



d h r u v a

A Ryan LLC Affiliate

# LITIGATION ALERT

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GSTAT: Improper invocation of Section 74  
cannot be cured by conversion to Section 73

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# Improper invocation of Section 74 cannot be cured by conversion of proceedings to Section 73: GSTAT

## **M/s Sterling & Wilson Pvt. Ltd. V. Commissioner, Odisha CT & GST<sup>1</sup>**

The first non-anti-profiteering ruling of the Goods and Services Tax Appellate Tribunal (GSTAT) Principal Bench has held that where proceedings initiated under Section 74 of the CGST Act by the FAA<sup>2</sup> or Tribunal are found unsustainable for absence of fraud or suppression, the FAA or Tribunal cannot convert the adjudication into proceedings under Section 73. The matter must be remitted to the Proper Officer for re-determination.

### **Background and facts**

- M/s Sterling & Wilson Private Limited (“Appellant”) is engaged in the business of EPC<sup>3</sup> services and is registered under GST laws.
- Departmental scrutiny revealed short disclosure of tax liability in GSTR-3B as compared to GSTR-1 for the Financial Year 2018-2019.
- Based on this discrepancy, the Proper Officer initiated proceedings under Section 74 of the CGST Act alleging fraud, suppression of fact, and misrepresentation of records.
- Accordingly, the Proper Officer confirmed the demand under Section 74, imposing equivalent penalty, despite not finding any suppression, misrepresentation or fraudulent misstatement to attract the said provision.

- Aggrieved by the Order-in-Original, the Appellant filed an appeal before the FAA.
- The FAA recorded absence of fraud or suppression and converted the proceedings from Section 74 to Section 73, reduced the penalty to 10% under Section 73(9), but sustained tax and interest.
- Aggrieved by the Order-in-Appeal, the Appellant approached the present Tribunal.

### **Contentions of the Petitioner**

- The difference between GSTR-1 and GSTR-3B arose due to credit notes, debit notes, and advance adjustments pertaining to different tax periods which could not be amended in GSTR-1 due to system constraints.
- The issue was purely reconciliatory in nature and revenue neutral.
- Once the FAA recorded absence of intent to evade tax, the proceedings under Section 74 ought to have been dropped entirely.
- The Appellant also submitted reconciliation statements supported by credit notes, debit notes, invoices and advance adjustment workings.

### **Contentions of the Respondent**

- The Appellant failed to properly reconcile the mismatch between GSTR-1 and GSTR-3B in the manner prescribed under the Act.

<sup>1</sup> TS-73-GSTAT(DEL)-2026-GST

<sup>2</sup> First Appellate Authority

<sup>3</sup> Engineering, Procurement, and Construction

- Relying upon *Hamida v. Md. Khalil*<sup>4</sup>, it was argued that new factual issues cannot be raised at the second appellate stage.
- The FAA in terms of Section 75(2) of the CGST Act had the powers to modify the tax liability, penalty and interest. Thus, the FAA had the power to hold that there was no fraudulent intention and thus alter the Proceeding from Section 74 of the CGST Act to Section 73 of the CGST Act.

### Findings of the Tribunal

- The Tribunal held that in the case of *Hamida(supra)* the Supreme Court took into consideration the provisions of Section 100 of the CPC<sup>5</sup> to conclude that the lower appellate court is the final court of facts. The Tribunal held that the limitations under Section 100 of the CPC placed on the High courts are absent in Section 112 of the CGST Act and there is no limitation on the Tribunal similar to those imposed under Section 100 of CPC. Therefore, the Tribunal is the final fact-finding authority competent to examine questions of fact.
- Referring to Section 75(2) of the CGST Act, the Tribunal noted that where proceedings under Section 74 fail for want of fraud or suppression, “the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of Section 73.
- Relying upon CBIC Circular No. 254/11/2025-GST dated 27.10.2025, the Tribunal observed that no proper officer has been assigned in respect of Section 75(2), and therefore, the original Proper Officer who issued notice under Section 74 shall re-determine the tax payable.
- The Tribunal categorically held that once the Appellate Authority or Tribunal concludes that Section 74 is not attracted and the matter falls under Section 73, the case has to be remitted to the Proper Officer for re-determining the tax, penalty and interest.

- Further, considering that the dispute was essentially reconciliatory in nature involving credit/debit notes and return mismatches, and that the transactions were recorded in books of accounts, the Tribunal held that the matter required reconsideration with opportunity to the Appellant to amend returns and substantiate reconciliation.

### Judgment

- The finding that the case does not fall under Section 74 of the CGST/SGST Act was upheld.
- The orders treating the case as one under Section 73 and sustaining the demand were set aside.
- The matter was remanded to the Proper Officer for fresh adjudication under Section 73 of the CGST Act.
- Liberty was granted to the Appellant to file amendment applications and supporting documents within one month.
- The Proper Officer was directed to re-consider the matter after affording reasonable opportunity of hearing and examine the genuineness of credit/debit notes and other documents.

<sup>4</sup> 2001 (5) TMI 939 - SUPREME COURT

<sup>5</sup> Civil Procedure Code, 1908

## **DHRUVA INSIGHT**

The Ruling has recognised that where proceedings initiated under Section 74 of the CGST Act fail on account of the fact that it does not involve fraud, suppression or wilful misstatement, the appellate authority cannot simply convert such proceedings into Section 73 and sustain the demand.

Section 75(2) of the CGST Act mandates that in the absence of ingredients required under Section 74, the matter must be remitted to the Proper Officer for re-determination as if the notice were issued under Section 73.

The ruling further clarified that the Tribunal in exercise of its jurisdiction has the power to examine questions of fact and the power is not restricted to questions of law alone.

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