VOLUME I

सत्यमेव जयते

GST APPELLATE TRIBUNAL

जीएसटी अपीलीय अधिकरण

धर्मो रक्षति रक्षितः

GSTAT E-JOURNAL

Till 31.08.2026

Reporting Judgments of the GST Appellate Tribunal

FOREWORD

"The law is not a set of abstract propositions. It is a living force."
— Benjamin N. Cardozo

It is a matter of pride to present the inaugural issue of the E-Journal of the Goods and Services Tax Appellate Tribunal (GSTAT).

The establishment of GSTAT marks an important milestone in the continuing evolution of the Goods and Services Tax regime in India. As the specialized appellate forum for adjudicating disputes arising under the GST laws, GSTAT has a vital role in promoting consistency, certainty and uniformity in the interpretation and application of tax law. The E-Journal has been conceived as an authoritative and accessible platform for disseminating the jurisprudence emerging from GSTAT. It will provide a reliable record of significant decisions of the Tribunal with respect to GST law. It is intended to serve the Bench and the Bar, tax administrators, legal and tax professionals, academics, industry and all stakeholders associated with the GST regime. The E-Journal will facilitate wider access to GSTAT's decisions and assist in identifying the important legal principles emerging from them. In this sense, it is intended not merely to be a repository of judgments, but a continuing record of the development of GST jurisprudence in India.

I place on record my appreciation for the efforts of all those associated with the conceptualization and publication of this E-Journal, particularly the Member colleagues, Registry officials, legal researchers, development team and members of the legal and professional fraternity whose collective contribution will be instrumental in making this initiative meaningful and enduring.

I am confident that the GSTAT E-Journal will develop into a credible and authoritative platform for the dissemination of GST jurisprudence and advance the larger objective of certainty, consistency and accessibility of justice in taxation. I extend my best wishes for the successful launch of the E-Journal and for its continued growth and contribution in the years ahead.

Dr. Justice Sanjaya Kumar Mishra
President, GSTAT

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GST — Anti-Profiteering —Additional ITC Benefit — Section 171 — HELD: Additional ITC benefit, including ITC on input services, is required to be passed on to homebuyers by way of commensurate reduction in prices — Passing on of benefit may be established through books of accounts, customer ledgers, credit notes and contemporaneous pricing records, and need not necessarily be by way of cash refund — Excess benefit passed on to one recipient cannot be adjusted against shortfall relating to another recipient - liable to be passed on — Interest @ 18% p.a. and penalty under Section 171(3A) attracted.

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Assessment Proceedings against deceased proprietor; Section 93 of the Central Goods and Services Tax Act, 2017
GST — Validity of assessment against deceased proprietor without notice to legal representative — HELD: No proceedings can be conducted against a deceased person — Section 93 authorises post-death initiation against legal heir only after due notice and hearing — Recovery confined to inherited estate — Where adjudication fails to examine whether estate is available, statutory basis for liability remains unaddressed — Entire proceedings liable to be set aside.

Bill to Ship to Model —S. 10(1)(b) Of Integrated Goods and Service Tax Act, 2017
GST — Input Tax Credit/Refund — Bill-to-Ship-to Model — Toll Plaza Receipts — Section 16(2) of CGST Act, 2017 — Goods alleged not dispatched from West Bengal as no toll plaza in West Bengal crossed, movement shown only in Bihar/UP — Bill-to-Ship-to model permitting delivery directly at place of export on exporter's instructions to supplier — No provision requiring goods to necessarily start from registered place of supplier — Revenue admitting receipt at Ship-to point and export, verified and confirmed — LCS Export confirming export, Bank Realization Statement received by DGFT — No dispute as to export, only mode of transportation — Toll plaza receipts not mandatory to prove physical movement for ITC/refund — Tax invoices, E-Way Bills, bilty copies and bank payments duly reflected on GST portal, not disputed — Respondent complying with Section 16(2)(a)–(d) — Eligible for ITC.

Cancellation of Registration of Second-Line/Upstream Suppliers
GST — Input Tax Credit / Refund — Denial of ITC/refund on the ground that second-line suppliers of the direct supplier had ab initio cancelled GST registrations — Sustainability — Direct/actual supplier holding valid registration and still existing on GST portal — HELD: No connection between respondent and second-line suppliers — Respondent not liable for irregularities committed by second-line suppliers — No irregularity committed by respondent in export of goods — ITC/refund cannot be denied.

Composition Levy — S. 10(1) Of Central Goods and Service Tax Act, 2017

GST — Composition Scheme — Cessation of Eligibility — Appellant, a red clay bricks manufacturer under Section 10(1), exceeded the ₹1.50 crore threshold in FY 2020-21 — Demand confirmed at 5% under Section 73 with interest and penalty — HELD: Option under composition scheme lapses automatically under Section 10(3) upon crossing the threshold; liability to pay tax at regular rate follows by force of statute.

Cum-Tax Benefit Valuation — Rule 35 of Central Goods and Service Tax Rules, 2017

GST — Cum-Tax Valuation under Rule 35 — Appellant, a composition taxpayer prohibited under Section 10(4) from collecting tax separately, challenged computation of differential tax liability — HELD: Invoice value must be treated as inclusive of tax; benefit of cum-tax valuation under Rule 35 must be extended — Omission to specifically claim the benefit cannot disentitle the Appellant from a benefit available under the Act and Rules.

De Novo Examination of Erstwhile Law Input Tax Credit — Section 140(1) of the Central Goods and Service Tax Act, 2017

Lower authorities undertaking de novo examination of correctness of ITC availed under erstwhile law — whether justified — Held — Lower authorities were not expected to undertake examination of correctness of ITC availed under erstwhile law where same has undisputedly remained unchallenged under erstwhile regime — Exercise not permissible in law unless same had been subject to challenge under erstwhile regime and that too by authorities constituted under erstwhile regime — Lower authorities have misunderstood clause (i) of proviso to Section 140(1).

E-way Bill — Penalty — Section 129 of the Central Goods and Service Tax Act, 2017

Penalty under Section 129(3) of CGST/UPGST Act — whether can be sustained when E-way Bill was generated after interception — Held — It is undisputed that E-Way Bill was generated approximately nine minutes after interception — Thus, there was a procedural lapse at the time of interception — E-way Bill was admittedly generated after interception, which constituted a procedural lapse on part of the appellant.

Intention to Evade Tax — Subsequent generation of E-way Bill and absence of intention to evade tax — whether relevant considerations for setting aside penalty — Held — Lapse occurred in background of a genuine and fully identifiable transaction — E-way Bill was generated within approximately nine minutes and immediately produced before authority — No independent material on record demonstrating suppression, clandestine movement, undervaluation, fake documentation or any other positive circumstance indicating tax evasion — Peculiar facts of this case, to be a bona fide procedural lapse rather than an act forming part of an attempt to evade tax.

GST — Detention of Goods — E-Way Bill — Section 129 — Transportation of goods without E-Way Bill — Subsequent production of E-Way Bill — HELD: E-Way Bill is mandatory under Rule 138 and subsequent production cannot cure the non-compliance at the time of transportation — Non-generation of E-Way Bill constitutes substantive non-compliance and, considering the circumstances of transportation and repeated similar conduct, establishes intention to evade tax — Such lapse cannot be treated as merely procedural or technical — Order of First Appellate Authority set aside and original order imposing tax and penalty under Section 129(3) restored.

GST — Detention of Goods — Alleged Reuse of E-Way Bill — Section 129 — Goods accompanied by valid tax invoice, e-invoice and E-Way Bill — Department alleging re-transportation on previously used E-Way Bill based on earlier verification/location of vehicle — HELD: Mere inference from earlier verification or vehicle location, without independent and cogent evidence of prior transportation or delivery of the same goods, is insufficient to establish reuse of E-Way Bill — Intention to evade tax cannot be presumed merely from suspicion or inference, and presumption cannot substitute proof — Detention and penalty under Section 129 unsustainable.

GST — Detention of goods — E-Way Bill — S. 129(3), CGST/KGST Act, 2017 — Limitation — Mandatory time-limit — Penalty order passed beyond seven days — E-Invoice generated and tax duly paid — No intention to evade tax — Order in MOV-09 passed 47 days after MOV-07 — Held, seven-day period under S. 129(3) mandatory; delay rendered penalty order illegal and without jurisdiction — Order-in-appeal set aside — Penalty quashed — Bank Guarantee directed to be released.

GST — E-Way Bill — Movement of own machinery — Excavator transported from work site — Delivery Challan — Absence of E-Way Bill — S. 68, CGST/UPGST Act, 2017 — Rule 138 — 20-km exemption — Failure to establish exemption — HELD: Movement of excavator without E-Way Bill, notwithstanding Delivery Challan, was in contravention of statutory requirements; appellant failed to establish applicability of prescribed exemption.

Intention to evade tax — Technical lapse — Tax treatment of consideration for use of excavator not established — Transportation without E-Way Bill — HELD: Failure to establish exemption or that lapse was merely procedural and without revenue implications justified action under S. 68 read with Rule 138 and S. 129; penalty upheld; appeal rejected.

Detention/seizure of goods — Alleged reuse of E-Way Bill — E-Way Bill previously verified/scanned — Vehicle breakdown — Repair bill and driver's affidavit — Goods tallying with invoices and E-Way Bills — HELD: Mere prior verification or scanning of an E-Way Bill did not establish reuse or completion of an earlier journey; Department failed to establish any discrepancy in description, quantity, value or ownership of goods or falsity of repair documents — Detention/penalty order and appellate order set aside.

Intention to evade tax — Suspicion and presumption — Independent corroborative evidence — HELD: Intention to evade tax could not be inferred merely from suspicion or circumstances; Department failed to produce cogent and independent evidence of reuse/re-transportation of goods.

Exclusion of Duty Credit Scrips from Exempt Supplies
GST — Input Tax Credit — Exempt Supplies — MEIS Duty Credit Scrips — Scope of Rule 43 of CGST Rules — Whether sale of duty credit scrips constitutes exempt supply requiring reversal of ITC — Whether amendment to Rule 43 by Notification No. 14/2022 dated 05.07.2022 can be applied retrospectively. HELD Exclusion of value of duty credit scrips from aggregate exempt supplies under Rule 43 was prospective from 05.07.2022 and could not be applied retrospectively to claim ITC benefit _Amendment to Rule 43 by insertion of clause (d) in Explanation 1 is prospective in operation from 05.07.2022

Incorrect Tax Head Reporting, Aggregate ITC and Revenue Neutrality
Whether mere difference in classification or reporting of ITC under different tax heads, in the absence of excess availment in aggregate or corresponding loss of revenue, can sustain the demand — HELD: Mere reporting or availment of eligible ITC under an incorrect tax head cannot, by itself, constitute excess availment where the aggregate credit does not exceed the eligible entitlement — Revenue neutrality is a relevant consideration where the credit remains otherwise eligible and no excess benefit is established.

Intermediary Services — S. 2(13), S. 13(2) And 13(8)(b) Of Integrated Goods and Service Tax Act, 2017
GST — Intermediary Services — Import of Services — Place of Supply — Foreign group entity acting as centralized procurement hub — Whether 'intermediary' under Section 2(13) of IGST Act — Whether place of supply under Section 13(2) (India) or Section 13(8)(b) (outside India) — IGST paid under reverse charge, ITC reversed, refund claimed on plea of intermediary services with place of supply outside India — HELD: Definition of 'intermediary' requires three parties, two distinct supplies and role akin to agent/broker not supplying on own account — Foreign entity rendering core procurement services on its own account as independent contractor, not merely facilitating main supply — Falls within exclusionary clause of Section 2(13) — Transaction constituting 'import of services', place of supply in India under Section 13(2).

Invocation & Sustainability of section 74 of the Central Goods and Services Tax Act, 2017
GST — Proceedings under Section 74 — Whether sustainable without establishing fraud, wilful misstatement or suppression — HELD: Section 74 cannot be sustained where no intention to evade tax by fraud or suppression is established — Appellant had disclosed transactions in debit/credit notes supported with invoices duly accounted in books — Only mistake: not reflecting these in periodical returns — No mens rea attracts Section 74.

Appellant engaged in manufacture of electrical apparatus and sale of MEIS duty credit scrips — Revenue issued SCN under Section 74(1) alleging wrongful availment of ITC on exempt supplies — Adjudicating Authority by a common order in original directed tax payer to reverse proportionate ITC for three financial years for availing ITC on exempt supplies in respect of outward supply of MEIS Duty Scrips and to pay applicable interest thereon along with penalty — First Appellate Authority allowed taxpayer's appeal by applying Rule 43 amendment retrospectively — HELD: Section 74(1) cannot be invoked in absence of material

Transitional Credit — Section 140(1) and Section 140(6) of Central Goods and Service Tax Act, 2017

Krishi Kalyan Cess — whether can be denied — Held — In light of judgment of jurisdictional Hon'ble Bombay High Court in Godrej & Boyce supra, confirmation of demand of transitioned KKC is not sustainable — Ratio of Godrej & Boyce supra will apply on all fours — Reliance on amendment by way of Central Goods and Services Tax (Amendment) Act, 2018 is of no avail to Revenue — Transition of Krishi Kalyan Cess by Appellant is in order

VAT Credit — whether can be denied in absence of specific objections or contrary findings — Held — Without giving any specific objection for denial of this credit, lower authorities have rejected this credit considering it to be part and parcel of other credits — In absence of contrary findings, denial of this credit cannot be countenanced — Revenue has not brought any material evidence on record to justify denial of VAT credit and consequent transition thereof to GST regime.

Waiver of Interest and Penalty under Section 128A — Temporal Eligibility

GST — Waiver of interest and penalty — S. 128A, CGST/KGST Acts — Amnesty scheme — Temporal eligibility — Excess ITC of Rs. 5,62,067/- claimed in December 2020, though underlying debit notes pertained to FY 2018-19 — HELD: Eligibility under S. 128A depends upon cumulative satisfaction of statutory conditions, including demand pertaining to period 01-07-2017 to 31-03-2020 — Relevant date is when disputed ITC was actually availed and became subject matter of S. 73 proceedings — ITC first availed in December 2020; demand therefore outside prescribed period — Mere payment of tax did not confer eligibility — Interest and penalty under S. 73(9) upheld; appeal dismissed.

S. 128A — Cumulative conditions — Procedural compliance — Form SPL-01 — CBIC Circular No. 238/32/2024-GST — Distinguishing authorities — HELD: Payment of disputed tax alone insufficient where substantive statutory conditions remained unsatisfied — Non-filing of Form SPL-01 also noticed — Wipro India Ltd. and Circular No. 238/32/2024-GST, concerning ITC mismatch/reconciliation, distinguishable from temporal eligibility under S. 128A — Precise propositions not supported by extracts relied upon could not be attributed to Circular or Samita Panda — Appeal dismissed.

(2026) 1 GSTAT E- Journal 1 (Principal Bench)

(GOODS AND SERVICES TAX APPELLATE TRIBUNAL, PRINCIPAL BENCH)

STERLING & WILSON PVT. LTD.

V.

COMMISSIONER, ODISHA, COMMISSIONERATE OF CT GST & ORS.

APPEAL NO. APL/1/PB/2026, FEBRUARY 11, 2026

CORAM:

HON'BLE JUSTICE (RETD.) DR. SANJAYA KUMAR MISHRA, PRESIDENT

REPRESENTATION:

For the Appellant: Shri Joydip Rang, Authorised Representative.

For the Respondent: Shri Saurav Tiberwal, Additional Standing Counsel, along with Shri Kunu Padhi, Joint Commissioner.

HEADNOTE:

GST — Mismatch between GSTR-1 and GSTR-3B — Scope of Sections 73 and 74 of CGST Act — Whether proceedings under Section 74 can be sustained without establishing fraud, wilful misstatement or suppression — Whether Appellant should be given opportunity to amend returns where discrepancy arose due to timing and technical constraints — Whether Appellate Tribunal has jurisdiction to examine questions of fact in second appeal. **HELD:** Proceedings under Section 74 cannot be sustained when no fraud, wilful misstatement or suppression of facts to evade tax is established — The First Appellate Authority rightly held that absence of fraudulent intent was established as appellant had disclosed transactions in debit/credit notes supported with invoices duly accounted in books of account — However, the proper course of action was to remand the matter to the Original Adjudicating Authority for re-determination under Section 73 after giving appellant an opportunity to amend its returns — The CGST Appellate Tribunal has jurisdiction to examine questions of fact under Section 112 read with Rule 112 of the CGST Rules, 2017 — Section 75(2) of the CGST Act mandates that where Appellate Authority concludes that notice under Section 74(1) is not sustainable, the Proper Officer shall determine tax payable as if notice were issued under Section 73(1) — The limitation enshrined in Section 100 of the Code of Civil Procedure, 1908 regarding substantial question of law is singularly absent in appeal provisions under CGST Act — The Appellate Tribunal is the last adjudicating forum on questions of fact — Matter remanded to Proper Officer for re-consideration giving liberty to appellant to file amendment petition within one month — Impugned order set aside to the extent it treated the case as under Section 73 and remanded for fresh adjudication — Appeal allowed by way of remand.

...In Favour of the Appellant

KEY ISSUES AND FINDINGS:

1. **Whether the Appellate Tribunal has jurisdiction to examine questions of fact under Section 112 of the CGST Act read with Rule 112 of the CGST Rules, 2017?**
   "A plain reading of aforesaid three Provisions leaves no doubt in the mind of this Tribunal that the limitations enshrined in the Section 100 of the Code are singularly absent in the appeal provisions in matters relating to GST under CGST Act as far as jurisdiction of the Tribunal is concerned regarding second appeals." [Para 17]
   "Thus, the argument advance by the Revenue that the Tribunal cannot go into the question of fact is not sustainable, and it is held that in exercise of Jurisdiction under Section 112 read with Rule 112 has power to examine question of facts also and it is the last adjudicating forum on questions of facts." [Para 21]

2. **Whether proceedings under Section 74 can be sustained in the absence of establishment of fraud, wilful misstatement or suppression of facts to evade tax?**
   "...The First Appellate Authority, while setting aside the penalty imposed by the Proper Officer under Section 74 of CGST Act, came to the conclusion (as underlined above) that

in the absence of establishment of any intention of the taxpayer to evade tax by way of fraud or suppressing the facts, as the appellant has disclosed the same in debit/credit notes, supported with invoices duly accounted for in books of accounts but did not disclose it in periodical returns matching with total liability in annual return correctly and could not prove the ITC passed by the appellant to the recipients are not utilised." [Para 24]
"Thus, from the aforesaid findings, the only mistake which has been found with the Appellant is that he has not reflected the debit/credit notes which has been duly accounted in books of account in its periodical returns. And that he did not prove the ITC passed to the Recipients by the Appellant are utilized." [Para 25]

3. **Whether the First Appellate Authority could itself proceed to determine liability under Section 73 or whether the matter was required to be remanded to the Proper Officer under Section 75(2) of the CGST Act?**
"…It is clear that original Proper Officer who has issued a notice under Section 74(1) of the CGST Act shall re-determine the tax payable by the Assessee and it cannot be done by the First Appellate Authority or the Tribunal. The natural corollary to such an observation would be that in case First Appellate Authority or the Tribunal comes to the conclusion that the proceeding initiated under Section 74 (1) of the CGST Act is not maintainable because of lack of requirements to attract the provision and comes to the conclusion that this is a matter to be considered under Section 73 of the CGST Act, then the matter has to be remitted back to the learned Proper Officer for re-determining the tax to be paid along with penalty, interest, etc." [Para 30]

4. **Whether the taxpayer should be given an opportunity to amend returns where discrepancies arise due to timing and technical constraints?**
"In our considered view every honest taxpayer should be protected and if it is held, he has no intention of evading tax by submitting wrong data or misinformation or fraudulent misinformation having intend to evade tax then he should be given a proper hearing before saddling him with penalties and interest. In the ultimate analyses if a person has paid the tax and if it is accepted the taxes has been paid because of timeline, his argument is not heard, then he should be given another opportunity to argue his point of view." [Para 27]
"…The matter should be re-considered by the learned Proper Officer. If we remand the matter, the best or the worst, depending upon the point of view, either from Revenue or from the side of the assessee, that can happen is that the case would be re-heard and decided at the very threshold and effective judgment would be passed." [Para 32]

5. **Whether the strict interpretation principle laid down by the Hon'ble Supreme Court in Dilip Kumar & Company applies to the facts of the present case?**
"We are in respectful agreement with the view of the Hon'ble Supreme Court, but note that question involved before the Constitution Bench has not direct relevance to the case in hand. In this case we are not deciding any interpretation of any exemption of tax available to an assessee. Here the simple question is whether the assessee has actually short paid taxes or not?" [Para 22]

EDITORIAL NOTES:
Principles Laid Down:
1. Proceedings under Section 74 of the CGST Act cannot be sustained in the absence of establishment of fraud, wilful misstatement or suppression of facts to evade tax. Mere mismatch between GSTR-1 and GSTR-3B without any element of mens rea does not attract Section 74.
2. Where the First Appellate Authority or Tribunal concludes that notice under Section 74(1) is not sustainable for failure to establish charges of fraud, Section 75(2) of the CGST Act mandates that the Proper Officer shall determine tax payable deeming as if

notice were issued under Section 73(1). The First Appellate Authority or Tribunal cannot itself proceed to determine tax liability under Section 73.

3. The GST Appellate Tribunal under Section 112 of the CGST Act read with Rule 112 of the CGST Rules has power to examine questions of fact and is the last adjudicating forum on questions of fact. The limitations enshrined in Section 100 of the Code of Civil Procedure, 1908 regarding substantial question of law do not apply to appellate proceedings before the GST Appellate Tribunal.
4. Taxpayers should be given an opportunity to amend their returns where discrepancies arise due to timing and technical constraints in filing returns, especially during the initial period of GST implementation and during the COVID-19 pandemic when return filing was being done manually.
5. Denial of credit or confirmation of tax demand cannot be sustained merely on account of return mismatch without verifying reconciliation records and without examining the substantive entitlement of the taxpayer to the credit or adjustment claimed.
6. Where debit/credit notes are duly accounted in books of account and supported with invoices, but not reflected in periodical returns due to timing constraints, the taxpayer should be given an opportunity to reconcile the same by filing appropriate amendment petitions.
7. The benefit of substantive compliance should prevail over procedural lapses, especially in the initial years of implementation of a new tax regime. Every honest taxpayer should be protected and given a proper hearing before being saddled with penalties and interest.

Case Law Referred to:
V.S. Products v. Additional Commissioner (Appeals), (2024) 19-Centax 434 (Bom) — followed. (Para 1)

Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company, (2018) 9 SCC 1 — distinguished. (Para 15)

Hamida v. Md. Khalil, 2001 (4) Supreme 21 — distinguished. (Para 15)

Circulars and Notifications Referred to:
- Circular No. 254/11/2025-GST dated 27.10.2025 *(Para 29)*

Relevant Provisions:
Section 73 of the CGST Act, 2017; Section 74 of the CGST Act, 2017; Section 75 of the CGST Act, 2017; Section 112 of the CGST Act, 2017; Rule 112 of the CGST Rules, 2017; Section 117 of the CGST Act, 2017; Section 118 of the CGST Act, 2017; Section 111 of the CGST Act, 2017; Section 34 of the CGST Act, 2017; Section 100 of the Code of Civil Procedure, 1908.

JUDGMENT

1. Relying upon the reported case of V.S. Products Vs Additional Commissioner (Appeals), (2024) 19-Centax 434 (BOM), the Defects pointed out are ignored.

2. ADMIT.
This is a second Appeal filled under Section 112 of the Central Goods & Services Act, 2017 hereinafter referred as the act for brevity, against the order passed by the first Appellate Authority namely the Additional Commissioner of CT and GST (Appeals), Puri Range, Orissa.

3. The brief facts of the case are as follows: -

i. The Appellant, M/s Sterling and Wilson Private Limited, is engaged in the business of engineering, procurement and construction (EPC) services and is duly registered under the Goods and Services Tax laws bearing GSTIN: 21AAACS9939D1ZG.The Appellant–Taxpayer has challenged the First Appellate Order bearing No. ZD2100922002623X dated 06.09.2022, Order-In-Appeal (OIA), passed by the 1st Appellate Authority, namely the Additional Commissioner of CT & GST (Appeal), Puri Range, Puri, in First Appeal Case No. AD210821009764B, pertaining to the tax period 01.04.2018 to 31.03.2019 (FY 2018–19). The said appeal order arose out of Order No. ZD2104210054090 dated 26.04.2021 Order-In-Appeal (OIA), passed under Section 74 of the OGST/CGST Act, 2017, whereby a demand of CGST and SGST amounting to ₹27,06,634/-, along with interest of ₹11,04,582/- and penalty of ₹27,06,634/-, aggregating to ₹65,17,849/-, was raised on the allegation that the Appellant had disclosed a lesser tax liability in GSTR-3B as compared to GSTR-1.

ii. That for the Financial Year 2018–19, the Appellant had declared an output tax liability of ₹31,36,18,763/- in GSTR-1, whereas the liability declared in GSTR-3B was ₹31,09,12,131/-, resulting in an alleged short disclosure of tax liability amounting to ₹27,06,634/-, comprising of ₹13,53,317/- under the CGST Act and ₹13,53,317/- under the SGST Act.

iii. That the 1st Appellate Authority, after examining the records including GSTR-1, GSTR-3B, GSTR-9 and GSTR-9C filed by the Appellant for the year 2018–19, determined the tax demand of ₹27,06,634/-, interest of ₹15,84,248/-, and reduced the penalty to ₹2,70,664/-, thereby determining a total liability of ₹45,61,546/-. Since the Appellant had already paid an amount of ₹2,70,664/- on 24.08.2021, the balance demand payable was computed at ₹42,90,882/-, comprising tax of ₹24,35,970/-, interest of ₹15,84,248/-, and penalty of ₹2,70,664/-, vide Appeal Order No. ZD2100922002623X dated 06.09.2022.

iv. The Appellate Authority held that there is no establishment of any intention of the tax payer to evade tax by act of fraud or suppressing the facts to evade tax as the appellant has disclosed the same in debit/credit notes supported with invoices duly accounted for in books of account but did not disclose it in periodical returns matching with total liability in annual return correctly. However, first Appellate Authority further held that Appellant could not prove that ITC passed by the Appellant to the Recipients were not utilised. Hence, the Appellate Authority treated it to be a case under Section 73(9) of the CGST/SGST Act. Thus, the 1st Appellate Authority partly allowed the appeal by modifying the penalty imposed under Section 74 from ₹27,06,634/- to ₹2,70,664/-, levied under Section 73(9) of the OGST/CGST Act, 2017, being 10% of the tax amount, while confirming the tax and interest as adjudicated by the Proper Officer vide order dated 26.04.2021. Accordingly, the adjudication was converted from Section 74 to Section 73 of the OGST/CGST Act, 2017, vide Appeal Order No. 1653/CT & GST dated 29.08.2022.

4. That aggrieved by the aforesaid Order-in-Appeal, the Appellant has approached this Tribunal by way of the present Second Appeal, contending that the First Appellate Authority, despite having recorded a finding on the following ground.

i. The demand of tax and interest sustained is erroneous in law and facts.

ii. The Appellate Authority erred in upholding tax liability merely on account of return mismatch without verifying reconciliation records.

iii. Once absence of intent to evade tax was admitted, entire proceedings under Section 74 ought to have been dropped.

iv. The levy of interest and penalty is unsustainable as the issue is reconciliatory and revenue neutral.

5. The matter was taken up for hearing through virtual mode on 26.12.2025, 06.01.2026, 13.01.2026 and 21.01.2026. The final hearing in the present appeal was concluded on 21.01.2026. Shri Joydip Rang, Authorized Signatory, appeared on behalf of the Appellant. Shri Saurav Tiberwal, Learned Additional Standing Counsel, along with Shri Kunu Padhi, Learned Joint Commissioner, appeared as Authorized Representatives for the Revenue-Respondents.

6. Memo of the cross objections were also filed by the Respondent on 05.01.2026. It is summarized as hereunder: -

i. The Respondent has reiterated the findings recorded by the adjudicating authority as well as the First Appellate Authority and submitted that the Appellant failed to reconcile the mismatch between the tax liability declared in Form GSTR-1 and the tax discharged in Form GSTR-3B in the manner prescribed under the CGST/OGST Act, 2017. It was contended that statutory returns filed under the Act are self-assessed declarations and any variation therein must be duly explained and corrected within the framework of law.

ii. It was further submitted that the explanations advanced by the Appellant regarding credit notes, advances, and prior-period adjustments were not supported by contemporaneous statutory compliance and were raised belatedly at the appellate stage. The Respondent contended that the Appellant failed to discharge the burden of proof cast upon it to justify the discrepancy noticed during scrutiny.

iii. It was submitted that the First Appellate Authority, after due verification of records, had rightly upheld the tax and interest while modifying the penalty in accordance with law. It was, therefore, contended that the impugned order does not suffer from any legal infirmity and calls for no interference by this Tribunal.

7. It is submitted by the Appellant that proper officer observed that there is discrepancy between return of outward supply declared in GSTR-1 and tax paid in GSTR-3B. The appellant submitted that such difference arose due to issuance of credit notes and adjustment of advances pertaining to different tax periods which could not be amended in GSTR-1 due to system constraints. All such adjustments were duly reflected in books of accounts and in GSTR-3B, thereby eliminating any element of tax evasion. It was contended that these were clerical mistakes. At that time, the returns were being made manually and online system of filling returns etc. were not fully operational.

However, the Proper Officer did not accept the explanation and held that:

a) Credit notes were not issued within the prescribed timeframe under Section 34(2);

b) No proof of reversal of ITC by recipients was furnished;

c) Liability reported in GSTR-3B was lower than GSTR-1 and not fully reconciled with GSTR-9/9C.

8. The Appellant further contended that the Proper Officer confirmed the demand under Section 74, imposing equivalent penalty, even though the issue was primarily reconciliatory in nature and without any suppression, fraud, or mis-statement.

9. It is further submitted by the Appellant that the it is not disputed at this stage that the Proper Officer i.e. the Deputy Commissioner of CT and GST, Puri Circle, Orissa did not find any suppression, misrepresentation or fraudulent mis-statement to attract Section 74 of the CGST/SGST Act. Nonetheless, the Proper officer proceeded to decide the case as one under section 74 of the CGST / SGST Act.

10. It is further submitted by the Appellant that the afore-said course of action has been set aside by the Appellant Forum. The Appellant forum, however, did not took into consideration the detailed reconciliation submitted with the supporting documents including Credit notes, Debit notes, invoices and advance adjustments working. The Appellant further submitted that it produced a summary of reconciliation between GSTR-1 and GSTR-3B supported by updated data extracted from the GST portal.

