vs. Section 76): The Respondent relied on generalia specialibus non derogant to argue that Sections 73 and 74 constitute exclusive special machinery for registered persons, prohibiting the Revenue from invoking Section 76. The Department firmly established that Section 76 functions as a special provision targeting the custody and immediate remittance of public monies collected in the name of tax. Where a taxpayer collects money from a service recipient representing

GST, holds it in trust, and fails to deposit it, the primary wrong is the retention of collected tax. The non-obstante and inclusive texture of Section 76— reinforced by the concluding mandate that it applies "irrespective of whether the supplies in respect of which such amount was collected are taxable or not"—ensures that the Department is not left helpless when defaults involve active collection coupled with deceptive return filings (suppressed/unfiled returns).

16. Distinguishing the Respondent's Case Law: While the Respondent cited A. V. Fernandez and Nazir Ahmad to assert that taxation must fall strictly within the letter of the law, the Department retorted that the strict letter of Section 76 explicitly covers the Respondent's exact conduct. The Respondent collected tax from South Western Railway under valid invoices and failed to pay it over. The literal interpretation of Section 76 captures this failure precisely. The Department did not stray outside the four corners of the statute; rather, it invoked the exact provision designed to penalize the retention of unremitted tax collections.

VII. OUR ANALYSIS AND REASONING

17. Scope and Interpretation of Section 76 of the CGST Act: We have heard both sides extensively and perused the statutory provisions and judicial pronouncements. The foundational contention of the Respondent—that Section 76 applies only to unauthorized collections by unregistered persons or amounts collected without legal authority—is

fundamentally flawed when tested against the literal text of Section 76(1). The provision mandates that every person who has collected any amount as representing the tax and has not paid it to the Government shall forthwith pay the said amount, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

18. The phrase "any amount" is of the widest possible amplitude. It includes tax collected by a registered entity under valid invoices issued pursuant to taxable supplies, which is subsequently withheld (i.e., not remitted via GSTR-3B). To hold that a registered supplier who collects tax from customers under the guise of GST but fails to deposit it escapes Section 76 would create an anomalous immunity for registered defaulters over unregistered ones, defeating the very object of preventing unjust enrichment.

19. **Binding Judicial Authority and Scope Explicated in R.K. Transport & Constructions Ltd.:** The applicability of Section 76 to registered taxpayers who fail to deposit collected taxes has been authoritatively settled by judicial pronouncements. In the landmark decision of the Jharkhand High Court in M/s R.K. Transport & Constructions Ltd. v. State of Jharkhand (W.P.(T) No. 1624 of 2024, decided on 13.06.2025), the Court undertook a meticulous examination of Section 76 and explicitly explained its scope in Paragraph 10, clarifying that the expression "every person" is all-encompassing. The High Court clearly articulated that Section 76 applies universally to any person, which structurally includes both unregistered persons and registered taxpayers who have collected tax under the color of

law but failed to deposit the same into the public exchequer. The Jharkhand High Court ruled in para 10:

> "10. This stand taken by the official respondents is contrary to Section 76 (1) of the Jharkhand GST Act, 2017 which mandates that 'every person who has collected from any other person any amount as representing GST, and had not paid the said amount to the Government, shall forthwith pay it to the Government' and if he does not do so, under subsection (2) thereof, 'the proper officer may direct him through a notice to show cause as to why the said amount as specified in the notice should not be paid by him to the Government, and why a penalty

equivalent to the amount specified to the notice should not be imposed on him under the Act'. Thus, action can be taken under subsection (2) of section 76 against 'every person' including a person not registered under the JGST Act, 2017, if he does not, having received JGST from the petitioner, file any return under GSTR-01 and does not remit the same to the official respondents".

