GSTAT

State Bench Prayagraj

Division Bench Court No. I

APL/63/ALB/2026

AWADHESH KUMAR DUBEY .....**Appellant**

Versus

THE ENGINEER'S, PROPRIETOR, KATRA BHOOPAT BABU KI KOTHI CAMPUS BANDA UPALL 210001 .....**Respondent**

Quorum

Hon'ble Mahtab Ahmad, Member(Judicial)
Hon'ble Ashish Varma, Member (Technical)

Counsel for Appellant
SMT. VIBHA MISHRA, DC/SR

Counsel for Respondent
SHRI RISHI RAJ KAPOOR

ORDER

The maintainability of the instant appeal in view of provisions of Section 120 of the Act, read with Circular No.GST/2024-25/76/State Tax, Lucknow, dated 05.07.2024.

I. As per Mahtab Ahmad, JM

We have heard the learned counsel for the respondent Shri Rishi Raj Kapoor, Adv. and the learned SR, Ms. Vibha Mishra (DCST), assisted by the ASR, Shri Suneel Kumar Nirmal (ACST), appearing for the Revenue, and have gone through the records.

2. The instant appeal is preferred by the Revenue (State Tax Department) challenging Order-in-Appeal No. ZD0906230573021, dated 09.06.2023, passed by Shri Arvind Kumar, Additional Commissioner, Grade – II (Appeal-1), Prayagraj in Appeal No.AD090223019957U, for F.Y.-2018-19, under Section 74 of the CGST/SGST Act, M/s The Engineer vs. Assistant Commissioner, State Tax, Sector–2, Prayagraj. The Learned Appellate Authority by the impugned order allowing the appeal has quashed Order-in-Original No. ZD090221021101C dated 20.02.2021 passed the Proper Officer/Assistant Commissioner, State Tax, Sector–2, Prayagraj, whereby a demand of Rs.25,20,896.00 (CGST Rs.5,10,549.00,

SGST Rs.5,10,540.00, interest of Rs.4,78,700.00 and Penalty of Rs.10,21,098 had been raised against the respondent. As such, this appeal involves tax component only Rs.10,21,080.

3. It appears from the record that the respondent, a registered person, is a coaching institute carrying its business at 13E/11/3E, Rajeev Nagar Colony, Shutur Khana, Salori, Prayagraj. On 10.07.2018, the Deputy Commissioner, SIB, State Tax Range-A, Prayagraj made a search of the coaching institute and seized three exhibits in the form of "Classmate Notebooks", therein, fees collected from the students were found entered as Rs. 65,00,000.00, Rs.14,41,500.00 and 9,56,000.00 respectively covering the months of July to April F.Y.-2018-19. In his returns of the said period, the respondent registered person has filed four returns in which only Rs.32,24,746.00 turnover has been declared, as such, he had suppressed supplies amounting to Rs.56,72,754.00. Accordingly, the Proper Officer issued a notice u/s 74 of the Act to the appellant, stating all the facts found during the search and contained in seized exhibits 1 to 3. The notice observed that the appellant had not maintained records in accordance with provisions of the Act and Rules framed thereunder with the intention to evade tax and had suppressed actual taxable sales, as was apparent from the seized documents showing total fees realized from students of ₹88.97 lakh, whereas in the GSTR-3B returns, a taxable turnover of only ₹32,24,746.00 had been declared. As such, the respondent taxpayer has intentionally suppressed the supply of services valued at Rs.56,72,754.00 to evade the tax during the period from April to July of F.Y. 2018-19. Accordingly, the Proper Officer proposed the aforementioned tax, interest, and penalty.

4. By the said notice, the respondent taxpayer was asked to submit a reply upto 15.01.2021, however, no reply was filed on the said date, therefore, reminder dated 16.01.2021 and thereafter reminder dated 04.02.2021 were also issued, but the respondent failed to file a reply. Thereupon, the Order-in-Original dated 20.02.2021 was passed ex-parte, confirming the demand proposed in the notice as the above.

5. Being aggrieved by the said demand, the respondent preferred an appeal u/s 107 of the Act before the Appellate Authority, Additional Commissioner, Grade – II (Appeal-1), Prayagraj. The Appellate Authority, vide order dated 09.06.2023 allowed the appeal and quashed the demand on the following grounds:

i. The order was passed ex-parte without giving sufficient opportunity to be heard.

