Sriba Nirman Company v. The Commissioner (Appeals), Guntur & Others

Invocation of Section 74 CGST Act and penalty where GSTR-3B returns were not filed and tax was paid only after DGGI inspection but before the show cause notice.

Date of Order: January 29, 2025
Case Law No: GIB-APHC-2025-72
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

The petitioner, a works contractor, raised nine invoices in March 2018 aggregating Rs. 20.92 crore (GST about Rs. 3.19 crore) for a principal contractor but neither filed monthly GSTR-3B returns nor paid tax for 2017-18. After a DGGI inspection on 31.07.2018 it paid the tax and filed all returns by 29.09.2018; show cause notices under Section 74 followed in 2020, and demand with penalty was confirmed and upheld in appeal. In its writ petition it argued that mere non-payment is not fraud or wilful suppression, that Section 74 cannot apply as tax was paid before the notice, and that tax was due only by the annual return date.

Final Verdict

The High Court dismissed the writ petition. It agreed, relying on CBIC Instruction 05/2023, that mere non-payment of tax cannot invoke Section 74(1); fraud, wilful misstatement or suppression with intent to evade (mens rea) must be shown. However, monthly returns with payment under Sections 37 to 39 and Rule 61 are mandatory, so the annual-return argument failed. The protection of Section 74(5) and (6) was unavailable because interest was paid only after the notice and the 15% penalty was never paid. As the petitioner had received payments from its principal client yet filed no returns and paid no tax, the finding of wilful suppression stands, and Section 74 penalty and the consequential penalties are upheld. The Court left open whether Section 74 operates as a permanent amnesty or compounding scheme.

GST INDIA BIZ

© 2026 GST INDIA Biz. All rights reserved.

GST INDIA BIZ