GSTAT

State Bench Bengaluru

Court No. Court II

APL/255/BUR/2026

SHEKHAR BASAPPA WALI **.....Appellant**

Versus

SHRINIVASA TRADERS, PROPRIETOR, 1 NEAR HESCOM OFFICE RAGHAVI NILAYA 1ST CROSS LEFT SIDEAYYAPPA NAGAR HUBLI ROAD SIRSI KAUTT 581402 **.....Respondent**

Quorum

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

Counsel for Appellant
NONE
MC VENUGOPAL NAIDU , AC AR , CGST

Counsel for Respondent
SHRI . PRABHAT KUMAR AC AR
CENTRE
NONE

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. : ZN570171026000156H **Date of order :** 29/10/2026

1.	GSTIN/Temporary ID/UIN -	
2.	Appeal Case Reference no. - APL/255/BUR/2026	Date - 27/05/2026
3.	Name of the appellant - Shekhar Basappa Wali , shekharw.c029301@gov.in , 7411004964	
4.	Name of the respondant - 1. SHRINIVASA TRADERS , bhanushalidhruv234@gmail.com , 8088910335	
5.	Order appealed against -	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - MLR-CGST-000-AP-AS-003-2024-25	Date - 09/05/2024

6.	Personal Hearing - 29/10/2026 15/10/2026 06/10/2026 22/09/2026 08/09/2026
7.	Status of Order under Appeal - Reject - Order under Appeal is annulled
8.	Order in brief - The reasoning of the Appellate Authority that penalty under section 122(1)(x) was levied without specifying the nature of offence is not correct. The order under Section 74 was not passed against the taxpayer in view of the Board's circular (cited supra). We hold that the deletion of penalty under section 122(1)(x) of the Act is improper and unjustified. Under the Act, the burden is on the taxpayer to prove eligibility for input tax credit. The taxpayer was required to prove that he had received the goods under Section 16(2)(b) and the supplier had paid tax under Section 16(2)(c), to claim the benefit of ITC. The authorities had furnished information in the show cause notice in support of their plea that the taxpayer was claiming the benefit of ITC without actual receipt of goods or services or both. The authorities stated that the suppliers' and the taxpayer's recipients' registration certificates were cancelled before the invoice date. The authorities stated that the vehicle numbers mentioned in the e-way bills were either unavailable or linked to other vehicles that cannot be used to transport goods. The taxpayer did not prove that he received the goods. He also has not proved that the suppliers paid tax to the Government. The taxpayer did not furnish documents to prove the genuineness of his dealings. The taxpayer admitted that he had provided fake invoices to various traders, who used them to pay GST liability. The taxpayer did not retract the statement at the earliest opportunity. We hold that deleting the penalty under Section 122(1)(vii) is invalid and unjustified.

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	7034064	7034064	7034064	7034064	28774180	28774180	0	0	42842308	42842308
(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 Appellate Tribunal

Levy of Penalty	The Commissioner (Appeals), after examining the Show Cause Notice, the Order-in-Original and the submissions of the appellant, observed that the Adjudicating Authority had dropped the demand of ITC and interest but confirmed penalties under Section 122(1)(vii) and Section 122(1)(x) of the CGST Act, 2017. The Appellate Authority held that in the absence of conclusive evidence establishing deliberate furnishing of false information with intent to evade tax, penalty under Section 122(1) was not sustainable. It was further observed that mere discrepancies or irregularities would not automatically justify penal action without clear findings supported by evidence. Accordingly, the appeal was allowed with consequential relief vide Order-in-Appeal dated 03.05.2024, thereby setting aside the penalties imposed under Section 122(1) of the CGST Act, 2017 and corresponding provisions of the KSGST Act.	the order-in-appeal is setaside and the order-in-original is confirmed.

Place :BENGALURU

Signature

Date : 29.10.2026

BENGALURU Srikanth Venkatraman

Designation : Member

Jurisdiction :Bengaluru

ORDER

Per: Srikanth Venkatraman, Member (Judicial)

(1) The appellant, the Assistant Commissioner, Uttar Kannada Division, has filed this appeal assailing the order of the Commissioner (Appeals) ("the Appellate Authority"), passed in order-in-appeal No. MLR-CGST-000-APP-AS-003-2024-25 dated 03.05.2024. The Appellate Authority reversed the order of the Additional Commissioner, Mangalore Commissionerate, Mangalore ("the Adjudicating Authority") passed in order-in-original No. GEXCOM/GST/46/2022-ADJN dated 25.01.2023. The Appellate Authority had set-aside the penalty imposed under Section 122(1)(vii) and Section 122(1)(x) of the Central Goods and Services Tax Act ("the Act"), on Suresh Chatroboja Bhanushali, Proprietor, Shrinivas Traders ("the taxpayer").

Factual matrix

Order-in-original

(2) The taxpayer was engaged in the business of trading in arecanuts. Investigations were carried out as part of the drive against the fake invoice racket, which had serious ramifications for GST revenue. A careful analysis of documents/digital returns/e-way bills indicated that one M/s. Unique Trading Co., Sirsi was issuing invoices without actual supply of goods. The registered premises of M/s. Unique Trading Co., Sirsi was searched on 21/11/2020. However, the premises were found completely empty, without any furniture/computers/records, etc.