11. It is also submitted by the Appellant that the Appellate Authority not accepted that the difference of ₹ 27,06,634/- was duly supported by documentary evidence and did not involve intent to evade tax. The appeal was partly allowed by the First Appellate Authority. The details of the Reconciliation have been submitted by the Appellant which is quoted below: -

Details of Reconciliations and Documentary Basis

Particulars	GST Amount	Concerned Customer	Reference / Annexure
GST on advance considered in 2017-18 in GSTR3B not in GSTR-1 ₹ 4,93,322 and advance adjusted in 2018-19 in GSTR-3B not in GSTR-1 ₹ 4,93,322	(-) ₹ 4,93,322	Shapoorji Pallonji & Co	Annex-IV
GST on advance considered in 2017-18 in GSTR3B & GSTR-1 ₹ 44,85,714 and advance adjusted in 2018-19 in GSTR-3B not in GSTR-1 ₹ 9,25,003	(-) ₹ 9,25,003	ITC Ltd.	Annex-IV
GST on debit note booked in 2018-19 considered in GSTR-3B not in GSTR-1	₹ 2,88,073	Odisha Power Transmission Corporation Ltd.	Annex-V
Credit note booked in 2018-19 for pre-GST period invoices	(-) ₹ 6,99,562	Odisha Power Transmission Corporation Ltd.	Annex-II

Credit note booked in 2018-19 (Sept'18) for invoice of 2017-18 (Oct'17)	(-) ₹ 3,23,210	Thyssenkrupp Industries	Annex-III
Credit note booked in 2018-19 (Mar'19) for invoice of 2018-19 (Jan'18)	(-) ₹ 4,76,308	Shapoorji Pallonji & Co	Annex-III
Credit note booked in 2018-19 (Sept'18) for invoice of 2017-18 (Mar'18)	(-) ₹ 77,305	Jindal Steel & Power Ltd.	Annex-III
Total Difference	**(-) ₹ 27,06,637**		

12. It was, therefore, submitted that adjustments were duly reflected in the appellant's books of accounts and accounted for in respective GSTR-3B filings for FY 2018-19. It is also submitted that the variations in GSTR-1 arose solely due to timing and technical constraints in amending earlier returns.

In reply to the submissions of the Appellant the Revenue would submit that Appellant's argument that the 1st Appellate Authority upheld the demand merely on mismatch without verification is factually incorrect.

13. It was stated by the Revenue that the Appellate Authority examined the reconciliation statements of credit notes, supply invoices and the updated return data as available on the GSTAT Portal. The Appellant have relied upon Credit notes/ Debit notes and advances but the scrutiny revealed multiple discrepancies including:

a) Non-amendment of GSTR-1.

b) Non reconciliation in Annual return and audit Return i.e. GSTR 9 and 9(C) respectively.

c) Credit notes issued beyond timelines under Section 34(2).

d) Failure to establish reversal of ITC by recipients where credit notes were claimed resulting in risk of unjust enrichment.

e) Several claims relating to prior periods/pre-GST issues which could not be adjusted in GST returns.

14. The Learned Additional Standing Counsel as well as Deputy Commissioner of the CT & GST Commissionerate, Orissa submitted a written argument in the portal. It was emphasized by the Revenue that as per the Judgement passed by the Hon'ble Supreme Court in **"Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company Ors**", (2018) 9 SCC 1, [para 24 and 34] and contended that taxation statue calls for strict interpretation. Further reliance is placed on judgment of Hon'ble Supreme Court in **"Hamida Vs. Md. Khalil-** 2001 4 Supreme 21, where in Supreme Court has held that issues not raised before the lower fora cannot be permitted to be raised for the first time at the appellate stage, especially in second appeals.

15. Coming to the last question at first, we find that in the case of Hamida Vs. Md. Khalil-2001, Supra., (08.05.2001) in CA No. 3695 of 2001, the Hon'ble Supreme Court took into consideration the Provision of Section 100 of Code of Civil Procedure, 1908, hereinafter referred as the Code, for brevity, and came to the conclusion that lower appellate court is final court of fact and, therefore, the high court erred in re-appreciating the evidences and without finding the conclusion of the lower appellate court were not based on the evidence, reversed the conclusions of fact on the ground that view taken by it was also a possible view on the fact. The Supreme Court further stated that it is well settled that while exercising jurisdiction under Section 100 of the Code, the High Court cannot reverse the findings of the lower appellate court on facts merely on the ground that on the facts found by the lower appellate court another view is possible.

16. However, we find Jurisdiction of the Appellate Tribunal under the CGST / SGST Act is different from the Jurisdiction of the High Court Under Section 100 of the Code. There is a need to compare the language used by two different Provisions. Section 100 of the Code provides the Second Appeal Jurisdiction in a Civil Matter and Section 112 of the CGST Act along with Rule 112 of the CGST Rules, 2017 provide for second appeals in GST matters. The aforesaid provisions are quoted below.

Section 100 of the Code reads as follows:- (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that <u>the case involves a substantial question of law</u>.

(2) An appeal may lie under this section from an appellate decree passed ex-parte.

(3) In an appeal under this section, the memorandum of appeal <u>shall precisely state the substantial question of law involved in the appeal</u>.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question: Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.

Section 112 of the CGST Act, 2017 reads as follows:- (1) Any person aggrieved by an order passed against him under Section 107 & 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within 1three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal 4[; or the date, as may be notified by the Government, on the recommendations of the Council, for filing appeal before the Appellate Tribunal under this Act, whichever is later.

(2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed fifty thousand rupees.

(3) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or Commissioner of Union territory tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within 2six months from the date on which the said order has been passed 4[; or the date, as may

be notified by the Government, on the recommendations of the Council, for the purpose of filing application before the Appellate Tribunal under this Act, whichever is later,] for determination of such points arising out of the said order as may be specified by the Commissioner in his order.

(4) Where in pursuance of an order under sub-section (3) the authorised officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under sub-section (11) of Section 107 or under sub-section (1) of Section 108 and the provisions of this Act shall apply to such application, as they apply in relation to appeals filed under sub-section (1).

(5) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the time specified in sub-section (1).

(6) The Appellate Tribunal may admit an appeal within three months after the expiry of the period referred to in sub-section (1) 4[or permit the filing of an application within three months after the expiry of the period referred to in sub-section (3)], or permit the filing of a memorandum of cross-objections within forty-five days after the expiry of the period referred to in sub-section (5) if it is satisfied that there was sufficient cause for not presenting it within that period.

(7) An appeal to the Appellate Tribunal shall be in such form, verified in such manner and shall be accompanied by such fee, as may be prescribed.

(8) No appeal shall be filed under sub-section (1), unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and

(b) a sum equal to 5[ten per cent.] of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of Section 107arising from the said order, 3[subject to a maximum of 5[twenty crore rupees]] , in relation to which the appeal has been filed. 6[Provided that in case of any order demanding penalty without involving demand of any tax, no appeal shall be filed against such order unless a sum equal to ten per cent. of the said penalty, in addition to the amount payable under the proviso to sub-section (6) of section 107 has been paid by the appellant.]

(9) Where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

(10) Every application made before the Appellate Tribunal,

(a) in an appeal for rectification of error or for any other purpose; or

(b) for restoration of an appeal or an application, shall be accompanied by such fees as may be prescribed.

Rule 112 of the CGST Rules, 2017 reads as follows (1) The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the Appellate Authority except in the following circumstances, namely: -

(a) where the adjudicating authority or, as the case may be, the Appellate Authority has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the Appellate Authority; or

(c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the Appellate Authority any evidence which is relevant to any ground of appeal; or

(d) where the adjudicating authority or, as the case may be, the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the Appellate Authority or the Appellate Tribunal records in writing the reasons for its admission.

(3) The Appellate Authority or the Appellate Tribunal shall not take any evidence produced under sub-rule (1) unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity –

(a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or

(b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1).

(4) Nothing contained in this rule shall affect the power of the Appellate Authority or the Appellate Tribunal to direct the production of any document, or the examination of any witness, to enable it to dispose of the appeal.

17. Thus, a plain reading of aforesaid three Provisions leaves no doubt in the mind of this tribunal that the limitations enshrined in the Section 100 of the Code are singularly absent in the appeal provisions in matters relating to GST under CGST Act as far jurisdiction of the Tribunal is concerned regarding second appeals. We may also note here that Section 117 and 118 of the CGST Acts provides for appeals to High Court and Supreme Court.

Sub Section (1) of 117 of the CGST Act, 2017 provides that “any person aggrieved by an order passed by the State Benches or Area Benches of the Appellate Tribunal to file an appeal directly to the High Court. The High Court may admit this appeal if it is satisfied that the case involves a substantial question of law”.

Sub Section (3) of 117 of the CGST Act, 2017 provides High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and the appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

18. Similarly, Section 118 of the CGST Act, 2017 provides that an appeal shall lie to the Supreme Court-

(a) from any order passed by the Principal Bench of the Appellate Tribunal; or

(b) from any judgment or order passed by the High Court as provide under Section 117.

19. It is further provided that the Code of Civil Procedure, 1908, relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section as they apply in the case of appeals from decrees of a High Court.

20. Thus, it is clear, the High Court as provided in Section 117 and Supreme Court as provide in Section 118 would be an Appellate Court to deal with the substantial question of law. Similar provision is found in Section 100 of the Code. Moreover, Sub Section (2) of 111 of the CGST Act, 2017 further provides that the Appellate Tribunal, while discharging its functions, possesses the same powers as a civil court under the Code.

Section 111(1) of the CGST Act, 2017 provides "that the Appellate Tribunal shall not, while disposing or proceeding before it or an appeal before it the bound by the procedure laid down in the Code of Civil Procedure, 1908".

21. Thus, the argument advance by the Revenue that the Tribunal cannot go into the question of fact is not sustainable and it is held that in exercise of Jurisdiction under Section 112 read with Rule 112 has power to examine question of facts also and it is the last adjudicating forum on questions of facts.

22. The Second question is that the Statute should interpretated strictly and for that reason Revenue has relied upon the Reported case in "Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company Ors" (2018) 9 SCC 1 [para 24 and 34], Supra.," We have carefully examined the Constitution Bench Judgment, wherein the Hon'ble Supreme Court has held that " (1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that this case comes within the parameters of the exemption clause or exemption notification, (2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject / assessee and it must be interpreted in favour of the Revenue. The ratio in Sun Export Corporation, Bombay Vs. Collector of Customs, Bombay, (1997) 6 SCC 564 is not correct and was overruled.

The Question that was examined by the Supreme Court is – What is the interpretative rule to be applied while interpreting a tax exemption provision/notification when there is an ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied?

We are in respectful agreement with the view of the Hon'ble Supreme Court, but note that question involved before the Constitution Bench has not direct relevance to the case in hand. In this case we are not deciding any interpretation of any exemption of tax available to an assessee. Here the simple question is whether the assessee has actually short paid taxes or not?

23. The First Appellate Authority while accepting part of the submissions made by the Appellant regarding absence of any fraudulent intent but not accepting the explanation given regarding reconciliation has held as under: -

As per above table, it becomes clear that the credit notes are not issued within the prescribed time limit as per section 34(2) of the CGST/SGST Act and in some cases though credit note is issued and disclosed in GSTR-1 but not reconciled correctly in GSTR-9 and GSTR-9C for 2018-19 by reflecting the liability correctly matching with corresponding periodical return in GSTR-3B. The liability for 2018-19 are also not found commensurating in GSTR-9 and GSTR-9C (as discussed at serial iii above). Besides this, the appellant could not establish the reversal of Input Tax Credit by the corresponding recipients who have already utilised the ITC relating to the supply invoices against which the appellant stated to have issued credit notes later.

In consideration of the above observations, the reasons stated by the appellant are not accepted and the less liability of Rs.27,06,634/- found in GSTR-3B for 2018-19 than its corresponding liability in GSTR-1 is taken as short paid/ not paid and its interest and penalty are calculated in the table below. Besides this, the imposed penalty u/s 74 of the SGST/CGST Act by the LPO is not accepted in the absence of the establishment of any intention of the tax payer to evade tax by act of fraud or suppressing the facts to evade tax as the appellant has disclosed the same in debit/credit notes supported with invoices duly accounted for in books of account but did not disclose it in periodical returns matching with total liability in annual return correctly nor could prove the ITC passed by the appellant to the recipients are not utilised. Now he is imposed with penalty u/s 73(9) of the CGST/SGST Act for short paid liability of Rs.27,06,634/- for 2018-19.

24. Thus, in our considered opinion the first Appellate Authority while setting aside the penalty imposed by the Proper Officer under Section 74 of CGST Act came to the conclusion (as underlined above) that in the absence of establishment of any intention of the taxpayer to evade tax by way of fraud or suppressing the facts, as the appellant has disclosed the same in debit/credit notes, supported with invoices duly accounted for in books of accounts but did not disclose it in periodical returns matching with total liability in annual return correctly and could not prove the ITC passed by the appellant to the recipients are not utilised. Thus, First Appellate Court has accepted that the Appellant has disclosed the transaction in Debit / Credit notes and are supported with invoices duly accounted in books of Account. But his fault was that he did not disclose the transactions in the periodical returns matching with total liability in annual returns correctly. It also held that the LPO has not proved that the ITC passed by the Appellant to the Recipient were not utilized.

25. Thus, from the aforesaid findings, the only mistake which has been found with the Appellant is that he has not reflected the debit / credit notes which has been duly accounted in books of account in its periodical returns. And that he did not prove the ITC passed to the Recipients by the Appellant are utilized. In this case we are of the opinion that this aspect has to be relooked into by the Learned Proper Officer and Appellant should be given chance to amend his returns by condoning his delay occasioned in the meantime. This view was discussed in course of virtual hearing and Learned Joint Commissioner was not in agreement with same, however, Learned Additional Standing Counsel would submit that such a case will become a precedent and may cause numerous cases to be remanded. We are of the view that every litigation has its own merits and demerit. It has to be decided on its own facts and merits. A cannot be decided on the basis consequences that follow with respect to other litigations.

26. The Learned First Appellate Authority has come to the Conclusion that the view taken by the Learned Proper officer that the timeline prescribed by Sub-Section (2) of Section 34 of the CGST Act, 2017 that such credit notes cannot taken into consideration to decide whether there is short payment of tax.

27. In our considered view every honest taxpayer should be protected and if it is held, he has no intention of evading tax by submitting wrong data or misinformation or fraudulent misinformation having intend to evade tax then he should be given a proper hearing before saddling him with penalties and interest. In the ultimate analyses if a person has paid the tax and if it is accepted the taxes has been paid because of timeline, his argument is not heard, then he should be given another opportunity to argue his point of view. It may also be noted here that the period in which proceedings in original and appeal were heard was a difficult time as it is during the Covid-19 Pandemic. Though the order of the SC in SUO MOTO WPC (2) No. 3/2020, wherein the Supreme Court has taken cognizance of the difficulties faced by the litigant and has directed to arrest of running of limitation from 15.03.2020 to 28.02.2022 is not applicable to timeline compliance in tax returns, we are though not applying the Principal, would like to take a pragmatic view and to Shun a pedantic approach in the matter. While examining order passed by the Learned First Appellate Authority, it was also noticed by this Tribunal that at concluding Paragraph, the Authority has converted the proceeding under Section 74 to pass an order u/s 73. The Learned Authorized Representative would submit that once the Appellate Authority holds that Section 74 is not applicable in this case, then it was improper on his part to pass an order imposing penalty interest etc. under Section 73.

28. In Countering this Argument, the Learned Additional Standing Counsel would submit by resorting to the Sub-Section (2) of 75 of the CGST Act. It provides that the Appellant Authority can modify the tax liability, penalty & interest by holding it to be a case of short payment of tax and not a case of fraudulent intend of evasion tax. In order to appreciate the question, we took note of exact language used in the statute which reads as follows: -

> Sub-Section 75 (2)- Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of Section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of Section 73.

29. In this connection, the Registry of GSTAT, PB on instructions has examine the different notifications of CBIC Circular no. 254/11/2025-GST dated 27.10.2025 at paragraph 2 instructs as follows: -

2. It is observed that no proper officer has been assigned in respect of the following provisions of the CGST Act and the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “CGST Rules”):

    a) xxxx

    b) Section 75(2) of the CGST Act which provides where any Appellate Authority / Appellate Tribunal / Court concludes that the notice issued under section 74(1) is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom Page 2 of 6 the notice was issued, the proper officer shall determine the tax payable, deeming as if the notice were issued under section 73(1) of CGST Act.

    c) xxxx

d) xxxx

30. Thus, it is clear that original Proper Officer who has issued Notice Under Section 74(1) of the CGST Act shall re-determine the tax payable by the Assessee and it cannot be done by the First Appellate Authority or the Tribunal. The natural corollary to such an observation would be that in case First Appellate Authority or the Tribunal comes to the conclusion that the proceeding initiated under Section 74 (1) of the CGST Act is not maintainable because of lack of requirements to attract the provision and comes to the conclusion that this is a matter to be considered under Section 73 of the CGST Act, then the matter has to be remitted back to the learned Proper Officer for re-determining the tax to be paid along with penalty, interest, etc.

31. So, even if we accept order of the First Appellate Authority in toto, without the qualification that we have discussed in the preceding paragraphs, then also this matter has to be remanded to Proper Officer for re-determination of Tax to be paid by the assessee.

32. Moreover, we are of the opinion that CGST / SGST Act is relatively new Act and professionals may not be thorough in the filing returns at the relevant period, together with fact that, at that particular time most of returns were being filed manually and the technique of auto-population and full online filling was not operational to fullest extent as it is now. There were chances of human error. In order to obviate any such human error, the matter should be re-considered by the learned Proper Officer. If we remand the matter, the best or the worst, depending upon the point of view, either from Revenue or from the side of the assessee, that can happen is that the case would be re-heard and decided at the very threshold and effective judgment would be passed. It is also not disputed at this stage that Appellant was not heard in-person at the time of passing of the order-in-original.

33. In the Result, we come to the conclusion, on the basis of aforesaid reasoning, that order passed by the learned Proper Officer and the order passed by the First Appellate Authority, so far as it relates to treating the case as Section 73 of the CGST/SGST Act are concerned, cannot be sustained and accordingly is set aside. However, we are not setting aside the orders passed by the learned Appellate Authority as far as its finding that case does not come under Section 74 of SGST / CGST Act.

34. Moreover, on the basis of aforesaid discussion we remand the matter back to learned Proper Officer for re-consideration of matter giving liberty to the Appellant to file appropriate amendment petition, if so adviced, within a period of one month from the date of the order uploaded and digitally signed on the portal / website.

35. The Appellant through its authorized Representative shall appear before the Proper Officer and file suitable application within a month. The case shall be re-considered as one under Section 73 of the CGST Act and after affording a reasonable opportunity of hearing, producing documents and seeking amendment (amendment must be filled withing 30 days from the publication of this judgment) shall be considered on merits by the learned proper officer. The learned Proper Officer while disposing the proceeding Under Section 73 of the CGST Act shall examine the genuineness of the Credit / Debit notes and other documents produced by the Appellant and render the final order.

36. There shall be no orders as to costs.

37. Before parting with the case, I record my appreciation of the efforts made by Shri Kunnu Padhi, JC, Shri Saurab Tiberwal, learned Standing Counsel, Shri Joydip Rang, Authorized Signatory of the Appellant, the Registry, GSTAT, GSTN-NIC team and other supporting staff of GSTAT in making it possible to conduct hearings in virtual mode and in a online paperless manner.

(2026) 1 GSTAT E- Journal 15 (Principal Bench)
GOODS AND SERVICES TAX APPELLATE TRIBUNAL, PRINCIPAL BENCH
DOW CHEMICAL INTERNATIONAL (P.) LTD.
V.
COMMISSIONER OF STATE TAX
APPEAL NOS. APL 2 TO 7 (PB) OF 2026, JUNE 4, 2026

CORAM:

JUSTICE (RETD.) DR. SANJAYA KUMAR MISHRA, PRESIDENT
AND
SHRI ANIL KUMAR GUPTA, TECHNICAL MEMBER

REPRESENTATION:

For the Appellant: Mihir Prashant Deshmukh, Advocate.
For the Respondent: Shwetal Shepal, Advocate.

HEADNOTE:

GST — Intermediary Services — Import of Services — Place of Supply — Whether services provided by a foreign group entity acting as a centralized procurement hub qualify as 'intermediary services' under Section 2(13) of IGST Act — Whether place of supply is determined under Section 13(2) (location of recipient in India) or under Section 13(8)(b) (location of supplier outside India) — Appellant, an Indian chemical manufacturer, engaged Dow Europe GmbH (Switzerland) under a Procurement Agreement for vendor identification, negotiation, and facilitation of supplies — Appellant paid IGST under reverse charge on services, then reversed ITC and filed refund, arguing services were intermediary with place of supply outside India — Revenue contended services were provided on principal-to-principal basis as an independent contractor, thereby constituting import of services — Whether CBIC Circular No. 159/15/2021-GST on scope of intermediary services is binding on Tribunal **HELD**: Definition of 'intermediary' requires existence of three parties, two distinct supplies (main and ancillary), and a role akin to an agent or broker who does not supply services on own account — Although three parties existed, Dow Europe was found to be providing core procurement services as a centralized hub for the Dow Group on its own account, not merely facilitating a main supply — Independent contractor clause and scope of work indicated a principal-to-principal relationship, falling within the exclusionary clause of Section 2(13) —Transactions constituted 'import of services' with place of supply in India under Section 13(2) — Refund claims under Section 54 of CGST Act rightly rejected as statutory conditions not met — AAR rulings have only persuasive value; High Court views and statutory provisions prevail — CBIC circulars are not binding on judicial authorities but may be persuasive — Appeals dismissed.

...In Favour of the Revenue

KEY ISSUES AND FINDING:

1. **Whether the services provided by Dow Europe GmbH qualify as 'Intermediary services' within the meaning of Section 2(13) of the IGST Act?**
   "The definition of 'intermediary' under Section 2(13) requires a person who arranges or facilitates the supply of goods or services between two or more persons, but excludes a person who supplies such goods or services on his own account." [Para 16]
   "A complete and holistic reading of Section 2(13) of the IGST Act demonstrates that the latter portion of the definition, namely the exclusionary clause which excludes a person who supplies services 'on his own account', is equally important."[Para 7.2(ii)]
   "...we are of the opinion that the Dow Europe renders services on his own account to the service receivers located in India, and the acts of the said foreign company are those of an independent contractor, and it does not represent or bind the Indian client in the course of its services." [Para 22]
   "In that view of the matter, we are of the opinion that services received by Dow India are in the nature of an import and the place of supply shall be in India, not in Europe. Thus,

it will not come within the purview of Section 13(8)(b) of the IGST Act, and definition provided in Section 2 (13) of the IGST Act." [Para 23]

2. **Whether the place of supply for the services is to be determined under Section 13(2) (India) or Section 13(8)(b) (outside India) of the IGST Act?**
   "As per the scheme of the goods and services tax regime, incidence of tax is the place of supply. However, Section 13(8) of the IGST Act provides for the exception for the same."[Para 8]
   "...the pivotal question around which the entire case revolves is whether the services provided by Dow Europe to Dow India are an intermediary service or a service that is the main service." [Para 8]
   "Coming to the second requirement of two distinct supplies in case of provision of intermediary services... we are of the considered of the opinion that the second consideration is not satisfied because of the fact that both the Dow Europe and Dow India are, either direct or indirect, subsidiaries of one company, i.e. "Dow INC", which is collectively, known as "Dow Group". Dow Europe, a company located in Switzerland, functions as the Centralized Procurement Hub for the entire Dow Group and thereby giving a core service to the entire Dow Group located throughout the world." [Para 21]
   "...we are of the opinion that services provided by Dow Europe cannot be termed as "intermediary service" and as it is not in the nature of the ancillary service, rather it is a core service provided by it to one of its sisters concerned... Accordingly, all the questions framed by us are answered against the Appellant and in favour of the Revenue." [Para 26]

3. **Whether the Appellant is entitled to refund of IGST paid under a mistaken impression that the services were an import, and whether the rejection of refund claims is justified?**
   "The First Appellate Authority held that the Appellant has paid the GST dues, and as afterthought, has come with a plea that it is an intermediary service and, therefore, the Appeal has no merit. This view is incorrect in view of the fact that Section 54 of the CGST Act provides for refund of taxes within a specific time limit, Rule 89 of the CGST Rules, 2017 provides for the particulars to be given in an application for refund of tax penalty." [Para 24]
   "If such provisions are there in this statute, it cannot be stated that every application for refund of tax, paid to the revenue under a misconception, will be hit by the principles of action arising as an afterthought." [Para 25]

4. **Whether the CBIC Circular No. 159/15/2021-GST on 'intermediary' is binding on the Tribunal?**
   "We are also of the opinion that since the Tribunal is not department under CBIC any circular issued by the CBIC does not have a binding effect on Tribunal. However, it can be looked into for the purpose of interpretation, having persuasive role." [Para 17]

EDITORIAL NOTES:

Principles Laid Down:

1. For a service to qualify as "intermediary services" under Section 2(13) of the IGST Act, the following prerequisites must be satisfied: (i) minimum of three parties; (ii) two distinct supplies — a main supply between two principals and an ancillary supply of facilitation; (iii) the intermediary must have the character of an agent, broker, or similar person playing a supportive role; and (iv) the intermediary must not supply goods/services "on his own account."
2. The presence of an independent contractor clause in an agreement, coupled with absence of authority to bind the principal, indicates that the service provider is acting on a principal-to-principal basis and falls outside the definition of "intermediary."
3. Services that constitute core procurement operations (strategy development, supplier risk management, quality audits, spend analytics, etc.) rendered by a centralized

procurement hub for a group of companies are substantive services provided "on own account" and not ancillary facilitation services.

4. Advance Rulings pronounced by State Advance Ruling Authorities under Section 103 of the CGST Act are binding only on the applicant and the concerned officer, and have no binding force on the Tribunal or other judicial authorities; they carry only persuasive value.
5. CBIC Circulars are binding on departmental officers but have no binding effect on judicial authorities like High Courts or the GST Appellate Tribunal; however, they can be looked at for interpretative guidance.
6. The Revenue cannot take contradictory stands — treating Indian companies providing services to foreign counterparts as intermediaries, while treating foreign companies providing services to Indian counterparts as import of services — and a consistent view must be adopted.
7. The fact that a refund claim is filed after initially treating a transaction as taxable does not automatically render it an "afterthought" since Section 54 of the CGST Act permits refund of taxes paid under mistake; however, the substantive entitlement to refund depends on the correct characterization of the transaction.

Case Law Referred to:

K.P. Varghese v. ITO [1981] 7 Taxman 13 (SC) — Followed (Para 17)

Ellerman Lines Ltd. v. CIT [1971] 82 ITR 913 (SC) — Followed (Para 17)

Pr. Commissioner, Central Excise and CGST - Delhi South v. Blackberry India (P.) Ltd [SERTA 7 of 2023] — Distinguished (Para 12)

Genpact India (P.) Ltd. v. Union of India [2022] 144 taxmann.com 201 (Punj & Har) — Distinguished (Para 13)

Airbus Group India (P.) Ltd., In re [2021] 128 taxmann.com 121 (AAR-KAR) — Referred to (Para 7.1)

Toshniwal Brothers (SR) (P.) Ltd., In re [2018] 98 taxmann.com 175 (AAR-KAR) — Referred to (Para 7.1)

Gulf Turbo Solutions LLP, In re [2023] 152 taxmann.com 210 (AAR-MAH) — Referred to (Para 7.1)

Global Reach Education Services (P.) Ltd., In re [2018] 92 taxmann.com 211 (AAR-WB) — Referred to (Para 7.1)

VservGlobal (P.) Ltd., In re [2018] 99 taxmann.com 253 (AAR-MAH) — Referred to (Para 7.1)

Columbia Sportswear India Sourcing (P.) Ltd. v. Union of India [2025] 174 taxmann.com 936 (Kar.) — Distinguished (Para 7.2, 9, 10, 19)

Circulars and Notifications Referred to:

- Circular No. 159/15/2021-GST, dated 28.09.2021
- Notification No. 10/2017 (Tax Rate), dated 28.06.2017
- Notification No. 28/2012-ST, dated 20.06.2012

Relevant Provisions:

Section 2(13) of the IGST Act, 2017; Section 13 of the IGST Act, 2017; Section 5(3) of the IGST Act, 2017; Section 54 of the CGST Act, 2017; Section 112 of the CGST Act, 2017;

Section 103 of the CGST Act, 2017; Rule 110 of the CGST Rules, 2017; Rule 89 of the CGST Rules, 2017.

JUDGMENT

Per, Justice S.K. Mishra, President –

1. These are a bunch of Appeals under Section 112 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act), read with Rule 110(1) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred as CGST Rules).

2. The Appellant, M/s DOW Chemical International Private Limited, has assailed the confirming orders passed by the Joint Commissioner of State Tax (Appeals), Raigad Division, Belapur, Navi Mumbai, dated 07.08.2023.

3. The First Appellate Authority has confirmed the order passed by the Deputy Commissioner of State Tax (MUMBAI-LTU_515) whereby the refund claimed u/s 54(1) & Rule 89 of the Maharashtra Goods & Services Tax Act, 2017 and Maharashtra Goods & Services Tax Rules, 2017 (hereinafter referred to as MGST Act and MGST Rules) were rejected. The details of the impugned orders refusing the refunds in favour of the Appellant pertaining to the tax periods spanning from January 2022 to June 2022 are as follows: -

   (a) In appeal No. APL/2/PB/2026 for the period 01/01/2022 to 31/01/2022 of refund amounting to Rs. 7,81,12,995/-
   (b) In appeal No. APL/3/PB/2026 for the period 01/02/2022 to 28/02/2022 of refund amounting to Rs. 1,12,62,629/-
   (c) In appeal No. APL/4/PB/2026 for the period 01/03/2022 to 31/03/2022 of refund amounting to Rs. 1,30,15,941/-
   (d) In appeal No. APL/5/PB/2026 for the period 01/04/2022 to 30/04/2022 of refund amounting to Rs. 1,47,89,813/-
   (e) In appeal No. APL/6/PB/2026 for the period 01/05/2022 to 31/05/2022 of refund amounting to Rs. 1,31,52,277/-
   (f) In appeal No. APL/7/PB/2026 for the period 01/06/2022 to 30/06/2022 of refund amounting to Rs. 38,56,339/-

   Details of the six appeals are given in the table below: -

No	Case No	Order Type	Details of order (O-I-O) challenged before Appellate/Revisional authority	Details of Order Appeal (O-I-A) challenged before GSTAT	Period of Dispute	Amount Involved (INR)
1	APL/2/PB/2026.	Refund	No. ZD2708230180897 Date- 07.08.2023	No. ZD2709250491371 Date - 11/09/2025	01/01/2022 to 31/01/2022	7,81,12,995/-
2	APL/3/PB/2026.	Refund	No. ZD270823018131Q	No. ZD2709250491470	01/02/2022 to 28/02/2022	1,12,62,629/-

			Dated 07/08/2023	Dated 11/09/2025		
3	APL/4/PB/ 2026.	Refund	No. ZD270823018161 N Dated 07/08/2023	No. ZD27092504915 9V Dated 11/09/2025	01/03/20 22 to 31/03/20 22	1,30,15,9 41/-
4	APL/5/PB/ 2026.	Refund	No. ZD270823018184 F Dated 07/08/2023	No. ZD27092504916 60 Dated 11/09/2025	01/04/20 22 to 30/04/20 22	1,47,89,8 13/-
5	APL/6/PB/ 2026.	Refund	No. ZD270823018195 C Dated 07/08/2023	No. ZD27092504917 35 Dated 11/09/2025	01/05/20 22 to 31/05/20 22	1,31,52,2 77/-
6	APL/7/PB/ 2026.	Refund	No. ZD270823018215 I Dated 07/08/2023	No. ZD27092504918 0A Dated 11/09/2025	01/06/20 22 to 30/06/20 22	38,56,33 9/-

4. Bereft of unnecessary details, the facts of these cases are as follows: -

(i) The Appellant, M/s Dow Chemical International Private Limited, is a company incorporated under the provisions of the Companies Act, 1956. The Appellant is primarily engaged in the business of manufacturing and distributing chemical components, as well as the provision of other services.

(ii) For the purpose of streamlining its procurement operations, the Appellant entered into a written Procurement Agreement dated 01.07.2021 with Dow Europe GmbH, a company incorporated under the laws of Switzerland ("Dow Europe"). Dow Europe is a related entity within the global Dow group of companies and functions as a centralized procurement hub. The said agreement sets out a detailed scope of work, along with the terms and conditions under which Dow Europe is to provide services in relation to the procurement of materials, components, and other services to the Appellant.