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ii. Learned counsel for the respondent, a list of amounts covered by the seized register and the seized receipt books was put up for perusal, which showed that the respondent had received of Rs.32,24,746.00 during the period in question. No difference was found between the names of the students in the registers produce and the receipts issued with respect to them. This showed that the Adjudicating Authority, without reconciling the seized registers and seized receipt books, fixed the evaded receipts only on the basis of some entries found in the registers and without observing how the provisions of Section 74 of the Act were satisfied.

iii. However, the Appellate Authority has permitted the Adjudicating Officer to proceed against the registered person under Section 73(1) read with Section 75(2) of the GST Act, 2017.

6. By the instant appeal, the Revenue's challenge to the Order-in-Appeal is based on this assertion that the entries of the seized documents "Sanket "1", "2", "3", and the GSTR-3B filed by the respondent for the said period clearly shows that respondent taxpayer did not maintain accounts of its taxable activities as per relevant provision of the GST Act and Rules framed thereunder. Furthermore, he had suppressed material information in his letters contrary to the transactions found in the seized registers. As such, he is guilty of short payment of tax by reason of wilful misstatement or suppression of fact with the intention to evade tax. These facts were mentioned in the notice as well as in the order, therefore, it is not correct to observed that the Proper Officer has acted in defiance of the mandatory ingredients of Section 74. As such, the order of the Appellate Authority, if allows to be remained, would be prejudicial to the revenue, as it set-aside the order without citing any substantive reason and does not appear justified.

7. The respondent chose to file a cross objection against the appeal in form GST APL-06, wherein the only question raised is that the disputed tax effect in this appeal is below the monitory limit fixed u/s 120 of the Act.

8. In the light of said cross objection, we proceed to decide this issue of the maintainability of the instant appeal as preliminary and threshold issue.

9. In this respect, reference to Section 120 of both the SGST and CGST Act is relevant, which is reproduced hereinbelow: -

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Section 120. *"(1) The Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter.*

(2) Where, in pursuance of the orders or instructions or directions issued under sub-section (1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such officer of the central tax from filing appeal or application in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal or application has been filed by the officer of the central tax pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the officer of the central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application.

(4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the officer of the central tax in pursuance of the orders or instructions or directions issued under sub-section (1)."

10. Being authorized by the GST council u/s 120(1) of the Act, the Commissioner, State Tax, Uttar Pradesh, has issued letter No. GST/2024-25/76/State Tax Lucknow dated 05.07.2024, thereby in para 2 of the circular, the Commissioner, State Tax, has fixed the monitory limit for filing an appeal before the GSTAT as "above Rs.20,000,00.00".

11. In para 3.i– It is also clarified that where the dispute pertains to the demand of tax without penalty and/or interest, the aggregate of the amount of tax in dispute, including CGST, UPGST, IGST and Compensation Cess only shall be considered while applying of the monetary limit to file the appeal. As such, this appeal is below the monetary limit set-forth by the aforesaid circular i.e. Rs.20,000,00.00.

12. In para 4 of the aforesaid circular, exclusions to the monetary limit are also provided, which are as under: -

"4. EXCLUSIONS

Monetary limits specified above for filing appeal or application by the department before GSTAT or High Court and for filing Special Leave Petition or appeal before the Supreme Court shall be applicable in all cases, except in the following circumstances where the decision to file appeal shall be taken on merits irrespective of the said monetary limits:

1. *Where any provision of the CGST Act or UPGST Act or IGST Act or GST (Compensation to States) Act has been held to be ultra vires to the Constitution of India; or*

2. *Where any Rules or regulations made under CGST Act or UPGST Act or IGST Act or GST (Compensation to States) Act have been held to be ultra vires the parent Act; or*

iii. Where any order, notification, instruction, or circular issued by the Government or the Board has been held to be ultra vires of the CGST Act or UPGST Act or IGST Act or GST (Compensation to States) Act or the Rules made thereunder; or

iv. Where the matter is related to -

a. Valuation of goods or services; or

b. Classification of goods or services; or

c. Refunds; or

d. Place of Supply; or

e. Any other issue,

which is recurring in nature and/or involves interpretation of the provisions of the Act/the Rules/notification/circular/ order/instruction etc; or

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1. *Where structures/adverse comments have been passed and/or cost has been imposed against the Government/Department or their officers; or*

2. *Any other case or class of cases, where in the opinion of the Commissioner, it is necessary to contest in the interest of justice or revenue.*

13. On behalf of the revenue, to bring this appeal within the aforesaid exception of para 4 of the said circular, a sanctioned order is passed by the Zonal Law Committee, which is authorized/delegated the power to grant sanction on behalf of the Commissioner for appeal, in which sanction for filing the appeal has given on the premise that the Order-in-Appeal has been passed without effectively taking into consideration the facts involved in this case and without proper verification and discussion, therefore, to pretest the revenue, a second appeal is to be filed.