(3) The officers of the Central Tax (GST) Department intercepted and seized a truck bearing No. RJ06 GB3939, belonging to M/s. Unique Trading Company, carrying 18,200 kgs of arecanut, as no valid documents accompanied the transport. One Mr Mohammed Haneef, Proprietor of M/s. Global Trading Company, Mangaluru, appeared before the Central Tax Department along with the taxpayer and claimed that the truck and goods detained by the department belonged to him.

(4) During the investigation, the department issued a summons under Section 70 of the Act to the taxpayer to verify the e-way bill and the truck's detention. On 24.11.20, the taxpayer deposed that he had worked as an agent in arecanut for 20 years; he came with Mr Mohammed Haneef, proprietor of M/S. Global Trading Co. to claim the goods; he called Mr Jabbar, Mangaluru, to send someone to claim ownership of the goods. Once the goods are released upon payment of the penalty, the goods will be sent to M/S. Bhagavati Cold Storage, New Delhi; The goods were procured from farmers near Shimoga for Rs. 45 lakhs and the payment was made in cash; The goods and the truck belonged to Mr. Shariff of Union Cargo; He is the sole proprietor of Shrinivas Traders; His address and the address of Unique Trading Co. are the same; He was aware that Unique Trading Co. was not operating for 2 months and the premises were vacant; he could read, write and speak in Hindi and English; the goods and the truck belonged to Unique Trading Co. which is a proprietorship of Mr. Arun Bhanushali, residing at Ghatkopar, Mumbai; His suppliers were M/s. Tumkos Society, Shimoga, M/s. Roshan Arecanut, Chitradurga, M/s. Shyam Traders, Nagpur, M/s. Shrinivas Enterprises, and M/s. Panduranga Traders, Chitradurga, and the purchasers were M/S. Rajesh Traders, Ahmedabad, M/s. Somnath Traders, Nadiad and M/s. Shree Shyam Traders, Chhattisgarh;

(5) Verification of the taxpayer's PAN on the online portal revealed that the taxpayer was availing a high value of input tax credit [ITC] using invoices issued in the name of his firm. On 04/12/2020, the registered principal place of business of his firm was searched by the officers of Central Tax (GST) under mahazar proceedings, and it was found that only one blue-coloured cupboard was found in the premises of the principal place of business, which contained papers relating to M/S. Union Cargo Movers and M/s. Vigneshwara Transport Co. and various documents relevant to the investigation were recovered and seized. During the search proceedings, the taxpayer stated that he acted as an agent and brought areca nut pertaining to the two entities. Whenever local orders were given, he stored some bags of areca nut in the said premises and later loaded them onto the vehicles of M/S. Union Cargo Movers and M/s. Vigneshwara Transport Co. No records/documents/computers of the taxpayer were stored/located in the registered place of business of the taxpayer.

(6) Regarding the consignment note of M/S. Union Cargo Movers, M/s. South India Transport and M/s. Vigneshwara Transport Co. that were seized from the premises, the taxpayer stated that he acted as a commission agent from June 2020 to August 2020 for these three entities and received a commission of Rs. 5/- per bag from the transporter agency, but he had not kept any records of the said commission amount. When the goods moved from Kerala to Delhi/Gujarat, the vehicles were changed at Sirsi, and the goods then moved from Sirsi to Delhi/Gujarat. The original invoices raised by M/S. Sastha Enterprises and M/s. Phoenix Enterprises were in his possession, but he sent duplicate copies with the vehicle. He had used consignment note No. 1001 for all transportation.

(7) The taxpayer admitted that the premises were empty and used for fake transactions, and that he provided fake invoices to various traders, who in turn used the said fake invoices to utilise the input tax credit available to them for paying applicable GST on the supplies they made. He had been transporting arecanut purchased from those traders without proper documents and without paying the applicable GST. He confessed that he and Mr Shridhar Hegde used to send vehicles to Delhi without valid invoices and without paying the applicable GST, routing them through Solapur under the cover of invoices issued for vehicles that had already passed. In the e-way bill, they used to enter another vehicle's details by filing Part B of the e-way bill.

(8) He confessed that they worked closely with Mr Shridhar Hegde, Mr Praveen Suvarna, Proprietor of M/S. Vigneshwara Transport Co., Mr. Sachin and Mr. Pramod Shetty. These persons used the same set of documents, including the invoice and e-way bill, to transport two consignments and cleared them without paying the appropriate tax. He confessed that M/s. Hanifa Trader, M/s. Sahil Trader, M/s. Sagar Traders, and the taxpayer had registered under his guidance, and he actually ran all these firms. Shri Kalpesh Bhai of Jamnagar created the WhatsApp group known as Supari Gang, and all members of the Supari Gang WhatsApp group are involved in supplying arecanut without paying GST or issuing invoices without actual supply of goods. The actual owner of M/s. Unique Trading Co. is Mr Dinesh Saroj, who is registered under Mr Saish Gavandi, and he conducted all transactions for M/S. Unique Trading Co. under the directions of Mr Dinesh Saroj, residing in Mumbai. Mr. Roshan Talwar, Proprietor of M/s. Hari Om Agency and M/s. South India Transport was also involved in supplying goods without invoices/documents or issuing invoices for the actual supply of goods. He and Shri Shridhar Hegde planned and executed all the illegal transactions together.

