Dated: 20.11.2026

GSTAT

State Bench Cuttack

Division Bench Court No. Court II

APL/7/CTT/2026

PRAKASH RAY **.....Appellant**

Versus

AMMAN ARUL BOREWELLS, PROPRIETOR, GT PETROL PUMP GANDHINAGAR PARA BALANGIR ODBLG 767001 **.....Respondent**

Quorum

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

Counsel for Appellant	**Counsel for Respondent**
SHIVANSH RAGHUWANSHI	SUDHIR KUMAR KHADELWAL,CA
MANIKANT	SHREYA KHANDELWAL

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. : ZN620271126000090H **Date of order :** 20/11/2026

1.	GSTIN/Temporary ID/UIN - 21FUCPS4446H1ZL	
2.	Appeal Case Reference no. - APL/7/CTT/2026	Date - 22/01/2026
3.	Name of the appellant - Prakash Ray , Prakashr.g119201@gov.in , 9163237068	

4.	Name of the respondant - 1. AMMAN ARUL BOREWELLS , suresh.jrb@gmail.com , 9944422288	
5.	Order appealed against - AD210224008706K	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - ZD210325008669H	Date - 13/03/2025
6.	Personal Hearing - 20/11/2026 06/11/2026 15/10/2026 08/10/2026 17/09/2026	
7.	Status of Order under Appeal - Modified – Order under Appeal is modified	
8.	Order in brief - The tax payer Respondent allegedly short paid the GST Liability arising out of supply to Government Departments willfully by misstating the taxable turnover. Proceeding initiated under Section 74 of the CGST Act placing reliance upon information gathered from a credible third party source i.e., WAMIS, a system maintained by works Department of Government of Odisha . Due to non participation of the Respondent taxpayer at the notice stage as well as the adjudication stage, demand confirmed ex parte by assessing GST @18% on the deferential turnover along with penalty equal to the amount of tax assessed under Section 74 (9) of the Act. On Appeal under Section 107(1) of the Act, the tax demand is modified by assessing GST @12% and holding that the alleged short payment was not caused by an Act of wilful misstatement with an intent to evade tax, but rather due to ignorance of Law. On Appeal under Section 112(3), while there is no contest on account of application of the rate of tax @12% and the tax demand modified as a consequence there to, holding invocation of Section 74 by the Adjudicating officer as illegal in the impugned Appeal has been challenged. The Respondent contested the Appeal inter alia on the ground of falling below the threshold limit prescribed by CBIC for filling of appeal under Section 112(3) of the Act. After hearing both the parties and examining the order of CBIC under Section 120 of the Act, it was found that the order passed under Section 107 (11) being a composite Appeal order in which the composite tax demand being in excess of rupees 20lakhs the appeal is found to be above the threshold limit and hence maintainable . From the conduct of the taxpayer by way of not discharging the tax liability on the suppressed turnover both at the pre-notice stage as well as post-notice stage it could not be attributed to his innocence or ignorance it was inferred to be wilful and intentional for not paying the tax. Therefore it is found to be a fit case to sustain invocation of Section 74 requiring modification of the order impugned. Accordingly, appeal order is passed setting aside the order in the impugned appeal holding invocation of Section 74 as illegal. The proper officer is directed to recompute the tax	

	liability as determined in first appeal, penalty under Section 74 as per the revise tax demand and interest under Section 50 of the Act.

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	707260	707260	707260	707260	0	0	0	0	1414520	1414520
(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