(iii) Under the aforesaid agreement, Dow Europe undertakes a comprehensive range of activities. These include, inter alia, the identification, selection, and approval of potential foreign suppliers, the negotiation of terms and conditions of procurement agreements, and the further facilitation of the supply from the selected suppliers to the Appellant. The role of Dow Europe is not limited to a single transaction but extends to the entire procurement lifecycle. Right from the development of procurement strategies to the final negotiation of contractual terms, and even the reviewing and signing of contracts and purchase orders, Dow Europe is engaged in the process of concluding contracts between the Appellant and the respective third-party suppliers. The Appellant has consistently maintained that these activities are, in substance, in the nature of facilitating the supply of goods between the Appellant and its independent foreign suppliers.

(iv) During the relevant period from January 2022 to June 2022, the Appellant, under a mistaken impression that the services received from Dow Europe constituted an "import of services" as defined under Section 2(11) of the Integrated Goods and Services Tax Act, 2017 ("IGST Act"), proceeded to discharge Integrated Goods and Services Tax (IGST) under the Reverse Charge Mechanism (RCM) on the consideration paid to Dow Europe amounting to INRs 7,81,12,995/-, 1,12,62,629/-, 1,30,15,941/-, 1,47,89,813/-, 1,31,52,277/- and 38,56,339/- respectively. Subsequently, upon identifying the error, the Appellant formed a view that the services rendered by Dow Europe were, in fact, in the nature of an "intermediary" within the meaning of Section 2(13) of the IGST Act.

(v) According to the Appellant, since the place of supply of intermediary services is the location of the supplier of such services in terms of Section 13(8)(b) of the IGST Act, the place of supply was outside India (Switzerland). Consequently, the Appellant argued that the transaction did not qualify as an "import of services" and was therefore not liable to GST. Upon this realization, the Appellant duly reversed the Input Tax Credit (ITC) that had been availed on the said tax payment and filed refund applications before the Respondent authorities seeking a refund of the IGST so paid. The refund claims were rejected by the Adjudicating Authority, and the rejection was subsequently affirmed by the First Appellate Authority, aggrieved by which the Appellant has preferred the present appeals before this Tribunal.

5. The Adjudicating Authority have rejected the application for refund for the impugned orders. However, the first appellate authority, by virtue of the impugned orders, considered all the contentions raised by the parties and passed the orders. The first Appellate Authority summarised its findings as follows: -

A. The Appellant itself had treated the services availed from the Procurement Hub as import of services and paid the IGST on import. It is an afterthought that they are contemplating that the said services are to be treated as intermediary services.

B. In view of Section 2(11) of the IGST Act 2017, read with section 5(3) and Notification No. 10/2017 (Tax Rate) dated 28.06.2017, the said services qualify as import of services and the appellant is correctly liable to discharge tax under the reverse charge mechanism (RCM).

C. The Agreement provided by the Appellant has clauses that denounce the claim of the Appellant that the services availed from M/s Dow Europe GmbH (Procurement Hub) are intermediary services.

D. Further Clause no. 6(b) of the said agreement, the purchaser (the Appellant) does not appoint Procurement Hub as their agent or authorize Procurement Hub to commit Purchaser to any binding purchases or similar obligations.

E. M/s Dow Europe GmbH (Procurement Hub) is providing services at his own account; therefore, such services come out of the ambit of intermediary services.

6. In all these cases, therefore, the following mixed questions of law and facts arise for determination: -

   a) Whether the services provided by Dow Europe GmbH (hereinafter referred to as "Dow Europe"), a company incorporated in Switzerland, under a contract entered into with the Appellant, M/s. Dow Chemical International Private Limited, a company incorporated under the laws of India, are to be treated as ancillary services provided in relation to the main service?
   b) Whether the services provided by Dow Europe GmbH qualify as "intermediary services" within the meaning of Section 2(13) of the Integrated Goods and Services Tax Act, 2017, and consequently attract the provisions of Section 13(8)(b) of the IGST Act, as applicable during the relevant period prior to the amendment dated 30.03.2026?
   c) Whether the place of supply of the services in question is liable to be determined under Section 13(2) of the Integrated Goods and Services Tax Act, 2017, thereby rendering the place of supply as being in India, or under Section 13(8)(b) of the said Act, thereby rendering the place of supply as being outside India?
   d) Whether, in light of the findings on the aforesaid issues, the Appellant is entitled to the refund of taxes paid, and whether the orders passed by the original proper officer and confirmed by the First Appellate Authority are liable to be set aside?

7. In assailing the findings of the first Appellate Authority, the Learned Counsel appearing for the parties raised different issues of law and facts. We have considered the same and summarize their contentions as follows: -

Appellant's Contention

7.1 <u>Appellant's Contention</u>

The Appellant, through its learned Advocate Shri Mihir Prashant Deshmukh, assisted by Shri Shamik Gupte, Learned Advocate, made the following detailed submissions:

(i) It was submitted that the services provided by Dow Europe are squarely and unambiguously covered under the definition of "intermediary" as provided under Section 2(13) of the IGST Act. The Appellant argued that the definition of "intermediary" is wide and inclusive, covering not only brokers and agents but also any person who performs facilitative roles in arranging or enabling the supply of goods or services between two or more parties. It was contended that in the present case, the main supply, i.e., the supply of materials and components, is being executed directly between the Appellant (purchaser in India) and the foreign supplier. Dow Europe is merely facilitating the said supply by undertaking activities such as identification, selection, and approval of suppliers, and negotiation of terms. Therefore, it was argued, Dow Europe clearly falls within the four corners of the definition of "intermediary".

The Learned Counsel for the Appellant would rely upon the cases of Airbus Group India (P.) Ltd., 2021 (54) G.S.T.L 195 (A.A.R.- GST – KAR), M/s Toshniwal Brothers (SR) Pvt Ltd [Karnataka AAAR] [2018 TIOL197-AAR-GST]. On the basis of these rulings by the Advance Ruling Authority of the State of Karnataka, the Learned Counsel for the Appellant would submit that the activities performed by the Appellant fulfilling the parameters mentioned in the definitions of intermediaries as per Section 2(13) of the IGST Act, 2017, where similar services such as identification, assessment and review of potential suppliers, were being provided by Airbus India to Airbus SAS, France, the Learned Advance Ruling Authority was pleased to hold that such services qualify as "intermediary services". It is a well-settled principle that the manner of remuneration is a key indicator of the nature of services. In numerous cases, arrangements have been classified as intermediary services primarily because the consideration was structured as commission or brokerage, rather than a fixed fee for principal services.

(ii) The Appellant further placed strong reliance on Circular No. 159/15/2021-GST dated 20.09.2021 issued by the CBIC. It was submitted that all the pre-requisites for qualification as an "intermediary" as specified in the said circular are satisfied in the present case. The Appellant argued that there is a minimum of three parties involved [Appellant, Dow Europe, and the foreign supplier(s)], which is the first prerequisite. Secondly, there are two distinct supplies: the main supply of goods from the foreign supplier to the Appellant, and the ancillary supply of facilitation services by Dow Europe. Thirdly, it was argued that Dow Europe is not supplying goods on its own account but is merely arranging the supply between the two principals.

(iii) Regarding the contractual clause of "independent contractor", the Appellant submitted that the Respondent has fundamentally misconstrued the same. It was argued that the independent contractor clause merely defines the working relationship between the parties, confirming that Dow Europe is not an employee of the Appellant. The Appellant distinguished a "contract of service" (employee) and a "contract for services" (independent contractor), arguing that this distinction has no bearing on the classification of the nature of services under GST law. The Appellant submitted that being an independent contractor does not by itself imply that services are provided on a principal-to-principal basis. It was further argued that the presence of a principal-agent relationship is not a prerequisite for a service to qualify as an "intermediary", as the definition includes "any other person, by whatever name called". The Appellant contended that the principle of "ejusdem generis" cannot be applied to restrict the wide scope of the term "intermediary".

Relying upon the reported cases of M/s. Gulf Turbo Solutions LLP, 2022 (4) TMI 1343 Authority for Advance Ruling, Maharashtra, Global Reach Education Services Pvt. Ltd., 2018 (4) TMI 808 - Authority for Advance Ruling, West Bengal, M/s Airbus Group India Private Limited, 2021 (7) TMI 263- Authority for Advance Rulings, Karnataka, Vservglobal Private Limited, 2018 (11) TMI 959 Appellate Authority for Advance Ruling, Maharashtra, the learned Counsel for the Appellant would submit that even if the contract is between two principals, despite being agreement providing that parties were independent contractors and not principal/agent the advance ruling authorities of Maharashtra, West Bengal and Karnataka held that applicants (service providers) were intermediaries because it connected customers with suppliers and facilitated supply.

(iv) On the aspect of remuneration, the Appellant argued that the service fee paid to Dow Europe is directly linked to the procurements facilitated, i.e., 3.5% of the total purchase made by the Appellant. It was submitted that in case the Appellant does not make any procurement for a particular month, there is no consideration payable to Dow Europe, despite numerous activities being performed by it. The Appellant argued that this is a well-settled principle that the manner of remuneration is a key indicator of the nature of services, and a commission-based structure clearly reflects a facilitative role. Reliance was placed on the decision of the Karnataka AAR in the case of Toshniwal Brothers (SR) Pvt Ltd.. The Appellant also argued that the Respondent has failed to examine the actual nature of services availed in contravention of the principle of substance over form, and that the impugned orders are non-speaking orders passed in gross violation of the principles of natural justice.

7.2 Respondent's Contention

The Respondent, through its learned Advocate Ms Shwetal Shepal, advanced the following submissions:

(i) At the outset, it was submitted that the present Appeals proceed on a fundamentally erroneous interpretation of Section 2(13) of the IGST Act. The Respondent argued that the Appellant has attempted to portray a procurement outsourcing arrangement as a mere facilitation arrangement between suppliers and Dow India. It was contended that such an interpretation is contrary to the express terms of the Procurement Agreement and the statutory framework governing intermediary services.

Rely upon Columbia Sportswear India Sourcing (P.) Ltd. v. Union of India [2025] 174 taxmann.com 936 (Karnataka) decided on 26.04.2025, and contends that the services provided by Dow Europe are an import of services and do not fall under the definitions of intermediaries.

(ii) The Respondent argued that a complete and holistic reading of Section 2(13) of the IGST Act demonstrates that the latter portion of the definition, namely the exclusionary clause which excludes a person who supplies services 'on his own account', is equally important. The Respondent submitted that the question to be asked is not merely whether the service provider 'arranges or facilitates', but whether the service provider independently renders substantive services on a principal-to-principal basis. It was argued that Dow Europe GmbH does not merely facilitate; it independently renders procurement and sourcing services to Dow India on a principal-to-principal basis.

(iii) The Respondent placed heavy reliance on Appendix-1 to the Procurement Agreement. It was submitted that this Appendix clearly demonstrates that Dow Europe GmbH independently undertakes substantive procurement operations, including procurement strategy development, procurement governance, supplier risk management, supplier relationship management, procurement analytics, strategic sourcing, procurement optimization, quality audits, spend analytics, and oversight of procurement. The Respondent argued that these are not ancillary or facilitative activities, but are core, substantive procurement operations independently rendered by Dow Europe utilizing its own procurement expertise, systems, and strategic sourcing capabilities.

(iv) Regarding the 'independent contractor' clause, the Respondent argued that Clause 6 of the Procurement Agreement expressly provides that the parties shall function as independent contractors and further specifically provides that Dow Europe GmbH is not authorized to bind Dow India in any manner whatsoever. The Respondent contended that an intermediary ordinarily acts as a broker or liaisoning entity, facilitating transactions on behalf of another person, whereas Dow Europe independently performed substantive procurement operations and did not merely connect suppliers with Dow India. The Respondent submitted that the exclusionary portion of Section 2(13) squarely applies, as Dow Europe supplied services on its own account and received procurement service fees for independently rendering procurement services.

(v) The Respondent also argued that the sub-contracting or outsourcing of services on a principal-to-principal basis is not intermediary services, and the Circular itself clarifies this position. It was submitted that the present case is essentially a centralized procurement outsourcing arrangement whereby Dow India outsourced its entire procurement and sourcing functions to Dow Europe GmbH, which functions as the centralized procurement hub within the Dow Group. Finally, the Respondent argued that the refund provisions under Section 54 cannot be invoked to reopen or revisit taxability merely on account of a subsequent change in interpretation, especially after the Appellant itself had initially treated the transaction as an import of services and discharged tax accordingly.

8. As per the scheme of the goods and services tax regime, incidence of tax is the place of supply. However, Section 13(8) of the IGST Act provides for the exception for the same. Clause (b) of Sub-Section 8 of Section 13 provides that, in the case of intermediary services, the place of supply shall be the location of the supplier's services. In this case the Appellant claims that the supplier of services i.e. Dow Europe, is located in Europe and it supplies the services for the procurement of goods and materials to be used by Dow India Ltd., and therefore, it is claimed that since the services were provided from Europe, it shall be the place of supply and will be exempt from the levy of GST as prevalent in India. Both the original authority and the first appellate authority have not accepted this contention. In essence, they have accepted that this is not an ancillary service but is a core service and therefore has to be treated as an import of the services from Europe, which is leviable with GST at the rate applicable. So, the pivotal question around which the entire case revolves is whether the services provided by Dow Europe to Dow India are an intermediary service or a service that is the main service. We have noted different rulings relied upon by both parties. The Appellant relied upon the rulings of the Karnataka Advance Ruling Authority in the case of Airbus Group India Pvt. Ltd. (supra), Global Reach Education Services Ltd. (AAAR West Bengal).

Similarly, in the case of Global Reach Education, the West Bengal Advance Ruling Authority was considering a case where Global Reach promoted courses of Foreign Universities in India, found suitable prospective students, and assisted in recruitment for which a consideration was paid as a percentage of fees paid by admitted students (commission-based). No fixed retainer or no consideration payable if no student is enrolled. The agreement referred to Global Reach as "Education Agent" with responsibilities including promotion, finding students, and recruitment. The West Bengal State Advance Ruling Authority held that in that case, the Appellant Global Reach promoted courses of Foreign Universities in India, found suitable prospective students, and assisted in recruitment. Consideration was paid as a percentage of fees paid by admitted students (commission-based). No fixed retainer or no consideration payable if no student is enrolled. The agreement referred to Global Reach as "Education Agent" with responsibilities including promotion, finding students, and recruitment. The West Bengal State Advance Ruling Authority held that Global Reach was an intermediary and the services were not export of services. The West Bengal State Advance Ruling Authority held that the Appellant promotes the courses of the University, finds suitable prospective students to undertake the courses, and, in accordance with university procedures and requirements, recruits and assists in the recruitment of suitable students, and hence, the Appellant is to be considered as an intermediary in terms of Section 2(13) of the IGST Act.

It is contended by the Learned Counsel for the Appellant that the case Airbus Group India (Supra) has a similarity with the Dow agreement, as in both cases one subsidiary provides procurement support services to the foreign holding company, including identifying vendors, qualitymonitoring, technical advisory and marketing intelligence. However, it is submitted that the outcome is opposite. In this case, the Advance Ruling authority held that the Principal to Principal relationship is not relevant to determine whether the services are intermediary services or otherwise. Similarly, it was argued by the Learned Counsel appearing for the Appellant that in the case of Global Reach Education (Supra), the relevance lies in the commission-based structure and the fact that no consideration was paid if no student was admitted, which is similar to the success-fee arrangements as in the present case.

9. Heavy reliance has been placed by the special counsel appearing for the Respondent on the ruling of Columbia Sportwear India Sourcing Pvt. Ltd. (Supra), which appears to be taking the contrary view to the view discussed above taken by the two States' Advance Ruling Authorities. In Columbia Sportswear India Sourcing Pvt. Ltd., (Supra), the Petitioner, entered into a Buying Support Services Agreement with Columbia Sportswear Company, USA. The Services included: surveying the market to identify the best suppliers, identifying and visiting factories, monitoring production, ensuring timely shipment, tracking shipments, and documentation support. Consideration on a cost-plus markup basis. The agreement between Columbia India and Columbia USA expressly provided that the petitioner acted as an independent contractor with no authority to bind the foreign recipient. Recipient was free to choose suppliers; petitioner's recommendations were not binding on Columbia USA. In that case, the assessing authority also held that the place of supply is India as the supplier was treated as an intermediary as per the definition under Section 2(13) of the IGST Act.

10. The matter came before the Hon'ble High Court of Karnataka, and as per their judgment dated 26.04.2025, the Hon'ble High Court of Karnataka held that:

> *"12. In the light of the principles that emerge from the aforesaid Judgments, Circulars, Notifications etc., in the facts and circumstances obtaining in the instant cases as set out supra analysing the said agreements, I am of the considered opinion that the petitioner is not an 'intermediary' under Section 2(13) of the IGST Act and provisions of the Finance Act, 1994 and the services provided by the petitioner to its service recipients are that of an independent service provider which qualify as export of services under the service tax provisions and 2(6) of the IGST Act for the following reasons:*
>
> *(i) There are only two persons in the subject agreements;*
>
> *(ii) The petitioner renders services on its own account to the service receiver located outside India and it does not enable supply between the foreign recipient and the third parties;*
>
> *(iii) The acts of the petitioner are that of an independent contractor and it does not represent or bind the foreign client in the course of executing its services.*
>
> *(iv) The foreign recipient, therefore, remunerates the petitioner by way of a service fee for the services rendered which is on a cost plus mark up basis and not based on percentage of success, etc. which is common in agency agreements.*
>
> *(v) The foreign recipient is free to chose from whom he would procure and the petitioner's recommendations are not final and binding on it and the*

petitioner cannot also represent that it is doing something on behalf of the foreign recipient.

(vi) The host of services rendered by the petitioner is more akin to business support services to enable efficient procurement of garments and a continuing business relationship rather than enabling procurement of orders on a commission basis."

11. The Learned Counsel appearing for the Respondent stated that the present case as well as the case cited by her, involves "Buying Support Services Agreement" where an Indian entity assists a foreign buyer to identify suppliers, etc., but in the present case, the foreign entity assists the Indian company to identify suppliers, monitor production, track shipments, etc. Both expressly state an independent contractor relationship, and they have no authority to bind the principal. In the reported case, the principal is located outside India, but the present case before us the principal is located in India.

12. We also take note of the judgment passed by the Hon'ble High Court of Delhi in the case of Pr. Commissioner, Central Excise and CGST - Delhi South v. Blackberry India Private Limited, SERTA 7/2023 dated 12.07.2023. The facts of the aforesaid case reveal that Blackberry India (formerly Research in Motion India Pvt. Ltd.) entered into an Agreement with Blackberry Singapore Pte Ltd. (formerly Research in Motion Singapore Pte) for providing Marketing Administration and Support Services. Services described in Schedule A to the Agreement as "promotional and marketing; technical marketing assistance; and other related services." Blackberry India received consideration on a cost-plus basis, raised invoices in US dollars, and had no authority to represent or bind Blackberry Singapore. Blackberry India filed refund claims for unutilized CENVAT Credit amounting to Rs. 8,55,34,345/- for periods April-June 2012, April-June 2013, and July-September 2013. Department rejected claims on the grounds that Blackberry India was an "intermediary" under Rule 2(f) of POPS Rules, 2012. CESTAT allowed Blackberry India's appeal. CESTAT held it to be an export. Revenue appealed to the Delhi High Court.

After considering the facts of the case, the Delhi High Court ruled as follows:

"19. The learned CESTAT had examined the Agreement and had concluded as under:

30. It would therefore transpire from the Agreement that:

(i) The appellant is engaged in providing marketing, administrative and support service to Blackberry Singapore, as an independent contractor

(ii) The appellant is not an agent or broker of Blackberry Singapore. There is no relationship of principal and agent between Blackberry Singapore and the appellant. The arrangement between the appellant and Blackberry Singapore is on a principal-to-principal basis. Further, the appellant does not have any authority to represent or bind Blackberry Singapore, which further supports the fact that the appellant is not an agent of Blackberry Singapore and, therefore, is not an intermediary;

(iii) The appellant is not engaged in facilitating any supply between Blackberry Singapore and its Customers. The Agreement is only between the appellant and Blackberry Singapore wherein the appellant is providing the aforesaid services to Blackberry Singapore. The customers of Blackberry Singapore are not a part of the contract and the appellant at no point in time is involved in providing any service

to the customers of Blackberry Singapore. The appellant does not even have any knowledge about the final customers of Blackberry Singapore;

(iv) The appellant receives consideration on a Cost-Plus basis. The consideration is not dependent on the sale made by the Blackberry Singapore to their customers; and

(v) The appellant raises invoices on Blackberry Singapore for the services provided by it in US dollars." It is further held that "It is apparent from the aforesaid definition that an intermediary merely arranges or facilitates provision of services. In the present case, the services rendered by BlackBerry India to BlackBerry Singapore under the Agreement, were not in the nature of facilitating services from another supplier. BlackBerry India, as an independent service provider, was required to render the promotional and marketing services; technical marketing assistance; and other related services. BlackBerry India did not arrange or facilitate these services from another supplier". "It is clear from the aforesaid Circular that BlackBerry India cannot be considered as an intermediary in the context of the services rendered by it under the agreement"

13. In both the aforesaid cases, the Indian Party to the agreement was exporting services. The High Courts considered such activity as export services and not intermediary services to facilitate purchases, supplies, etc., to Blackberry Singapore / Columbia USA. A similar view has been taken by the Punjab & Haryana High Court in the case of Genpact India (P) Ltd., v. Union of India, [2022] 144 taxmann.com 201 (Punjab & Haryana).
14. Thus, from the aforesaid rulings available on this issue, two streams of legal opinion are forth coming, cases involving provision of services by an Indian Company to a sister company located abroad, and by company located abroad to a sister company located in India has been treated differently by the Revenue. The Revenue in all these cases has treated any services provided by the India Company to its counterpart outside India as intermediary service and not export of services and therefore, levied GST, holding India to be the place of supply. At the same breath, the Revenue has treated any services provided by the foreign company to an Indian Company as import of services and not intermediary services and levied GST on it, holding the place of supply to be in India. We are of the opinion that both the views cannot be taken. One view is to be taken.
15. If there is a contradiction between the findings and rulings passed by the High Court Judicature and Advance Ruling Authority, then ruling of the High court has to be preferred in view of Article 228 of the Constitution of India. However, such recognition of a Ruling of the Advance Ruling Authority is not available especially in view of Section 103 (1)(a) of the CGST Act, which provides that an advance ruling pronounced by the Authority or the Appellate authority shall be binding only on the applicant and concerned officer in the respect of the Applicant. In view of the Section 103 of the CGST Act, the rulings pronounced by the State Advance Ruling Authority and National Appellate Authority under Chapter XVII of the CGST Act may be taken as persuasive ruling and have no binding effect.
16. In applying the Provision in the present case, we have carefully examined the different provisions of law and for the better appreciation we quote the same. Section 2 (13) and Section 13 (8) (b) of the IGST Act reads as follows:-

2(13) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;

13. Place of supply of services where location of supplier or location of recipient is outside India.

(8) The place of supply of the following services shall be the location of the supplier of services, namely:

(a) xxx

(b) intermediary services;

(c)xxx

[Section 13(8)(b)was omitted by Finance Act, 2026 (4 of 2026), Dated 30.03.2026]

17. The circular issued by the CBDT and CBIC are having binding character as far as its officers are concerned not as far as judicial authorities like High Court exercising jurisdiction under Article 226 or 227 of the Constitution of India. We are also of the opinion that since the Tribunal is not department under CBIC any circular issued by the CBIC does not have a binding effect on Tribunal. However, it can be looked into for the purpose of interpretation, having persuasive role.

In this connection, we rely upon two judgments.

1. K.P. Varghese v. ITO 19811981 7 Taxman 13/131 ITR 597 (SC),
2. Ellerman Lines Ltd. v. CIT 19711971 82 ITR 913 (SC)

18. In interpreting these provisions and in order to clarify, the CBIC vide Circular No. 159/15/2021-GST dated 28.09.2021 elaborated the scope of intermediary services, which is quoted below in verbatim:

Circular No. 159/15/2021-GST dated 28.09.2021

Subject: Clarification on doubts related to scope of "Intermediary"–reg.

Representations have been received citing ambiguity caused in interpretation of the scope of "Intermediary services" in the GST Law. The matter has been examined. In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues in succeeding paragraphs.

2. Scope of Intermediary services

2.1 'Intermediary' has been defined in the sub-section (13) of section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST" Act) as under–

"Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or

securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account."

2.2 The concept of 'intermediary' was borrowed in GST from the Service Tax Regime. The definition of 'intermediary' in the Service Tax law as given in Rule 2(f) of Place of Provision of Services Rules, 2012 issued vide notification No. 28/2012-ST, dated 20-6-2012 was as follows:

"intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account;"

2.3 From the perusal of the definition of "intermediary" under IGST Act as well as under Service Tax law, it is evident that there is broadly no change in the scope of intermediary services in the GST regime vis-à-vis the Service Tax regime, except addition of supply of securities in the definition of intermediary in the GST Law.

3. Primary Requirements for intermediary services

The concept of intermediary services, as defined above, requires some basic prerequisites, which are discussed below:

3.1 Minimum of Three Parties: By definition, an intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons. It is thus a natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply. An activity between only two parties can, therefore, NOT be considered as an intermediary service. An intermediary essentially "arranges or facilitates" another supply (the "main supply") between two or more other persons and, does not himself provide the main supply.

3.2 Two distinct supplies: As discussed above, there are two distinct supplies in case of provision of intermediary services;

(1) Main supply, between the two principals, which can be a supply of goods or services or securities;

(2) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals. This ancillary supply is supply of intermediary service and is clearly identifiable and distinguished from the main supply.

A person involved in supply of main supply on principal to principal basis to another person cannot be considered as supplier of intermediary service.

3.3 Intermediary service provider to have the character of an agent, broker or any other similar person: The definition of *"intermediary"* itself provides that intermediary service provider *means a broker, an agent or any other person, by whatever name called....".* This part of the definition is not inclusive but uses the expression "means" and does not expand the definition by any known expression of expansion such as “and includes”. The use of the expression “arranges or facilitates” in the definition of “intermediary” suggests a subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the role of intermediary is only supportive.

3.4 Does not include a person who supplies such goods or services or both or securities on his own account: The definition of intermediary services specifically mentions that intermediary *“does not include a person who supplies such goods or services or both or securities on his own account”.* Use of word **“such**” in the definition with reference to supply of goods or services refers to the main supply of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary. It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal to principal basis, the said supply cannot be covered under the scope of intermediary”.

3.5 Sub-contracting for a service is not an intermediary service: An important exclusion from intermediary is sub-contracting. The supplier of main service may decide to outsource the supply of the main service, either fully or partly, to one or more sub-contractors. Such sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary. For instance, ‘A’ and ‘B’ have entered into a contract as per which ‘A’ needs to provide a service of, say, Annual Maintenance of tools and machinery to ‘B’. ‘A’ subcontracts a part or whole of it to ‘C’. Accordingly, ‘C’ provides the service of annual maintenance to ‘A’ as part of such sub-contract, by providing annual maintenance of tools and machinery to the customer of ‘A’, i.e. to ‘B’ on behalf of ‘A’. Though ‘C’ is dealing with the customer of ‘A’, but ‘C’ is providing main supply of Annual Maintenance Service to ‘A’ on his own account, i.e. on principal to principal basis. In this case, ‘A’ is providing supply of Annual Maintenance Service to ‘B’, whereas ‘C’ is supplying the same service to ‘A’. Thus, supply of service by ‘C’ in this case will not be considered as an intermediary.

3.6 The specific provision of place of supply of ‘intermediary services’ under section 13 of the IGST Act shall be invoked only when either the location of supplier of intermediary services or location of the recipient of intermediary services is outside India.

4. Applying the abovementioned guiding principles, the issue of intermediary services is clarified through the following illustrations:

<u>Illustration 1</u>

‘A’ is a manufacturer and supplier of a machine. ‘C’ helps ‘A’ in selling the machine by identifying client ‘B’ who wants to purchase this machine and helps in finalizing the contract of supply of machine by ‘A’ to ‘B’. ‘C’ charges ‘A’ for his services of locating ‘B’ and helping in finalizing the sale of machine between ‘A’ and ‘B’, for which ‘C’ invoices ‘A’ and is paid by ‘A’ for the same. While ‘A’ and ‘B’ are involved in the main supply of the machinery, ‘C’, is facilitating the supply of machine between ‘A’ and ‘B’. In this arrangement, ‘C’ is providing the ancillary supply of arranging or facilitating the ‘main supply’ of machinery between ‘A’ and ‘B’ and therefore, ‘C’ is an intermediary and is providing intermediary service to ‘A’.

Illustration 2

'A' is a software company which develops software for the clients as per their requirement. 'A' has a contract with 'B' for providing some customized software for its business operations. 'A' outsources the task of design and development of a particular module of the software to 'C', for which "C' may have to interact with 'B', to know their specific requirements. In this case, 'C' is providing main supply of service of design and development of software to 'A', and thus, 'C' is not an intermediary in this case.

Illustration 3

An insurance company 'P', located outside India, requires to process insurance claims of its clients in respect of the insurance service being provided by 'P' to the clients. For processing insurance claims, 'P' decides to outsource this work to some other firm. For this purpose, he approaches 'Q', located in India, for arranging insurance claims processing service from other service providers in India. 'Q' contacts 'R', who is in business of providing such insurance claims processing service, and arranges supply of insurance claims processing service by 'R' to 'P'. 'Q' charges P a commission or service charge of 1% of the contract value of insurance claims processing service provided by 'R' to 'P'. In such a case, main supply of insurance claims processing service is between 'P' and 'R', while 'Q' is merely arranging or facilitating the supply of services between 'P' and 'R', and not himself providing the main supply of services. Accordingly, in this case, 'Q' acts as an intermediary as per definition of sub-section (13) of section 2 of the IGST Act.

Illustration 4

'A' is a manufacturer and supplier of computers based in USA and supplies its goods all over the world. As a part of this supply, 'A' is also required to provide customer care service to its customers to address their queries and complains related to the said supply of computers. 'A' decides to outsource the task of providing customer care services to a BPO firm, 'B'. 'B' provides customer care service to 'A' by interacting with the customers of 'A' and addressing / processing their queries / complains. 'B' charges 'A' for this service. 'B' is involved in supply of main service 'customer care service' to 'A', and therefore, "B' is not an intermediary.

5. The illustrations given in para 4 above are only indicative and not exhaustive. The illustrations are also generic in nature and should not be interpreted to mean that the service categories mentioned therein are inherently either intermediary services or otherwise. Whether or not, a specific service would fall under intermediary services within the meaning of sub-section (13) of section 2 of the IGST Act, would depend upon the facts of the specific case. While examining the facts of the case and the terms of contract, the basic characteristics of intermediary services, as discussed in para 3 above, should be kept in consideration.

19. We apply these principles to the case at hand. The first is that there has been a written agreement between Dow India and Dow Europe. In fact, when the transaction that take place involves it three parties, i.e. Dow Europe identifies the parties to supply, fixes the price, quantity, quality, etc. Dow India purchases the same and manufactures the product. Such purchases have been made from a supplier identified by Dow Europe. So, in essence, it involves three parties. In

this connection, we are of a different opinion on the factual aspect than the judgment rendered by the Hon'ble Karnataka High Court in the case of Columbia Sportswear (Supra) appears to be different. Factually the case before us is different from the case before the Karnataka High Court. But at this point, we come to the conclusion that the first consideration of a minimum of three parties is satisfied in this case.