(9) Mr. Saish Gavandi, proprietor of M/s. Unique Trading Co., deposed on 22.11.20 that he generated invoices without actually supplying goods. The principal place of business of Shyam Traders, Sirsi, was searched on 24.12.20, and the premises were found to be an empty godown measuring 40X50 feet, with no goods/documents/other relevant items found. Shridhar Hegde deposed that he had issued e-way bills for many dealers, including the taxpayer, on their request; he had issued invoices for the taxpayer from his laptop; his firm was actually run by the taxpayer, and most of the transactions were carried out by him; he was generating e-way bills and invoices for both the firms, and the taxpayer paid him for this work; he was generating fake invoices for Mr. Sachin, the taxpayer, Mr. Praveen Suvarna, Mr. Pramod Shetty and others as and when he was told to do so; he was aware that the same set of invoices were used for transporting of 2 consignments so that one of the two consignments was cleared without payment of appropriate GST.

(10) The registered place of business of M/s. Vigneshwara Transport Co., was searched on 28.11.20 and it was found that one room on the right side wherein tables/chairs were located and in the adjacent room on the left side wherein the room was filled up with old/used tyres, four extra discs, two diesel tanks, tubes, and other miscellaneous used vehicle parts, were found by the officers. Shri Sachin, staff of Vigneshwara Transport Co., deposed that his uncle was the proprietor of the company; he was generating the e-way bills of many suppliers, including the taxpayer, as he was provided with the user ID and password for generating the e-way bills; he used to sign invoices of many suppliers, including the taxpayer.

(11) Mr Praveen Suvarna, proprietor of Vigneshwara Transport Co., deposed that they have been generating e-way bills for many suppliers, including the taxpayer, as the user ID and password were given to him; he was aware that Mr Sachin was signing invoices for many persons, including the taxpayer.

(12) Analysis of the Form GST 3B returns filed for the period 2018-19 and 2019-20 revealed that the taxpayer discharged more than 99% of the tax liability through input tax credit (ITC) and more than 95% for the financial year 2020-21. Verification of the Form GSTR-3 B returns filed by the taxpayer revealed that the taxpayer disclosed sales turnover of Rs. 85,66,95,389/- during the tax period from July 2017 to January

2021 and paid GST of Rs. 4,23,01,108/- [i.e. IGST - Rs.2,64,53,501/-, CGST-Rs. 83,14,876/- & SGST-Rs.75,32,731/-] through electronic credit ledgers and only Rs.12,05,126/- [i.e. IGST Rs. 1,76,164/-, CGST-Rs.1,23,411/- & SGST-Rs.9,05,551/-] paid through electronic cash ledgers.

(13) A verification of the suppliers' and recipients' registration numbers revealed that the registration certificates were cancelled suo motu before the invoices were raised. This indicated no movement of goods and that all transactions related to the fake invoices. The taxpayer had availed total ITC of Rs. 4,28,42,308/- [i.e., IGST- Rs.2,87,74,180/-, CGST Rs. 70,34,064/- & SGST-Rs.70,34,064/-] from the registered persons. Verification of the availed input tax credit ("ITC") revealed excess availment of ITC amounting to Rs. 24,50,237/- [i.e., IGST - Rs. 19,43,837/-, CGST - Rs. 2,53,200/- & SGST - Rs. 2,53,200/-] in their GSTR-3B returns.

(14) Verification of the vehicle details mentioned in the e-way bills and invoices, on the 'vaahan.nic.in' website, revealed that the vehicle numbers pertained to vehicles like Scooters, Tankers, Tippers, 3-wheelers, etc., and in most cases the registration numbers showed "Vehicle detail not found," and so on. This clearly indicated that the suppliers casually selected all these vehicle numbers mentioned in the invoices and e-way bills and that they were not genuine.

(15) The taxpayer, having been actively involved in the illegal transportation of goods and generating fake invoices without actual supply of goods, leading to non-payment of GST and wrongful availment and utilisation of input tax credit, was arrested as per section 69(1) of the CGST Act under Arrest Memo vide O.R.Nos. 10/2020-21 and No. 11/2020-21 [Annexure - XVI], on 18.03.2021 at 16:00 Hrs, and was produced before the Hon'ble Principal Senior Civil Judge and CJM Court, Mangaluru, Dakshina Kannada, and was released on bail as per the bail order dated 24.03.2021.

(16) Based on the aforesaid investigation and information, a show cause notice was issued to the taxpayer proposing to (i) demand tax of Rs. Rs.4,28,42,308/- under section 74(1) of the Act, (ii) levy interest under Section 50 on the amount demanded, (iii) impose penalty under Section 74(1) read with Section 122(2)(b) of the Act, (iv) impose penalties under Section 122(1)(vii), 122(1)(x), 122(1)(xvi), 122(1)(xi), (v) take action under Section 132 of the Act, (vi) to provisionally attach the bank accounts.