10.	For Other orders and Demand orders which are not quantified:	
Issues as raised by	Issues as determined by Appellate/Revisional authority	Order by GST Appellate Tribunal

proper officer		
Levy of Penalty	The Additional Commissioner (Appeals), in Order-In-Appeal No. 833-834/GST/BBSR/ADC/2024-25 Dated: 11.03.2025 opined that the elements of wilful mis-statement or suppression of facts to evade tax, are not present in this case to invoke the provisions of section 74 of the CGST Act. Accordingly, he held that the total penalty of Rs. 28,53,650/- [Rs. 18,03,534/- +10,50,116/-] imposed by the adjudicating authority for the FY 2017-18 [July-March] and FY 2018-19 is not sustainable. At the same time, he held that there is short / non-payment of tax totalling to Rs. 21,62,039/- [CGST: Rs. 10,81,019.50 + SGST: Rs. 10,81,019.50] in the case for which the provisions of Section 73 of the CGST Act shall apply. Subsequently, The penalty of Rs. 28,53,650/- [Rs. 18,03,534 + 10,50,116] imposed by the adjudicating authority in the impugned order for the FY 2017-18 [July-March1 and FY 2018-19 is set aside. Further details may be referred to in the Annexure.	The tax payer Respondent allegedly short paid the GST Liability arising out of supply to Government Departments willfully by misstating the taxable turnover. Proceeding initiated under Section 74 of the CGST Act placing reliance upon information gathered from a credible third party source i.e., WAMIS, a system maintained by works Department of Government of Odisha . Due to non participation of the Respondent taxpayer at the notice stage as well as the adjudication stage, demand confirmed ex parte by assessing GST @18% on the deferential turnover along with penalty equal to the amount of tax assessed under Section 74 (9) of the Act. On Appeal under Section 107(1) of the Act, the tax demand is modified by assessing GST @12% and holding that the alleged short payment was not caused by an Act of wilful misstatement with an intent to evade tax, but rather due to ignorance of Law. On Appeal under Section 112(3), while there is no contest on account of application of the rate of tax @12% and the tax demand modified as a consequence there to, holding invocation of Section 74 by the Adjudicating officer as illegal in the impugned Appeal has been challenged. The Respondent contested the Appeal inter alia on the ground of falling below the threshold limit

		prescribed by CBIC for filling of appeal under Section 112(3) of the Act. After hearing both the parties and examining the order of CBIC under Section 120 of the Act, it was found that the order passed under Section 107 (11) being a composite Appeal order in which the composite tax demand being in excess of rupees 20lakhs the appeal is found to be above the threshold limit and hence maintainable . From the conduct of the taxpayer by way of not discharging the tax liability on the suppressed turnover both at the pre-notice stage as well as post-notice stage it could not be attributed to his innocence or ignorance it was inferred to be wilful and intentional for not paying the tax. Therefore it is found to be a fit case to sustain invocation of Section 74 requiring modification of the order impugned. Accordingly, appeal order is passed setting aside the order in the impugned appeal holding invocation of Section 74 as illegal. The proper officer is directed to recompute the tax liability as determined in first appeal, penalty under Section 74 as per the revise tax demand and interest under Section 50 of the Act.

Place :CUTTACK

Date : 20.11.2026

ORDER

Per: Hon'ble Suchismita Misra, Member(Judicial)

Case Nos: APL/7/CTT/2026

APL/8/CTT/2026

Appeal Nos 7/CTT/2026 and 8/CTT/2026 are taken up together for disposal by this common order, as both appeals arise out of a common order, passed by the Appellate Authority in OIA 833-834/GST/BBSR/ADC/2024-25 which has been challenged before this Tribunal.

2. The facts giving rise to these appeals are set out below.

M/s Amman Arul Borewells (hereinafter referred to as the "Assessee-Respondent") was engaged in the business of making composite supplies of works contract services relating to the construction of borewells for Government organisations, companies, Public Sector Undertakings and other entities, having its principal place of business at Balangir, Odisha. On the basis of information received from the Works and Account Management Information System (in short "WAMIS"), Odisha, an enquiry was initiated against the Assessee-Respondent. On verification of relevant documents, such as the Balance sheet, Profit and Loss Account, Income Tax Returns alongwith form 26 AS, Work Orders, etc., the authority concerned detected a short payment of tax amounting to Rs 18,03,534/- for the financial year 2017-18 (July to March) and Rs 10,50,116/- for the financial year 2018-19, calculated at the highest applicable rate of 18% on the taxable value. Accordingly, show cause notices were issued to the Assessee-Respondent proposing recovery of the total short-paid GST liability amounting to Rs 28,53,660/- alongwith interest and penalty under Section 74 read with Section 50 of the Central Goods and Services

Act, 2017 (hereinafter referred to as "the Act"). The aforesaid tax demand was subsequently confirmed by the Adjudicating Authority, alongwith interest and penalty under Section 74 read with Section 50 of the Act.