20. Coming to the second requirement of two distinct supplies in case of provision of intermediary services, i.e. (1) Main supply, between the two principals, which can be a supply of goods or services, (2) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals. In this present case, it is submitted that there are two distinct supplies, (i) main supply of the goods or services between the supplier and the Appellant and (ii) ancillary supply of services in the nature of facilitating or arranging the above main supply by Dow Europe between the Appellant and the supplier.

21. In this context, we are of the considered of the opinion that the second consideration is not satisfied because of the fact that both the Dow Europe and Dow India are, either direct or indirect, subsidiaries of one company, i.e. "Dow INC", which is collectively, known as "Dow Group". Dow Europe, a company located in Switzerland, functions as the Centralized Procurement Hub for the entire Dow Group and thereby giving a core service to the entire Dow Group located throughout the world.

22. So we are of the view that the view taken by the First Appellate Authority that actually services provided by Dow Group are not in the nature of ancillary supply of services, rather it is a service for which Dow Europe does exist. Moreover, as in the cases of Columbia and Blackberry (Supra), we are of the opinion that the Dow Europe renders services on his own account to the service receivers located in India, and the acts of the said foreign company are those of an independent contractor, and it does not represent or bind the Indian client in the course of its services.

23. In that view of the matter, we are of the opinion that services received by Dow India are in the nature of an import and the place of supply shall be in India, not in Europe. Thus, it will not come within the purview of Section 13(8)(b) of the IGST Act, and definition provided in Section 2 (13) of the IGST Act.

24. Before parting, we may note here that the First Appellate Authority held that the Appellant has paid the GST dues, and as afterthought, has come with a plea that it is an intermediary service and, therefore, the Appeal has no merit. This view is incorrect in view of the fact that Section 54 of the CGST Act provides for refund of taxes within a specific time limit, Rule 89 of the CGST Rules, 2017 provides for the particulars to be given in an application for refund of tax penalty.

25. If such provisions are there in this statute, it cannot be stated that every application for refund of tax, paid to the revenue under a misconception, will be hit by the principles of action arising as an afterthought. To this extent, we disagree with the First Appellate Authority.

26. Thus, on a conspectus of facts involved in this case and in the law, guiding the cases of this nature, we are of the opinion that services provided by Dow Europe cannot be termed as "intermediary service" and as it is not in the nature of the ancillary service, rather it is a core service provided by it to one of its sisters concerned, who is operating under the global concern, i.e., "Dow INC". Accordingly, all the questions framed by us are answered against the Appellant

and in favour of the Revenue. In the result the appeals are dismissed and the orders passed by the first Appellate Authority are hereby confirmed.

(2026) 1 GSTAT E- Journal 33 (Hyderabad)
(GOODS AND SERVICES TAX APPELLATE TRIBUNAL, HYDERABAD BENCH)
REDDY VEERANNA CONSTRUCTIONS PVT. LTD
V.
APPEAL - I COMMISSIONER & ORS.
APPEAL NO. APL/623/HYD/2026, JULY 28, 2026

CORAM:

HON'BLE SHRI SUSHIL KUMAR SHARMA, MEMBER (JUDICIAL)
AND
HON'BLE SHRI DUVVURI KRISHNA SRINIVAS, MEMBER (TECHNICAL)

REPRESENTATION:
For the Appellant: Shri Muktinutalapati Ramachandra Murthy

HEADNOTE:
GST — Pre-deposit — Retrospective Operation — The proviso to Section 112(8), requiring 10% of penalty as pre-deposit, inserted by the Finance Act, 2025 w.e.f. 01.10.2025, has no retrospective application. Since the SCN, OIO, and OIA were all issued before 01.10.2025, no pre-deposit is required. **HELD:** Right to appeal is substantive vested right — Amendment to Section 112(8) is prospective; does not apply to orders passed prior to 01.10.2025 — No pre-deposit required in penalty-only matters where no tax is in dispute — Barjinder Singh Kohli (Cal. HC) and Hoosein Kasam Dada (SC) followed — Appeal Allowed without pre-deposit — Defect rectified — Order confined to admission; merits not prejudiced.

...In Favour of the Appellant

KEY ISSUES AND FINDINGS:

1. **Whether pre-deposit under Section 112(8) is required for filing an appeal before GSTAT where the impugned order was passed prior to 01.10.2025.**
   "The Section 112 of the Act envisages payment of full amount of admitted tax, interest, fine, fee and penalty, and 10% of remaining amount of tax in dispute as pre-deposit while preferring the appeal before the Tribunal. This amount is in addition to the pre-deposit already made under the Section 107 of the Act. Further, it was observed that proviso to Section 112(8) was effective from 01.10.2025 vide Finance Act, 2025 (Act No. 7 of 2025) dated 29.03.2025, wherein pre-deposit was prescribed in cases where issue involved is only the penalty. In the present case, it was observed that show cause notice was issued on 29.09.2022, Order-in-Original was issued on 28.08.2023 and impugned order (OIA) was issued on 12.01.2024. From this, it can be seen that the impugned order was issued very much before the amendment became effective i.e. 01.10.2025. We find that the requirement of pre-deposit, in cases before the amendment became effective, was decided by the Hon'ble Calcutta High Court in the above referred case, squarely applies to the present case of pre-deposit as contested by the Appellant.
   Further, it was observed that the amendment bringing into effect the proviso to Section 112 (8) did not indicate any retrospective application or necessary implication.
   Hence, we are inclined to hold that no pre-deposit is required to be made under Section 112 of the Act in the present appeal.
   It is made clear that this order shall not prejudice the merits of the case. At the time of final hearing, while deciding the appeal on merits, if the Tribunal comes to the conclusion that the appellant was required to make a pre-deposit a sum equal to ten percent of the said penalty amount under section 112(8) of C.G. S.T. Act, the appellant shall be bound to comply with the direction of the bench." [Para 10]

EDITORIAL NOTES:

Principles Laid Down:

1. Section 112(8) of the CGST Act requires a statutory pre-deposit as a condition for filing an appeal with the GSTAT. However, such condition must have statutory relevance to the proceeding in question and cannot be imposed retroactively if the relevant statutory requirement did not exist when the impugned ruling was issued.
2. The provision included in Section 112(8) by the Finance Act, 2025, requiring a pre-deposit of 10% of the penalty in circumstances where a penalty is demanded without a tax demand, is prospectively effective on October 1, 2025. In the absence of an express provision or required implication giving retrospective effect to the modification, the newly introduced requirement cannot be applied to an order issued before October 1, 2025.
3. A subsequent amendment introducing an additional condition for exercise of a statutory right of appeal cannot be applied to an earlier proceeding so as to impose a burden that did not exist when the appellate right accrued. The Tribunal applied the principle laid down by the Supreme Court in *Hoosein Kasam Dada (India) Ltd. v. State of Madhya Pradesh* that a vested right of appeal cannot be adversely affected by a subsequent amendment unless retrospective operation is expressly provided or necessarily implied.
4. In a penalty-only matter, where the impugned order was passed before 01.10.2025, the pre-deposit requirement introduced by the proviso to Section 112(8) cannot be insisted upon. The Tribunal followed the decision of the Calcutta High Court in *Barjinder Singh Kohli v. Assistant Commissioner of Revenue & Others*, which held that a non-existent statutory condition relating to pre-deposit cannot be imported into an appeal against an order involving only penalty.
5. The relevant date for evaluating the applicability of the amended pre-deposit requirement was the date of the impugned appellate order, which in this case was 12.01.2024, which was substantially previous to the amendment's effective date of 01.10.2025.
6. The Tribunal saw the alteration to Section 112(8) as impacting the substantive right of appeal, and hence declined to apply the newly imposed pre-deposit requirement retrospectively. As a result, the appeal was allowed to proceed without the additional 10% pre-deposit requirement.

Case Law Referred to:

Anukul Bindal v. Union of India — (2026) 43 Centax 362 (All.) — Referred [Paras 6, 7]

Barjinder Singh Kohli v. Asstt. Commissioner of Revenue — (2025) 36 Centax 311 (Cal.) =2026 (104) G.S.T.L. 102 (Cal.)— Followed [Paras 6, 7, 11]

Hoosein Kasam Dada (India) Ltd. v. State of Madhya Pradesh — 1983 (13) E.L.T. 1277 (S.C.) — Referred [Para 6]

Life Line Aqua of Andhra Pradesh Sales Tax Appellate Tribunal.

Relevant Provisions:

Section 107 of CGST Act, 2017; Section 112 of CGST Act, 2017; Section 122 of CGST Act, 2017; Section 125 of CGST Act, 2017; Section 20 of IGST Act, 2017.

<u>JUDGMENT</u>

<u>Order Per: Hon'ble Shri Sushil Kumar Sharma, Judicial Member</u>

1. The appeal came up for consideration on the question of admission.

2. The Registry has issued a notice to the Appellant for rectification of certain defects and pointed out that they have not made statutory pre- deposit.
3. We heard the Ld. Counsel for the Appellant.
4. Briefly, the facts are that the Appellant was served with Show Cause Notice for proposing penalties under Section 122 of CGST Act, 2017,alleging that Appellant has raised fake invoices without supply of goods or services. The Adjudicating Authority has levied the penalties under Section 122 read with Section 20 of IGST Act and also under Section 125 read with Section 20 of IGST Act. The Appellant had preferred an appeal to the learned First Appellate Authority against the said order. The Ld. First Appellate Authority has dismissed their appeal upholding the original Adjudication Order. Against this Appellate Order, the Appellants have preferred the present appeal.
5. The questions before us, are whether the Appellant has rectified the defects pointed out by the Registry, whether the statutory pre-deposit is required to be paid for admission of this appeal.
6. The Ld. Counsel for the Appellant submits that with regard to the Defect Memo, listing five defects, satisfactory replies were given with regard to the bookmarking, correct indexing, uploading of show cause notice / statements with certifications and copies of appeal and relevant documents. With regard to pre-deposit under Section 112 (8) of CGST Act, he submitted that the present demand is related to only penalty on order impugned is issued prior to 01.10.2025 and, as such, the requirement of pre-deposit under the said Section does not arise. Further, he has submitted that a detailed reply was submitted on 28.04.2026 bringing out the details of amendment to Section112 (8) which was made effective from 01.10.2025. He relied upon the following judgements.

- *Hoosein Kasam Dada (India) Ltd. v. State of Madhya Pradesh (1953) 4 STC 114 (SC)*
- *Barjinder Singh Kohli v. Assistant Commissioner & Others (Judgment dated 03.11.2025, 2025 Taxo.online 2833)*
- *Anukul Bindal v. Union of India (Writ Tax No.2096 of 2026)*
- *Life Line Aqua of Andhra Pradesh Sales Tax Appellate Tribunal*

7. He also brought to our notice that right to file an appeal is a substantive and vested right and requested to admit the appeal without insisting on pre-deposit. The Ld. Counsel further contended that same issue was before the Hon'ble High Court of Calcutta in Barjinder Singh Kohli Vs. The Assistant Commissioner of Revenue and Others dated 03.11.2025 (2025Taxo.online 2833) observed as under wherein Hon'ble High Court has held that :
"It is evident from the above that there was no requirement for making any pre-deposit in cases where the appeal was carried against an order pertaining only to penalty and there being no amount of tax in dispute".
"It is well settled that right to prefer appeal is a substantive right. It is equally settled that when a statute provides for a right to prefer appeal, it can also limit or restrict such right by imposing appropriate conditions. Requirement of pre- deposit for filing appeal under Section 107 (6) of the 2017 Act is one such condition. The opening words of Section 107(6) of the 2017 Act 'No appeal shall be filed…….' Indicate that the condition of pre-deposit is attached to the filing ofthe appeal. It is a precondition for filing the appeal. A provision containing such condition would be in the nature of a substantive provision and not merely procedural. When there was no provision for making any pre-deposit in respect of an appeal against an order demanding penalty or interest the petitioner could not have been asked to put in any pre-deposit where the order impugned by him only involved demand of penalty and interest. Non-existent conditions affecting substantive rights of appeal cannot be imported into statute. The appellate authority has, therefore, fallen in error in rejecting the petitioner's appeal on such ground. "

The aforesaid decision is directly on point and squarely applicable to the facts of the present case and no pre-deposit can be insisted upon in a penalty-only matter, where the lis commenced prior to 01.10.2025. The Court has further held that the amendments introduced by the Finance Act, 2025 is prospective in nature and cannot be applied to the proceedings initiated before its coming into force and that non- existent statutory conditions effecting substantive right to appeal cannot be imported into the statute by any authority. Further, the Counsel has relied upon the decision of Hon'ble Supreme Court Judgement in case of Hoosein Kasam Dada (India) Ltd. Vs. State of Madhya Pradesh and Others on 23.02.1953 (4STC114) The brief case law is as under :

" The right of appeal was treated as a substantive vested right that accrued when assessment proceedings commenced before the First Instance Authority. A later amendment requiring proof of payment of assessed taxes as a condition for the admission of the appeal could not curtail the right, unless the retrospective application was clearly expressed or necessarily implied. Because of the amended proviso created the substantial additional burden, it was held inapplicable to pending proceedings, and the appeal had to be admitted without insisting for proof of payment of assessed taxes".

8. The learned Counsel prayed that appeal be admitted without making any further pre-deposit.

9. The departmental representative on enquiry by the Bench has stated that, they don't have any objection to decide the pre-deposit matter on merits.

10. We have perused the matter on the issue of statutory pre-deposit, quantum of pre-deposit to be made while preferring appeal before First Appellate Authority and the Appellate Tribunal is prescribed under sub- section (6) of Section 107 and sub-section (8) of Section 112 of the Act respectively. The relevant extract of the Section 112 (8) is reproduced below:

" (8) No appeal shall be filed under sub-section (1), unless the appellant has paid-

• in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and

• a sum equal to [ten per cent] of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order [subject to a maximum of [twenty crore rupees],] in relation to which the appeal has been filed:

*** [Provided** that in case of any order demanding penalty without involving demand of any tax, no appeal shall be filed against such order unless a sum equal to ten percent of the said penalty, in addition to the amount payable under the proviso to sub-section (6) of section 107 has been paid by the appellant.**]** "

* inserted by the Finance Act, 2025 w.e.f. 01.10.2025

10. The Section 112 of the Act envisages payment of full amount of admitted tax, interest, fine, fee and penalty, and 10% of remaining amount of tax in dispute as pre-deposit while preferring the appeal before the Tribunal. This amount is in addition to the pre-deposit already made under the Section 107 of the Act. Further, it was observed that proviso to Section 112(8) was effective from 01.10.2025 vide Finance Act, 2025 (Act No. 7 of 2025) dated 29.03.2025, wherein pre-deposit was prescribed in cases where issue involved is only the penalty. In the present case, it was observed that show cause notice was issued

on 29.09.2022, Order in Original was issued on 28.08.2023 and impugned order (OIA) was issued on 12.01.2024. From this, it can be seen that the impugned order was issued very much before the amendment became effective i.e. 01.10.2025. We find that the requirement of pre-deposit, in cases before the amendment became effective, was decided by the Hon'ble Calcutta High Court in the above referred case, squarely applies to the present case of pre-deposit as contested by the Appellant.
Further, it was observed that the amendment bringing into effect the proviso to Section 112 (8) did not indicate any retrospective application or necessary implication.

Hence, we are inclined to hold that no pre-deposit is required to be made under Section 112 of the Act in the present appeal.It is made clear that this order shall not prejudice the merits of the case.

At the time of final hearing, while deciding the appeal on merits, if the Tribunal comes to the conclusion that the appellant was required to make a pre-deposit a sum equal to ten percent of the said penalty amount under section 112(8) of C.G. S.T. Act, the appellant shall be bound to comply with the direction of the bench.

We order accordingly.

Issue notice to the respondents. List it after four weeks.

(2026) 1 GSTAT E-Journal 37 (Thane)

(GOODS AND SERVICES TAX APPELLATE TRIBUNAL, THANE BENCH)

TATA UNISTORE LIMITED

V.

COMMISSIONER CGST & EX., NAVI MUMBAI

APPEAL NO. APL/8/THN/2026, JULY 31, 2026

CORAM:

SHRI RAMESH NAIR, MEMBER (JUDICIAL)
AND
SHRI PRALLHAD S. PARANJAPE, MEMBER (TECHNICAL)

REPRESENTATION:

For the Appellant: Shri Prasad Paranjape, Advocate.
For the Respondent: Shri G.N. Jha, Assistant Commissioner, Authorised Representative.

HEADNOTE:

GST — Transitional Credit — Scope of Section 140 of CGST Act — CENVAT credit carried forward from erstwhile regime — Whether GST authorities can examine correctness of credit availed under erstwhile law — Whether proceedings under Section 74 of CGST Act can be initiated for alleged inadmissible CENVAT credit under pre-GST regime — Appellant engaged in e-commerce business, transitioned CENVAT credit of Rs. 32,06,07,869/- and VAT credit of Rs. 22,14,479/- through Form GST TRAN-1 — Credit reflected in Service Tax return for April-June 2017 and VAT returns — Revenue issued Show Cause Notice under Section 74(1) of CGST Act alleging inadmissible credit — Whether transitional credit can be denied on grounds of alleged non-substantiation of invoices, KKC credit, and procedural lapses — Whether proceedings under CGST Act for examining pre-GST credit are without jurisdiction — **HELD:** Proceedings under Section 74(1) of CGST Act cannot be initiated to examine admissibility of CENVAT credit under erstwhile laws — Section 142(6)(a) and Section 174(2)(e) provide that recovery proceedings related to inadmissible credit under erstwhile laws can only be initiated under provisions of the erstwhile laws— GST authorities lack jurisdiction to adjudicate correctness of credit availed under Finance Act, 1994 and CENVAT Credit Rules, 2004 — Section 140(1) permits transition of closing balance as reflected in returns, and authorities cannot undertake de novo verification of invoices — Credit of Krishi Kalyan Cess (KKC) cannot be denied in view of judgment of Bombay High Court in Godrej & Boyce — CBIC Circular No. 87/06/2019-GST clarifies that Explanation 3 to Section 140 not applicable to Section 140(1) — VAT credit on stock-in-trade cannot be denied without contrary findings — Penalty under Section 74 unjustified when all disclosures made voluntarily — Impugned order set aside — Appeal allowed with consequential relief.

...In Favour of the Appellant

KEY ISSUES AND FINDINGS:

1. **Whether the proceedings initiated by the Respondents under Section 74(1) of the CGST Act for examining admissibility of CENVAT credit under the erstwhile laws are without jurisdiction?**
   "*From the above cited provisions it is clear that recovery proceedings related to inadmissible credit under erstwhile laws can be initiated only under the provisions of the erstwhile laws, even after enactment of the CGST Act." [Para 5.6]*
   "Further, the above provisions do not empower the Respondents to initiate proceedings pertaining to the erstwhile period under the provisions of the CGST Act. As per Section 142 of the CGST Act read with Section 174 thereof, the relevant authority should have initiated proceedings for adjudicating correctness of credits availed by the Appellant, only if any there is a case of wrong availment of CENVAT credit in terms of Rule 14 of erstwhile Cenvat Credit Rules, 2004." [Para 5.7]
   "Respectfully, following the ratio of the above judgements of the Hon'ble High Courts, we hold that the proceedings initiated by the Respondents are beyond the jurisdictional powers vested in them under the CGST Act." [Para 5.11]

2. **Whether the lower authorities were justified in undertaking a de novo examination of the correctness of ITC availed under the erstwhile law for the purpose of transitional credit under Section 140(1) of the CGST Act?**
   "In our opinion, the lower authorities were not expected to undertake an examination of the correctness of the ITC availed under the erstwhile law where the same has undisputedly remained unchallenged under the erstwhile regime, which is the position in the present case." [Para 5.18]
   "The lower authorities have sought to examine and call for records such as copies of invoices, CENVAT credit registers, payment details, and the correctness of such invoices, in order to determine whether the credit transitioned is eligible to the Appellant under the erstwhile law. Such an exercise is not permissible in law unless the same had been subject to challenge under the erstwhile regime and that too by the authorities constituted under the erstwhile regime." [Para 5.19]
   "The lower authorities have misunderstood clause (i) of the proviso to Section 140(1) of the CGST Act... It does not by any stretch of imagination permit the GST officers to carry out assessments of credits claimed under the erstwhile regime." [Para 5.22, 5.23]

3. **Whether the transitioned credit of Krishi Kalyan Cess (KKC) can be denied to the Appellant?**
   "We find that in light of the judgment of the jurisdictional Hon'ble Bombay High Court in the case of Godrej & Boyce supra, confirmation of demand of transitioned KKC is not sustainable." [Para 5.25]
   "Thus, the ratio of Godrej & Boyce supra will apply on all fours in the present case justifying the KKC credit transitioned by the Appellant and reliance on the amendment by way of Central Goods and Services Tax (Amendment) Act, 2018 is of no avail to the Revenue..." [Para 5.28]
   "Thus, we hold that the transition of Krishi Kalyan Cess by the Appellant is in order." [Para 5.29]

4. **Whether the VAT credit transitioned into the GST regime can be denied in the absence of specific objections or contrary findings?**

"…Without giving any specific objection for denial of this credit, the lower authorities have rejected this credit considering it to be part and parcel of the other credits. Thus, in the absence of contrary findings, denial of this credit cannot be countenanced. Moreover, the revenue has not brought any material evidence on record to justify denial of VAT credit and consequent transition thereof to GST regime." [Para 5.30]

5. **Whether the imposition of 100% penalty under Section 74 of the CGST Act is justified?**
   "…Invocation of penalty under Section 74 of the CGST Act and the consequent imposition of 100% penalty on the Appellant is wholly unjustified, inasmuch as the entire basis for initiation of the present proceedings arises from disclosures made by the Appellant by filing Form GST TRAN-1 and by furnishing detailed submissions from time to time before the authorities." [Para 5.32]

EDITORIAL NOTES:

Principles Laid Down:

1. Proceedings under Section 74(1) of the CGST Act cannot be initiated for examining admissibility of CENVAT credit under the erstwhile laws. Such proceedings can only be initiated under the provisions of the erstwhile laws (Central Excise Act, 1944; Finance Act, 1994; CENVAT Credit Rules, 2004) in terms of Section 142(6)(a) and Section 174(2)(e) of the CGST Act.
2. Section 140(1) of the CGST Act permits transition of the amount of CENVAT credit as reflected in the return filed under the erstwhile law. The proviso to Section 140(1) only excludes credit that is not admissible as ITC under the GST Act, and does not empower GST authorities to conduct a de novo verification of credit availed under the erstwhile regime.
3. The transitioned closing balance, being a derivative of opening balance, credit availed and credit utilized, cannot be linked to any specific invoice or document. Therefore, the exercise of justifying the closing balance with invoice copies is an exercise in futility.
4. Credit of Krishi Kalyan Cess (KKC) can be transitioned under Section 140(1) of the CGST Act, as Explanation 3 to Section 140 is not applicable to Section 140(1) in the absence of operationalisation of Explanations 1 and 2. CBIC Circular No. 87/06/2019-GST clarifies that the clause linking Explanation 1 and Explanation 2 to Section 140(1) has not been notified.
5. The benefit of transitional credit cannot be denied on account of minor procedural lapses or alleged non-substantiation of invoices, especially when the same credit was never disputed under the erstwhile regime. Substantive benefit of ITC should not be denied for procedural reasons.
6. Penalty under Section 74 of the CGST Act is not sustainable when the entire basis for initiation of proceedings arises from voluntary disclosures made by the assessee by filing Form GST TRAN-1 and furnishing detailed submissions.

Case Law Referred to:

Usha Martin Limited v. Additional Commissioner of CGST & CEx (2022) 1 Centax 46 (Jhar) — Followed (Para 5.8)

Steel Authority of India Limited v. State of Jharkhand (2025) 28 Centax 60 (Jhar.) — Followed (Para 5.9)

Kunjal Synergies Pvt Ltd v. Assistant Commissioner of CGST & CEX (2025) 28 Centax 198 (Cal.) — Followed (Para 5.10)

Godrej & Boyce Mfg Co Ltd v. UOI & Ors 2021 (11) TMI 157 (Bom.) — Followed (Para 5.25)

Circulars and Notifications Referred to:

- Circular No. 87/06/2019-GST, dated 02.01.2019

- Notification No. 18/2017-Service Tax, dated 22.06.2017
- Notification No. 02/2019-GST, dated 29.01.2019

Relevant Provisions:
Section 140 of the CGST Act, 2017; Section 142 of the CGST Act, 2017; Section 174 of the CGST Act, 2017; Section 73 of the CGST Act, 2017; Section 74 of the CGST Act, 2017; Section 50 of the CGST Act, 2017; Section 122 of the CGST Act, 2017; Section 59 of the CGST Act, 2017; Section 155 of the CGST Act, 2017; Rule 117 of the CGST Rules, 2017; Rule 14 of the CENVAT Credit Rules, 2004; Section 70 of the Finance Act, 1994; Rule 7 of the Service Tax Rules, 1994.

JUDGMENT

Order per: Shri Ramesh Nair, Judicial Member

The present appeal is directed against the Order-in-Appeal No. CSM/203/RGD APP/2024-25 dated 31.05.2024 passed by the Commissioner, CGST & CEX, Appeals Raigad for the period July 2017 to March 2018.

1. Question of Law involved

1.1 Whether the 1st Appellate Authority is right in confirming the demand of alleged inadmissible Input Tax Credit ("**ITC**") transitioned from the pre-GST regime into the GST regime under the provisions of Section 140 of the Central Goods and Services Tax Act, 2017 ("**CGST Act**") read with Central Goods and Services Tax Rules, 2017 ("**CGST Rules**"), when such credit was never disputed under the pre-GST regime?

2. Brief facts of the case

2.1 The Appellant is, *inter alia*, engaged in the business of managing and operating an e-commerce platform, viz. TataCliQ.com, which functions through both a mobile application and a website (online platform). The Appellant was duly registered under the service tax regime and was availing CENVAT credit of eligible input services and also ITC of VAT paid on goods were sold on its online platform.

2.2 With the introduction of Goods and Services Tax ("**GST**") in India with effect from 01.07.2017, the Appellant became entitled to transition the ITC balance reflected in its service tax and VAT returns into the GST regime by filing Form GST TRAN-1, in accordance with Section 140 of the CGST Act read with Rule 117 of the CGST Rules.

2.3 Under the taxation regime prior to introduction of GST i.e. the erstwhile regime, the Appellant had filed its service tax return for the period April 2017 to June 2017 under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994. For the period April 2017 to June 2017, vide Notification No. 18/2017-Service Tax dated 22.06.2017, the Appellant was permitted to file its return by 15.08.2017, and such return could legitimately be revised within 45 days from the date of filing of the original return. The Appellant had filed its original ST-3 return on 14.08.2017 and thereafter filed a revised return on 26.09.2017.

2.4 In the said Service tax return, the Appellant had disclosed an amount of Rs. 31,83,93,390 as basic service tax and Rs. 74,67,109 towards Krishi Kalyan Cess ("**KKC**") as CENVAT credit. An amount of Rs. 22,14,479, representing ITC of VAT paid on Stock-in-Trade, was transitioned into the GST regime under Section 140(6) of the CGST Act.

2.5 For the purpose of transitioning the aforesaid CENVAT credit and VAT ITC balance into the GST regime, the Appellant filed Form GST TRAN-1 under Section 140 of the CGST Act and transitioned the said amount under the following categories:

Sr. No.	**Credit Transitioned**	**Basic tax** Rs.	**KKC** Rs.
1	Input Services - Under Section 140(1) - as per Tran-1 – (Pg 55 of Appeal)	29,93,34,297	67,86,516
2	Input Services - Under Section 140(5) - as per Tran-1 – (Pg 59-63 of Appeal)	1,90,59,093	6,80,681
3	Total (Amount as per Service tax Return - 31,83,93,382)	31,83,93,390	74,67,109
4	Stock-in-Trade – Under Section 140(6) - VAT credit - as per Tran-1 (Pg No. 57-58 of Appeal)	22,14,479	-
5	Total	32,06,07,869	74,67,109
6	**Grand Total** (as per SCN Rs.32,80,75,063 – excess by Rs.85)	**32,80,74,978**	

2.6 Thus, a total ITC of Rs. 32,80,74,878 (SCN alleges Rs.32,80,75,063) was transitioned from the erstwhile regime into the GST regime by filing Form GST TRAN-1. Out of the above amount, the Appellant had reversed under protest Rs.74,67,109 towards credit of transitioned KKC in the return of December 2017 due to doubts of its eligibility during the relevant time.

2.7 The aforesaid credit so transitioned came to be disputed by way of a Show Cause Notice dated 18.01.2022, alleging that the Appellant had not produced relevant evidence to substantiate the eligibility of such credit under the GST law.

2.8 Briefly, the submissions made by the Appellant before the Original Authority as well as the 1st Appellate Authority were that, since the said credit was never disputed under the pre-GST regime and was duly reflected in the service tax returns filed by the Appellant which have not been challenged by the Revenue to date, the same cannot be questioned under the GST regime.

2.9 The aforesaid submissions were not accepted by the Original Authority as well as the 1st Appellate Authority, resulting in confirmation of the demand along with applicable interest and imposition of 100% penalty. Therefore, the present appeal.

3. Grounds of Appeal

3.1 The Appellant has filed the present appeal challenging the order of the 1st Appellate Authority on the following grounds.

a) Respondents have travelled beyond the jurisdictional powers assigned under the CGST Act inasmuch as the proceedings are initiated under Section 74(1) of the CGST Act and not under the erstwhile law, as provided under Section 142(6)(a) of the CGST Act.

b) There is no contravention of Section 140 of the CGST Act.

c) Respondent has erred in holding that the Service tax revised return was filed beyond statutory limit.

d) Procedural lapses should not come in way to grant substantial benefit of ITC to the Appellant.

e) Verification of invoices not envisaged in law nor is it feasible to corelate closing balance with specific invoices.

f) Credit of KKC cannot be denied in view of the judgement of the Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg Co Ltd vs UOI & Ors – 2021 (11) TMI 157.

g) Invocation of Section 74 of the CGST Act and consequent imposition of penalty not sustainable.

3.2 Shri Prasad Paranjape, learned Advocate appeared on behalf of the appellant and reiterated the grounds of appeal. He also argued on the basis of the written submission and compilation of judgments and relevant statutory provisions filed online.