(17) After receiving the objections, the Adjudicating Authority held that e-way bills and invoices were issued without the supply of goods. The taxpayer had not submitted any document to prove movement of goods. Verification of outward supply-related vehicle details revealed that, in some cases, the vehicle numbers pertained to tankers, 3-wheeler passenger vans, and delivery vans. In many cases, the 'vaahan.nic.in' website showed the registration numbers as 'vehicle detail not found'. The taxpayer generated e-way bills only to falsely show that the goods were being supplied. The taxpayer submitted no credible evidence to explain the mismatches. The taxpayer had not submitted bank statements to support his claim that he made the purchase considerations through bank instruments.

(18) The Adjudicating Authority passed the order dropping the demand of Rs. 4,28,42,308/- on the ground that the taxpayer availed and utilised ITC based only on documents, without supplying the goods. The interest demand was dropped as the tax demand was dropped. No penalty was imposed under Section 74, as the taxpayer had not supplied any goods. A penalty of Rs. 4,28,42,308 under section 122 (1)(vii) of the Act was imposed for taking and utilising input tax credit without actual receipt of goods in contravention of the provisions of the Act and the rules made thereunder. A penalty of Rs. 4,28,42,308 was imposed under section 122 (1)(x) of the Act for falsifying or substituting financial records or producing fake accounts or documents or furnishing any false information or return with an intention to evade payment of tax due under the Act. No penalty was imposed under section 122(1)(xvi) of the Act for failure to keep, maintain, or retain books of account and other documents. No penalty was imposed under section 122(1)(xi) of the Act for his failure to obtain registration in respect of his actual place of business, as he was not supplying any goods or services liable to tax under GST. The taxpayer's payment of Rs. 22,00,400/- was appropriated against the imposed penalties. The provisional attachment of the Bank accounts initiated as per DRC-22 dated 06.07.2021 and further upheld vide speaking order dated 22.10.2021 was to be enforced, and the amount in the said Bank accounts was ordered to be appropriated against the above-imposed penalties. The authority recommended initiating action under section 132 of the CGST Act, 2017 for committing the offences specified therein.

Order-in-appeal

(19) The Appellate Authority held that the adjudicating authority had dropped the demand of GST and the fraudulent ITC availed by the appellant; however, it confirmed the penalties under Section 122(1) (vii) and Section 122(1) (x) of the CGST Act, 2017. The appellate authority set-aside the penalty levied under Section 122(1)(x) of the Act, accepting the contention of the taxpayer that the levy of penalty was not only contrary to the circular of the Board in Circular No. 171/3/2022-GST dated 6.7.2022 but was also imposed casually, without specifying the nature of the offence.

(20) Regarding the penalty imposed under Section 122(1)(vii), the Appellate Authority had deleted the penalty for the following reasons:

- Shri Shridhar Hegde's statement contained no admission of the offence.
- Relying on the Supreme Court's decision in *Commissioner of Central Excise vs. CERA Boards and Doors, Kannur*, it was held that each transaction must be viewed independently, and applying evidence from one transaction horizontally to all others was not acceptable under law.
- None of the inward suppliers or recipients was confronted or investigated. Neither the taxpayer's statements nor Mr Shridhar Hedge's statements led to an admission that no underlying supply existed, either inward or outward.
- Referring to paras 34 and 46 of the OIO, the Adjudicating Authority was held to be contradicting itself. The adjudicating authority failed to conclude that there were no transactions at all. Even if some statements indicate the creation of fake documents for Bill trading, it is unclear under which GSTIN those transactions occurred.
- The bank statements and the Purchase account clearly indicate an underlying supply of goods. The order indicated that some transactions were made without paying taxes. The order's findings were based on mere presumption.
- The suo motu cancellation of registrations was done with retrospective effect, i.e. from the date of transaction. The Appellate Authority relied on the Kolkata High Court's decision in *Gargo Traders Vs. The Joint Commissioner of Commercial Taxes (State Tax) [(2023) 7 Centax 136]* to contend that retrospective cancellation will not deprive the benefit of ITC.
- The investigating officers found discrepancies in the vehicle numbers carrying goods in a few countable transactions. CBIC, vide circular No. 64/38/2018-GST dated 14.09.2018, clarified that an error in one or two digits/characters of the vehicle number is a minor error and is liable for a minor penalty of Rs. 500/- each under CGST and SGST, and it does not invite action under Section 129 of the Act. Because of an error in the vehicle number in the E-way bills, not all transactions can be treated as fake.
- Without corroborative evidence, the statements cannot form the basis for an allegation of availment and utilisation of entire ITC without the underlying supply of goods, whether inward or outward. The taxpayer had not admitted that he had issued bills without underlying supply of goods. The Appellate Authority relied on the Tribunal's decision in (376) ELT 666 (Habib Uz Zaman v. *Commissioner of Customs, New Delhi)* and *2022 (63) GSTL 64 (J.P. Iscon Private Limited vs. Commissioner of Central Excise, Ahmedabad).*
- Penalty under Section 122(1)(vii) of the GST Act cannot be imposed in the absence of clear grounds/corroborative evidence.