Being aggrieved by the orders passed by the Adjudicating Authority, the Assessee-Respondent challenged the same before the Appellate Authority, describing those orders as illegal, arbitrary and founded entirely on a misconception of law and facts. The Assessee-Respondent further contended before the Appellate Authority that it had received payments in respect of works executed during both VAT and GST regimes, but had declared in its GSTR-3B returns only those payments received in respect of the GST regime. It was also explained that the payments reflected in Form 26 AS included amounts received against works executed during the VAT regime. Although the Assessee-Respondent had not participated in the proceedings before the Adjudicating Authority, it appeared before the Appellate Authority and advanced its submissions. It contended that, owing to its ignorance and lack of awareness, it had failed to declare the correct taxable value in its periodic returns. It further submitted that there was no malafide on its part to evade payment of tax and therefore, the proceedings initiated against it under Section 74 of the Act were not legally sustainable. Accordingly, it urged the Appellate Authority to hold that the proceedings, if any, ought to have been initiated under section 73 instead of Section 74 of the Act.

3. Learned Appellate Authority, on consideration of the pleas and submissions advanced by the Assessee-Respondent, the

relevant statutory provisions and the documents placed before him, re-computed the tax liability of the Assessee- Respondent and determined the differential tax liability at Rs 21,62,039/- in aggregate for the financial years 2017-18 (July to March) and 2018-19.

As regards the applicability of Section 74 of the Act and imposition of the penalty prescribed thereunder, the Appellate Authority examined the issue and held that the short-payment of tax by the Assessee-Respondent was not attributable to any intention to evade payment of tax. He further held that there was no wilful suppression of facts on the part of the Assessee - Respondent resulting in such short-payment. Accordingly, the Appellate Authority concluded that the penalty on the differential tax liability was leviable under the provisions of Section 73 of the Act and not under Section 74 thereof.

4. The Appellant-State, being aggrieved by the aforesaid order passed by the Appellate Authority, preferred the present appeals, inter alia, on the following

Grounds:

There has been a fundamental misinterpretation of Section 74 of the Act. The Appellate Authority gravely erred in applying Section 73 of the Act while rejecting the substantial and unequivocal evidence indicative of suppression. The consistent failure on the part of the Assessee-Respondent to disclose the correct taxable turnover for the relevant tax periods clearly indicates deliberate suppression within the meaning of Explanation 2 to Section 74 of the Act. The Assessee-Respondent deliberately withheld the correct particulars necessary for proper assessment of tax, and such

omission or misstatement with regard to the actual and correct turnover could be detected only upon investigation in to the matter. This in itself, is indicative of wilful suppression. Had the Departmental Authority not initiated an enquiry, such wrongful misstatement or suppression on the part of the Assessee-Respondent would have remained undetected, thereby enabling the Assessee-Respondent to continue to enjoy an undue and unlawful benefit. In support of its submissions, the Appellant-Department also placed reliance upon the decision of the Hon'ble Supreme Court in the case of Continental Foundation and some other case laws of Hon'ble High Courts.

On the aforesaid grounds, the Appellant-State prayed for setting aside the Order in Appeal Nos OIA 833-834/GST/BBSR/ADC/2024-25, dated11.03.2025 and for granting consequential reliefs, alongwith such other order or orders as may be deemed fit and proper in the facts and circumstances of the case.