20. Hence, from the statutory provisions of Sec 76 and judicial pronouncements, it is amply clear that the expression 'every person' under Section 76(1) is of widest amplitude. It does not draw a distinction between a person registered under the Act and an unregistered person. Where an amount is collected representing tax by any person and withheld, Section 76 operates to mandate immediate deposit and penal consequences. Thus, the authoritative interpretation in Paragraph 10 of R.K. Transport completely shatters the Respondent's artificial construct that registered taxpayers are insulated from the reach of Section 76.

21. **Examination of the Obiter Dicta and Ratio in GAIL (India) Ltd. v. Additional Commissioner:** We have also examined the judgment of the Madras High Court in GAIL (India) Ltd. v. Additional Commissioner [2026 VIL 372 MAD]. The Madras High Court held that Section 76 cannot be invoked to demand tax a second time where the tax has already been duly deposited with the exchequer, albeit through another registration or business vertical of the same corporate entity. However, the ratio decidendi and obiter dicta of GAIL India powerfully reinforce the Revenue's stance in cases where tax collected has not reached the exchequer at all. GAIL India underscores that Section 76 targets the actual failure to remit collections to the Government. In the present case, unlike GAIL, the Respondent admittedly collected GST of Rs.25,18,205/- from South Western Railway under valid invoices and completely withheld it, suppressing returns and failing to remit any portion until departmental intelligence intervened, leading to DRC-03 deposits long after the due dates. Thus, GAIL India confirms that where collections are retained and unremitted to the exchequer, Section 76 applies with full force.

22. **The Fiduciary Responsibility of Indirect Tax Collectors and the Hon'ble Supreme Court's Jurisprudence:** It is a foundational principle of indirect taxation that an assessee who collects tax from a recipient does so in a fiduciary capacity as an agent or custodian for the State. The money collected as tax does not belong to the commercial entity; it is public revenue held in trust for the Government exchequer.

23. This fiduciary obligation inherent in indirect taxation finds robust endorsement in the landmark jurisprudence of the Hon'ble Supreme Court. In the Constitution Bench ruling of Commissioner of Central Excise v. Solar Pesticides (P) Ltd. (2000) 2 SCC 705, and subsequently reaffirmed in principles relating to unjust enrichment and statutory remittances such as in Sahakari Khand Udyog Mandal Ltd. v. Commissioner of Central Excise (2005) 3 SCC 738, the Supreme Court held that any amount collected by representing it as duty or tax is collected under a statutory mandate, and the person collecting it holds it strictly in a fiduciary capacity for the credit of the Consolidated Fund. Retaining such collections while filing suppressed or nil returns constitutes a direct breach of this fiduciary trust, attracting the immediate operation of special recovery and penalty provisions such as Section 76.

VIII. CONCLUSION

27. The finding of the First Appellate Authority that Section 76 of the CGST Act excludes registered suppliers who failed to remit collected output tax is legally unsustainable. The statutory language of Section 76(1) comprehensively covers any amount collected as tax and not paid over to the Government, irrespective of the registration status of the collector or the taxability of the underlying supply. Backed by the clear exposition of scope in Paragraph 10 of R.K. Transport, the principles clarified in GAIL India, and the fiduciary doctrine articulated by the Hon'ble Supreme Court, the departmental appeal is well-founded, and the penalty imposed under Section 76 deserves to be fully restored.

ORDER

Accordingly, for the reasons stated above, we pass the following order:

1. The Departmental Appeal is allowed.

2. The portion of the Order-in-Appeal No. BGM-JJ-ADC-118-2023-24-GST dated 08.03.2024 setting aside the penalty imposed under Section 76 of the CGST Act is hereby set aside.

3. The penalty is equivalent to the tax amount of Rs. 25,18,205/- imposed under Section 76 of the CGST Act vide the Order-in-Original dated 21.11.2022 is restored and confirmed.

4. The Respondent is directed to discharge the penalty dues, giving due adjustment to any pre-deposits made within EIGHT Weeks from the date of this order

(Sudha Koka)

(Srikanth Venkatraman)

Dated: 29.10.2026