(21) The revenue has filed the present appeal before this Tribunal, assailing the Appellate Authority's order.

Submissions of the appellant and the respondent

(22) The learned authorised representative for the appellant reiterated the contentions raised in the grounds of appeal and would submit as under:

(a) The Adjudicating Authority has recorded his findings in detail from paras 25 to 42 of the impugned OIO, to come to the conclusion that M/s Srinivas Traders is only an intermediary unit existing for the purpose of creating and passing on fake ITC. The Adjudicating Authority examined the taxpayer's inward suppliers and recorded that they were non-existent and that the department cancelled their registrations suo motu.

(b) The Adjudicating Authority, in para 37 of the impugned OIO, has examined and recorded that the recipients of outward invoices issued by the taxpayer are also non-existent.

(c) In para 46 of the impugned OIO, the Adjudicating Authority has recorded findings to impose a penalty under Section 122 (1)(x) and Section 122(1)(vii) of the Act, 2017.

(d) The Appellate Authority had erred in not following the clarification issued by CBIC vide Circular No. 171/3 / 2022 - GST dated 06.07.2022. As per

the above Circular, the taxpayer is liable for penalty under Section 122(1)(vii) of the Act, 2017. As the appellate authority is part of the Department, the CBIC Circular binds it.

(e) The Adjudicating Authority, in para 40 of the impugned OIO, has verified the details of vehicles mentioned in the e-way bills on the website 'vaahan.nic.in' and recorded the findings in detail.

(f) Reliance was placed on the decisions of the Tribunal in *2012 (12) TMI 706 (Windson Chem Industries Vs. Commissioner of Central Excise, Daman), 2014 (8) TMI 86 (Tulip Lamcraft Pvt Ltd Vs. C.C.E. & St., Ahmedabad III)* and *2014 (11) TMI 203 (Commissioner of central excise & ST, Ahmedabad Vs. M/S. Paras Steel Industries)* wherein it was held that further corroboration of clandestine removal is not necessary if the proprietor admits clandestine removal in his statement.

(g) The statements given were voluntary. The revenue cannot be expected to investigate for alternate evidence when the taxpayer did not retract the statements during investigation/adjudications. The records also show that no purchase bills were found for the purchase of Arecanut. Voluntary statements made by the persons containing all the details about the functioning of a unit, which can be only with the personal knowledge of the taxpayer, could not have been obtained through coercion or duress or through dictation, and there is no reason as to why such statements cannot be looked into and relied upon.

(23) The respondent did not appear before the Tribunal on 8.9.2026, 22.9.2026, 6.10.2026, and 15.10.2026, when the appeal was posted for hearing. Notice of hearing was served online through the portal and also was served by affixing it at the registered premises in the presence of 2 witnesses, and the same was recorded in a panchanama dated 28.09.2026 and 29.09.2026.

Findings

(24) The respondent being absent, we heard the appellant's submissions and perused the connected records. The following issues arise for our consideration:

(a) Whether the deletion of the penalty imposed under Section 122(1)(x) of the Central Goods and Services Tax Act, 2017, was just and valid?

(b) Whether the deletion of the penalty imposed under Section 122(1)(vii) of the Central Goods and Services Tax Act, 2017, was just and valid?

(a) Whether the deletion of the penalty imposed under Section 122(1)(x) of the Central Goods and Services Tax Act, 2017, was just and valid?

(25) Section 122(1)(x) of the Act is applicable *where a taxable person falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax under this Act,* then the taxable person shall be liable to pay a penalty of Rs. 10000/- or the amount of tax evaded, whichever is higher.

(26) The Appellate Authority would state that, as per serial no. 3 of the Board's circular in 171/3/2022-GST dated 6.7.2022, penalty can be levied only under section 122(1)(ii) and Section 122(1)(vii) of the Act but penalty was levied under Section 122(1)(vii) and Section 122(1)(x) of the Act. The appellate authority accepted the contention of the taxpayer that the levy of penalty under Section 122(1)(x) of the Act was contrary to the Board's circular and also was imposed without specifying the nature of the offence.

(27) Circular No. 171/03/2022-GST dated 6.7.2022 was issued in respect of transactions involving fake invoices. Serial No. 3 of the circular states that where a taxpayer claims ITC on the basis of invoices without actual receipt of goods or services or both and issues invoices without actual supply of goods or services or both, then no demand can be made from the taxpayer under Section 73 or Section 74, as the case may be. However, the taxpayer shall be liable for penal action under Section 122(1)(ii) and Section 122(1)(vii) of the Act. The circular also states that *Actual action to be taken against a person will depend upon the specific facts and circumstances of the case which may involve complex mixture of above scenarios or even may not be covered by any of the above scenarios. Any person who has retained the benefit of transactions specified under sub-section (1A) of section 122 of CGST Act, and at whose instance such transactions are conducted, shall also be liable for penal action under the provisions of the said sub-Section.* The Adjudicating Authority has acted in accordance with the circular when he dropped the proceedings to impose tax under Section 74. The Appellate Authority ought to have considered the circular in its entirety before accepting the taxpayer's submissions. A Board circular cannot be interpreted contrary to a statutory provision. Serial no. 3 of Circular No. 171/03/2022-GST dated 6.7.2022 does not state that penalty can be levied only under Section 122(1)(ii) and Section 122(1)(vii) of the Act. A restrictive interpretation of the circular that curtails the proper officer's power to invoke the various subclauses in Section 122(1) is not correct.

