



Executive Summary :

M/s Sterling and Wilson Private Limited was issued a demand under Section 74 for alleged shortpayment of tax due to mismatch between GSTR-1 and GSTR-3B. In First Appeal, the Appellate Authority held that fraud or wilful suppression was not established and reclassified the proceedings from Section 74 to Section 73. In Second Appeal, the Tribunal set aside the demand and remanded the matter to the Proper Officer for re-determination under Section 73, granting liberty to file an amendment petition within one month from the date of upload of the digitally signed order on the portal.

Background:

- The appellant, (M/S Sterling and Wilson private limited) is engaged in engineering, procurement, and construction (EPC) companies.
- The appellant filed an appeal against Order No. ZD2104210054090 dated 26-04-2021
- The demand was raised under section 74 for short discharge of liability in GSTR-1 compared with liability discharged in GSTR-3B of INR 27,06,634 along with interest INR 15,84,248, and equivalent penalty.
- Upon review of the returns for FY 2018-19, the First Appellate Authority held that the fraud or wilful misstatement was not established and that Section 73(9) needs to be invoked. Consequently, the penalty was reduced from 27,06,634 to 2,70,664, being 10% of the tax liability
- Aggrieved by the Order-in-Appeal, the appellant filed a Second Appeal before the GST Appellate Tribunal, contesting the findings on facts as well as the re-determination of liability.



Appellant contention:

- The Appellant contended that the invocation of Section 74 was wholly unlawful, as the discrepancy between GSTR-1 and GSTR-3B did not arise from any intent to evade tax or wilful misstatement, but merely a reconcilable reporting difference.
- Appellant submitted that difference was occurred due to issuance of credit notes, debit notes and advance adjustments, all of which were duly recorded in the books of accounts and not reported the same in returns.
- The Appellant argued that the liability was sustained solely on the basis of return mismatches without proper verification of reconciliation statements. Once the absence of fraudulent intent was acknowledged, the proceedings under Section 74 ought to have been dropped entirely.
- Further, contended that in terms of Section 75(2), any proceedings re-determined under Section 73 must be undertaken by the Proper Officer and not directly by the Appellate Authority.

Respondent Contention:

- Proper Officer rejected the appellant's explanation on the grounds that the credit notes were issued beyond the prescribed statutory time limit and that no documentary evidence was furnished to establish reversal of input tax credit by the respective recipients. It was further observed that the tax liability reported in GSTR-3B was lower than that declared in GSTR-1 and that the discrepancy was not properly reconciled in the Annual Returns (GSTR-9 and GSTR-9C)
- First Appellate Authority, upon an examination of the records, rightly sustained the demand for tax and interest and modified the penalty in accordance with the statutory provisions. The Respondent also contended that the impugned order is legally sound and does not suffer from any infirmity of fact or law.
- Respondent further argued that the Appellant cannot be permitted to raise fresh factual pleas or produce new material at the appellate stage, and that the Tribunal ought not to re-examine issues or facts which were not properly substantiated before the lower authority.



Respondent Contention :

- A comparative reading of Section 100 of the Code of Civil Procedure, and Section 112 of the CGST, 2017 clearly demonstrates that the scope and nature of jurisdiction (Scope of Tribunal) under the two provisions are materially different
- Section 100 of the Code confines the jurisdiction of the High Court in a second appeal strictly to cases involving a substantial question of law
- Section 112 of the CGST Act provides for a statutory appeal before the Appellate Tribunal with a significantly wider ambit. The Tribunal is not confined to examining substantial questions of law alone but is vested with the authority to consider questions of fact, law, and the overall legality and propriety of the impugned order.

- Accordingly, the jurisdiction exercised by the Appellate Tribunal under Section 112 of the CGST Act is broader in scope and distinct in character from the limited second appellate jurisdiction contemplated under Section 100 of the CPC.

Tribunal order :

- The Tribunal held that once the proceedings are to be treated under Section 73, the tax liability must be re-determined by the Proper Officer in terms of Section 75(2) of the CGST Act. Since the GSTAT is not the Proper Officer empowered to undertake such re-determination, the impugned order was set aside, and the matter was remanded back. Liberty was granted to the appellant to file appropriate amendments within one month from the date of the order

A3 Comments:

- ❑ Long wait of Eight and a half years, the first GSTAT Order has finally been pronounced, marking a new era in GST Litigation.
- ❑ This is a welcome and positive development, as the GSTAT has adjudicated the matter on merits
- ❑ The Tribunal clarified that GSTAT is the last fact-finding authority under the CGST Act. It further upheld that proceedings re-classified from 74 to 73, the entire matter must be re-determined by the Proper Officer in terms of Section 75(2).