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

GSTR-1 v. GSTR-3B mismatch due to credit notes and advance adjustments – whether the First Appellate Authority can itself convert a Section 74 demand into Section 73, and the Tribunal's power to examine facts.

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

2. Background

For FY 2018-19 the appellant, an EPC contractor, reported tax in GSTR-3B Rs. 27,06,634 lower than in GSTR-1. It attributed the difference to credit notes and advance adjustments recorded in its books and GSTR-3B but not amended in GSTR-1. A Section 74 demand of Rs. 65,17,849 was raised. The First Appellate Authority found no intent to evade, but itself recomputed the case under Section 73, confirming tax and interest with a 10% penalty, holding that the credit notes were beyond the Section 34(2) time limit and recipients' ITC reversal was unproven.

3. Final Verdict

Rejecting Revenue's reliance on Hamida v. Md. Khalil, the Tribunal held that **unlike Section 100 CPC, Section 112 read with Rule 112 does not confine the Tribunal to questions of law; it is the last fact-finding forum**, and that Dilip Kumar & Co. (on exemption notifications) had no bearing on whether tax was actually short-paid. It noted that the only lapse found was the non-reflection in periodical returns of debit and credit notes duly accounted in the books, at a time when online filing was not fully operational, and adopted a pragmatic rather than pedantic approach. Relying on the text of Section 75(2) and CBIC Circular 254/11/2025-GST, it held that **once Section 74 fails, it is the proper officer, not the appellate authority or the Tribunal, who must re-determine tax as if the notice had been issued under Section 73**. The finding that Section 74 did not apply was upheld, but the Section 73 determinations of both lower authorities were set aside and the matter remanded, with liberty to file amendments within one month and a direction to examine the genuineness of the credit and debit notes and decide afresh after a hearing.

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