14. The learned SR, vehemently argued that the case falls under exclusion clause 4(vi), which provides for non-applicability of monetary to any other case or clause of cases where, in the opinion of the Commissioner, it is necessary to contest in the interest of justice or revenue.

15. Since, the Order-in-Appeal is not based on proper appreciation of law and facts and is without proper reconciliation, if it remains, it would be detrimental to the interest of revenue, as it may encourage the passing of such order at the appellate level in cases where the tax involved in appeal is below the monitory limit, and it may set a wrong trend in respect of the adjudication at the appellate stage. Therefore, it is necessary in the interest of justice and the Revenue to file this second appeal.

16. On the other hand, the learned counsel for the respondent argued that the monitory limit for filing an appeal by the revenue before the GSTAT is fixed, according to statutory provisions and litigation policy of the State aimed at minimizing litigation by the State and its instrumentalities, which are the biggest litigants, it also aims at minimizes and lightens the work pressure on judicial forums by curtailing petty and less important matters so that the adjudicatory forum could employ its time and energy on more serious and bigger cases. As such, it involves public interest, therefore, the exclusion clause should not be applied readily. In this appeal, the tax amount involves is just above half of the monitory limit, and no serious question of law or fact is involved, therefore, the monitory limit prescribed for appeal must be adhered strictly, and as such, the appeal is not maintainable.

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17. We have given anxious consideration to the rival submissions of the parties. Clause 4.vi. of the said circular, no doubt gives an occasion to the Sanctioning Authority to file an appeal where, in its opinion, it is necessary to contest in the interest of justice and revenue. The sanction order as referred to hereinunder above has been passed on this premise, stating that the appeal before the Tribunal is permitted to protest the revenue, which is preceded by the observation that the Appellate Authority has quashed the order and demand without due consideration or evaluation of the facts and the material on record and without proper reconciliation. Though the words 'protest the revenue' have been used, the preceding observations left no doubt that the sanction order was intended to secure the interest of revenue and not merely the amount of tax involved in this appeal, which is substantially below from the fixed monitory limit of Rs.20,000,00.00.

18. Now, the question for thinking and circumspection before us is whether the sanction order comply with the purpose and the intention of the such monitory limit and exclusion clause thereof. As noticed earlier, the provision of Section 120 and the aforesaid circular issued thereunder by the Commissioner, State Tax, are based on public good in order to minimize unnecessary litigation and to unburden adjudicatory forum therefrom so that the time and money of the adjudicatory authority could be utilized for serious and bigger matters of adjudication. However, the exception regarding the monitory limit is vitally purposive to secure the interest of justice and revenue. It is a bigger and more serious affair then the amount of tax involved in a matter, if the order in question is perverse, without any basis, based on erroneous appreciation of the law and facts and tends to set a wrong trend of passing perverse order, without any sound basis, it should be considered a serious challenge to the interest of justice and the revenue. The challenge to the Order-in-Appeal before us is based on this premise that the order was passed without proper discussion and appreciation of the facts of the case and the material available on record. In appeal memo, the Sanket seized during the search and seizure, the supplies of service entered therein, and the supply of service declared in GSTR-3B by the respondent, along with the allegation of wilful misinformation and suppression of facts with intention to evade tax, have been made the basis of the proceedings. The allegation of the Revenue in this appeal is that, in the facts and circumstances of the case, it is not correct to say that Section 74 of the Act was not complied with, that the reconciliation recorded by the Appellate Authority has no tangible basis, and that the Order-in-Appeal was passed without proper appreciation of facts and material available on record and without cogent reason.

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19. In our considered opinion, it cannot be disagreed that tax amount is not material to bring the appeal under the exclusion clause 4.vi. of the circular, but the basis of challenge raised by the Appellant-Revenue in this appeal against the appellate order, if found true, may certainly set a wrong trend for the appellate forum in view of the monitory limit as apprehended by the Revenue. Therefore, we hold that the present appeal falls under exclusion clause 4.vi. of the circular and this appeal is necessary in the interest of justice, therefore, the respondent's challenge to the maintainability of this appeal on the basis of the monitory limit is not fit to be accepted. Accordingly, the above preliminary question is decided in favour of the Revenue and against the respondent.

