IGST Paid Under a Wrong Head to be Adjusted Against CGST/SGST Liability Before Any Recovery of Tax Interest or Penalty

The Hon'ble Karnataka High Court in ***M/s. GR Tech Services Pvt. Ltd. v. Assistant Commissioner of Commercial Taxes (Audit) & Ors. [Writ Petition No. 15670 of 2026 (T-RES) dated June 03, 2026]*** allowed the writ petition in part, thereby quashing the Adjudication Order, the Order-in-Appeal, and the consequential demand issued in Form GST DRC-13, and held that where an assessee has inadvertently discharged IGST on supplies which were subsequently held to be intra-State supplies, the tax paid under the wrong head ought to be adjusted against the liability arising under the correct head in terms of Section 77(2) of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) read with Rule 92 of the Central Goods and Services Tax Rules, 2017 (**"the CGST Rules"**), and the assessee cannot be fastened with the liability to pay either tax or interest or penalty. Accordingly, the matter was remanded back to the original authority for passing a fresh order.

Facts:

M/s. GR Tech Services Pvt. Ltd. (**"the Petitioner"**) entered into transactions with M/s. Larsen and Toubro Limited, which has its units both at Bengaluru and Chennai, during the tax period 2019-20. For the initial months, the Petitioner raised invoices on its vendor's unit at Chennai treating the supplies as inter-State supplies and accordingly discharged IGST thereon. However, upon realizing that the invoices had to be raised on the vendor's unit at Bengaluru, the supplies being intra-State in nature, the Petitioner filed its returns accordingly offering CGST/SGST liability.

During the course of audit, the Revenue Department (**"the Respondent"**) raised an observation that the Petitioner had wrongly remitted tax under the IGST head and that the Petitioner had no choice except to first pay the tax under the correct head i.e., CGST/SGST, and thereafter claim refund of the tax paid under the wrong head, which could be considered in terms of Section 77(1) of the CGST Act. The proceedings pursuant to the Show Cause Notice were closed based on the audit observation and an Adjudication Order dated July 30, 2024 (**"the Impugned Order"**) was passed under Section 73(9) of the CGST Act. The appeal filed against the Impugned Order was dismissed on the ground of limitation vide Order-in-Appeal dated June 24, 2025, culminating in a demand issued in Form GST DRC-13 dated May 06, 2026. Further, the Petitioner's application seeking refund of the IGST was also rejected on the ground that the refund request was made before the CGST/SGST authorities, whereas the IGST was offered on the basis of invoices raised for inter-State transactions.

Aggrieved thereby, the Petitioner filed a writ petition contending that in view of Section 77(2) of the CGST Act read with Rule 92 of the CGST Rules, the tax already paid under the wrong head ought to have been adjusted against the liability under the correct head, without levy of any tax, interest, or penalty. In support thereof, reliance was placed on the judgment of the Hon'ble Kerala High Court in ***Saji S., Proprietor, Adithya and Ambadi Traders v. The Commissioner, State GST Department, Thiruvananthapuram & Ors. [WP(C) No. 35868 of 2018 dated November 12, 2018].***

Issue:

Whether IGST paid on supplies initially treated as inter-State but subsequently held to be intra-State can be adjusted against the CGST/SGST liability without requiring the assessee to first pay the tax under the correct head along with interest and penalty?

Held:

The Hon'ble Karnataka High Court in ***Writ Petition No. 15670 of 2026 (T-RES)*** held as under:

- Observed that, Section 77(2) of the CGST Act stipulates that a registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of tax payable.

- Noted that, the Hon'ble Kerala High Court in *Saji S. (supra)* has read Section 77 of the CGST Act in conjunction with Rule 92 of the CGST Rules, which contemplates adjustment of an amount to which an assessee is entitled, and where the amount of refund is completely adjusted against any outstanding demand, an order giving details of such adjustment is to be issued in Part A of FORM GST RFD-07.

