THE COMMISSIONER, CGST & CX, KOLKATA NORTH COMMISSIONERATE v. POWER TECH GLOBAL PRIVATE LIMITED

Reversal of ITC under Section 17(2) read with Rules 42 and 43 of the CGST Rules and retrospective applicability of Notification No. 14/2022. Whether Section 74(1) could be invoked in the absence of established fraud, wilful misstatement or suppression, an

Date of Order:	August 5, 2026
Case Law No:	GIB-GSTAT-2026-89
Source:	GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

BACKGROUND

The adjudicating authority directed reversal of proportionate ITC attributable to exempt supplies for the financial years 2017-18 to 2019-20 and imposed interest and an equivalent penalty under Section 74. The First Appellate Authority subsequently allowed the taxpayer's appeal by applying the 2022 amendment to Rule 43 retrospectively.

The Revenue challenged the retrospective application of the amendment and the dropping of the demand. The Tribunal therefore considered the monetary-limit objection, the temporal operation of the 2022 amendment and the validity of the Section 74 proceedings.

COURT OBSERVATION

The Tribunal held that the amendment to Rule 43 was specifically brought into force from 05.07.2022. Although Section 164(3) empowered retrospective rulemaking, the rule-making authority chose to make the amendment prospective. The First Appellate Authority therefore erred in applying it retrospectively to transactions of 2017-2020.

On Section 74, the Tribunal held that the Revenue had failed to bring material establishing a deliberate intention to evade tax. The Tribunal relied upon the strict meaning of “suppression of facts” and concluded that the Section 74(1) notice was not sustainable.

Consequently, under Section 75(2), the proper officer was directed to determine the tax liability as if the notice had been issued under Section 73.

FINAL VERDICT

The Tribunal held that the First Appellate Authority was incorrect in giving retrospective effect to the 2022 amendment to Rule 43. However, since the invocation of Section 74 was not sustainable for want of established fraud, wilful misstatement or suppression, the matter was directed to be dealt with under Section 75(2) as a Section 73 proceeding.

CASE REFERRED BY COURT

Sedco Forex International Drill Inc. v. Commissioner of Income-tax, Dehradun — Supreme Court

Hitendra Vishnu Thakur v. State of Maharashtra — Supreme Court

Suchitra Components Ltd. v. Commissioner of Central Excise, Guntur — Supreme Court

Allied Motors (P.) Ltd. v. Commissioner of Income-tax — Supreme Court.

Sree Sankaracharya University of Sanskrit v. Dr. Manu — Supreme Court.

Pushpam Pharmaceutical Company v. Collector of Central Excise, Bombay — Supreme Court.

Anand Nishikawa Co. Ltd. — Supreme Court.