5. The Assessee-Respondent filed its Cross-Objection challenging the legality and validity of the present appeals on the following grounds:

i. The first Appellate Authority, having found that the essential ingredients of Section 74 of the CGST Act, namely, fraud, wilful misstatement or suppression of facts with intent to evade tax, were not established, rightly treated the case under Section 73 of the CGST Act. Such treatment, being a consequential application of the law, cannot, by itself, constitute a ground for interference with the impugned order;

ii. The applications filed under Section 112(3) of the CGST Act are not accompanied by any reasoned order of the Commissioner specifying the points for determination. The Appellant is, therefore, put to strict proof of the existence and contents of any such order;

iii. The sole ground raised, namely Ground No 1.1, merely discloses a disagreement with the findings of the first Appellate Authority and does not point out any illegality or impropriety in the impugned order, which is the statutory test contemplated under Section 112(3) of the CGST Act;

iv. The Department, having passed the Orders-in-Original and having had them examined by its own first Appellate Authority, on the full record, now seeks to reopen issues without identifying any error.

v. On the Appellant's own figures, the penalty in dispute is Rs 19,45,834/-, which is below the monetary limit of Rs 20,00,000/- fixed by the Circular No. 207/1/2024-GST dated 26.06.2024 under Section 120 of the CGST Act, for a Composite order, and no exclusion has been pleaded.

vi. The Appellant has not challenged the finding on the rate of 12 per cent, the re-computed tax of Rs 21,62,039/- or the interest, and those findings have attained finality between the parties.

vii. The applications describe the order appealed against and the date of communication incorrectly and the Appellant cannot urge any ground not pleaded without leave and an opportunity to the Respondent.

viii. The demand was computed entirely from the Income Tax Return and Form 26 AS furnished by the Respondent on the Department's request, and the Department had its own WAMIS data. Therefore, there was no concealment of facts from the Department.

ix. The Orders-in-Original identify no false statement, false document or positive act of suppression, and infer intent only from non-declaration in Form GSTR- 3B which is not permissible in law.

x. (X) It is settled by the Hon'ble Supreme Court in Continental Foundation, Cosmic Dye Chemical, Uniworth Textiles, TamilNadu Housing Board and Padmini products that suppression or misstatement must be wilful and with intent to evade, and that mere non-payment or omission is not enough. These discussions apply to section 74 being in pari materia with Section 11A of the central excise Act 1944. The decision in Continental Foundation, relied on by the Appellant, supports the Respondent and not the Appellant.

xi. Explanation 2 to section 74 does not dispense with the requirement of 'wilful' conduct to evade tax in section 74 (1) and the Respondent was never asked in writing for information which it failed to furnish.

xii. The burden to prove fraud, wilful misstatement or suppression lies on the Department, and the Department adduced no evidence of intent in the orders-on-original which were pressed ex-parte.

xiii. The short payment arose from interpretation of the rate notification and the initial phase of GST, as found by the first Appellate Authority, and the Department's own demand at 18 percent was corrected to 12 percent and has not been challenged.

xiv. Instruction No. 05/2023-GST dated 13.12.2023 of the Board itself states that Section 74(1) cannot be invoked merely on account of non-payment without a specific element of fraud, wilful misstatement or suppression.

xv. The Tribunal has held in return mismatch matters that short payment enables determination under Section 73 but that Section 74, requires a link to intent to evade.

xvi. The Respondent has paid the tax determined by the impugned order and has derived no unlawful benefit which shows absence of intent to evade.

xvii. The first Appellate Authority rightly set aside the penalty of Rs 28,53,650/- under section 74 and imposed penalty of Rs 2,16,204/- under Section 73(9) which is the penalty provided by law on the facts found.

xviii. Invocation of Section 74 in the Orders-in-Original, without the ingredients of fraud, wilful misstatement or suppression with intent to evade tax being identified and established on the record, does not sustain Section 74 and does not bind the First Appellate Authority, which is required by Section 107(11) to examine the decision appealed against and to confirm, modify or annul it as it thinks just and proper.

xix. Section 75(2) of the CGST Act recognises that, where an Appellate Authority concludes that the charges of fraud, wilful misstatement or suppression to evade tax have not been established, the notice is to be treated as one under Section 73(1); the treatment under Section 73 is the statutory consequence of that conclusion and is not a separate ground for interference.

xx. The Appellant has not demonstrated any error of law or perversity in the finding that the ingredients of Section 74 are not established, and mere disagreement with the treatment under section 73 cannot substitute for proof of fraud, wilful misstatement or suppression with intent to evade tax.

xxi. The penalty equal to the tax under Section 74(1) presupposes intent to evade tax which has not been established and the Appellant does not challenge the tax or interest; the penalty under section 73(9) is the penalty provided by law.