4. Submission of Respondent

4.1 Shri G. N. Jha, Learned Assistant Commissioner, Authorised Representative appearing on behalf of the Respondent during the hearing reiterated the findings in the impugned order and had sought time to file written submissions within 15 days, however the same was belatedly submitted online on 15.07.2026. Despite delay in submission, we considered the said submissions in the interest of justice. The submissions made on behalf of the Respondents is briefly as under:

a) The Assessee had failed to substantiate eligibility of the transitioned credit despite repeated opportunities and had furnished only 174 sample invoices involving credit of Rs. 8,61,84,494, being approximately 29% of the total credit of Rs. 32,80,75,063 transitioned through TRAN-1. Thus, the onus under Sections 59 and 155 of the CGST Act had not been discharged.

b) In respect of admissibility of transitional credit, only CENVAT credit of "eligible duties" could be transitioned under Section 140(1) of the CGST Act, and credit of Krishi Kalyan Cess / Cesses was not an eligible duty and could not have been transitioned into the GST regime. Reliance was placed on Explanation 1 and Explanation 3 to Section 140 of the CGST Act, Notification No. 02/2019-GST dated 29.01.2019 and Circular No. 87/06/2019-GST dated 02.01.2019.

c) In respect of credits claimed under Sections 140(5) and 140(6) of the CGST Act, the Appellant did not furnish documentary evidence to verify credits of Rs. 1,97,39,771 and Rs. 22,14,479 respectively, and therefore the same was rightly denied.

d) The credit of Rs. 8,61,84,494 was wrongly availed, since the Appellant did not establish receipt of goods / services or accounting thereof in its books, and the case law relied upon by the Appellant on procedural lapse were distinguishable.

e) Credit on tax paid under reverse charge of Rs. 3.17 crores was unsupported by requisite documents such as statement, invoice details, challans, payment details and date of availment.

f) In respect of the two Google India Pvt. Ltd. invoices, the credit of Rs. 15,69,217 was rightly denied, since one invoice involving Service Tax of Rs. 7,25,996 was not furnished and there was mismatch in invoice dates, and no payment voucher / proof of payment was submitted.

g) The proceedings had been validly initiated under Section 74(1) of the CGST Act, since the disputed CENVAT credit had been transitioned through Form GST TRAN-1 and the issue was related to contravention of Section 140 of the CGST Act read with Rule 117 of the CGST Rules. Further, Section 142(6)(a) was inapplicable, and the matter was covered by Section 142(9)(a), Section 174, Rule 121 and Section 160 of the CGST Act / Rules.

h) The Appellant failed to furnish documents despite reminders and opportunities, did not comply with its commitment to submit documents by 10.11.2021, and thereby suppressed material facts with intent to transition and utilise inadmissible credit. Thus, invocation of Section 74(1), along with interest under Section 50(3) and penalty under Section 122(2)(b) of the CGST Act is justified.

i) The decisions in Usha Martin Ltd. and Steel Authority of India Ltd. vs. State of Jharkhand and Kunjal Synergies Pvt. Ltd. & Anr. vs. Assistant Commissioner of CGST & CX, Park Street Division were distinguishable on facts and did not apply to the present proceedings.

5. Discussion and Finding

5.1 We have heard both the parties, perused the records and considered oral and written submissions made before us during the hearing.

Jurisdiction of the CGST Authorities to invoke proceedings

5.2 We find that the present proceedings are initiated under Section 74(1) of the CGST Act for the period July 2017 to March 2018 and has denied the benefit of transition of CENVAT credit to the GST regime on the ground that availment of the said credit was inadmissible under the erstwhile laws.

5.3 From the records, it is apparent that the credit that is transitioned by the Appellant and is subject matter of dispute was appearing as closing balance of credit in respective returns filed by the Appellant under the erstwhile laws viz. Finance Act, 1994 and the Maharashtra VAT Act.

5.4 The learned Authorized Representative for the Respondents has also admitted that no proceedings have been initiated or pending against the Appellant under the erstwhile laws with respect to admissibility of such credit now sought to be transitioned when it was availed.

5.5 At this juncture we refer to Section 142 (6)(a) and Section 174(2)(e) of the CGST Act which are reproduced as under:

Quote

<u>Section 142 (6)(a)</u>

"(6) (a) every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act,

1944 (1 of 1944) and the amount rejected, if any, shall not be admissible as input tax credit under this Act:

Provided that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act;

Section 174

(1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (1 of 1944) (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955), the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), and the Central Excise Tariff Act, 1985 (5 of 1986) (hereafter referred to as the repealed Acts) are hereby repealed.

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (32 of 1994) (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not-

a. ...

b. ...

c. ...

d. ...

e. *affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed"*

Unquote

5.6 From the above cited provisions it is clear that recovery proceedings related to inadmissible credit under erstwhile laws can be initiated only under the provisions of the erstwhile laws, even after enactment of the CGST Act.

5.7 Further, the above provisions do not empower the Respondents to initiate proceedings pertaining to the erstwhile period under the provisions of the CGST Act. As per Section 142 of the CGST Act read with Section 174 thereof, the relevant authority should have initiated proceedings for adjudicating correctness of credits availed by the Appellant, only if any there is a case of wrong availment of CENVAT credit in terms of Rule 14 of erstwhile Cenvat Credit Rules, 2004.

5.8 Our above finding is supported by the judgement of the Hon'ble Jharkhand High Court in the case of Usha Martin Limited vs Additional Commissioner of CGST & CEx – (2022) 1 Centax 46 (Jhar) which has held as under:

18. The enumerated conditions under which the registered person shall not be entitled to avail of the credit of input tax are not one which are applicable to the case of the present petitioner. The show cause notice under which the instant adjudication proceedings were initiated is worded allege similar contraventions under the CEA, Finance Act, 1994 and the CCR as the previous show cause notices issued under the existing law against the petitioner relating to contravention of the C.E.A., Finance Act and C.C.R.. The adjudicating authority does not hold that the transition of CENVAT Credit under section 140 of the C.G.S.T. Act by the petitioner and relating to the period just before the appointed date i.e. 1st July, 2017 are not one which are inadmissible to be credited in terms of section 16 (2) of the C.G.S.T. Act. The Show cause notice itself alleges contravention of the C.E.A., Finance Act, 1994 read with C.C.R., 2004. As such, sub clause (i) of proviso to section 140 does not apply to the case of the petitioner at hand. It is neither the allegation against the petitioner that he had not furnished his returns required under the existing law for the period of six months immediately preceding the appointed date as per clause (ii) to the proviso to Section 140. In substance, the contraventions which have been alleged and the proceedings which have been initiated under section 73 (1) of the C.G.S.T. Act are in relation to violation of the C.E.A. and Finance Act read with C.C.R. The gist of the imputation is that the petitioner could not claim the CENVAT credit in lieu of invoices raised by its Bokna mines as both of them were independent entities. Similar was the imputation in respect of the previous show cause notices issued under the existing law which are pending adjudication before the learned CESTAT or the Commissioner (Appeals) for different periods and in some of which the petitioner has already got a stay by the learned CESTAT. Whether the CENVAT credit under the existing law were admissible to be availed and transitioned by the petitioner was not an issue lying within the jurisdiction of the C.G.S.T authorities to be proceeded against and determined under the relevant provisions of Section 73 of the C.G.S.T. Act which provides as under:

"Under Section 73 of the C.G.S.T. Act a proper Officer may require a registered person to show cause in case it is found that he has not paid any tax or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized for any reason, other than the reason of fraud or any wilful misstatement or suppression of fact to evade tax (such contraventions are covered by Section 74 of the C.G.S.T. Act) asking him to explain as to why he should not pay the amount specified in the notice along with interest and under section 50 and penalty thereupon".

A perusal of the provisions of Section 73 of the CGST Act makes it clear that such a proceeding can be initiated for non-payment of any tax or short payment of such tax or for erroneous refund of such tax or for wrongly availing or utilizing the input tax credit which are available under the C.G.S.T. Act. Section 73 does not speak of CENVAT Credit as C.G.S.T. Act does not provide for CENVAT Credit rather the term has been subsumed in the expression input tax credit both relating to the supply of good or services. The assumption of jurisdiction by Respondent No. 1 to determine whether the CENVAT Credit was admissible under the existing law by invoking provisions of Section 73 of the C.G.S.T. Act was therefore not proper in the eye of law.

…….
……..

22. Therefore, it is clear that the repeal of the existing laws upon coming of the G.S.T. law regime did not leave a vacuum as to past transactions which were not closed. The repeal and saving clause (e) under section 174(1) of the C.G.S.T. Act allowed *such legal proceedings to be instituted in respect of inchoate rights except rights under transactions which were past and closed. Petitioners also admit that proceedings for availing CENVAT Credit which were allegedly inadmissible under the C.E.A., Finance Act, read with C.C.R., 2004 could have been initiated under the existing laws. It is also not in dispute that in respect of previous proceedings for such contravention the cases have been kept in call book and in some of them the learned CESTAT has stayed the recovery of the tax. The duty of the constitutional courts is to interpret the law and also to ensure that there is certainty about the law not only in the minds of the law enforcement agencies but also in the common person as to where he stands in the eye of law. If proceedings for transition of CENVAT Credit alleged to be inadmissible is permitted to be carried under the C.G.S.T. Act, it may lead to uncertainty not only in the minds of the ordinary citizen but also in the minds of the Tax authorities. In some cases a jurisdictional proper officer under the C.G.S.T. Act may initiate proceedings under the provisions of the C.G.S.T Act for such contravention. In other cases the competent jurisdictional officer may initiate proceedings under the existing law that is the C.E.A. and Finance Act for the same contravention in view of the repeal and saving provisions under section 174 of the C.G.S.T. Act. Such a course cannot be countenanced in law. As such, we are of the considered view that the initiation of proceedings by respondent no. 1 under section 73 (1) of the C.G.S.T. Act, 2017 for alleged contravention of the C.E.A. and Finance Act, read with C.C.R. against the petitioner by filing TRAN 1 in terms of Section 140 of the C.G.S.T. Act for transition of CENVET Credit as being inadmissible under the existing law was beyond his jurisdiction. Consequently the Order in Original dated 30th March, 2022 passed by the respondent no. 1 being without jurisdiction cannot be sustained in the eye of law. The impugned adjudication proceedings and the order in original dated 30th March, 2022 are accordingly quashed.*

5.9 Our attention is also drawn to the judgement of the Hon'ble High Court of Jharkhand in Steel Authority of India Limited vs State of Jharkhand – (2025) 28 Centax 60 (Jhar.) which has taken a similar view following the ratio in the judgement of Usha Martin supra by holding as under:

8. It was submitted, inter alia, that exactly similar issue came up for consideration before this Court in the aforesaid case, wherein similar adjudication order denying the benefit of migration of CENVAT credit under GST regime was passed by adjudicating authority under the provisions of GST Act on the ground that availment of CENVAT credit under Central Excise Act, 1944 and Finance Act, 1994 was inadmissible.

It has been submitted that this Hon'ble Court, after taking into consideration detailed provisions of GST Act, in substance, held that eligibility or ineligibility of CENVAT credit/Input Tax Credit under the erstwhile Act is to be adjudicated in terms of the provisions of erstwhile Act and migration of the credit under GST Act cannot be denied merely because certain credit of ITC, which has been migrated, was ineligible under the repealed Act.

…..

…..

11. In view of the settled proposition of law, the instant writ petition is disposed of in terms of the order dated 10th November, 2022 passed in the case of Usha Martin Limited (supra) and the impugned adjudication Order dated 08.01.2018 (Annexure-9) and the Appellate Order dated 13.12.2019 (Annexure-15) are, hereby, quashed and set aside. Since Respondents have already recovered an amount of

Rs.30,29,99,999/- against the impugned demand by reversing the credit available in electronic Credit Ledger of the petitioner company, we further direct the Respondents to restore the amount of Rs. 30,29,99,999/- along with statutory interest in electronic Credit Ledger of the petitioner within a period of four weeks from the date of the order.

5.10 Further, Hon'ble Calcutta High Court in the case of Kunjal Synergies Pvt Ltd vs Assistant Commissioner of CGST & CEX – (2025) 28 Centax 198 (Cal.) held thus:

1. *Thus, while answering the question, it has to be considered whether the initiation of proceedings by the respondent no.1 therein under Section 73 of the CGST Act for alleged contravention of the Central Excise Act and Finance Act read with CENVAT Credit Rules against the petitioners therein by filing TRAN 1 in terms of Section 140 of the CGST Act for transition of CENVAT credit as being inadmissible under the existing law or beyond his jurisdiction. Accordingly, the adjudication proceeding, which was impugned in the said writ petition, was quashed. However, the respondent authorities were granted liberty to initiate proceedings under the provisions of the existing law i.e. Central Excise Act, 1944, Finance Act, 1944 read with CENVAT Credit Rules, 2004 against the petitioner therein for the relevant tax period in accordance with law.*

2. The expression "in accordance with law" is added with the purpose because the *liberty should not be construed to be a liberty de hors the provisions of law.*

3. *The learned advocate appearing for the appellants submitted that information was sought for under the provisions of the Right to Information Act, 2005 as to whether any appeal has been filed against the judgment passed in the case of Usha Martin Limited (supra) and a reply was received on 6th February, 2024 stating that the department has not filed any appeal against the said judgment. However, we note that the Hon'ble Division Bench of the High Court of Jharkhand in the case of Steel Authority of India Ltd. v. State of Jharkhand (2025) 28 Centax 60 (Jhar.) /[TS-49-HC (JHAR)-2025-GST] had occasion to consider more or less an identical fact as the case on hand and followed the decision in Usha Martin Limited (supra) and quashed the adjudication order, which was impugned therein and also issued consequential directions. However, the liberty for the authority was preserved as per the observations made in Usha Martin Limited (supra).*

4. *In the light of the above discussions, we have no hesitation to hold that the impugned show-cause notice is without jurisdiction. In the result, the appeal is allowed along with the connected application (IA No. CAN 1 of 2023). The order passed by the learned Single Bench is set aside. Consequently, the writ petition is allowed and the impugned show-cause notice is quashed.*

5.11 Respectfully, following the ratio of the above judgements of the Hon'ble High Courts, we hold that the proceedings initiated by the Respondents are beyond the jurisdictional powers vested in them under the CGST Act.

5.12 Our specific observations with respect to the specific findings in the impugned order are as under:

Transitioned ITC of Rs. 31,83,93,390 (Rs. 29,93,34,297 under Section 140(1) and Rs. 1,90,59,093 under Section 140(5))

5.13 We find that the amount of credit disclosed in the service tax return filed for the period April 2017 to June 2017, and subsequently transitioned into the GST regime, was never disputed or challenged on the ground of eligibility under the erstwhile law.

5.14 The assessee, under Section 140(1) of the CGST Act, is entitled to carry forward the amount of CENVAT credit of eligible duties, as reflected in the return relating to the period ending immediately preceding 01.07.2017, furnished under the erstwhile law, into its electronic credit ledger maintained under the GST regime. Such transition is, however, subject to the following conditions, namely that such credit shall not be allowed:

(i) where the said amount of credit is not admissible as ITC under the GST law; or

(ii) where the person has not furnished all returns required under the erstwhile law for the period of six months immediately preceding the appointed date, i.e., 01.07.2017; or

(iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as may be notified by the Government.

5.15 We find that compliance to conditions (ii) and (iii) above are not in dispute. Insofar as condition (i) is concerned, the lower authorities have sought to examine the correctness and eligibility of the credit availed under the erstwhile law under the guise of the powers conferred upon them under Section 140(1) of the CGST Act.

5.16 We find force in the submission of the Appellant that such an exercise of power is without authority of law and contrary to the ratio of judgements relied upon by them during the hearing before this Tribunal and referred by us *supra*.

5.17 Revenue in its submissions has merely argued that these judgements are distinguishable on facts without actually bringing out such distinguishing features.

5.18 In our opinion, the lower authorities were not expected to undertake an examination of the correctness of the ITC availed under the erstwhile law where the same has undisputedly remained unchallenged under the erstwhile regime, which is the position in the present case.

5.19 The lower authorities have sought to examine and call for records such as copies of invoices, CENVAT credit registers, payment details, and the correctness of such invoices, in order to determine whether the credit transitioned is eligible to the Appellant under the erstwhile law. Such an exercise is not permissible in law unless the same had been subject to challenge under the erstwhile regime and that too by the authorities constituted under the erstwhile regime.

5.20 Reliance of the Revenue on Section 174 of the CGST Act is also of no avail inasmuch as it only authorizes continuation of the proceedings initiated under the erstwhile law. However, it doesn't authorize the officers appointed under the CGST Act to examine correctness of ITC availed by the Appellant under the erstwhile regime.

5.21 Even otherwise, since what is permitted to be transitioned is the closing balance, such a balance being a derivative of opening balance, credit availed and credit utilized, cannot be attributed to any specific invoice or document. Thus, the exercise of justifying the ITC closing balance with invoice copies was an exercise in futility.

5.22 We observe that the lower authorities have misunderstood clause (i) of the proviso to Section 140(1) of the CGST Act which states that transition is not permitted when the said amount of credit is not admissible as ITC under the GST Act. This clause has to be read in the context of the parent provision which states that the Appellant shall be entitled to take into electronic credit ledger, the amount of CENVAT credit carried forward in the service tax return. Then this amount is qualified to be not eligible when the said amount of credit is not admissible as input tax credit under the CGST Act.

5.23 Reading the above two provisions harmoniously, what it means is when the CGST Act does not permit credit of input tax in certain situations or on certain goods and services the same cannot be transitioned into the GST regime. There are instances under Section 142 of the CGST Act where it is expressly provided that in certain situations the tax or credit arrears determined of the erstwhile regime will not be permitted as ITC under the GST regime. It does not by any stretch of imagination permit the GST officers to carry out assessments of credits claimed under the erstwhile regime.

Transition of Krishi Kalyan Cess (KKC)

5.24 With respect to KKC, the Appellant had transitioned the same into the GST regime by filing Form GST TRAN-1. However, due to lack of clarity regarding the availability of ITC in respect of KKC, the Appellant, out of abundant caution, reversed the amount of Rs. 74,67,109 under protest and duly reflected the same in the return for the month of December 2017.

5.25 We find that in light of the judgment of the jurisdictional Hon'ble Bombay High Court in the case of ***Godrej & Boyce supra***, confirmation of demand of transitioned KKC is not sustainable. We reproduce the relevant findings of the Hon'ble Bombay High Court as under:

11. Importantly, Mr. Jetly has not produced any document or material to show that the amendments in Explanations 1 and 2 to Section 140 brought about by Section 28 of the Amending Act have been brought into force. Pertinently, amendment in sub-section (1) of Section 140 has been brought into force by the said notification and the expression 'of eligible duties' now finds place therein. However, Explanation 3 seeks to clarify that the expression 'eligible duties and taxes', as distinguished from 'eligible duties', excludes any cess not specified in Explanations 1 and 2 and any cess collected as additional duty of customs. The expression 'eligible duties and taxes' appears in sub-section (5) of Section 140, whereas the expression used in sub-section (1) thereof is 'of eligible duties'. Mr. Hidayatullah seems to be right in his contention that mere introduction of Explanation 3 to Section 140 of the CGST Act, and making it operational with effect from February 1, 2019, would not clothe the respondent no. 3 with the power to issue a show-cause notice on the premise that Education Cess, Higher Secondary Education Cess and Personal Account Amounts are not included in Explanations 1 and 2. For sustaining the validity and/or legality of the impugned show-cause notice, the respondent no. 3 could not have relied upon Explanation 3 exclusively to contend that cess is not included in 'eligible duties and taxes'. As the law now stands, Explanation 3 does not have any application to sub-section (1) of Section 140. The respondent no. 3 while issuing the impugned show-cause notice perhaps overlooked this aspect and also that, parts of the amendments in Explanations 1 and 2 to Section 140 of the CGST Act sought to be introduced by sub-clause (1) each of clauses (b) and (c) of Section 28 of the Amending Act are yet to be brought into force. In such view of the matter, a reference to Explanations 1 and 2, as it stands now, may be held to be mindless which, in law, would amount to issuance of a notice without due regard to the provisions of law as well as facts requiring existence or non-existence of a material fact for assumption of jurisdiction.

12. We are conscious of the settled law that the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India ought not to interfere with a show-cause notice as a matter of routine or for the mere asking.

However, it is only in a case where a show-cause notice is found to be totally non est in the eyes of law for absolute want of jurisdiction of the authority issuing the notice to even investigate into the facts that the writ court may, instead of relegating the noticee to respond to the show-cause notice, itself examine the point of lack/want of jurisdiction. If any authority is required, one may profitably refer to the decision of the Supreme Court in Special Director and Anr. v. Mohd. Ghulam Ghouse 2004 (164) E.L.T 141/[2004] 3 SCC 440.

13. Although it is true, as contended by Mr. Jetly, that the respondent no. 3 does not lack the jurisdiction to issue a notice of the nature impugned herein provided the circumstances therefor do exist, the question that has arisen for our consideration is whether issuance of the show-cause notice is vitiated for an approach which is based on an erroneous legal premise. An error in assumption of jurisdiction might also render a notice/an order ultra vires and bad. Perusal of the impugned show-cause notice would reveal assumption of jurisdiction by the respondent no. 3 based on introduction of Explanation 3 to Section 140 of the CGST Act read with Explanations 1 and 2 thereof without showing application of mind as to whether the amended Explanations 1 and 2 have been made operational or not as well as whether Explanation 3 would at all apply to sub-section (1) of Section 140 of the CGST Act. There could have been little reason for us to interfere if assumption of jurisdiction by the respondent no. 3 on the ground appearing from the impugned show-cause notice were shown to be defensible with reference those provisions of law, which have become operational by due exercise of power in terms of sub-section (2) of Section 1 of the Amending Act. Even otherwise, it has not been shown to us that upon introduction of Explanation 3 of Section 140 of the CGST Act read with partly un-amended Explanations 1 and 2 thereof, the respondent no. 3 did have the jurisdiction to issue the impugned show-cause notice.

14. For the reasons as aforesaid, we hold that the present case is one where the impugned show-cause notice suffers from an error going to the root of the jurisdiction of the respondent no. 3 in assuming jurisdiction and is, accordingly, indefensible and liable to be set aside. We order accordingly.

5.26 Thus, we find that even as of today although Explanation 3 was inserted vide the Central Goods and Services Tax (Amendment) Act, 2018 with retrospective effect from 01.07.2017, the said explanation cannot be implemented in the absence of operationalisation of Explanation 1 and Explanation 2 by issuance of the notification.

5.27 We also make a note of the CBIC vide Circular No.87/06/2019-GST dated 02.01.2019, relied upon by the Leaned Counsel for the Appellant which at Para 4 clarifies as under:

4. Further, it has been decided not to notify the clause (i) of sub-section (b) of section 28 and clause (i) of sub-section (c) of section 28 of CGST (Amendment) Act, 2018 which link Explanation 1 and Explanation 2 of section 140 to section 140(1). This would ensure that the credit allowed to be transitioned under section 140(1) is not linked to credit of goods in stock, as provided under Explanation 1, and credit of goods and services in transit, as provided under Explanation 2. However, the duties and taxes for which transition is allowed shall be governed by para 3.2 above.

5.28 Thus, the CBEC itself has clarified that they won't be issuing notification to operationalize Explanation 1 and Explanation 2. Thus, the ratio of ***Godrej & Boyce supra*** will apply on all fours in the present case justifying the KKC credit transitioned by the Appellant and reliance on the amendment by way of Central Goods and Services Tax (Amendment) Act, 2018 is of no avail to the Revenue. The respondent also submitted in their written submission filed on 15.07.2026 that the revenue has preferred an Special Leave Petition (C) No. 3226 of 2019 before the Hon'ble Supreme Court against the judgment of Bombay High Court in Godrej & Boyce supra. We are of the firm view that merely because the revenue is before the Hon'ble Supreme Court that can not be sole reason to hold our decision, particularly when the Apex Court has not granted the stay from the operation of the said Bombay High Court judgment. Moreover, our view on the issue of transition of KKC is not only based on the judgment in the case of ***Godrej & Boyce*** supra but also on our independent interpretation of the provision and Board's circular dated 02.01.2019.

5.29 Thus, we hold that the transition of Krishi Kalyan Cess by the Appellant is in order.

Transitioned ITC of Rs. 22,14,479 under Section 140(6)

5.30 With respect to VAT credit transitioned into the GST regime, the Appellant had provided all the details required to claim VAT credit on Stock-in-Trade goods lying in stock as on 30.06.2017. There is no finding to the contrary to deny this amount of transitioned credit. Without giving any specific objection for denial of this credit, the lower authorities have rejected this credit considering it to be part and parcel of the other credits. Thus, in the absence of contrary findings, denial of this credit cannot be countenanced. Moreover, the revenue has not brought any material evidence on record to justify denial of VAT credit and consequent transition thereof to GST regime.

5.31 We also find that certain other reasons given to deny transitional credit such as incorrect address on the invoice, description of service not mentioned, copies of invoice or credit register not produced, etc are not sustainable at this stage especially when at the stage of claiming credit such objections were not raised. Further, with respect to Google invoice, the Appellant had provided the correct invoice at the time of appeal proceedings which has not been considered and as in other cases, this alleged discrepancy was never raised at the stage of claiming of credit.

5.32 With respect to invocation of penalty under Section 74 of the CGST Act and the consequent imposition of 100% penalty on the Appellant is wholly unjustified, inasmuch as the entire basis for initiation of the present proceedings arises from disclosures made by the Appellant by filing Form GST TRAN-1 and by furnishing detailed submissions from time to time before the authorities.

5.33 In view of the foregoing discussion, the ITC transitioned by the Appellant is in accordance with law. We accordingly hold the same to be eligible. Hence, the impugned order being not sustainable, is set aside.

5.34 The present Appeal filed by the appellant is allowed with consequential reliefs.

(Order pronounced in Open Court.)

(2026) 1 GSTAT E- Journal 51 (Kolkata)
(GOODS AND SERVICES TAX APPELLATE TRIBUNAL, KOLKATA BENCH)
COMMISSIONER CGST & CX, KOLKATA NORTH
V.
M/S POWER TECH GLOBAL PRIVATE LIMITED
APPEAL NOS. APL/62/KLK/2026, APL/74/KLK/2026 & APL/75/KLK/2026,
AUGUST 5, 2026

CORAM:

JUSTICE S.G. CHATTOPADHYAY, MEMBER (JUDICIAL)
AND
SHRI BIJOY KUMAR KAR, MEMBER (TECHNICAL)

REPRESENTATION:

For the Appellant: Shri Shankha Majumdar, Superintendent, CGST.
For the Respondent: Shri Subham Tulsian, Chartered Accountant.

HEADNOTE:
GST — Input Tax Credit — Exempt Supplies — MEIS Duty Credit Scrips — Scope of Rule 43 of CGST Rules — Whether sale of duty credit scrips constitutes exempt supply requiring reversal of ITC — Whether amendment to Rule 43 by Notification No. 14/2022 dated 05.07.2022 can be applied retrospectively — Whether invocation of Section 74 of CGST Act justified in absence of fraud or wilful suppression — Appellant engaged in manufacture of electrical apparatus and sale of MEIS duty credit scrips — Revenue issued SCN under Section 74(1) alleging wrongful availment of ITC on exempt supplies — Adjudicating Authority by a common order in original directed tax payer to reverse proportionate ITC for three financial years for availing ITC on exempt supplies in respect of outward supply of MEIS Duty Scrips and to pay applicable interest thereon along with penalty — First Appellate Authority allowed taxpayer's appeal by applying Rule 43 amendment retrospectively — Whether Appellate Authority erred in giving retrospective effect to amendment — Whether Revenue's appeal barred by CBIC Circular No. 207/1/2024-GST prescribing monetary limit — **HELD:** Exclusion of value of duty credit scrips from aggregate exempt supplies under Rule 43 was prospective from 05.07.2022 and could not be applied retrospectively to claim ITC benefit _Amendment to Rule 43 by insertion of clause (d) in Explanation 1 is prospective in operation from 05.07.2022 — CBIC Circular on monetary limits does not bind Tribunal, and in any case, composite order with multiple appeals exceeds threshold — Section 74(1) cannot be invoked in absence of material evidence of fraud or wilful suppression — Proper officer directed to determine tax liability under Section 73 of CGST Act — Appeals disposed of with directions.

...Partly in Favour of Assessee

KEY ISSUES AND FINDINGS:

1. **Whether we can accept the contention of the taxpayer that in view of Circular No.207/1/2024-GST dated 26.06.2024 fixing the monetary limit of Rs.20 lakhs for filing appeal before GSTAT, this appeal is not entertainable?**
"From a careful reading of the contents of the circular, it has appeared to us that under the directions contained in the circular, the revenue has to carefully consider the various principles laid down under this circular before filing such appeal. It is contended by the revenue that they have strictly followed the instructions contained in the circular. Clause viii of paragraph 3 of the circular and the exclusion clause provided in clause iv of paragraph 3 of the circular have been specifically referred to which support the contention of the Revenue that filing of the present appeal is not affected under this circular. We find force in the submission of the Revenue. There is, therefore, no merit in the contention of the taxpayer with regard to this issue." [Para34]

2. **Whether the Appellate Authority was correct in exonerating the taxpayer from all tax liabilities by applying Notification dated 05.07.2022 retrospectively whereby the value of duty credit scrips was excluded from the aggregate value of exempt supplies by insertion of clause (d) after clause (c) in Explanation 1 to Rule 43 of CGST Rules, 2017 by way of amendment?**
“As we have discussed, the duty credit scrip was not an exempt supply in terms of clause (47) of Section 2 of CGST Act, 2017 before 13.10.2017. It was incorporated in the law as an exempt supply by way of issuing Notification No.35 of 2017 dated 13.10.2017. At that time, the benefit of exclusion of the value of supply of duty credit scrips from the aggregate value of exempt supply for the purpose of calculating proportionate ITC reversal was not made available to the taxpayers. 04 years later, in 2022, the Central Government in the Ministry of Finance, Department of Revenue came out with a notification whereby clause (d) was inserted after clause (c) in Explanation 1 to Rule 43 of CGST Rules which excluded the value of supply of duty

credit scrips from the aggregate value of exempt supplies with prospective effect from 05.07.2022. Looking to the language of Explanation 1 and clause (d), it cannot be presumed that the provision was inserted in the Rule to clarify doubts or any kind of ambiguities in the provision. It is apparent that the provision was inserted to provide the benefit of exclusion of the value of the duty credit scrips from the aggregate value of exempt supplies for the purpose of calculating proportionate ITC reversal from a prospective date. Obviously, the rule framers had power under Section 164(1) of CGST Act, 2017 to give retrospective effect to the amendment. Despite having such power, they intended to give the provision of prospective effect. Input Tax Credit being concessional in nature, the taxpayer cannot be allowed to claim its enforcement from retrospective effect as a vested right. In the case of Sree Sankaracharya University of Sanskrit Vs. Dr. Manu and another, reported in (2023) 19 SCC 30, the Hon'ble Apex Court was of the view that where the statute is curative or merely clarificatory of previous law, retrospective operation thereof may be permitted. In the case in hand, apparently the amendment to Rule 43 was not brought to cure or clarify any doubts or ambiguity."[Para 56]

3. **Whether in the given facts and circumstances of the case, the Revenue was legally correct in invoking Section 74(1) of the CGST Act, 2017 against the taxpayer?**

In the case in hand no investigation was carried out and no evidence has been brought on record on the part of the revenue to establish fraud, wilful mis- statement or suppression of facts within the meaning of Section 74(1) read with Explanation 2 to sub- section (12) of Section 74 of the CGST Act, 2017. If we go further, suppression of facts cannot be equated with ordinary non- declaration. The wordings of Section 74(1) clearly indicates that there must be a deliberate intention on the part of the taxpayer to evade tax." [Para 62]

"We have examined the case in the light of the judgment of the Hon'ble Apex Court in the case of Anand Nishikawa Co. Ltd. (supra) and keeping in view the relevant provisions of CGST Act quoted hereinabove and the Circular dated 13.12.2023 issued by the CBIC as well as in the given facts and circumstances of the case. In our considered view the Revenue could not bring on record any material to prove a deliberate intention on the part of the taxpayer to evade tax and as a result the Revenue was not correct in invoking Section 74(1) of the CGST Act against the taxpayer in this case. Therefore, the SCN issued under Section 74(1) of the CGST Act, is not sustainable in this case."[Para 64]

"In view of what has been held above, Section 75(2) of CGST Act, 2017 will be applicable..."[Para 65]

EDITORIAL NOTES:

Principles Laid Down:

1. An amendment to a rule which is brought into force with a specific prospective date cannot be applied retrospectively merely because it is beneficial to the taxpayer, especially where the Rule Making Authority had power to give retrospective effect but chose not to.
2. CBIC Circulars issued under Section 120(1) read with Section 168(1) of the CGST Act are binding on departmental officers but not on the GST Appellate Tribunal. The Tribunal may look into such circulars for persuasive value but is not bound by them.
3. When determining monetary limits for filing appeals under CBIC Circular No. 207/1/2024-GST, clause (viii) of paragraph 3 requires that in a composite order disposing more than one appeal, the monetary limit shall apply on the total amount of tax/interest/penalty/late fee, and not on the amount involved in individual appeals.