II. <u>As per Ashish Varma, TM</u>

20. I agree with the conclusion reached by my learned colleague that the preliminary objection raised by the respondent-taxpayer in Form GST APL-06 is liable to be rejected and that the present appeal preferred by the Revenue is maintainable before this Tribunal. However, I arrive at this conclusion for different reasons, which I set out below.

21. The preliminary objection turns on whether the Revenue's appeal, which involves a disputed tax component of **₹10,21,098.00**, is barred by the monetary ceiling of **₹20,00,000.00** prescribed for the Appellate Tribunal under CGST Circular No. 207/1/2024-GST dt 26.07.2024 and Circular No. GST/2024-25/76/STATE TAX, Lucknow, dated 05.07.2024 (as clarified and operationalized by Circular No. 252 dated 22.05.2026) issued under Section 120 of the CGST/UPGST Act, 2017.

22. In my considered view, the maintainability of the present appeal rests on a much firmer and objective statutory footing provided under **Clause 4(iv)(e)** of CGST Circular No. 207/1/2024-GST dt 26.07.2024 and Circular No. GST/2024-25/76/STATE TAX, Lucknow, dated 05.07.2024 read with **Paragraph 4 of Circular No. 252 dated 22.05.2026**:

- **(a) Presence of an Issue of Recurring Legal Significance [Clause 4(iv)(e)]:** Clause 4(iv)(e) of the Circular expressly provides that the monetary limits shall not apply where the matter relates to:

  "Any other issue, which is recurring in nature and/or involves interpretation of the provisions of the Act/the Rules/notification/circular/order/instruction etc."

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A perusal of Clause 4(iv)(e) of the Circular dated 05.07.2024 makes it clear that the monetary limits do not apply where the matter involves a question of 'recurring nature' or relates to the interpretation of statutory provisions and rules. In the present case, the foundational legal controversy is whether contemporaneous private registers (Sanket 1, 2, and 3) seized during an inspection under Section 67 can be discarded in an assessment under Section 74 merely upon accepting the taxpayer's unilateral proceedings. Across hundreds of service providers and coaching institutes, taxpayers maintain private registers containing names and figures and routinely raise the defense of "free demo classes," "promotional batches," or "uncollected fees." Hence, this is not an isolated factual dispute of accountancy; it represents an issue of recurring legal and administrative impact across numerous survey-based assessments in the coaching and service sectors. The grievance articulated by the Revenue is that the First Appellate Authority accepted the taxpayer's explanation of unpaid 'demo classes' without a comprehensive evaluation of the seized survey registers (Sanket 1, 2, and 3), raising a recurring question regarding the evidentiary standard required to rebut contemporaneous survey records in Section 74.

- **(b) Objective Alignment with Circular No. 252 (Paragraph 4):** Paragraph 4 of Circular No. 252 dated 22.05.2026 specifically instructs that where the First Appellate Authority has reduced or quashed a confirmed demand by reason of an **oversight of a legal principle** or by **omitting to evaluate vital factual/evidentiary records**, an appeal before the GSTAT shall be instituted. It is the objective presence of such a recurring legal question and evidentiary framework that legitimately attracts the exception to the monetary threshold.

23. Therefore, without expressing any opinion on the final factual merits of the rival contentions—which remain open for comprehensive determination at the regular hearing—I hold that the appeal involves an issue of recurring nature and statutory interpretation falling within the ambit of **Clause 4(iv)(e)** of the governing litigation policy.

24. I accordingly concur with the operative order that the preliminary objection raised by the respondent-taxpayer in Form GST APL-06 is rejected and that the appeal is maintainable and shall proceed for hearing on merits.

III. Conclusion.

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25. The preliminary question regarding the maintainability of the instant appeal, in view of the provisions of Section 120 of the Act read with Circular No. GST/2024-25/76, State Tax, Lucknow dated 05.07.2024, is decided in the negative, and the appeal is found to be maintainable under Section 120 of the Act read with Para-IV (5) of the said Circular dated 05.07.2024. Accordingly, the appeal is fixed for hearing on 09.12.2026.

(Mahtab Ahmad)

(Ashish Varma)

Dated: 23.11.2026

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