SANTHOME LATEX ENTERPRISES v. COMMISSIONER OF CGST, THIRUVANANTHAPURAM

Whether availment of ineligible self-assessed ITC under Section 42(1) amounts to suppression for invoking Section 74. Consequential liability for interest and penalty under Sections 50, 74(9) and 122.

Date of Order: August 21, 2026
Case Law No: GIB-GSTAT-2026-83
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

BACKGROUND

The proceedings arose from an audit of the taxpayer's records for July 2017 to March 2022. An SCN under Section 74(1) proposed recovery of alleged excess ITC together with interest and penalty. The adjudicating authority found that the ingredients necessary for invoking Section 74 had not been established and dropped the demand.

The Department appealed and the appellate authority reversed the original order, relying substantially upon alleged failure to furnish information during audit. The taxpayer challenged that appellate order before the Tribunal.

COURT OBSERVATION

The Tribunal found that the proceedings were based upon statutory return data and reconciliation records already available on the GST portal. The reconciliation had been disclosed through statutory filings and the SCN did not establish the non-declaration contemplated by Explanation 2 to Section 74.

The Tribunal held that the appellate authority had introduced a ground not contained in the SCN, namely failure to respond to audit observations/final audit report. Raising such a ground at the appellate stage was contrary to natural justice. The Tribunal also held that mere availment of ineligible self-assessed ITC, without contrary evidence, did not amount to suppression under Section 74.

The Tribunal further held that failure to reply to an audit enquiry or final audit report, where the underlying data was already available on the portal, could not by itself amount to suppression.

FINAL VERDICT

The Tribunal answered both issues in the negative: mere taking of ineligible self-assessed ITC under Section 42(1) did not amount to suppression, and mere failure to respond to an audit enquiry/final audit report did not amount to suppression under Section 74.

The impugned Order-in-Appeal was therefore set aside and the appeals were allowed with consequential relief.

CASE REFERRED BY COURT

- Cosmic Dye Chemical v. Collector of Central Excise, Bombay — Supreme Court — 06.09.1994. Considered on the requirement of wilful intent in suppression/misstatement.
- Commissioner of Central Excise, Nagpur v. Ballarpur Industries Ltd. — Supreme Court — 30.08.2007. Considered on the strict construction of “suppression” and requirement of wilfulness.