6. In view of the respective pleadings of the parties, the following points arise for determination:

(i) Whether the present appeals are maintainable in view of Circular No. 207/1/2024-GST, dated 26.06.2024 issued by the Central Board of Indirect Taxes and Customs (CBIC).

(ii) Whether the Appellate Authority was justified in concluding that the dispute in question does not fall within the ambit of Section 74 of the CGST Act, 2017, in the absence of the essential ingredients of fraud, wilful misstatement, or suppression of facts with intent to evade payment of tax on the part of the Assessee-Respondent.

7. Since the maintainability of these appeals is being questioned before the Tribunal in view of the Circular No. 207/2024-GST dated 26.06.2024 issued by the CBIC, it would be appropriate, at the outset, to examine the said Circular and determine its applicability to the present appeals.

These appeals arise out of a common order passed by the Appellate Authority in OIA No. 833-834/GST/BBSR/ADC/2024-25 whereby two separate appeals preferred by the Assessee against two Orders-in-Original passed by the Adjudicating Authority have been decided. The two Orders-in-Original pertain to two different periods, namely, the Financial Year 2017-18 (July 2017 to March 2018) and the Financial Year 2018-19.

Thus, the Order-in-Appeal is a composite order disposing of two separate appeals, involving an aggregate tax demand of Rs 21,62,039/-

Learned Counsel appearing for the Assessee - Respondent contended that since the aforesaid amount of tax demand, as determined on recomputation by the Appellate Authority, represents the aggregate demand for two different financial periods, the demand pertaining to each individual period, would necessarily be much less than the prescribed monetary limit of Rs 20,00,000/-. According to him, therefore, the Department would be precluded from maintaining the present appeals before the Tribunal.

A bare perusal of the Circular reveals that with a view to reducing Government litigation, certain instructions have been issued to the authorities concerned, prescribing monetary limits for filing appeals or applications by the Department before the GST Appellate Tribunal, the Hon'ble High Courts and the Hon'ble Supreme Court. However, in paragraph 3 of the said Circular, certain guiding principles have also been

laid down for determining whether a particular case falls within the prescribed monetary limits. One such principle, contained in clause (viii) of paragraph 3, is relevant for consideration and is quoted
below:

Quote:

"(viii) In a composite order which disposes more than one appeal/demand notice, the monetary limit shall be applicable on the total amount of tax/interest/penalty/late fee, as the case may be, and not on the amount involved in individual appeal or demand notice." Unquote.

In view of the aforesaid specific stipulation contained in Clause (viii) of Paragraph 3 of the Circular, it is evident that where a composite order disposes of more than one appeal or demand notice, the prescribed monetary limit is required to be examined with reference to the total amount involved in such composite order and not with reference to the amount involved in each individual appeal or demand notice.

Applying the aforesaid principle to the facts of the present case, since the impugned Order-in-Appeal is a composite order disposing of two separate appeals arising out of two Orders-in-Original pertaining to two different financial periods, the relevant consideration is the aggregate tax demand involved in the composite order, which admittedly amounts to Rs 21,62,039/- Consequently, the contention advanced by the learned Counsel for the Assessee Respondent that the demand pertaining to each individual financial year falls below the prescribed monetary limit of Rs 20,00,000/- does not appear to be sustainable in view of the express language of the aforesaid Clause. Accordingly, these appeals are held to be maintainable.

8. So far as second point is concerned, it is evident from the pleadings of the parties and the submissions advanced on their behalf during the course of hearing that the Department has no grievance with regard to the tax demand as determined by the Appellate Authority. Similarly, the Assessee - Respondent has no grievance against the order passed by the Appellate Authority. The Department has preferred the present appeals, being aggrieved by the finding of the Appellate Authority that the cases involve violations which are required to be dealt with under Section 73 of the Act and not under Section 74 thereof.

