

Sterling & Wilson Pvt. Ltd. vs. Commissioner, Odisha Commissionerate of CT & GST & Ors.

Demand due to mismatch between GSTR-1 and GSTR-3B – Sections 73, 74, 75(2), 112 of the CGST Act, 2017 and Section 34(2) of the CGST Act.

Date of Order: February 11, 2026
Case Law No: GIB-GSTAT-2026-10
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CASE DESCRIPTION / SUMMARY

Facts:

The appellant was issued a demand under [Section 74](#) of the CGST/OGST Act for FY 2018-19 alleging short payment of tax of ₹27,06,634 due to mismatch between tax liability reported in GSTR-1 and GSTR-3B. The first Appellate Authority held that there was no intention to evade tax and converted the proceedings from [Section 74](#) to [Section 73](#), confirming tax and interest and reducing penalty to 10% of the tax amount. Aggrieved by the order, the appellant filed a second appeal before the GST Appellate Tribunal.

Court Decision:

The Tribunal held that once the Appellate Authority concluded that the ingredients of fraud, suppression, or wilful misstatement required under [Section 74](#) were not established, the matter could not be finally decided by the appellate authority itself under [Section 73](#). In view of [Section 75\(2\)](#) of the CGST Act, the proper officer who issued the original notice must determine the tax liability treating the notice as one issued under [Section 73](#).

The Tribunal observed that the transactions were disclosed through debit notes and credit notes in the books of account but were not correctly reflected in periodic returns. Therefore, the orders of the proper officer and the first Appellate Authority to the extent they treated the case under [Section 73](#) were set aside and the matter was remanded to the proper officer for fresh determination after giving the appellant opportunity to produce documents and amend returns.

Cases Referred by Court:

- V.S. Products vs. Additional Commissioner (Appeals)
- Commissioner of Customs (Import), Mumbai vs. Dilip Kumar & Company & Ors.
- Hamida vs. Md. Khalil

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