

EY Tax Alert

GSTAT holds re-adjudication under Section 73 can be done only by the proper officer where Section 74 proceedings held unsustainable in appeal

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Executive summary

This Tax Alert summarizes a recent ruling of the Goods and Services Tax Appellate Tribunal (GSTAT)¹ on jurisdiction of the Appellate Authority to re-adjudicate proceedings where original proceedings initiated under Section 74 of the Central Goods and Services Tax Act, 2017 (CGST Act) are held unsustainable due to the absence of any fraud or intent to evade tax on the part of the taxpayer.

A demand for tax, interest and penalty was confirmed on the assessee under Section 74 due to mismatch in tax liability reported in GSTR-3B *vis-à-vis* GSTR-1. The First Appellate Authority found no intent of taxpayer to evade tax, however, it upheld the tax and interest demand while reducing the penalty by applying the provisions of Section 73 of the CGST Act.

The key observations of the GSTAT are:

- ▶ Section 75(2) of the CGST Act provides that if an Appellate Authority, Tribunal, or court concludes that a notice issued under Section 74(1) is unsustainable due to failure to establish fraud, the proper officer (AO) must reassess the tax as though the notice had been issued under Section 73(1).
- ▶ Circular No. 254/11/2025-GST clarified that AO under Section 75(2) shall be the same officer who adjudicated original notice.
- ▶ Accordingly, where proceedings have been initiated under Section 74, the Appellate Authority, GSTAT or Court cannot adjudicate proceedings under Section 73 upon establishing that no element of fraud exists. The matter must be remanded to Adjudicating Authority for re-determining the liability under Section 73.

Basis above, GSTAT set aside the order passed by the First Appellate Authority in so far as the proceedings being diverted to Section 73, while upholding its finding that the case did not warrant action under Section 74. The matter was remanded to the AO for fresh consideration under Section 73, with liberty to the assessee to file an appropriate amendment petition.

¹ TS-73-GSTATDEL-2026-GST



Background

- ▶ Assessee is engaged in the business of engineering, procurement and construction services.
- ▶ Section 73 of the Central Goods and Services Tax Act, 2017 (CGST Act) governs the adjudication of cases involving tax not paid or short paid without any allegation of fraud, whereas Section 74 applies to similar adjudication in cases where fraud, wilful misstatement, or suppression of facts is alleged.
- ▶ Assessee was issued Show Cause Notice (SCN) under Section 74 on the ground that it had disclosed lesser tax liability in GSTR-3B as compared to GSTR-1 for the period 2018-19.
- ▶ Upon adjudication, assessee filed an appeal before First Appellate Authority.
- ▶ First Appellate Authority observed that the intention of the assessee to evade tax was not established by the adjudicating authority.

However, since assessee could not prove that input tax credit (ITC) was reversed by the recipients basis credit notes issued, the appellate authority upheld the demand for tax and interest, while reducing the penalty by converting the adjudication from Section 74 to Section 73 of the CGST Act.

- ▶ Aggrieved, assessee filed an appeal before the Goods and Services Tax Appellate Tribunal (GSTAT).

GSTAT ruling

- ▶ The argument advanced by the Revenue that Tribunal cannot go into the question of fact is not sustainable.

In exercise of jurisdiction under Section 112 of the CGST Act read with Rule 112 of Central Goods and Services Tax Rules, 2017 (CGST Rules), GSTAT has power to examine question of facts, and it is the last fact-finding forum.

- ▶ The only discrepancy which has been found is the failure to report the debit/ credit notes, duly accounted in books of account, in the periodical returns. Also, there was failure to establish reversal of ITC by recipients where credit notes were issued.

This aspect requires reconsideration by the proper officer (AO), and the assessee should be afforded an opportunity to amend the relevant returns by condoning the delay caused in the interim.

- ▶ Section 75(2) of the CGST Act stipulates that if an Appellate Authority, Appellate Tribunal, or court concludes that a notice issued under Section 74(1) is unsustainable because the allegations of fraud, wilful misstatement, or suppression of facts with intent to evade tax are not established, AO shall redetermine the tax liability by deeming the notice to have been issued under Section 73(1).

Further, Central Board of Indirect Taxes and Customs (CBIC) vide Circular No. 254/11/2025 – GST clarified that for the above purpose, AO shall be the same officer who adjudicated the original show cause notice.

- ▶ Accordingly, if the First Appellate Authority, GSTAT or any court comes to a conclusion that the proceedings initiated under Section 74(1) are not maintainable because of lack of establishment of fraud, then the matter has to be remitted back to AO to re-determine the tax to be paid along with penalty, interest, etc.

Basis above, GSTAT set aside the order passed by Appellate Authority to the extent it converted the proceedings under Section 73 of the CGST Act. However, it upheld the order insofar as it concluded that the case did not fall under Section 74.

Further, the matter was remanded to AO for reconsideration under Section 73, while granting liberty to the assessee to file an appropriate amendment petition.

Comments

- a. While Section 75(2) of the CGST Act requires the proper officer to re-determine tax under section 73 in cases where proceedings initiated under Section 74 are held unsustainable, Section 107(11) prohibits the Appellate Authority from remanding the matter to the adjudicating authority.
- b. It may be necessary to examine whether a harmonious interpretation is warranted, so as to apply restriction under section 107(11) to all cases other than the cases where proceedings under Section 74 are held not sustainable.

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