Under the CGST/OGST Act, 2017, Sections 73 and 74 deal with the determination and recovery of tax not paid, short-paid, erroneously refunded, or Input Tax Credit (ITC) wrongly availed or utilised. The main difference is the intention behind the tax default. Section 73 applies when the tax default is without fraud, wilful misstatement or suppression of facts whereas Section 74 is applied when the tax default is due to fraud, wilful misstatement or suppression of facts with the intention to evade tax.

9. The law is no longer res integra that for invoking the provision under Section 74 of the CGST Act and imposing penalty thereunder, the Department is required to establish that the non-payment or short payment was occasioned by fraud, wilful misstatement or suppression of facts on the part of the tax-payer, with the specific intent to evade payment of tax. It is equally well settled that mere non-payment of tax or mere suppression or omission to disclose the correct tax liability, by itself, can not be construed as conduct tainted with an intent to evade tax. The burden of establishing such intent rests squarely on the Department, which must discharge the same by providing clear and cogent circumstances/evidence that the omission or suppression on the part of the tax-payer was

deliberate and was intended to evade payment of the tax due. In the instant case the Assessee-Respondent did not deny his short-payment of tax for the periods 2017-18 (from July to March) and 2018-19 but raised objection regarding its computation by the Adjudicating Authority and further explained his innocence taking a plea that since the new Law on GST was introduced at that relevant period there was confusion as well as ignorance on his part to reconcile its tax liability. The Department did not accept his such plea though the Appellate Authority accepted his above stated stand as a genuine explanation in favour of his innocence. However, it is noticed that, as the Assessee-Respondent had defaulted in discharging his tax liability correctly not only once, but continuously for two financial year i.e., 2017-18 and 2018- the crucial question that arises for consideration is whether such repeated defaults were merely inadvertent or bona fide lapses or whether they constituted deliberate acts intended to evade payment of tax, as alleged by the Department.

10. As revealed from the case records, the short payment of tax by the Assessee-Respondent for the relevant tax period was detected by the Department on its own initiative. Thereafter, an enquiry was initiated in to the matter, and relevant documents, such as informations obtained from WAMIS, Balance Sheet, Profit and Loss Accounts, Income Tax, Returns alongwith Form 26AS, Work Orders issued by the Government were examined and verified. The Assessee-Respondent was duly informed of the discrepancies noticed by the Department and was afforded an opportunity to submit his explanation and clarify the circumstances. However, as borne out by the records, the Assessee-Respondent failed to respond to the communications issued by the concerned Authority within the stipulated time, for reasons best known to him. He also failed to

respond to the Show Cause Notice, dated 18.09.2023 under Ruled 142 of the Rules issued by the Authority, despite having become aware by then of the discrepancies relating to his tax liability and the amount of the tax actually short paid by him for the relevant periods. The matter was thereafter placed before the Adjudicating Authority, but the Assessee-Respondent once again failed to appear and explain his position despite being afforded adequate opportunities of hearing in respect of the alleged short payment of tax. The Adjudicating Authority, on taking in to consideration the returns filed by the Assessee-Respondent alongwith other relevant records, as mentioned above, which disclosed his total turnover during the relevant periods, determined the amount of tax short paid and adjudicated the matter against him under Section 74 of the CGST Act, besides determining the penalties payable by him.

11. The Assessee-Respondent, thereafter, challenged the findings of the Adjudicating Authority before the First Appellate Authority, contending that the non-payment of the differential tax liability, was never intentional or motivated by any intention to evade payment of tax, but was merely attributable to his ignorance and lack of awareness regarding the correct tax liability.

The question that now arises for consideration is whether the aforesaid explanation offered by the Assessee- Respondent deserves acceptance in the facts and circumstances of the present cases.