(28) Section 122(1)(x) can be invoked if the taxpayer falsifies or substitutes the financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax. The taxpayer gave contradictory statements during the investigation. Initially, he denied any connection with Shrinivasa Traders, but later admitted he was its proprietor. Again, he initially stated that he purchased arecanut for cash from farmers, but later stated that he purchased it from traders. The taxpayer admitted to issuing and receiving bills without supplying goods. The invoices reflected in the returns were dated after the supplier's and the recipient's registration certificates were cancelled. The ITC was claimed and utilised on the basis of invoices without underlying receipt or supply of goods; the vehicle numbers found in the invoices and e-way bills pertained to tankers, 3-wheeler passenger vans, and delivery vans; and, in many cases, the 'vaahan.nic.in' website showed the registration numbers as 'vehicle detail not found'. The Adjudicating Authority stated in para 46 that the taxpayer created fake accounts and documents without any underlying supply of goods and filed GST returns without any underlying supply of goods.

(29) Therefore, the reasoning of the Appellate Authority that penalty under section 122(1)(x) was levied without specifying the nature of offence is not correct. The order under Section 74 was not passed against the taxpayer in view of the Board's circular (cited supra). We hold that the deletion of penalty under section 122(1)(x) of the Act is improper and unjustified.

(b) Whether the deletion of the penalty imposed under Section 122(1)(vii) of the Central Goods and Services Tax Act, 2017, was just and valid?

(30) Section 122(1)(vii) of the Act states that *where a taxable person takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of the Act or the rules made there under,* then the taxable person shall be liable to a penalty of Rs.10000/- or the tax evaded, whichever is higher.

(31) The taxpayer gave statements to the authorities under section 70 of the Act, which empowers a proper officer to summon persons to give evidence and produce documents. The Section states that a proper officer may summon a person whose attendance he considers necessary to give evidence or produce a document or any other thing in any inquiry. The persons summoned shall be bound to attend in person or by an authorised representative and the person shall state the truth during examination or make statements or produce such documents or other things as may be required. Every such inquiry shall be deemed to be a "judicial proceeding".

(32) Pursuant to the proper officer's summons, the taxpayer appeared before the authorities on 24.11.20, 18.12.20, 19.12.20, 22.12.20, 23.12.20, and 17.3.21 and gave statements relating to their business transactions. The statements given by the appellant on various dates, under Section 70 of the Act, are binding on the taxpayer as per the principles stated by the Supreme Court in *(2023) 11 Centax 101 (Commissioner of Customs [Imports], Mumbai Vs. Ganpati Overseas),* wherein the Supreme Court interpreted Section 108 of the Customs Act. The Court held that a customs officer is not a police officer and that a statement made before a customs officer is admissible in evidence and can be used against the person. Section 108 aims to elicit the truth from the person being examined regarding the customs infringement. Since the objective is to

ascertain the truth, the customs officer must ensure the truthfulness of the statement so recorded. The Court further held that the adjudicating authority must determine whether it used any duress or coercion in recording such a statement, since it exercises quasi-judicial powers.

(33) The Karnataka High Court, in *(2023) 8 Centax 2 (Commissioner of Customs, Mangaluru Vs. Imtiaz Ahmed)*, held that a statement made before a customs officer under Section 70 of the Customs Act is not barred by Section 25 of the Evidence Act. It further held that statements of third parties cannot be treated as statements of co-accused but as independent evidence, for which no other independent evidence was required. The decisions of the Tribunal in *2012 (12) TMI 706 (Windson Chem Industries Vs. Commissioner of Central Excise, Daman)*, and *2014 (11) TMI 203 (Commissioner of central excise & ST, Ahmedabad Vs. M/S. Paras Steel Industries)*, and of the Gujarat High Court in *2014 (8) TMI 86 (Tulip Lamcraft Pvt Ltd Vs. C.C.E. & St., Ahmedabad III)* are also authorities for the view that further corroboration of clandestine removal was not necessary if the proprietor admits clandestine removal in his statement.

(34) Section 70 of the Act is similar to Section 108 of the Customs Act; hence, the principles stated by the Supreme Court (cited supra) and the Karnataka High Court (cited supra) apply to the case at hand. The taxpayer's statement under Section 70 before a proper officer is binding on him, as the proper officer was not a police officer. The taxpayer has full and complete knowledge of his business transactions and can be relied upon by the proper officer. The Appellate Authority did not find that the statement was obtained by duress or coercion; it only stated that it required further corroborative evidence. The Appellate Authority's reasoning that it required further corroborative evidence before fastening liability on the taxpayer must be rejected in light of the principles laid down in the aforesaid cases. Courts and tribunals have categorically held that corroborative evidence is not necessary when liability is fixed based on an admission statement made before the proper officer under the Act. Hence, the statement can be relied on for determining the validity of the penalty imposed under Section 122(1)(x) and Section 122(1)(vii) of the Act.