4. Section 74(1) of the CGST Act can be invoked only in cases involving fraud, wilful misstatement, or suppression of facts with deliberate intention to evade tax. The mere fact that the taxpayer's interpretation of law differs from that of the Revenue does not constitute suppression of facts.
5. "Suppression of facts" within the meaning of Section 74(1) must be construed strictly; it does not mean any omission, and the act must be deliberate and wilful to evade payment of duty. Where facts are known to both parties, omission by one to do what he might have done, and not that he must have done, does not render it suppression.
6. Where a show cause notice issued under Section 74(1) is held unsustainable for want of establishing fraud or wilful suppression, the proper officer is mandated under Section 75(2) to determine the tax payable deeming as if the notice were issued under Section 73.

Case Law Referred to:
Sedco Forex International Drill Inc. v. Commissioner of Income-tax, Dehradun AIR 2006 Supreme Court 428 —Distinguished (Para 47)

Hitendra Vishnu Thakur v. State of Maharashtra (1994) 4 SCC 602 —Distinguished (Para 48-49)

Suchitra Components Ltd. v. Commissioner of Central Excise, Guntur (2006) 12 SCC 452 —Distinguished (Para 50)

Allied Motors (P.) Ltd. v. Commissioner of Income-tax (1997) 224 ITR 677 (SC) —Distinguished (Para 52-53)

CCE v. Mysore Electricals Industries Ltd. (2006) 12 SCC 448 —Distinguished (Para 51)

Sree Sankaracharya University of Sanskrit v. Dr. Manu (2023) 19 SCC 30 —Followed (Para 56)

Anand Nishikawa Co. Ltd. v. Commissioner of Central Excise, Meerut (2005) 7 SCC 749 —Followed (Para 63)

K.P. Varghese v. ITO (1981) 131 ITR 597 (SC) — Referred (Para 32)

Ellerman Lines Ltd. v. CIT (1971) 82 ITR 913 (SC) — Referred (Para 32)

M/s Dow Chemical International Private Limited v. Commissioner of State Tax, Mazgaon, Mumbai GSTAT Principal Bench Final Order dated 04.06.2026 — Referred (Para 32)

Circulars and Notifications Referred to:
- Circular No. 207/1/2024-GST, dated 26.06.2024
- Notification No. 14/2022-Central Tax, dated 05.07.2022
- Notification No. 35/2017-Central Tax (Rate), dated 13.10.2017
- Notification No. 2/2017-Central Tax (Rate), dated 28.06.2017

Relevant Provisions:
Section 74 of the CGST Act, 2017; Section 75 of the CGST Act, 2017; Section 73 of the CGST Act, 2017; Section 120 of the CGST Act, 2017; Section 168 of the CGST Act, 2017; Section 164 of the CGST Act, 2017; Section 11 of the CGST Act, 2017; Rule 43 of the CGST Rules, 2017; Rule 42 of the CGST Rules, 2017; Section 2(47) of the CGST Act, 2017 (definition of "exempt supply").

JUDGMENT

Per: S.G. Chattopadhyay (JM)

1. Since all these 03 appeals arise from the same lis and resolve around substantially similar facts and questions of law, they are taken up together for disposal by a common order with the consent of the parties for the sake of convenience and to avoid multiplicity of proceedings.
2. The present appeals have been preferred before the GSTAT, Kolkata Bench under sub-section (1) of Section 112 of the Central Goods & Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act') against the common Order in Appeal dated 08.07.2025 passed by the Joint Commissioner, CGST & CX, Kolkata, Appeal-1 Commissionerate in Appeal Nos.563 of 2025, 564 of 2025 & 565 of 2025. The said appeals came to be filed before the Joint Commissioner by the present respondent (hereinafter called the 'taxpayer') under sub-section (1) of Section 107 of the CGST Act against the common Order in Original No.399 dated 02.02.2025 passed by the Assistant Commissioner of CGST & CX, Chowringhee Division, Kolkata North Commissionerate in case No.JD190225001830, No.JD1902250017988 and No.JD190225001785F.
3. The adjudicating authority by the said Order in Original (hereinafter called 'OIO') directed the taxpayer to reverse proportionate ITC to the tune of Rs.74,75,604/- (Rupees Seventy-four Lakhs Seventy-five Thousand Six Hundred Four only) for 03 financial years from 2017-2020 for availing the said sum of ITC on exempt supplies and to pay applicable interest thereon along with penalty of an equal sum of Rs.74,75,604/- (Rupees Seventy-four Lakhs Seventy-five Thousand Six Hundred Four only).
4. The aggrieved taxpayer assailed the said order of the adjudicating authority before the appellate authority under sub-section (1) of Section 107 of the CGST Act. As indicated, the appellate authority by the impugned order in appeal dated 08.07.2025 rejected the OIO passed by the adjudicating authority and thereby exonerated the tax payer from the liabilities.
5. Aggrieved by and dissatisfied with the impugned order passed by the Appellate Authority, the department (hereinafter called 'the revenue') has filed these 03 appeals before GSTAT Kolkata Bench for setting aside the said impugned order.
6. Brief facts of the case projected by the revenue are that the taxpayer is engaged in the business of manufacture of electrical apparatus designed to distribute and control the flow of electricity which, *inter alia*, includes the manufacture of switchgears, voltage limiters, fuses and circuit breakers, surge protection devices, suppressors, junction boxes, boards, panels, consoles, cabinets, power capacitors etc. For carrying out his business, the taxpayer has set up his principal office at 6th Floor, O, Hi- tech Chamber, 84/1B, Topsia South Kolkata-46. He is registered under CGST Act with GSTIN:19AADCP2569B1ZH under the jurisdiction of R-V Chowringhee Division, Kolkata-North, CGST & CX Commissionerate.
7. The crux of the allegations against the taxpayer is that he availed ITC on inputs and services for outward supply of goods and services and wilfully suppressed it in the return submitted by him in GSTR Form 3B. A scrutiny undertaken by the revenue revealed that as per GSTR Form 3B submitted by the taxpayer, there was a total taxable supply of a sum of Rs.17,37,61,985/- during 03 financial years commencing from 2017-2020 and the taxpayer availed the benefit of exemption on a sum of Rs.10,93,43,077/- in respect of outward supply of MEIS Duty Scrips and availed ITC of Rs.1,95,15,412/-. But, as per determination made by the revenue in terms of Section 17 of the CGST Act, read with Rules 42 & 43 of CGST Rules, the taxpayer availed excess ITC of Rs.74,75,604/- for exempt goods and services and he wilfully suppressed the fact in GSTR Form 3-B.
8. Thus, for availing ITC by way of wilful suppression of fact, the revenue served a show-cause notice vide SCN No.8/SC/GST/CHOW/KOL-N/24-25 dated 01.08.2024 on the taxpayer in terms of sub-section (1) of Section 74 of the CGST Act requiring him to

show cause as to why he should not pay the amounts specified in the SCN along with applicable interest thereon and a penalty equivalent to the tax specified in the notice.

9. The show-cause notice in paragraph 2 contains a table which demonstrates as to how the revenue determined the amount of ITC to be reversed by the taxpayer in accordance with Section 17 of CGST Act read with Rules 42 & 43 of the CGST Rules and the corresponding provisions of the State GST Act and Rules. The table aforesaid is reproduced hereunder :-

F..Y.	**Total Taxable Turnover (INR)**	**Total Exempt Turnover (INR)**	**Total Turnover (Taxable + Exempt) (INR)**	**Exempt Turnover to Total Turnover Ratio**	**ITC Available as per GSTR-3B (INR)**		**Total ITC Reversed in Table 4(B)(1) of GSTR-3B (INR)**		**ITC to be Reversed as per Ratio Computed (INR)**		**Net ITC to be REVERSED**	
2017-18	36730988	13536249	50267237	0.27	IGST=	80773	IGST =	0	IGST =	21751	IGST=	21751
					CGST =	1574848	CGST=	0	CGST=	424084	CGST=	424084
					SGST =	1574848	SGST=	0	SGST=	424084	SGST=	424084
2018-19	93991062	71622012	165613074	0.43	IGST=	944607	IGST =	36000	IGST =	408510	IGST=	408510
					CGST =	4664897	CGST=	0	CGST=	2017409	CGST=	2017409
					SGST =	4664897	SGST=	0	SGST=	2017409	SGST=	2017409
2019-20	43039935	24184816	67224751	0.36	IGST=	3550454	IGST =	0	IGST =	1277317	IGST=	1277317
					CGST =	1230039	CGST=	0	CGST=	442520	CGST=	442520
					SGST =	1230039	SGST=	0	SGST=	442520	SGST=	442520
Total						**19515412**	**36000**		**7475604**		**7475604**	

10. Paragraphs 6, 7 & 8 of the show-cause notice is also considered relevant which is reproduced hereinbelow :-

6. The said taxpayer viz M/s POWER TECH GLOBAL PRIVATE LIMITED having GSTIN: 19AADCP2569B1ZH is, therefore called upon to Show Cause u/s 74 of the

CGST/SGST Act, 2017 read with Section 20 of the IGST Act, 2017, before the Assistant Commissioner of CGST & CX, (Room No. 124), Chowringhee Division, Kolkata North Commissionerate, Kolkata, 180, Rajdanga Main Road, Shantipally, Kolkata-700107 within 30 (thirty) days from the date of receipt of this notice as to why:-

(i) Ineligible ITC of Rs. 74,75,604/-(Rupees Seventy Four Lakh Seventy Five Thousand Six Hundred Four Only) [Rs. 17,07,578 /-(IGST) + Rs. 28,84,013 /-(CGST) + Rs. 28,84,013 /-(SGST)] availed and utilized shall not be demanded and recovered under section 74 of CGST & SGST Act, 2017 read with Section -20 of IGST Act, 2017 from them.

(ii) Appropriate interest shall not be imposed under Section 50 of CGST & SGST Act, 2017 read with Section -20 of IGST Act, 2017 and recovered from them.

(iii) Penalty under section 74 of CGST & SGST Act, 2017 read with Section -20 of IGST Act, 2017 shall not be imposed and recover from them.

7. If no cause is shown within the stipulated period of 30 (thirty) days from the date of receipt of this Notice or if he fails to appear before the Adjudicating Authority when the case shall be posted for hearing, the case will be adjudicated on the basis of available records with the department without any further reference.

8. This notice is issued without prejudice to any other action that may be taken against the Noticee under the provisions of the CGST Act, 2017/WBGST Act, 2017 and/or Rules made thereunder or under any other law for the time being in force.

11. The taxpayer submitted his reply dated 25.11.2024 to the show- cause notice served on him by the revenue. The relevant extract of taxpayer's reply is as under:-

2.0 REPLY TO THE SCN:-

"We Power Tech Global Private Limited registered with GSTIN: 19AAPFA2433C1ZP have not contravened the provisions of Section 17 of the CGST Act, 20173. The brief fact is that we purchased a Drilling Machine (Hydra) from M/s Aqua Construction & Company registered with GSTIN: 19AAPFA2433C1ZP on 31.08.2017 having invoice number AQUA/HDD/09(17-18) only once but by mistake our Chartered Accountant has shown it twice while filing GSTR-1. Still, we have not taken ITC Input twice.

Sir, to claim our innocence we are enclosing the invoice of M/s Aqua Construction &Company so that you can verify it as Annexure-1. Sir, we are enclosing the Independent Auditors Report for the period 2017-2018, 2018-2019 and 2019-2020 as Annexure 2.

Sir, we are enclosing the list of our suppliers for verification for 2017- 2018, 2018-2019, 2019-2020. As Annexure 3.

Sir, we enclosing our Bank Statement as Annexure 4 for the disputed period along with our statement of License sales & purchases as Annexure 5 alongwith the invoices.

Sir, we will request you to verify all the documents and provide us an opportunity to clear any doubts."

12. The adjudicating authority considered the taxpayer's reply and each of the documents adduced on his behalf and by the OIO passed on 02.02.2025 came to the conclusion that in absence of any cogent evidence and plausible explanation, the taxpayer was liable to reversal of ITC to the tune of Rs.74,75,604/- as alleged in the SCN and passed the following order :-

"4.2.5 I find that the noticee has not submitted any details regarding amount of Input Tax attributable to inputs and input services Intended to be used exclusively for purposes other than business and exclusively for effecting exempt supplies respectively. The noticee did not submit any requisite justifiable documents/evidence in support of their aforesaid claim. Neither did they submit any cogent clarification whatsoever along with copies of supporting statutory documents/evidence wherein one to one correlation. between Input goods/services and Outward supply of goods/services could be established in relation to the taxable items/services &

Exempted/Non GST items/services They submitted a reply mainly claiming of inadvertent double submission of one purchase in their GSTR-1.
Therefore, in absence of any conclusive documents and plausible explanation, I find that the alleged ITC as alleged in the SCN is to be reversed for the Period from FY 2017-18 to FY 2019-20.
4.2.6. It is evidently clear that the said taxpayer have willfully suppressed the fact by declaring amount of ITC attributable to exempt supply and waited until the department unearthed the facts in the present case. If the scrutiny had not been initiated by the Department, such evasion of tax would never have come to light and the revenue involved would have been lost forever. Let me reiterate that due to indulgency in such activity of wrong declaration of amount and also remained reticent for such a long time it is clear that the said taxpayer have suppressed the relevant data from the department wilfully to avail the irregular ITC. In the current regime, so as in the earlier one, the Government has placed full trust on the taxpayer and accordingly measures like self-assessments, etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of taxpayer; therefore, the governing statutory provisions create a liability on taxpayer when any provision is contravened or there is a breach of trust placed on the taxpayer. It is pertinent to mention here that the system of self-assessment is specifically incorporated in respect of GST under the provisions of Section 59 of CGST Act, 2017 which reads and is quoted hereunder:
"Section 59. Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39."
Since the said taxpayer were liable to self-assess the liability to pay tax and/or avail eligible ITC they had an obligation to furnish the correct and complete information, which I gravely note from the Show-Cause-cum-Demand Notice and the records, that the said taxpayer have miserably failed in pursuit of their statutory duty, more so by availing ITC which was procured by obtaining fake invoices when there is no supply of services.
Had the department not initiated the scrutiny against the said taxpayer the matter would have gone unearthed. Therefore, the amount of inadmissible ITC wrongly availed and utilized is liable to be reversed or paid under Section 74 of the CGST Act, 2017 read with corresponding Sections of SGST Act, 2017 and Section 20 of the IGST Act, 2017 along with interest under Section 50(3) of the CGST Act, 2017 and applicable penalty under Section 74 of the CGST Act, 2017 read with corresponding Sections of SGST Act, 2017 and IGST Act, 2017.
Accordingly, I find that the noticee is liable to reverse proportionate ITC to the tune of Rs. 74,75,604/- (Seventy Four Lakh Seventy Five Thousand Six Hundred Four Only) [Rs. 17,07,578/- (IGST) + Rs. 28,84,013/-(CGST) Rs.28,84,013/- (SGST)) for period from FY 2017-18 to FY 2019-20 attributable towards 'exempt supplies' in violation of Section 17(2) of the said Act and the said amount is recoverable under Section 74 of the said Act.
5.0 In view of the above observations, I pass the following order:

O R D E R

i. *I confirm the demand of Proportionate ITC attributable towards Exempted/Nil rated/Non-GST supply amounting to Rs. 74,75,604/-(Seventy Four Lakh Seventy Five Thousand Six Hundred Four Only) [Rs.17,07,578/- (IGST) + Rs. 28,84,013/-(CGST) Rs.28,84,013/-(SGST)) for the FY 2017-18 to 2019-20 in terms of Section 17(2) of the CGST Act 2017 read with Rule 42 of CGST Rules, 2017 and order for recovery of the same in terms of Section 74 of the CGST, Act, 2017 read with corresponding provisions of WBGST Act, 2017 & Section 20 of the IGST Act, 2017.;*

ii. *I order for recovery of interest as applicable, on amount of ITC confirmed at SI No. (i) above, under Section 50 of the CGST Act, 2017 read with corresponding provisions of WBGST Act, 2017 & Section 20 of the IGST Act, 2017.*

iii. *I also impose a penalty of Rs.74,75,604/- (Seventy Four Lakh Seventy Five Thousand Six Hundred Four Only) under Section 74 of the CGST Act 2017 read with corresponding WBGST Act, 2017 & & Section 20 of the IGST Act, 2017,*

6.0 This order is passed without prejudice to any other action which may be taken against the Noticee under any other law for the time being in force.

13. Aggrieved taxpayer challenged the OIO before the appellate authority mainly on the following grounds :-

(i) The revenue did not consider that the taxpayer was entitled to the financial incentive provided by the Government of India under the Mercandise Exports from India Scheme (MEIS) despite of his filing the invoices of the sale of duty credit scrips. As a beneficiary of MEIS, he used to sell duty credit scrips which should not have been treated as supply of goods for the purpose of determination of taxable liability. Moreover, in view of the amendment to Explanation 1 to Rule 43, CGST Rules, 2017, effected vide Notification No.14 of 2022 dated 05.07.2022, the taxpayer was entitled to the benefit of exempt supplies (sell of duty credit scrips) with retrospective effect.

(ii) In terms of Section 17(2) of the CGST Act, apportionment of ITC should have been restricted to taxable supplies including zero rated supplies only. It should not have included exempt supply duty credit scrips

(iii) The demand for reversal of ITC for sale of duty credit scrips would go against the objective of the Government to incentivise the exporters for promotion of exports and amount to violation of the provisions of Rules 42 & 43 of the CGST Rules, 2017.

(iv) Invocation of the provision of Section 74(1) was not warranted in the proceedings because there was no wilful suppression or misstatement contemplated under Section 74(1) of the CGST Act. The taxpayer sought for the rejection of the OIO under the premises aforesaid.

14. The appellate authority was of the view that sale of MEIS licences falls within the category of exempt supplies and in view of the amendment to Explanation 1 to Rule 43 of CGST Rules by inserting clause (d) after clause (c) in Explanation 1 effected vide Notification No.14 of 2022 dated 05.07.2022, whereby the value of supply of duty credit scrips was excluded from the aggregate value of exempt supplies, the taxpayer was entitled to ITC on the aggregate value of exempt supplies of duty credit scrips. The first appellate authority viewed that in view of the said amendment to Explanation 1 to Rule 43 of CGST Rules, the order of the adjudicating authority for reversal of the credit availed by the taxpayer for sale of duty credit scrips was illegal. To arrive at the conclusion, the appellate authority relied on the decision of the Hon'ble Apex Court in the cases of (i) **Sedco Forex International Drill Inc. Vs Commissioner of Income-tax, Dehradun, reported in AIR 2006 Supreme Court 428** (ii) **Hitendra Vishnu Thakur And others Vs. State of Maharashtra And Others, reported in (1994) 4 SCC 602** (iii) **Suchitra Components Ltd. Vs. Commissioner of Central Excise, Guntur, reported in (2006) 12 SCC 452 and** (iv) **Allied Motors (P.) Ltd. Vs. Commissioner of Income- tax, reported in (1997) 224 ITR (SC) 67**7 and held that the said amendment of Rule 43 of CGST Rules which was effected by the Notification dated 05.07.2022 should have been applied retrospectively by the adjudicating authority because the said amendment was beneficial to the taxpayer. In this regard, the appellate authority also relied on Advance Ruling vide Order No.12 of 2023 dated 24.05.2023 passed by the Telengana State Authority for Advance Ruling, wherein it was ruled that after insertion of clause (d) to Explanation 1 of Rule 43 of CGST Rules, 2017, the value of duty credit scrips would not form part of the value of exempt supplies for the purpose of computation of reversal of input tax credit under Rule 42

of CGST Rules, 2017. On the basis of such findings, the appellate authority allowed the appeal and rejected the order in original passed by the Assistant Commissioner, Chowringhee Division, Kolkata North Commissionerate. It would be appropriate to reproduce the relevant extract of the impugned order of the appellate authority which is as under :-

5.4. The appellant is engaged in purchase sale of MEIS license and is also engaged in its regular operations of electrical supplies which is taxable in nature. I find that the adjudicating authority in Para 4.2.3 of the impugned order had considered the sale and purchase of MEIS Iicense as 'Exempted Supply' and accordingly ordered to reverse the proportionate ITC to the tune of Rs. Rs.74,75,604/- alongwith interest and penalty alleging that common ITC had been used for exempted supply as well as taxable supply.

5.5. I find that vide notification no. 14/2022 dt: 05.07.2022 a new clause (d) was inserted in the Explanation-1 to Rule 43 wherein the scope of the said explanation was expanded to exclude the value of duty credit scrips from the aggregate value of exempt supplies for the purpose of the Rule 42 as follows:

"[Explanation 1: -For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude: -

(a)…

(b)…

(c)…

(d) the value of supply of Duty Credit Scrips specified in the notification of the Government of India, Ministry of Finance, Department of Revenue No. 35/2017-Central Tax (Rate), dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number GSR 1284(E), dated the 13th October, 2017."

5.6. I find, the notification is clarificatory in nature. So, it is clear that, the intension of the I find the legislature is clarificatory rather than to enact a new rule. In this context, Apex Court judgement in the case of Sedco Forex International Drill Inc. Vs. Commissioner of Income Tax, Dehradoon reported in [AIR 2006 SUPREME COURT 4281/ (2005) 279 ITR 310[SC] is relevant and applicable.

5.7. Rule 43 of the CGST/SGST Rules, 2017 governs the manner of apportionment and reversal of ITC and these are procedural in character. In this respect, wish to mention the Apex Court judgement in the case of Hitendra Vishnu Thakur Vs. State of Maharashtra reported in 1994 SCC (4) 602. It was expressly opined that, procedural amendments shall have retrospective effect.

5.8. I find an Advance Ruling of TSAAR Order No.12/2023 dtd. 24.05.2023 passed by TELANGANA STATE AUTHORITY FOR ADVANCE RULING, wherein it has been clarified that: "After the insertion of this Rule, the value of duty credit scrips will not form part of value of exempt supplies for the purpose of computation of reversal of input tax credit under Rule 42 of the CGST Rules."

5.9. I find cluse (d) to Explanation 1 of Rule 43 was inserted vide the notification no. 14/2022 dt: 05.07.2022. Explanation 1 pertains to clarification for computation of exempted supplies. As per legal understanding, any clarification always bears a retrospective effect. In this context, I wish to mention the Case of Suchitra Components Ltd. Vs. CCE, Guntur [(2008)12 STT 25 (SC)] wherein at Para 2 of the order the Hon'ble Apex Court held that a beneficial circular has to be applied retrospectively while oppressive circular has to be prospectively. I fird similar findings in the order given by the Apex Court in the case of M/s Allied Motors Pvt. Ltd. Vs. Commissioner of Income Tax Delhi reported in (1997) 224 ITR 677. I find it as a beneficial provision and must be given retro effect to avoid hardship and promote equity.

Hence, the MEIS transaction made by the appellant during 2017- 18 to 2019-20 and Its non-reversal of proportionate ITC must be construed retrospectively being procedural, clarificatory and beneficiary which is consistent with binding on the basis *of findings given by the Apex Court and established principles of statutory interpretations.*

Now, in view of the findings as discussed hereinbefore and in terms of Sec 107 of the CGST Act 2017, I proceed to pass the following order.

ORDER

I allow the appeal and reject the orders vide DRC 07 no. ZD1902250018130, ZD1902250017988 & ZD190225001785F dated 03.02.2025 (Order -in-Original No. 399/CHOW/AC/Kol- N/2024-25 dated 02.02.2025) passed by the Assistant Commissioner, Chowringhee Division, Kolkata North Commissionerate. So, the instant case is herewith disposed off accordingly.

15. The said order of the appellate authority is under challenge before us.
16. We have heard Mr. Shankha Majumdar, Superintendent, CGST appearing on behalf of the revenue before us. We have also heard Mr. Subham Tulsian, Chartered Accountant, who is representing the respondent in this appeal.
17. The grounds of the appeal before us are mainly as follows :-
    - *i) The sale of duty credit scrips was an exempt supply during the period of assessment from 2017-2020. In terms of the statute, the taxpayer is not entitled to ITC for exempt supplies, therefore, the adjudicating authority lawfully directed the him to reverse the ITC availed by him for sale of duty credit scrips.*
    - *ii) The Notification No.14 of 2022 dated 05.07.2022 amending Explanation 1 to Rule 43 of CGST Rules by insertion of clause (d) in Explanation 1 was given prospective effect under its commencement clause and the appellate authority committed error by giving the benefit of such amendment to the respondent with retrospective effect.*
    - *iii) The Advance Ruling of the Telengana State Authority was applicable only to the jurisdictional officers.*
    - *iv) The amendment of Rule 43 of CGST Rules, 2017, whereby the value of duty credit scrips was excluded from the aggregate value of exempt supply to the taxpayer would apply prospectively as contemplated under the amended rule.*
18. With regard to the judgments of the Hon'ble Apex Court relied upon by the appellate authority, the revenue has contended that the facts of those cases being distinguishable, the decisions are not applicable to the present case. On the grounds aforesaid, the appellant has sought for dismissal of the impugned order of the appellate authority.
19. In response, the taxpayer uploaded his cross objection and documents he considered relevant in support of his case. The grounds of his objections have been summarized as follows :-
    - *i) The appellate authority has decided the appeal on merit with due application of mind and after due appreciation of the factual matrix, applicable statutes and available materials which does not call for any interference. The present appeal before the GSTAT, is therefore, devoid of merit.*
    - *ii) The revenue was preferred this appeal in violation of the monetary limit prescribed by the CBIC vide Circular No.207/1/2024-GST, dated 26.06.2024, whereby the CBIC, in exercise of power conferred under Section 120(1) of the CGST Act, 2017, has fixed a monetary limit of Rs.20,00,000/- for the purpose of filing appeal before the GST Appellate Tribunal. The amount involved in this appeal is less than this monetary threshold of Rs.20,00,000/- and as such in view of the said circular of CBIC, all the three appeals of the revenue are liable to be dismissed at the outset.*
    - *iii) The taxpayer is engaged in regular business of electrical supplies which has been duly disclosed by the taxpayer under taxable supplies and taxable liability arising from such supplies has also duly been discharged by him. But, insofar as the question of sale of duty credit scrips is concerned, the said scrips are received as rewards in order to encourage exports. Once issued by the Government, such scrips can be sold as such and does not require any taxable input. Therefore, the duty credit scrips cannot be treated at par with other exempt goods and services and as such the appellate authority has rightly held that ITC availed by the taxpayer on the sale*

of duty credit scrips is not reversable. The taxpayer has, therefore, sought for dismissal of the appeal.

20. In the course of his arguments, Mr. Shankha Majumdar, Superintendent, vehemently contended that the appellate authority committed serious error in holding that amendment of Rule 43 of CGST Rules effected by Notification No.14/2022 dated 05.07.2022 would be given retrospective effect since it conferred a benefit to the taxpayer. It was argued by Mr. Majumdar that the sale of duty credit scrips falls in the category of exempt supplies and since the taxpayer availed ITC on such exempt supplies during the assessment period before the Notification came into force, he was legally bound to reverse the ITC availed by him on such exempt supplies.
21. With regard to the threshold limit of Rs.20,00,000/- for filing appeal before GSTAT, contended by the taxpayer, Mr. Majumdar argued that CBIC Circular No. No.207/1/2024-GST, dated 26.06.2024 in paragraph 3 has laid down some principles which are to be considered while determining as to whether a case falls within the said monetary threshold or not. Mr. Majumdar has referred to para 3.viii of the Notification which reads as under :-

    3. While determining whether a case falls within the above monetary limits or not, the following principles are to be considered:

    i. xxxxxxxx
    ii. xxxxxxx
    iii. xxxxxxx
    iv. xxxxxxx
    v. xxxxxxx
    vi. xxxxxxx
    vii. xxxxxx
    viii. In a composite order which disposes more than one appeal/demand notice, the monetary limits shall be applicable on the total amount of tax/interest/penalty/late fee, as the case may be, and not on the amount involved in individual appeal or demand notice.

22. It is contended by Mr. Majumdar, Superintendent that the three appeals taken together, the amount involved in these appeals exceeds the monetary limit of Rs.20,00,000/- and as such the contention of the taxpayer does not gain ground. This apart, Mr. Majumdar has also invited our attention to the exclusions provided in the said circular which, in paragraph 4.iv, provides that when the matter is related to an issue which is recurring in nature and/or involves interpretation of the provisions of the Act/the Rules/Notification/Circular/Order/Instruction etc., the threshold limit provided under the Circular shall not apply. According to Mr. Majumdar, Superintendent, the said circular would have no bearing on this case. Mr. Majumdar, the authorised representative of the appellant, concluded his arguments by submitting that the appellate authority rejected the OIO without application of mind and the law laid down in this regard and, therefore, the order of the appellate authority is liable to be dismissed.
23. Appearing on behalf of the taxpayer Mr. Subham Tulsian, Chartered Accountant, vehemently contended that the present appeal preferred by the revenue is not maintainable in view of Circular No.207/1/2024-GST dated 26.06.2024, which was issued by the Government of India, Ministry of Finance, Department of Revenue to reduce the Government litigation. The Circular fixed monetary limits for filing of appeals or application by the revenue before the GST Appellate Tribunal, High Courts and Supreme Court which clearly indicates that for filing appeals before the GSTAT, such monetary limit would be Rs.20,00,000/-. It is submitted by Mr. Tulsian that the Circular has statutory force since it has been issued by the competent authority in exercise of powers conferred under Section 120 (1) read withSection 168 of CGST Act pursuant to the recommendation of GST Council. Mr. Tulsian has further contended that unless the policy framed by the Government of India for the purpose of reducing litigation by fixing a monetary limit is adhered to by the departmental officer, the goal

to be achieved by such policy will be frustrated. Mr. Tulsian concludes his submission on this issue by contending that the present appeal does not fall within the ambit of any of the exclusions provided under paragraph 4 of the Circular and, therefore, the appeal is required to be dismissed *in limine.*

24. In continuation of his arguments Mr. Tulsian contends that the order impugned is passed on a sound reasoning. According to him the appellate authority has, by correct interpretation of law, rightly held that the amendment of Rule 43 of CGST Rules effected by the Notification of 2022 would apply to this case retrospectively. He argues that looking to the curative nature of the said amendment by way of insertion of clause (d) under Explanation 1 to Rule 43 of CGST Rules and taking into consideration the intention of the framer of this rule, it must be applied retrospectively for the benefit of the taxpayers including the present respondent.

25. With regard to the allegation of the revenue in the SCN that the taxpayer has suppressed the ITC availed by him on the sale of exempt goods (duty credit scrips), Mr. Tulsian has contended that the taxpayer did not suppress any information. With regard to purchase of inputs for outward taxable supplies of electrical apparatus, a complete statement of his turnover, tax liability and ITC availed by him has been furnished in GSTR Form-3B in time. The revenue did not dispute it. Mr. Tulsian has contended that insofar as the duty credit scrips is concerned, the same is only received as reward. Once it is issued by the Government of India, the same can be sold by the beneficiary which does not require the purchase of any input for this purpose and, therefore, the value of the supply of duty credit scrips was excluded from the aggregate value of exempt supplies for the purpose of Rule 42 of CGST Rules, which along with Rule 43 provides the manner of determination of input tax credit in respect of inputs or input service reversal thereof.