It is well settled that, in the absence of direct evidence indicating the intention of a person, the question as to whether an act was wilful or otherwise has to be determined by drawing an inference from the surrounding facts and circumstances, including the conduct of the person concerned. In order to arrive at a conclusion as to whether a particular act

was deliberate and intentional, rather than accidental or attributable to an inadvertent mistake, the conduct and actions of the person concerned to be taken in to notice.

12. On perusal of the Show Cause Notices issued in these cases, it is evident that the Assessee-Respondent was afforded adequate and reasonable opportunities to explain the discrepancies and take appropriate corrective measures in respect of the alleged short payment of tax. However, he failed to take any timely steps to reconcile the discrepancies or offer a satisfactory explanation. In the first place, he failed to correctly disclose his tax liability and thereafter, even when the discrepancies were detected and brought to his notice, he did not take the necessary steps within a reasonable time. Even before this Tribunal, he has not come forward with any cogent or justifiable explanation as to why he failed to respond to the Show Cause Notices or appear before the Adjudicating Authority to explain his position when the matters were taken up for adjudication. In such circumstances, his mere assertion that he had extended cooperation to the concerned authorities in relation to the tax demand for the relevant periods does not inspire confidence and cannot, by itself, be accepted as sufficient to establish his bonafides or innocence in the matter.

13. The First Appellate Authority appears to have failed to take due note of the aforesaid conduct of the Assessee Respondent, particularly his failure to respond to the Show Cause Notices, and his continued non-appearance before the Adjudicating Authority at the time of hearing of the cases. The reasons assigned by the First Appellate Authority for arriving at the conclusion that the Assessee-Respondent had no intention to evade payment of tax and that the short payment was merely a result of an

innocent mistake, do not appear to be consistent with the facts and circumstances emerging from the records. The Assessee- Respondent was engaged in the business of providing composite supply of works contract services and, in the ordinary course of such business, is expected to possess a reasonable understanding of his statutory tax obligations. GST is a transaction-based indirect tax imposed on the supply of goods and services. Such transactions create or generate tax liability. Such supply transactions are required to be declared in a statutory statement under Section 37 of the CGST Act i.e. in Form GSTR-1 every month. Law further imposes a statutory obligation on the taxpayer to file returns under Section 39 of the CGST Act in Form GSTR-3B based on self-assessment of one's tax liability every month. The Assessee-Respondent had complied with the statutory requirement by filing a statement under Section 37 and return under Section 39 of the CGST Act, 2017. While doing so he seems to have not disclosed his taxable transactions in the GSTR-1 as well as his taxable turnover and tax liability in GSTR- 3B correctly during the relevant period. The above stated inference seems to be natural when considered alongwith his conduct in accepting the findings of the Appellate Authority with regard to determination of his differential tax liability as well as differential turnover. It is, therefore, difficult to accept, in the absence of any convincing explanation, that the substantial discrepancies in discharge of his tax liability were attributable merely to ignorance or lack of awareness. Rather the aforementioned circumstances clearly establish, beyond all reasonable doubt, that the Assessee Respondent had deliberately and persistently misstated and suppressed his actual taxable turnover, resulting in the wilful suppression of his tax liability. When all the aforementioned circumstances are considered cumulatively, those

indicate that the conduct of the Assessee -Respondent was not merely the result of an inadvertent error or an innocent mistake, but gives rise to a reasonable inference of mala fide and an attempt to evade his legitimate tax liability which would have remained undetected but for the intervention of the Department. Therefore, the Appellate Authority's finding that the instant cases do not warrant proceedings under Section 74 of the CGST Act but should be dealt with under Section 73 of the said Act is found to be not tenable.

14. In the result, the order of the Appellate Authority holding invocation of Section 74 of the CGST Act by the Adjudicating Authority as illegal, is hereby set aside. Thus, invocation of Section 74 Act is sustained and restored in the present appeals before the Tribunal. Liability on account of tax as determined by the first Appellate Authority is sustained. Penalty and interest be recomputed accordingly.

These Appeals are disposed of accordingly. There is no order as to costs.

The order is pronounced in open Court on this 20th day of November 2026.

(Ananda Satpathy) (Suchismita Misra)