(35) The Tribunal's decision in *2021 (376) ELT 666 (Habib Uz Zaman Vs. Commissioner of Customs, New Delhi)*, relied upon by the Appellate Authority, is not relevant, as in that case third parties gave statements against the appellant, which the Tribunal rejected on the ground of lack of corroborative evidence. In the present case, the appellant gave a statement under Section 70, admitting that it carried on business without actually receiving and supplying goods.

(36) The decision of the Tribunal in *2022 (63) GSTL 64 (J.P. Iscon Private Limited vs. Commissioner of Central Excise, Ahmedabad)*, relied upon by the appellate authority, is not relevant to the case, as in the case before the Tribunal, the department had relied only on Excel sheets furnished by an employee, and hence the Tribunal held that the same cannot be accepted in the absence of corroborative evidence with any other evidence. The decision was not rendered in the context of section 14 of the Central Excise Act and hence not relevant. Section 14 of the Central Excise Act is similar to Section 108 of the Customs Act.

(37) The Appellate Authority relied on the Kolkata High Court decision reported in *(2023) 7 Centax 136 (Gargo Traders Vs. The Joint Commissioner of Commercial Taxes (State Tax))* to contend that retrospective cancellation will not deprive the benefit of ITC. In the case before the Court, it was found that the supplier was a registered taxable person and the petitioner had paid the sale price, including tax, through the bank. The Court noted that the petitioner did not allege collusion with the supplier. The Court set-aside the order and directed the proper officer to pass a fresh order after considering the documents filed by the petitioner. The Appellate Authority’s finding that the registration certificates of the suppliers and the recipients were cancelled retrospectively is not supported by the materials on record. The adjudicating authority had held that the registration certificates were cancelled suo motu before the invoice dates. The Kolkata High Court's decision (supra) does not support the taxpayer's case. In the case under appeal, the proper officer passed the order after considering the taxpayer's objections.

(38) One other reason the Appellate Authority gave for deleting the penalty was that Shri Shridhar Hegde had not given any statement admitting to any offence. Shri Shridhar Hegde is the proprietor of M/S Shyam Traders, Sirsi, and he gave statements on issues relating to his business. He would state that he had issued e-way bills for many suppliers, including the taxpayer; that he had issued invoices for the taxpayer; that this business of generating e-way bills and invoices was generating income for him. Shri Shridhar Hegde categorically stated that he issued e-way bills and invoices for the taxpayer. The taxpayer failed to explain why he received e-way bills and invoices from a third person instead of generating them himself, given his huge business volume.

(39) The Appellate Authority had relied on the decision of the Supreme Court in *Commissioner of Central Excise vs. CERA Boards and Doors, Kannur [2020 (373) ELT 794]* in support of his reasoning that every transaction has to be viewed independently and any horizontal application of any evidence of a transaction to all other transactions was not acceptable under law. The Supreme Court had not laid down such a proposition. The question before the Supreme Court concerned the valuation of excisable goods only for the purpose of charging duty, as the assessees had not challenged the Tribunal's order on the existence of undervaluation and consequent evasion of duty. The Court found that, for that purpose, it was necessary to consider the period of assessment, as the method of determining value before 1.7.2000 differed from the method of valuation after 1.7.2000, since Section 4 of the Central Excise Act was amended with effect from 1.7.2000. The Court directed the authorities to follow the prescribed procedure for ascertaining value before and after 1.7.2000. The decision contains nothing to support the Appellate Authority's finding that the Supreme Court's directions apply universally, irrespective of the facts and circumstances of each case. Reliance placed on the decision is therefore misplaced.

(40) The Appellate Authority would state that the taxpayer did not admit that no underlying supply of goods, either inward or outward, existed. This is not correct. The taxpayer deposed on 17.3.2021 that he was using the premises for fake transactions; that goods were not stored in his premises; that the name and GSTIN was not displayed in the premises; that he had not maintained any accounts in the premises; that he had been providing fake invoices to various traders who used the fake invoices for payment of applicable GST on the supplies made by them; that goods were sent to Solapur under the cover of invoices issued in respect of vehicles which had already passed; details of another vehicle was entered in part B of the e-way bill; that he was working with Shridhar Hegde and others who were using the same set of invoices and e-way bills for transportation of two consignments cleared without payment of GST. The taxpayer had not furnished details of the supplies on which he had paid tax and on which his suppliers had paid tax.

(41) The Appellate Authority would rely on bank statements and the Purchase account to show an underlying supply of goods and conclude that the order-in-original's findings were based on presumptions only. We find that the Adjudicating Authority was not presented with the bank statements. This finding is present on pages 210 and 211 of the order-in-original. Rule 112 of the CGST Rules states that the taxpayer shall not be allowed to produce before the Appellate Authority any evidence other than the evidence produced before the Adjudicating Authority. On page 15 of the order-in-appeal, the Commissioner, Mangaluru, while commenting on the appeal filed by the taxpayer, stated that the taxpayer had not submitted documents, such as the weighment slip and toll receipt, indicating the actual movement of goods. The taxpayer had not submitted a bank statement to support its claim that it transacted only through banks. In fact, the document submitted before the appellate authority is not a bank statement but a ledger copy. The taxpayer has not furnished any reasons for non-production of the records before the Adjudicating Authority. The Appellate Authority ought not to have accepted the bank statements, given the embargo imposed by Rule 112 of the CGST Rules. If the Appellate Authority had decided to accept the documents, he ought to have given reasons for accepting documents not furnished to the Adjudicating Authority.