26. Mr.Tulsian has further contended that this is not a fit case for invoking Section 74 of the CGST Act, 2017 as there is no proof of any wilful misstatement or suppression of facts to evade tax as contemplated under Section 74(1) of the CGST Act, 2017.

    Under the premises, aforesaid, Mr. Tulsian, CA urges this Tribunal to dismiss the appeal.

27. In view of the above, the questions which arise for determination in this appeal are as follows :-

    i) Whether we can accept the contention of the taxpayer that in view of Circular No.207/1/2024-GST dated 26.06.2024 fixing the monetary limit of Rs.20 lakhs for filing appeal before GSTAT, this appeal is not entertainable?

    ii) Whether the Appellate Authority was correct in exonerating the taxpayer from all tax liabilities by applying Notification dated 05.07.2022 retrospectively whereby the value of duty credit scrips was excluded from the aggregate value of exempt supplies by insertion of clause (d) after clause (c) in Explanation 1 to Rule 43 of CGST Rules, 2017 by way of amendment?

    iii) Whether in the given facts and circumstances of the case, the Revenue was legally correct in invoking Section 74(1) of the CGST Act, 2017 against the taxpayer?

FINDINGS

28. As regards the question as to whether this appeal is entertainable in view of the monetary limit for filing appeal in view of the monetary limit for filing appeal before the GSTAT fixed by Circular No.207/1/2024-GST dated 26.06.2024 issued by the Government of India, Ministry of Finance, Department of Revenue, the argument of the revenue is that the Circular is not applicable to this appeal because clause-viii of paragraph 3 of the said circular has provided in unambiguous terms that whenever more than one appeals have been decided by a composite order, the amount involved in individual appeal or individual demand notice shall not be considered for determining as to whether it falls within the threshold of such monetary limit. Rather the total amount of tax/interest/penalty/late fee, as the case may be, shall be taken into account to determine the applicability of the circular. It has also been argued on behalf of the Revenue that under paragraph 4 of the circular, the exclusions have been

provided and under one of such exclusions provided under clause iv of paragraph 4, whenever the appeal involves an issue which is recurring in nature and/or involves interpretation of the provisions of the Act/the Rules/Notification/Circular/Order/Instruction etc., the said circular will not apply. The revenue contends that apart from the question of monetary limit fixed by the circular, the overall objective of the circular for reducing unnecessary litigation has been considered by the revenue and after giving a careful consideration to the merit of the appeal, the revenue has preferred this appeal before this Tribunal.

29. The contention of Mr. Tulsian appearing on behalf of the taxpayer is that paragraph 3 of the circular has only laid down the principles to be considered by the revenue while determining as to whether the appeal falls within the monetary limit fixed by the circular. Paragraph 3 does not provide any exclusion. Therefore, paragraph 3 will not be applicable to exclude the present appeal from the purview of this circular. Further contention of Mr. Tulsian is that the exclusions are provided under paragraph 4 of the circular and the instant appeal does not fall within the ambit of any those exclusions and as such the present appeal is squarely covered by the circular and the revenue is debarred from filing the appeal before the Tribunal in view of the monetary limit fixed by the circular.

30. We have considered their submissions in the light of the circular which has been brought on record and the parties to the appeal have advanced argument and counter argument on the issue. Under this circular issued on 26.06.2024 the Government of India has fixed monetary limits for filing appeals before the GSTAT, High Court and the Supreme Court. Under paragraph 2 of the circular no appeal can be filed by the revenue before GSTAT where the amount involved in the appeal is less than Rs.20,00,000/- and in respect of Hon'ble High Court it would be Rs.1,00,00,000/-and in respect of Supreme Court it would be Rs.2,00,00,000/-, respectively. The object of the circular is stated in the preamble which reads as under :-

Reference is invited to the National Litigation Policy which was conceived with the aim of optimizing the utilization of judicial resources and expediting the resolution of pending cases. It underscores the importance of prudent litigation practices by establishing thresholds for filing appeals in Revenue matters. Specifically, the Policy mandates that appeals should not be pursued when the amount involved is below a specified monetary limit set by Revenue authorities. Furthermore, it discourages filing appeals in cases where established precedents from Tribunals and High Courts have settled the matter and have not been contested in the Supreme Court.

31. Undoubtedly the said circular has statutory force because the Central Board of Indirect Taxes and Customs (hereinafter called 'CBIC') has been empowered under Section 120(1) read with Section 168(1) of CGST Act, 2017 to issue such orders or instructions or directions fixing the monetary limit to regulate the filing of the appeal. It would be appropriate to reproduce Section 120 and Section 168(1) of the CGST Act, 2017 for the sake of clarity. The said Sections read as under :-

***"120. Appeal not to be filed in certain cases**. —1) The Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter.*

(2) Where, in pursuance of the orders or instructions or directions issued under subsection (1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such officer of the central tax from filing appeal or application in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal or application has been filed by the officer of the central tax pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the

officer of the central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application.

(4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the officer of the central tax in pursuance of the orders or instructions or directions issued under sub-section (1).

x x x x x

"***168. Power to issue instructions or directions.*** *- (1) The Board may, if it considers it necessary or expedient so to do for the purpose* ***o****f uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.*

32. From the language of Sections 120 and 168(1) of the CGST Act, 2017, it is clear that such circulars contain instructions/directions to the officers of the central tax, who are legally bound to follow such instructions/directions. But insofar as the Tribunal is concerned, a CBIC Circular does not have a binding effect on the Tribunal. In this regard, the Principal Bench of the GST Appellate Tribunal in its final order dated 04.06.2026 in the case of M/s Dow Chemical International Private Limited, Appellant Vs. Commissioner of State Tax, Mazgaon, Mumbai in paragraph 17 has succinctly held as under :-

17. The circular issued by the CBDT and CBIC are having binding character as far as its officers are concerned not as far as judicial authorities like High Court exercising jurisdiction under Article 226 or 227 of the Constitution of India. We are also of the opinion that since the Tribunal is not department under CBIC any circular issued by the CBIC does not have a binding effect on Tribunal. However, it can be looked into for the purpose of interpretation, having persuasive role. In this connection, we rely upon two judgments.

1. *K.P. Varghese v. ITO [1981] 7 Taxman 13/ 131 ITR 597 (SC),*
2. *2. Ellerman Lines Ltd. v. CIT [1971] 82 ITR 913 (SC)*

[italics supplied by us]

33. Since the matter has been raised before us by the parties, we have given due consideration to the said Circular in order to ascertain the bearing of the said circular on this appeal. Paragraph 1.1 of the circular contains the entire provision of Section120 of CGST Act, 2017. Paragraph 2 of the circular fixes the monetary limits in the tabular form for fling the appeal before the GSTAT, High Court and Supreme Court. Paragraph 3 lays down the principles to be considered to ascertain whether a case falls within the said monetary limits and paragraph 4 provides the exclusions which excludes the cases where the monetary ceiling shall not apply. Paragraph 5, 6, 6.1, 6.2 & 6.3 have been reproduced for the purpose of an understanding of the circular from the right perspective. The said paragraphs read as under:-

5. *It is pertinent to mention that an appeal should not be filed merely because the disputed tax amount involved in a case exceeds the monetary limits fixed above. Filing of appeal in such cases is to be decided on merits of the case. The officers concerned shall keep in mind the overall objective of reducing unnecessary litigation and providing certainty to taxpayers on their tax assessment while taking a decision regarding filing an appeal.*

6. Attention is drawn to sub-sections (2), (3) & (4) of section 120 of the CGST Act, which provide that in cases where it is decided not to file appeal in pursuance of these instructions, such cases shall not have any precedent value. In such cases, the Reviewing Authorities shall specifically record that "even though the decision is not acceptable, appeal is not being filed as the amount involved is less than the monetary limit fixed by the Board."

6.1 Non-filing of appeal based on the above monetary limits, shall not preclude the tax officer from filing appeal or application in any other case involving the same or *similar issues in which the tax in dispute exceeds the monetary limit or case involving the questions of law.*

6.2 Further, it is re-iterated that in such cases where appeal is not filed solely on the basis of the above monetary limits, there will be no presumption that the Department has acquiesced in the decision on the disputed issues in the case of same taxpayers or in case of any other taxpayers. Accordingly, in case any prior order is being cited or relied upon by the taxpayer, claiming that the same has been accepted by the Department, it must be checked as to whether such order was accepted only on account of the monetary limit before following them in the name of judicial discipline.

6.3 Also, in respect of such cases where no appeal is filed based on the monetary limit, the Departmental representatives/counsels must make every effort to bring to the notice of the GSTAT or the Court, as the case may be, that the appeal in such cases was not filed only for the reason of the amount of the tax in dispute being less than the specified monetary limit and, therefore, no inference shall be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should draw the attention of the GSTAT or the Court towards the provisions of sub-section (4) of section 120 of the CGST Act, 2017 as reproduced in para 1.1 above.

34. From a careful reading of the contents of the circular, it has appeared to us that under the directions contained in the circular, the revenue has to carefully consider the various principles laid down under this circular before filing such appeal. It is contended by the revenue that they have strictly followed the instructions contained in the circular. Clause viii of paragraph 3 of the circular and the exclusion clause provided in clause iv of paragraph 3 of the circular have been specifically referred to which support the contention of the Revenue that filing of the present appeal is not affected under this circular. We find force in the submission of the Revenue. There is, therefore, no merit in the contention of the taxpayer with regard to this issue.
35. The next issue which arises for our determination is whether the Appellate Authority was correct in applying Notification No.14 of 2022 dated 05.07.2022 retrospectively in favour of the taxpayer whereby the value of duty credit scrips was excluded from the aggregate value of exempt supplies by insertion of clause (d) after clause (c) in Explanation 1 to Rule 43 of the CGST Rules, 2017.
36. The main ground of appeal of the taxpayer before the appellate authority was that in view of the insertion of clause (d) after clause (c) in Explanation 1 to Rule 43 of CGST Rules effected by Notification No.14 of 2022 dated 05.07.2022, the value of duty credit scrips would be excluded from the aggregate value of exempt supply in order to make apportionment of ITC reversal and as such the taxpayer would be entitled to avail ITC on the value of the sale of duty credit scrips. The first appellate authority accepted the contention of the taxpayer and by giving retrospective effect to the said amendment to Rule 43 of CGST Rules, 2017 for the transactions made in 2017-2020 provided relief to the taxpayer which is under challenge before us.
37. The question is whether in the given facts and circumstances of the case the benefit of the amendment made in 2022 w.e.f.05.07.2022 would be available to the taxpayer for availing ITC for the transactions made by him in 2017-2020.
38. In order to settle the question, we need to have a look into the status of Rule 43 of CGST Rules, 2017 as it was, prior to the amendment in 2022. Before we go to Rule 43 of CGST Rules, 2017, let us have a look at Section 11 of CGST Act, 2017.
39. Sub-section (1) of Section 11 of CGST Rules, 2017 empowers the Central Government to exempt by notification, goods or services or both of any specified description from the whole or any part of the tax leviable thereon on the recommendations of the GST Council. The said sub- section (1) of Section 11 of CGST Act, 2017 is being quoted for the sake of clarity of understanding which reads as follows :-

Section 11. Power to grant Exemption.-

(1) *Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or* *services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.*

40. Therefore, the goods or services or both notified under sub-section (1) of Section 11 of the CGST Act, 2017 shall be treated as exempt supply as defined under clause (47) of Section 2 of the CGST Act, 2017. The Central Government, in exercise of its power, conferred under the said sub-section (1) of Section 11 of CGST Act, 2017 came out with Notification No.2 of 2017 from the Ministry of Finance, Department of Revenue with effect from 28.06.2017, whereby the supply of some goods and services specified in the schedule appended to the said notification were exempted from the central tax leviable thereon under Section 9 of the CGST Act, 2017. There were as many as 148 items in the said schedule. The duty credit scrips were not then included in the said list of the exempt supplies.
41. 03 months later, the Government of India by similar statutory notification No.35 of 2017 dated 13.10.2017 amended its earlier Notification No.2 of 2017 dated 28.06.2017 referred to in the preceding paragraph and included therein Duty credit scrips by incorporating item No.122A in the schedule as an exempt supply with prospective effect. Thus, the duty credit scrips, an export promotion incentive granted by the Government of India, came to be recognized as an exempt supply under the CGST Act, 2017 with effect from 13.10.2017.
42. Subsequently 04 years later, the Government of India, Ministry of Finance, Department of Revenue in exercise of its rule making power provided under Section 164(1) of CGST Rules, 2017 amended Rule 43 of CGST Rules, 2017 by inserting clause (d) after clause (c) in Explanation 1 to Rule 43 of the CGST Rules, 2017. After such amendment, the Explanation 1 to Rule 43 stands as under:-

    [Explanation 1: -For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude: -
    [* *]*
    (b) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and
    (c) the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.][(d) the value of supply of Duty Credit Scrips specified in the notification of the Government of India, Ministry of Finance, Department of Revenue No. 35/2017-Central Tax (Rate), dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide number GSR 1284(E), dated the 13th October, 2017.]

    (*italics supplied by us*)

43. The commencement clause of the said Notification No.14 of 2022 provides in specific terms that save and otherwise provided under the Rules, the amendment shall come into force on the date of its publication in the official gazette. There is no dispute that the said notification was published in the Gazette of India in its extraordinary issue on 05.07.2022. Therefore, as per the commencement clause of the said amendment clause (d) after clause (c) in Explanation 1 to Rule 43 is said to have come into force with effect from 05.07.2022.
44. Section 164(3) of the CGST Act empowers the Central Government i.e. the Rule Making Authority to give retrospective effect to the rules or any of them from a date not earlier than the date of which the provisions of CGST Act, 2017 came into force. In the wisdom of the Rule Making Authority, they brought the amendment in force with a prospective effect from 05.07.2022 despite having power under the enabling provision of Section 164(3) of the Act to effect it retrospectively.
45. But the appellate authority having ignored the specific provision provided under the amended Rules of 2022 applied the said amendment retrospectively in favour of the taxpayer for the assessment made for transactions made by him 04 years back in

2017-2020 and allowed his appeal on the analogy that the amended rule being beneficial to the taxpayer, its benefit cannot be denied to him by applying the rule prospectively.

46. The appellate authority, however, relied on various decisions of the Hon'ble Apex Court to arrive at such conclusion. As we have gathered from the impugned order passed by the first appellate authority, it relied on the following judgments of the Hon'ble Supreme Court :-

i) Sedco Forex International Drill Inc. Vs Commissioner of Income-tax, Dehradun, reported in AIR 2006 SCC;

ii) Hitendra Vishnu Thakur And Ors. Vs. State of Maharashtra And Ors, reported in (1994) 4 SCC 602;

iii) Suchitra Components Ltd. Vs. Commissioner of Central Excise, Guntur, reported in (2006) 12 SCC 452; and

iv) Allied Motors (P.) Ltd. Vs. Commissioner of Income-tax, reported in (1997) 224 ITR (SC) 677.

47. In the case of **Sedco Forex International Drill Inc.** (supra), the issue before the Hon'ble Apex Court was whether the salary of the employee of the appellant company payable for "field break" outside India would be subjected to tax under Section 9(1)(ii) read with the Explanation thereto in the Income Tax Act, 1961 for the assessment years 1992-1993 and 1993-1994 retrospectively after the said Explanation to Section 9(1)(ii) was substituted by the amendment with effect from 01.04.2000. In paragraph 20 of the said judgment, the Hon'ble Apex Court held that as was affirmed by the Apex Court in the case of **Goslino Mario, reported in (2000) 241 ITR 313**, *a cardinal principle of the tax law is that the law to be applied for such assessment is that the law which is in force in the relevant assessment year unless otherwise provided expressly or by necessary implication* [italics supplied by us]. It would be appropriate for us to refer the paragraph 20 of the judgment which reads as follows :-

> *20. As was affirmed by this Court in Goslino Mario (supra), a cardinal principle of the tax law is that the law to be applied is that which is in force in the relevant assessment year unless otherwise provided expressly or by necessary implication. [See also: Reliance Jute and Industries vs. CIT (1980) 1 SCC 139]. An Explanation to a statutory provision may fulfil the purpose of clearing up an ambiguity in the main provision or an Explanation can add to and widen the scope of the main section. If it is in its nature clarificatory then the Explanation must be read into the main provision with effect from the time that the main provision came into force. But if it changes the law it is not presumed to be retrospective irrespective of the fact that the phrase used are 'it is declared' or 'for the removal of doubts'.*
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> *[italics supplied by us]*

48. In the case of **Hitendra Vishnu Thakur** (supra), which was also relied upon by the first appellate authority, the Hon'ble Apex Court decided a batch of criminal appeals and Special Leave Petitions where the following 03 questions arose before the Hon'ble Apex Court :-

> *i) When can the provisions of Section 3(1) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as the 'TADA') be attracted ?*
> *ii) Is the 1993 amendment amending Section 167(2) of the Code of Criminal Procedure by modifying Section 20(4)(b) and adding a new provision of Section 20(4)(bb) applicable to the pending cases i.e. is it retrospective in operation ?*
> *iii) What is the true ambit and scope of Section 20(4) and Section 20(8) of TADA in the matter of grant of bail to an accused brought before the designated court and the factors which the designated court has to keep in view while dealing with the application for grant of bail u/s.20(4) of the Act and for grant of extension of time to the prosecution for further investigation under clause (bb) of Section 20(4) of the Act and incidentally whether the conditions contained in Section 20(8) of TADA Control, grant of bail under Section 20(4) of the Act also?*

49. The Hon'ble Apex Court dealt with the issue No.2 with regard to retrospective operation of the amendment in paragraphs 24 to 29 . In para 26 of the Judgement, the Hon'ble Apex Court laid down the principles with regard to the ambit and scope of an amended Act and its retrospective operation which reads as under

26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.

[italics supplied by us]

50. In the case of **Suchitra Components Ltd.** (supra), which has been relied upon by the first appellate authority, the Hon'ble Apex Court held that the issue is covered by a previous judgment of the Hon'ble Apex Court rendered in the case of **CCE v. Mysore Electricals Industries Ltd.**, **reported in (2006) 12 SCC 448**, wherein it was held by the Hon'ble Supreme Court that a beneficial circular has to be applied retrospectively while oppressive circular has to be applied prospectively. Thus, when the circular is against the assessee, they have right to claim enforcement of the same prospectively. Paragraphs 2 and 3 of the judgment reads as under :-

2. We have heard Mr. A.R.Madhav Rao, learned counsel for the appellant and Mr K. Radhakrishna, learned Senior Counsel for the respondent. We have perused the orders passed by the lower Authorities and also of the Tribunal. The point raised by the learned counsel for the appellant is covered by the recent judgment of this Court in Civil Appeal No.4488 of 2005, Commissioner of Central Excise, Bangalore versus M/s. Mysore Electricals Industries Ltd., reported in 2007 (204) E.L.T. 517. In the said Judgment, this Court held that a beneficial circular has to be applied retrospectively while oppressive circular has to be applied prospectively. Thus, when the circular is against the assessee, they have right to claim enforcement of the same prospectively.

3. In view of the submission made by the learned counsel for the appellant and also of the judgment of this Court in Mysore Electricals, the appellant is liable to pay the duty from 29-8-1990 i.e. from the date of issue of the show-cause notice and not from 1-3-1990 as ordered by the Tribunal.

[italics supplied by us]

51. We have also gone through the judgment passed by the Hon'ble Apex Court in the case of CCE v. Mysore Electricals Industries Ltd. (supra) which was relied upon by the Hon'ble Apex Court for rendering the judgment in the case of **Suchitra Components**

Ltd. (supra). The decision of the Hon'ble Apex Court in the case of **CCE v. Mysore Electricals Industries Ltd**. (supra) is contained in paragraphs 14 to 17 which read as under:

14. We have perused the order impugned in this appeal, other connected records, and considered the rival submissions.

15. In the instant case, the assessee had filed a classification list effective from 1-3-1993, classifying the single panel circuit-breakers un-der Heading 85.35 and claiming concessional rate of duty at 5% under Notification No. 52/93 dated 28-2-1993. The said classification list was approved by the jurisdictional Assistant Commissioner on 10-6-1993. Thereafter, the assessee cleared the said goods in accordance with the approved classification list. When this approved classification was proposed to be revised to reclassify the single panel circuit-breakers under Heading 85.37 of the Tariff Act, such reclassification can take effect only prospectively from the date of communication of the show-cause notice proposing reclassification. In the instant case, the show-cause notice was communicated to the assessee only on 31-12-1993. Therefore, as rightly urged by the learned counsel for the respondent, the reclassification can take effect only from 27-4-1994 and accordingly the differential duty can be demanded only from that date.

16. In view of the above, we see no reason to interfere with the order passed by the Commissioner (Appeals) and as confirmed by the Tribunal. The appeal is accordingly dismissed.

17. However, there shall be no order as to costs.

[italics supplied by us]

52. In the case of **Allied Motors (P.) Ltd. V. Commissioner of Income- Tax** (supra), the issue before the Hon'ble Apex Court was that the first proviso was added to Section 43B of the Income Tax Act, 1961 which was not on the statute when the assessments were made in respect of the assesses. The assesses, therefore, contended that the proviso brought by way of amendment should be given effect to retrospective date when Section 43B became a part of income Tax Act, 1961. As it is intended to obviate unexpected hardships in the application of Section 43B, the Hon'ble Apex Court in paragraph 15.2 on this issue has held as under :-

15.2. Certain courts have interpreted the provisions of section 43B in a manner which may negate the very operation of this section. The interpretation given by these courts revolves around the use of the words any sum payable. The interpretation given to these words is that the amount payable in a particular year should also be statutorily payable under the relevant statute in the same year. Thus, the sales tax in respect of sales made in the last quarter was held to be totally outside the purview of section 43B since the same is not statutorily payable in the financial year to which it relates. This is against the legislative intent and, there fore, by way of inserting an Explanation, it has been clarified that the words 'any sum payable', shall mean any sum, liability for which has been incurred by the taxpayer during the previous year irrespective of the date by which such sum is statutorily payable…"

[italics supplied by us]

53. For a better perspective, the backdrop of the circumstances in which the Hon'ble Apex Court gave above judgment in the case of **Allied Motors (P.) Ltd**. (supra) need to be brought on record. For this purpose, a portion of paragraph 60 of the judgment may be quoted which runs as under:-

"The Budget Speech of the Finance Minister for the year 1983-84, reproduced in [1983] 140 ITR (St.) 31, is to the same effect.

Section 43B was, therefore, clearly aimed at curbing the activities of those taxpayers, who did not discharge their statutory liability of payment of excise duty, employer's contribution to provident fund, etc., for long periods of time but claimed deductions in that regard from their income on the ground that the liability to pay these amounts had been incurred by them in the relevant previous year. It was to stop this mischief that section 43B was inserted. It was clearly not realised that the language in which *section 43B was worded, would cause hardship to those taxpayers who had paid sales tax within the statutory period prescribed for this payment, although the payment so made by them did not fall in the relevant previous year. This was because the sales tax collected pertained B to the last quarter of the relevant accounting year. It could be paid only in the next quarter which fell in the next accounting year. Therefore, even when the sales tax had in fact been paid by the assessee within the statutory period prescribed for its payment and prior to the filing of the income-tax return, these assessees were unwittingly prevented from claiming a legitimate deduction in respect of the tax paid by them. This was not intended by section 43B. Hence, the first proviso was inserted in section 43B. The amendment which was made by the Finance Act of 1987 in section 43B by inserting, inter alia, the first proviso, was remedial in nature, designed to eliminate unintended consequences which may cause undue hardship to the assessee and which made the provision unworkable or unjust in a specific situation.*

Looking to the curative nature of the amendment made by the Finance Act of 1987, it has been submitted before us that the proviso which is inserted by the amending Finance Act of 1987, should be given retrospective effect and be read as forming a part of section 43B from its inception. This submission has taken support from decisions of a number of High Courts before whom this question came up for consideration. The High Courts of Calcutta, Gujarat, Karnataka, Orissa, Gauhati, Rajasthan, Andhra Pradesh, Patna and Kerala appear to have taken the view that the proviso F must be given retrospective effect. Some of these High Courts have held that "sum payable under section 43B(a) refers only to the sum payable in the same accounting year, thus excluding sales tax payable in the next accounting year from the ambit of section 43B(a). The Delhi High Court has taken a contrary view holding that the first proviso to section 43B G operates only prospectively. We will refer only to some of these judgments."

[*italics supplied by us*]

54. The issue we are dealing with in the case in hand is that whether Explanation 1(d) inserted in Rule 43 of GST Rules, 2017 which excludes the value of supply of duty credit scrips from the aggregate value of exempt supplies with effect from 05.07.2022 for the purpose of calculating proportionate ITC reversal of the taxpayer could be applied retrospectively to allow the taxpayer for availing ITC on such exempt goods in the transactions made way back in 2017-20.
55. As we have already discussed, the first appellate authority gave relief to the taxpayer by allowing retrospective effect to the aforesaid amendment made in Rule 43 relying on the judgments of the Hon'ble Apex Court which have been referred to in the preceding paragraphs. From a reading of those judgments, it goes without saying that the first appellate authority relied on the said judgments without appreciating the fact that the legal and factual issues involve ed in those cases are entirely different from the instant case.
56. As we have discussed, the duty credit scrip was not an exempt supply in terms of clause (47) of Section 2 of CGST Act, 2017 before 13.10.2017. It was incorporated in the law as an exempt supply by way of issuing Notification No.35 of 2017 dated 13.10.2017. At that time, the benefit of exclusion of the value of supply of duty credit scrips from the aggregate value of exempt supply for the purpose of calculating proportionate ITC reversal was not made available to the taxpayers. 04 years later, in 2022, the Central Government in the Ministry of Finance, Department of Revenue came out with a notification whereby clause (d) was inserted after clause (c) in Explanation 1 to Rule 43 of CGST Rules which excluded the value of supply of duty credit scrips from the aggregate value of exempt supplies with prospective effect from 05.07.2022. Looking to the language of Explanation 1 and clause (d), it cannot be presumed that the provision was inserted in the Rule to clarify doubts or any kind of ambiguities in the provision. It is apparent that the provision was inserted to provide the benefit of exclusion of the value of the duty credit scrips from the aggregate value

of exempt supplies for the purpose of calculating proportionate ITC reversal from a prospective date. Obviously, the rule framers had power under Section 164(1) of CGST Act, 2017 to give retrospective effect to the amendment. Despite having such power they intended to give the provision of prospective effect. Input Tax Credit being concessional in nature, the taxpayer cannot be allowed to claim its enforcement from retrospective effect as a vested right. In the case of **Sree Sankaracharya University of Sanskrit Vs. Dr. Manu and another, reported in (2023) 19 SCC 30**, the Hon'ble Apex Court was of the view that where the statute is curative or merely clarificatory of previous law, retrospective operation thereof may be permitted. In the case in hand, apparently the amendment to Rule 43 was not brought to cure or clarify any doubts or ambiguity.

57. With a view to the discussion made above, we are of the considered view that the first appellate authority was not correct in applying the said amendment in Rule 43 retrospectively in favour of the taxpayer. In our view, the rule framers intended to enforce the amendment prospectively and there is no reason to alter it in favour of the taxpayer. The issue is accordingly decided.

58. Now, the issue which we are going to decide is whether Section 74(1) of the CGST Act, 2017 under which the SCN No.8/SC/GST/Chow/Kol-N/2024-25 dated 01.089.2024 was issued against the taxpayer could be invoked in the given facts and circumstances of the case. In order to decide this question, we need to have a look at the provision of law at the outset. Section 74(1) of the CGST Act, 2017 reads as under:

> ***Section 74. Determination of tax [, pertaining to the period up to Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.-*** *(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by <u>reason of fraud, or any wilful-misstatement or suppression of facts to evade tax</u>, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.*
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> *[italics supplied by us]*

59. From a plain reading of Section 74(1) it would appear that the circumstances in which Section 74(1) can be invoked are fraud and wilful- misstatement or suppression of facts which requires an intention to evade tax by unfair or illegal means. After Section 74, Section 74-A has been inserted in the CGST Act, 2017 by Notification No.15 of 2024 and the Explanation 2 to sub-section (12) of Section 74-A defines "suppression" which reads as under :

> ***"Explanation 2.****—For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.]"*

60. This definition of "suppression" in Explanation 2 to sub-section (12) of Section 74-A, thus provides that "suppression" shall mean non- declaration of facts or information which a taxable person is required to declare in his return, statement, report or any other document furnished under this Act. There is no dispute that the taxpayer duly filed his monthly return in GSTR Form-3B as well as in his annual returns. We have gathered from the documents uploaded on behalf of the taxpayer that he filed his monthly GSTR returns in Form No.3B almost regularly for the assessment period. Even there is no allegations against the taxpayer that he did not submit his annual returns. The taxpayer has also uploaded his annual returns on the portal. There is, therefore, no act of non-submission or non-declaration of facts or information on the

part of the taxpayer. He also produced the invoices to bring to light the fact that he used to sell duty credit scrips. Therefore, no malafide intention could be attributed to the taxpayer.

61. Pursuant to the direction of the Hon'ble Supreme Court in the case of **Northern Operating Systems Private Limited (NOS) in Civil Appeal No.2289-2293 of 2021**, an instruction bearing No.05/2023-GST was issued by CBIC vide F.No.CBIC-20004/3/2023-GST, dated 13th December, 2023 stating therein that Section 74(1) can be invoked only in cases where there is a fraud or wilful mis-statement or suppression of facts to evade tax on the part of the said taxpayer. The said instruction contains that Section 74(1) cannot be invoked merely on account of non- payment of GST, without specific element of fraud or wilful mis-statement or suppression of facts to evade tax. It also provides that only in the cases where the investigation indicates that there is material evidence or fraud or wilful mis-statement or suppression of fact to evade tax on the part of the taxpayer, provisions of Section 74(1) of CGST Act may be invoked for issuance of show cause notice, and such evidence should also be made a part of the show cause notice. It would be appropriate to reproduce paragraph 3.1, 3.2 & 3.3 of the said Instruction reads as under:-

    3.1 It has also been represented by the industry that in many cases involving secondment, the field formations are mechanically invoking extended period of limitation under section 74(1) of the CGST Act.

    3.2 In this regard, section 74 (1) of CGST Act reads as follows:

    > *"(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax."*

    3.3 From the perusal of wording of section 74(1) of CGST Act, it is evident that section 74(1) can be invoked only in cases where there is a fraud or wilful mis- statement or suppression of facts to evade tax on the part of the said taxpayer. Section 74(1) cannot be invoked merely on account of non-payment of GST, without specific element of fraud or wilful mis-statement or suppression of facts to evade tax. Therefore, only in the cases where the investigation indicates that there is material evidence of fraud or wilful mis statement or suppression of fact to evade tax on the part of the taxpayer, provisions of section 74(1) of CGST Act may be invoked for issuance of show cause notice, and such evidence should also be made a part of the show cause notice.

62. In the case in hand no investigation was carried out and no evidence has been brought on record on the part of the revenue to establish fraud, wilful mis-statement or suppression of facts within the meaning of Section 74(1) read with Explanation 2 to sub-section (12) of Section 74 of the CGST Act, 2017. If we go further, suppression of facts cannot be equated with ordinary non-declaration. The wordings of Section 74(1) clearly indicates that there must be a deliberate intention on the part of the taxpayer to evade tax.