- Observed that, there can be no dispute that the original authority has not read the provisions of Section 77(2) of the CGST Act in conjunction with Rule 92 of the CGST Rules while raising a demand on the Petitioner along with interest and penalty.

- Held that, if the Petitioner, in terms of the conjoint reading of the provisions by the Hon'ble Kerala High Court, cannot be fastened with the liability to pay either tax or interest or penalty because it has wrongly offered IGST, then for just orders, the original authority must consider these aspects and issue an order in the prescribed form in the light of the undisputed facts and circumstances.

- Hence, allowed the writ petition in part, quashing the Adjudication Order dated July 30, 2024, the Order-in-Appeal dated June 24, 2025, and the demand in Form GST DRC-13 dated May 06, 2026, and remanded the matter back to the original authority to reconsider the case and pass a fresh order in the prescribed form after examining the Petitioner's entitlement to adjustment of the IGST paid under the wrong head against the CGST/SGST liability.

Our Comments:

Section 77 of the CGST Act deals with *"Tax wrongfully collected and paid to Central Government or State Government"*. Section 77(1) of the CGST Act provides that a registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed. Correspondingly, Section 77(2) of the CGST Act provides that a registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of Central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable. A pari materia provision is contained in Section 19 of the Integrated Goods and Services Tax Act, 2017 (**"the IGST Act"**) covering the converse situation where IGST becomes payable on a transaction earlier treated as intra-State.

Further, Rule 92 of the CGST Rules prescribes the mechanism for sanctioning of refund and, inter alia, contemplates that where the amount of refund is completely adjusted against any outstanding demand under the Act, an order giving details of such adjustment shall be issued in Part A of FORM GST RFD-07. It is by a conjoint reading of Section 77(2) of the CGST Act and Rule 92 of the CGST Rules that the Courts have held that the amount remitted under one head can be adjusted against the liability arising under another head, without insisting on a fresh payment followed by a refund claim.

In this regard, the CBIC vide Circular No. 162/18/2021-GST dated September 25, 2021 has clarified that the expression *"subsequently held"* in Section 77 of the CGST Act and Section 19 of the IGST Act covers both the situations where the inter-State or intra-State nature of the supply is ascertained by the taxpayer himself as well as where it is so held by the tax officer in any proceeding. Correspondingly, Rule 89(1A) was inserted in the CGST Rules vide Notification No. 35/2021-Central Tax dated September 24, 2021, permitting the refund of tax paid under the wrong head to be claimed within two years from the date of payment of tax under the correct head, thereby ensuring that the taxpayer is not saddled with interest or left remediless on account of a mere misclassification of the nature of supply.

A similar view was taken by the Hon'ble Jharkhand High Court in ***Shree Nanak Ferro Alloys Pvt. Ltd. v. Union of India & Anr. [W.P.(T) No. 2246 of 2019 dated December 18, 2019],*** wherein the assessee had inadvertently deposited tax under the CGST head instead of the IGST head. The Court, relying upon Section 19(2) of the IGST Act, held that the assessee could not be saddled with interest liability and directed that the amount deposited under the wrong head be adjusted/refunded in accordance with law. Likewise, the Hon'ble Kerala High Court in *Saji S. (supra)* directed the department to transfer/adjust the tax wrongly remitted under one head towards the liability under the correct head, instead of relegating the assessee to the cumbersome route of fresh payment and refund.

The present ruling reaffirms the settled position that payment of tax under a wrong head is a revenue-neutral situation involving no loss to the exchequer, and the proper course for the department is to invoke the adjustment mechanism envisaged under Section 77(2) of the CGST Act read with Rule 92 of the CGST Rules, rather than compelling the taxpayer to pay the tax again under the correct head along with interest and penalty. Taxpayers facing similar demands during audit or adjudication proceedings, particularly in cases of inadvertent misclassification of the place of supply, may rely on this judgment to seek adjustment of the tax already paid and resist any levy of interest and penalty.

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(Author can be reached at info@a2ztaxcorp.com)

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