(42) The Adjudicating Authority did not base his order solely on the statements. The order-in-original would disclose that the registration certificates of the suppliers and the recipients of the taxpayer were cancelled prior to the date of the invoice issued to and by the taxpayer. The show cause notice contained the allegation. The taxpayer had not furnished any material to disprove the allegation. Instead, the appellate authority would state that the authorities should have conducted further investigation before fastening liability on the taxpayer. This is incorrect. Further investigation would have been required only if the taxpayer had furnished concrete material to disprove the allegations made in the show cause notice. The burden shifted to the taxpayer to prove the genuineness of his dealings. The taxpayer’s contention was that the supplier and the recipients were genuine and hence the burden was on the taxpayer under Section 155 and Section 16(2)(b) & (c) to prove the genuineness of the transaction. The taxpayer had to prove that he received the goods and that the supplier had paid tax. This is what the taxpayer had to do and failed to do.

(43) The order-in-original also disclosed that verification of the vehicle numbers on the online portal “vaahan.nic.in” revealed that the vehicle numbers related to scooters, tankers, tippers, 3-wheelers, etc., and, in many cases, the registration numbers showed “vehicle detail not found”. The adjudicating authority also conducted this verification after the taxpayer received objections. After receiving the objections, the adjudicating authority again verified the online portal and uploaded screenshots of the verification. On page 160 of the order-in-original, the taxpayer stated that, due to a mismatch, the vehicle numbers were not available on the portal. The taxpayer blamed the transporter for the mismatch. The taxpayer furnished no

evidence in this regard.

(44) The Appellate Authority would reject the findings relating to the vehicle mismatch, relying on the Board's clarification in Circular No. 64/38/2018-GST dated 14.9.2018. The said circular was issued in the context of detention of conveyance to determine violation of Section 129 and 130 of the Act. Under Sections 129 and 130, the existence of a vehicle for transportation is not disputed; however, in the present case, the existence of the vehicle involved in the transportation of goods is disputed. Reliance placed on the circular is therefore misplaced.

(45) The Appellate Authority would allege that the Adjudicating Authority made contrary findings in para 34 and para 46; therefore, the Adjudicating Authority failed to categorically conclude that no transactions occurred. In para 34 of the order-in-original, the Adjudicating Authority states that it is clear that *Shri Suresh Bhanushali, Shri Praveen Suvarna, Shri Sachin, Shri Prabhkar Hegde, and many others were members of a racket dealing in fake GST invoices without supply of goods. In many cases, multiple consignments were transported under the strength of one set of invoices and e-way bill where goods moved to one destination and recipient but the documents were used for passing on input tax credit to persons who did not receive the supplies.* In para 46 of the order, the Adjudicating Authority states that *the Noticee has taken fraudulent ITC and passed on the same without actual supply of goods either on inward end or outward end. The Noticee has created fake books of accounts and documents without underlying supply of goods, has filed GST returns without underlying supply of goods*. There is no contradiction in the Adjudicating Authority's findings when comparing the said 2 paras. In para 34, the Adjudicating Authority referred not only to the taxpayer but also to others, whereas in para 46, the Adjudicating Authority referred only to the taxpayer.

(46) Under the Act, the burden is on the taxpayer to prove eligibility for input tax credit. The taxpayer was required to prove that he had received the goods under Section 16(2)(b) and the supplier had paid tax under Section 16(2)(c), to claim the benefit of ITC. The authorities had furnished information in the show cause notice in support of their plea that the taxpayer was claiming the benefit of ITC without actual receipt of goods or services or both. The authorities stated that the suppliers' and the taxpayer's recipients' registration certificates were cancelled before the invoice date. The authorities stated that the vehicle numbers mentioned in the e-way bills were either unavailable or linked to other vehicles that cannot be used to transport goods. The taxpayer did not prove that he received the goods. He also has not proved that the suppliers paid tax to the Government. The taxpayer did not furnish documents to prove the genuineness of his dealings. The taxpayer admitted that he had provided fake invoices to various traders, who used them to pay GST liability. The taxpayer did not retract the statement at the earliest opportunity. We hold that deleting the penalty under Section 122(1)(vii) is invalid and unjustified.

Order

(1) The appeal is allowed.

(2) Order-in-appeal No. MLR-CGST-000-APP-AS-003-2024-25 dated 03.05.2024 is set aside.

(3) The penalties under Section 122(1)(vii) and 122(1)(x) imposed in order-in-original No. GEXCOM/GST/46/2022-ADJN dated 25.01.2023 are restored.

(4) The appropriation of ?22,00,400 and the attached bank balances stand.

(Sudha Koka)

(Srikanth Venkatraman)

Dated: 29.10.2026