63. In the present case before us, stand of the taxpayer right from the beginning is that he is entitled to the benefit of clause (d) in Explanation 1 to Rule 43 of CGST Rules, 2017 retrospectively. Under this impression, he made his self-assessment in Form GSTR-3B. He never concealed that he availed ITC on the value of supply of duty credit scrips. The department was not also unaware of the fact that he supplied duty credit scrips during the financial years 2017-20. When both sides were aware of the fact, the taxpayer cannot be accused of fraud or wilful suppression. In the case of **Anand Nishikawa Co. Ltd. Vs. Commissioner of Central Excise, Meerut, reported in (2005) 7 SCC 749**, the Hon'ble Supreme Court in paragraph 26 of the judgment succinctly held that the "suppression of facts" must be construed strictly, it does not mean any omission and the act must be deliberate and wilful to evade payment of duty. The relevant observations of the Hon'ble Supreme Court in para 26 are as under:-

26. In Tata Iron & Steel Co. Ltd. vs. Union of India & Ors [1988 (35) ELT 605 (SC)], this Court held that when the classification list continued to have been approved regularly by the department, it could not be said that the manufacturer was guilty of "suppression of facts". As noted herein earlier, we have also concluded that the classification lists supplied by the appellant were duly approved from time to time regularly by the excise authorities and only in the year 1995, the department found that there was "suppression of facts" in the matter of post forming manufacturing process of the products in question. Furthermore, in view of our discussion made herein earlier, that the department has had the opportunities to inspect the products of the appellant from time to time and, in fact, had inspected the products of the appellant. Classification lists supplied by the appellant were duly approved and in view of the admitted fact that the flow-chart of manufacturing process submitted to the Superintendent of Central Excise on 17.5.1990 clearly mentioned the fact of post-forming process on the rubber, the finding on "suppression of facts" of the CEGAT cannot be approved by us. This Court in the case of Pushpam Pharmaceutical Company vs. Collector of Central Excise, Bombay [1995 Supp (3) SCC 462], while dealing with the meaning of the expression "suppression of facts" in proviso to section 11A of the Act held that the term must be construed strictly, it does not mean any omission and the act must be deliberate and wilful to evade payment of duty. The Court, further, held: -

> *"In taxation, it ("suppression of facts") can have only one meaning that the correct information was not disclosed deliberately to escape payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."*

64. We have examined the case in the light of the judgment of the Hon'ble Apex Court in the case of **Anand Nishikawa Co. Ltd**. (supra) and keeping in view the relevant provisions of CGST Act quoted hereinabove and the Circular dated 13.12.2023 issued by the CBIC as well as in the given facts and circumstances of the case. In our considered view the Revenue could not bring on record any material to prove a deliberate intention on the part of the taxpayer to evade tax and as a result the Revenue was not correct in invoking Section 74(1) of the CGST Act against the taxpayer in this case. Therefore, the SCN issued under Section 74(1) of the CGST Act, is not sustainable in this case.
65. In view of what has been held above, Section 75(2) of CGST Act, 2017 will be applicable which reads as under:-

Section 75. General provisions relating to determination of tax.-

(1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74 2[or sub-sections (2) and (7) of section 74A], as the case may be.

(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.

66. Consequently, we direct the proper officer of the Revenue contemplated under sub-section (2) of Section 75 of the CGST Act, 2017 to determine the tax liability of the taxpayer herein within the statutory period after providing an opportunity of hearing to the taxpayer.
67. With the direction aforesaid to the Revenue, the present appeals of the Revenue are decided and disposed off.
68. Order pronounced in open Court in presence of the authorised representatives of the parties.

69. The Registry is directed to upload the Final Order on GSTAT Portal immediately.

(2026) 1 GSTAT E-Journal 75 (Lucknow)
(GOODS AND SERVICES TAX APPELLATE TRIBUNAL, LUCKNOW BENCH)
M/S LUCKNOW AUTOMOTIVES
V.
ASSISTANT COMMISSIONER (MOBILE SQUAD), GONDA
APPEAL NO. APL/8/LCK/2026, AUGUST 14, 2026

CORAM:

HON'BLE SANTOSH KUMAR SRIVASTAVA, MEMBER (JUDICIAL)
AND
HON'BLE ARVIND KUMAR, MEMBER (TECHNICAL)

REPRESENTATION:

For the Appellant: Shri Suresh Kumar Sharma, Advocate.
For the Respondent: Mr. Mahendra Pratap Singh, Assistant Commissioner, SGST.

HEADNOTE:

GST — Penalty under Section 129 — E-way Bill — Procedural lapse v. intention to evade tax — Whether penalty under Section 129(3) of CGST/UPGST Act can be imposed for generation of E-way Bill after interception — Whether subsequent generation of E-way Bill can validate movement of goods — Whether bona fide human error and absence of tax evasion can be grounds for setting aside penalty — Appellant engaged in business of purchase and sale of motorcycles and spare parts — Vehicle carrying motorcycles covered by Challan/Invoice Nos. 405, 406, 407 and 408 was intercepted on 20.01.2025 at 7:25 A.M. — E-way Bill was generated at 7:34 A.M., approximately nine minutes after interception — Proceedings under Section 129 initiated and penalty of Rs. 2,63,330/- (CGST Rs. 1,31,665/- and SGST Rs. 1,31,665/-) imposed — First Appellate Authority confirmed the penalty — Whether penalty can be sustained when transaction was genuine, supported by valid tax invoices, no discrepancy in quantity/value/classification was found, and no intention to evade tax was established — **HELD:** E-way Bill was admittedly generated after interception, constituting a procedural lapse — However, lapse occurred in the background of a genuine and fully identifiable transaction supported by purchase and sale invoices, challans, ledger accounts and bank records — No discrepancy in quantity, value or classification was found — No material on record indicating suppression, undervaluation, fake documentation, unaccounted goods or any intention to evade tax — Goods were motorcycles, fully identifiable through invoice particulars, engine and chassis numbers and subject to R.T.O. registration, making the transaction completely traceable — Penalty under Section 129 cannot be sustained mechanically where there is no material indicating tax evasion and the lapse is attributable to bona fide human error — Impugned order set aside — Appeal allowed — Penalty amount to be refunded.

...In Favour of the Appellant

KEY ISSUES AND FINDINGS:

1. **Whether the penalty under Section 129(3) of the CGST/UPGST Act can be sustained when the E-way Bill was generated after interception?**
   "It is undisputed that the E-Way Bill was generated approximately nine minutes after interception. Thus, there was a procedural lapse at the time of interception." [Para 6]
   "The E-way Bill was admittedly generated after interception, which constituted a procedural lapse on the part of the appellant." [Para 7]

2. **Whether the subsequent generation of E-way Bill and the absence of intention to evade tax are relevant considerations for setting aside the penalty?**
   "...However, the lapse occurred in the background of a genuine and fully identifiable transaction. ...No independent material has been brought on record demonstrating suppression, clandestine movement, undervaluation, fake documentation or any other positive circumstance indicating tax evasion. The peculiar facts of this case, to be a bona

fide procedural lapse rather than an act forming part of an attempt to evade tax." [Para 7]
"…The goods were motorcycles, fully identifiable through their invoice particulars and engine and chassis numbers as well as subject to R.T.O. Registration..." [Para 6]

EDITORIAL NOTES:
Principles Laid Down:
1. Penalty under Section 129 of the CGST Act requires examination of whether there was intention to evade tax. Where the lapse in E-way Bill generation is attributable to bona fide human error, and there is no material indicating tax evasion, proceedings under Section 129 cannot be sustained mechanically.
2. Subsequent generation of E-way Bill, though not validating the movement retrospectively, is a relevant factor to be considered in the factual circumstances of each case, particularly where the requisite document is subsequently produced, and no discrepancy is found.
3. The effect of an E-way Bill lapse must be examined in the factual circumstances of each case, particularly where the goods are fully identifiable and traceable, and the transaction is supported by genuine invoices, challans, ledger accounts and bank records.
4. Technical violations without intent to evade tax cannot warrant punishment. Penalty is not justified where there is genuine invoice, no excess quantity, no undervaluation, no wrong classification, no fake consignee, no suppression of transaction, no unaccounted goods and no loss of revenue.
5. Where the goods are highly identifiable (such as motorcycles having engine and chassis numbers and subject to R.T.O. registration), the transaction becomes completely traceable, mitigating the rigour of procedural lapses.

Case Law Referred to:
M/s Uttam Electric Store v. State of U.P. & 2 Others, Writ Tax No. 153 of 2021, decided on 26.07.2024 (All.) — Followed (Para 3.1)

M/s Osr Creation v. State of U.P. & 2 Others, Writ Tax No. 1914 of 2024, decided on 27.01.2025 (All.) — Followed (Para 3.2)

M/s Vishnu Singh v. State of U.P. & Others, Writ Tax No. 599 of 2024, decided on 20.02.2025 (All.) — Followed (Para 3.3)

Kunal Aluminium Company v. State of Himachal Pradesh, (2025) 16 GSTJ Online 373 (HP) : (2025) 55 GSTJ 587 — Followed

Shyam Sel and Power Ltd. v. State of U.P., (2024) 13 GSTJ Online 147 (All): (2024) 51 GSTJ 409 — Followed

Falguni Steels v. State of U.P., (2024) 13 GSTJ Online 150 (All): (2024) 51 GSTJ 422 — Followed

RELEVANT PROVISIONS:
Section 129 of the CGST Act, 2017; Section 129 of the UPGST Act, 2017; Section 112 of the CGST Act, 2017; Rule 138(1) of the CGST Rules, 2017.

JUDGMENT

Shri Santosh Kumar Srivastava, Member (Judicial)- This appeal has been preferred under Section 112 of the Central Goods and Services Tax Act, 2017 read with the corresponding provisions of the Uttar Pradesh Goods and Services Tax Act, 2017 against the order dated 04.02.2025 passed under Section 129(3) of the CGST/UPGST Act, 2017 and the consequential order passed by the First Appellate Authority in Appeal No. AD0905250107428/2025.

By the impugned order, penalty of Rs.2,63,330/-, comprising CGST Rs.1,31,665/- and SGST Rs.1,31,665/-, was imposed upon the appellant. The said amount was admittedly deposited by the appellant. The appeal record reflects the aforesaid penalty and payment particulars.

QUESTION OF LAW INVOLVED

Since the goods (Scrap) were being transported without E-way Bill which is mandatory under Rule 138(1). Therefore, we find the matter should be heard in Division Bench.

BRIEF FACTS

The appellant, M/s Lucknow Automotives, is a registered proprietorship concern engaged in the business of purchase and sale of motorcycles and spare parts. On 20.01.2025 at about 7:25 A.M., vehicle No. UP32 DN 2873, carrying motorcycles covered by Challan/Invoice Nos. 405, 406, 407 and 408, was intercepted by the Mobile Squad, State Tax, Gonda. At the precise time of interception, the E-way Bill had not been generated. However, E-way Bill No. 471521531708 dated 20.01.2025 was generated at 7:34 A.M., approximately nine minutes after interception, and the same was produced before the inspecting authority.

The appellant has consistently stated that the goods were covered by genuine tax invoices and that the transaction was in between registered dealers. The appellant has further relied upon its purchase invoices, tax invoices, challans, ledgers and bank statements. Proceedings under Section 129 were initiated and penalty of Rs.2,63,330/- was imposed. The appellant preferred an appeal before the First Appellate Authority, which was dismissed and the penalty was confirmed. The appellant has therefore approached this Tribunal seeking setting aside of both the orders and refund of the amount deposited.

3. GROUNDS OF APPEAL

The appellant has challenged the impugned orders substantially on the following grounds-Penalty has been imposed merely on account of a procedural lapse, there was no intention to evade tax, the E-way Bill was generated within nine minutes of interception, the lapse occurred due to bona fide human error, valid tax invoices and delivery documents were accompanied the goods. The goods were motorcycles identifiable by engine and chassis numbers. The transaction was duly recorded in the books of account, no discrepancy in quantity, value or classification was found, no loss of revenue, the supporting documentary evidence was not properly appreciated. The penalty was excessive and disproportionate. The proceedings were initiated without establishing any intention to evade tax.

The following precedents were referred by the appellant-

3.1 M/s Uttam Electric Store

In M/s Uttam Electric Store v. State of U.P. & 2 Others, Writ Tax No. 153 of 2021, decided on 26.07.2024, the Hon'ble Allahabad High Court recognized that where an E-Way Bill lapse is attributable to bona fide human error and there is no material indicating tax evasion, proceedings under Section 129 cannot be sustained mechanically.

3.2 M/s Osr Creation

In M/s Osr Creation v. State of U.P. & 2 Others, Writ Tax No. 1914 of 2024, decided on 27.01.2025, the Hon'ble Allahabad High Court emphasized that the effect of an E-Way Bill lapse must be examined in the factual circumstances of each case, particularly where the requisite document is subsequently produced and no discrepancy is found.

3.3 M/s Vishnu Singh

In M/s Vishnu Singh v. State of U.P. & Others, Writ Tax No. 599 of 2024, decided on 20.02.2025, the Hon'ble Allahabad High Court reiterated the relevance of bona fide human error where the surrounding circumstances do not establish tax evasion.

4. SUBMISSIONS OF THE APPELLANT

The Learned counsel for the appellant stated that the transaction in question is a genuine transaction in between registered dealers.

It is submitted that the motorcycles were supported by proper invoices and challans and that all relevant records were maintained in the ordinary course of business. It is further submitted that the E-way Bill was generated at 7:34 A.M., only about nine minutes after the vehicle was intercepted at 7:25 A.M., and the same was immediately made available to the seizing authorities.

Learned Counsel submits that the delay was neither deliberate nor motivated by any intention to evade tax and was attributable to a bona fide mistake. It is emphasized that there was Genuine invoice, No excess quantity, undervaluation, wrong classification, fake consignee, suppression of transaction, unaccounted goods and loss of revenue.

It is submitted that motorcycles are highly identifiable goods having engine and chassis numbers as well as are subject to R.T.O. registration, making the transaction completely traceable.

The Appellant relied upon some further more judgments which are as under:

Himachal Pradesh High Court *held Section 129 penalty requires intent to evade tax; quashed penalty for technical e-way bill lapse and ordered release of bank guarantee with interest — Kunal Aluminum Company v. State of Himachal Pradesh, (2025) 16 GSTJ Online 373 (HP) : (2025) 55 GSTJ 587.*

The Allahabad High Court *quashed Section 129(3) penalties, holding that intent to evade tax is essential and was absent in the case — Shyam Sel and Power Ltd. V. State of U.P., (2024) 13 GSTJ Online 147 (All): (2024) 51 GSTJ 409.*

The Court *quashed penalties, emphasizing that technical violations without intent to evade tax cannot warrant punishment — Falguni Steels v. State of U.P., (2024) 13 GSTJ Online 150 (All): (2024) 51 GSTJ 422.*

On the basis of above facts and judgements the appellant prays that the penalty be set aside and the amount deposited to be refunded.

5. SUBMISSIONS OF THE RESPONDENT

Shri Mahendra Pratap Singh, learned Assistant Commissioner, Authorized representative appeared for department appellant and argued vehemently against the appellant’s ground of appeal.

It is submitted that the appellant admittedly had no E-way Bill at the time of interception. The E-way Bill was generated only after the vehicle had been intercepted and, therefore, the statutory requirement had not been complied with at the relevant point of time. It is contended that subsequent generation of the E-way Bill cannot retrospectively validate the movement of goods.

He also relied on the judgement which is quoted in the first Appellate Authority order. The judgment is writ no. M/s M.B. Computers v. Uttar Pradesh.

The Authorised Representative therefore submitted that the appeal is liable to be dismissed.

6. DISCUSSION

We have carefully considered the submissions of the parties and perused the material on record.

It is undisputed that the E-Way Bill was generated approximately nine minutes after interception. Thus, there was a procedural lapse at the time of interception. The goods were motorcycles, fully identifiable through their invoice particulars and engine and chassis numbers as well as subject to R.T.O Registration. The transaction was supported by purchase and sale invoices, challans, ledger accounts and bank records. No discrepancy in quantity, value or classification has been found, and there is no material on record indicating suppression, undervaluation, fake documentation, unaccounted goods or any intention to evade tax.

7. FINDING

After considering the entire material, we record the following findings:

The E-way Bill was admittedly generated after interception, which constituted a procedural lapse on the part of the appellant. However, the lapse occurred in the background of a genuine and fully identifiable transaction. The E-way Bill was generated within approximately nine minutes and immediately produced before the authority. No independent material has been brought on record demonstrating suppression, clandestine movement, undervaluation, fake documentation or any other positive circumstance indicating tax evasion. The peculiar facts of this case, to be a bona fide procedural lapse rather than an act forming part of an attempt to evade tax. This is also noteworthy that the transaction material was Motorcycles which are highly identifiable goods having engine and chassis numbers as well as subject to R.T.O. registration.

The decision relied upon appellate particularly M/s OSR Creation supported out and out to the present facts of the case, as the E-way bill was generated on 21.11.2002 at 4:59 P.M., while the goods was intercepted at 6pm but due to lacks of intention to evade tax, penalty order has been quashed. Besides this, mentioned other decisions are also applicable in the appellant’s matter due to lack of intention to evade tax.

As far as the respondent mentioned precedent writ petition no. 1559 of 2024 B M Computers. We gone through deeply this judgement. We find that the matter involved in this judgement is totally different from the appellant’s matter because in this judgement the issue is involved unfiled part B of E-Way Bill and the goods was being transported for different destination. Appellant issue is only related to the E-Way bill submission after the interception of the goods.

<u>ORDER</u>

1. In view of the foregoing discussion the appeal is ALLOWED.
2. The order dated 04.02.2025 passed by proper Officer under Section 129(3) of the CGST/UPGST Act, 2017, imposing penalty of CGST - Rs. 1,31,665/- SGST - Rs. 1,31,665/- and amounting to - Rs. 2,63,330/- is hereby SET ASIDE. Consequently, the order passed by the First Appellate Authority in Appeal No. AD0905250107428/2025 whereby the penalty was confirmed is also SET ASIDE.
3. The amount of Rs. 2,63,330/-, if deposited by the appellant pursuant to the impugned proceedings, shall be refunded to the appellant in accordance with law, subject to verification of the payment and statutory requirements.

(2026) 1 GSTAT E-Journal 80 (Thiruvananthapuram)
(GOODS AND SERVICES TAX APPELLATE TRIBUNAL, THIRUVANANTHAPURAM BENCH)
MS STEELS
V.
THE COMMISSIONER OF KERALA STATE GST, THIRUVANANTHAPURAM
APPEAL NO. APL/1/TVP/2026, AUGUST 14, 2026

CORAM:

HON'BLE SHRI SUBRAMANYA V RAYAPROL, MEMBER (JUDICIAL)
AND
HON'BLE SHRI RAMAMOORTHI SRIRAM, MEMBER (TECHNICAL)

REPRESENTATION:

For the Appellant: Unnikrishnan M, CA.
For the Respondent: Mansur M I, JC, Authorized Representative.

HEADNOTE:

GST — DETENTION OF GOODS — PENALTY — SECTION 129 OF CGST/KGST ACT — STOCK TRANSFER — SAME GSTIN — NON-GENERATION OF E-WAY BILL — Appellant transported steel goods from its own premises to its own godown under the same GSTIN against a Delivery Challan — Goods detained for want of e-way bill and penalty of Rs. 1,34,640/- imposed under Section 129(3) — **HELD:** Movement between the appellant's own premises, involving no second person/entity and no consiAderation, does not constitute "supply" under Section 7 — Consequently, no tax is payable under Section 9 and penalty under Section 129, being linked to "tax payable", is not leviable — E-way bill requirement under Rule 138(1)(ii) for movement for reasons other than supply acknowledged, but its contravention cannot attract Section 129 where the underlying movement is non-taxable — Section 122(1)(xiv) may apply for such document-related contravention — Impugned order set aside — Appeal allowed.

...In Favour of the Appellant

KEY ISSUES AND FINDINGS:

1. **Whether movement of goods by way of stock transfer from one registered premises of the appellant to another registered premises under the same GSTIN constitutes "supply" under Section 7 of the CGST/KGST Act**
"W*hether the impugned stock transfer transaction would amount to supply is the next question. We find that for a transaction to be categorized as a supply under the above section, it necessarily has to involve two persons / entities who are the two different parties between whom such sale/transfer/exchange/ license/ rental/ lease or disposal takes place. In the instant case there is only one party, viz the appellant and there is no second party to the transaction and there is also no consideration involved in the said stock transfer transaction. (Para 6.8)*
We therefore find that: (a) the transaction in question would not be a supply as defined under section 7 of the CGST / KGST Act 2017; (b) Once it is not a supply simpliciter, there is no question of it being an intra state supply; (c) Once it is determined that it is not an

intra state supply, it would be dehors the charging section – section 9 of the CGST/KGST Act- and therefore is no tax payable on the impugned goods. (Para 6.9)"

2. **Whether penalty under Section 129 of the CGST/KGST Act can be imposed where no tax is payable on the goods transported by way of stock transfer?**
   "*Once a determination has been made that tax on the goods is non est, it stands to reason that penalty under section 129(1) of the CGST/KGST Act (which is to be determined in terms of such tax payable), is not leviable. For the foregoing reasons, we find that order of the appellate authority is not legal and is liable to be set aside. (Para 6.10)"*

3. **Whether non-generation of an e-way bill for movement of goods for reasons other than supply can, by itself, attract penalty under Section 129(3)?**
   "*Rule 138 (1)(ii) reads as follows…….. shall, before commencement of such movement, furnish information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal. The Hon'ble Allahabad High Court has nowhere said that EWB is not required in respect of cases other than supply. The true import of the above judgement is that in cases governed by Rule 138(1)(ii) penalty is not leviable under section 129(3). The natural corollary is that in such cases recourse will have to be had only to section 122(1)(xiv). We find the said judgement of the Allahabad High Court lays down the correct law and cannot be said to 'not account for the independent operation of Rule 138(1)(ii)'. [Para 8(v)]"*

4. **Whether the expression "tax payable on such goods" under Section 129(1)(a) can be treated merely as a measure for quantifying penalty, without an underlying taxable transaction?**
   "*We find that one of the main arguments of the learned AR is that the expression 'tax payable on such goods 'in Section 129(1)(a) is only a measure for quantifying the penalty by reference to the value and the rate of tax ordinarily applicable to goods of that description and that it does not require proof that an actual completed supply occurred. We find that this line of argument has been comprehensively rejected in the judgement of the Bombay High Court in the case of Fabricship supra wherein the Court had categorically and unambiguously held that The phrase 'tax payable 'would contemplate that the transaction is liable for tax and on which the tax becomes payable. [Para 8(i)]"*

5. **Whether absence of an e-way bill, by itself, can justify a finding that the stock transfer transaction was not genuine?**
   "*The next contention is of the learned DR is that in the present case, no e-way bill was generated at all and the finding that 'the transaction was not genuine for want of any e-way bill whatsoever is sustainable on the material on record'. We have thoroughly perused the crucial documents such as show cause notice, order in original and order in appeal and find that in the absence of any allegation, leave alone evidence, regarding non genuineness of the transaction, the above said contention of the DR is not backed by any material on record. [Para 8(iii)]"*

EDITORIAL NOTES:

Principles laid down:

1. Penalty under Section 129 of the CGST/KGST Act is not leviable on a stock transfer between the registered premises of the same person under the same GSTIN, as such movement does not constitute "supply" under Section 7 where there is no second person/entity or consideration.
2. Where the movement of goods is not a supply, no tax is payable under Section 9, and consequently the tax-linked penalty under Section 129 cannot be imposed.

3. The expression “tax payable on such goods” in Section 129(1)(a) contemplates an underlying transaction which is liable to tax, and cannot be treated merely as a notional measure for computing penalty on otherwise non-taxable movement.
4. The requirement of an e-way bill under Rule 138(1)(ii) for movement of goods for reasons other than supply remains applicable; however, where the movement is not a taxable supply, the contravention does not attract Section 129(3), and recourse lies under Section 122(1)(xiv).
5. Absence of an e-way bill, by itself, cannot support a finding that the transaction is non-genuine, particularly where there is no allegation or evidence of non-genuineness in the show cause notice or orders.

Case laws referred to:
Fabricship Pvt. Ltd. v. Union of India (2024) 90 G.S.T.L. 302 (Bom.) / (2024) 20 Centax 84 (Bom.) — Followed (Para 7.1; Para 8(i) & (ii)

Vacmet India Ltd. v. Additional Commissioner Grade-2 (Appeal) (2023) 12 Centax 156 (All.) — Followed (Para 7.2(a))

Goverdhan Oil Mill v. Additional Commissioner (2025) 32 Centax 368 (All.) — Followed (Para 7.2(b); Para 8(iv) & (v)

Kamal Envirotech Pvt. Ltd. v. Commissioner of GST (2025) 94 G.S.T.L. 345 (Del.) / (2025) 26 Centax 332 (Del.) — Referred to (Para 3.2(iv)

Hindustan Steel Ltd. v. State of Orissa 25 STC 210 — Referred to (Para 3.2(iv); Para 5(x) & (xiv))

Guljag Industries v. Commercial Taxes Officer (2007) 7 SCC 269 — Referred to (Para 5(vii))

Union of India v. Dharmendra Textile Processing Mills (2008) 13 SCC 369 — Referred to (Para 5(viii))

RELEVANT PROVISIONS:
Section 7 of the CGST Act, 2017; Section 9 of the CGST Act, 2017; Section 68 of the CGST Act, 2017; Section 122(1)(xiv) of the CGST Act, 2017; Section 126 of the CGST Act, 2017; Section 129 of the CGST Act, 2017; Section 2(64) of the CGST Act, 2017; Section 8 of the IGST Act, 2017; Rule 138(1)(ii) of the CGST Rules, 2017; Rule 138A of the CGST Rules, 2017.

JUDGMENT

Order Per: Shri Ramamoorthi Sriram, Member (Technical)
The present appeals are directed against the Order-in-Appeal No. GSTA No. 77/2022 dated 02.11.2022 passed by Joint Commissioner of State Tax (Appeals), Thiruvananthapuram.

1. Question of Law Involved

Whether the first Appellate Authority is right in confirming the penalty under section 129 of Central Goods and Services Act / Kerala Goods and Services Act 2017 on the registered person for transport of goods without e-way bill when such transport was undertaken on account of stock transfer?

2. Brief Facts of the Case :

The facts of the case are that the appellant M/s M.S. Steels (GSTIN: 32AADFM9241J1ZA), a Partnership Firm dealing in steel goods was transporting steel goods on 13.06.2022 under Delivery Challan No. M120 — a same- GSTIN intra-firm stock movement from its own premises to its own godown. The vehicle was intercepted by Mobile Squad No. II, Thiruvananthapuram and detained under Section 129(1) of the CGST/KGST Act, 2017 on the ground that no e-Way Bill was available. After proceedings, a penalty of Rs.1,34,640 (CGST Rs.67,320 + SGST Rs.67,320) was imposed under Section 129(3) — with no tax demand. To secure release of the goods, full penalty was paid via CPIN 22063200032740 dated 14.06.2022. A First Appeal filed before the Joint Commissioner of State Tax (Appeals), Thiruvananthapuram was dismissed vide Order-in-Appeal No. GSTA No. 77/2022 dated 02.11.2022. The Appellant, being aggrieved, files this Second Appeal.

3. Grounds of Appeal / Submissions of the Appellant:

3.1. The most important and primary grounds of appeal are that:

(i) First Appellate Authority has mechanically confirmed penalty under Section 129 merely on the ground that e-way bill was not available, without appreciating that the movement was an internal movement between locations of the same GSTIN, supported by delivery challan, and not an outward taxable supply to any customer.

(ii) Penalty under Section 129 computed with reference to "tax payable" is unsustainable where the movement was only between locations of the same GSTIN and did not constitute a taxable supply. The goods were being moved under Delivery Challan No. M120 dated 13.06.2022 between locations of the appellant under the same GSTIN. The movement was not pursuant to a sale invoice and was not an outward taxable supply to any customer.

(iii) The expression "tax payable" as referred to in Section 129(1) cannot be read in isolation. Tax becomes payable under the GST law only when the charging provision is attracted. The charging provision under Section 9 of the CGST/KGST Acts operates only on an intra-State supply of goods or services or both. Therefore, for any tax to be payable under Section 9, there must first be a taxable event in the nature of "supply" under Section 7. In the present case, the movement was not a supply under Section 7. It was only an internal movement / stock transfer between locations of the same registered person under the same GSTIN. The movement was not made to a customer, was not made under a tax invoice, and was not a sale or transfer to another taxable person.

(iv) In the absence of a supply under Section 7, the charging provision under Section 9 does not operate. If Section 9 does not operate, there is no tax payable on the movement. Consequently, penalty under Section 129, which is computed with reference to tax payable on such goods, could not have been mechanically computed by applying the rate of tax on TMT bars to the value shown in the delivery challan.

(v) The appellant relies on the judgment of the **Hon'ble Bombay High Court in Fabricship Pvt. Ltd. v. Union of India, 2024 (90) G.S.T.L. 302 (Bom.) / (2024) 20 Centax 84 (Bom.).**

3.2. The appellant also made extensive submissions on alternate grounds which are summarized as follows:

(i) The impugned Order-in-Appeal has erred in treating the transaction as "not genuine" merely because e-way bill was not available and had proceeded to go beyond the scope of the original notice. They relied on **Vacmet India Ltd. v. Additional Commissioner Grade-2 (Appeal), 2024 (81) G.S.T.L. Page 15 of 101 149 (All.) / (2023) 12 Centax 156 (All.)** in support of the above contentions.

(ii) The Order-in-Appeal confirms the penalty by holding that transportation without e-way bill makes the transaction not genuine. This is an impermissible presumption. Absence of e-way bill may be a statutory contravention, but it does not automatically establish evasion of tax or non-genuineness of the movement. The appellant relies on the judgment of the Hon'ble Allahabad High Court in **Goverdhan Oil Mill v. Additional Commissioner, (2025) 32 Centax 368 (All.)**.

(iii) Once the tax-linked penalty under Section 129 fails for want of tax payable, the alleged contravention, if any, falls under the specific document-related penal provision under Section 122(1)(xiv). The penalty should have been limited to Rs.20,000/- (CGST Rs.10,000 and SGST Rs.10,000). The Department could not bypass the statutory requirement of "tax payable" under Section 129 and impose penalty by notionally applying the GST rate to a non-supply stock movement.

(iv) Penalty under Section 129 cannot be imposed mechanically merely upon noticing a movement-document lapse. The consistent judicial view now is that proceedings under Section 129 cannot be sustained in the absence of intent to evade tax, particularly where the goods, movement and transaction are otherwise disclosed. The appellant relies on the principles recognized by the Hon'ble Delhi High Court in **Kamal Envirotech Pvt. Ltd. v. Commissioner of GST, 2025 (94) G.S.T.L. 345 (Del.) / (2025) 26 Centax 332 (Del.),** wherein it was held that the principles under Section 126 requiring moderation in penalty, and non-imposition of penalty for minor breaches or procedural lapses without fraudulent intent or gross negligence, cannot be ignored while considering penalty under Section 129.

4. CA Unnikrishnan M, Counsel appeared for the appellant and argued vehemently reiterating the above grounds of appeal.

5. **Submissions of the Respondent / Revenue**: Shri Mansoor MI , learned Joint Commissioner / Authorized Representative appeared for the respondent /Revenue and made the following submissions in defense of the order in appeal:

(i) Rule 138(1) of the CGST/KGST Rules, 2017 requires every registered person who causes movement of goods of consignment value exceeding Rs. 50,000/- to generate an e-way bill "in relation to a supply", "for reasons other than supply", or "due to inward supply from an unregistered person". The requirement to generate an e-way bill is thus not confined to movements that constitute a taxable supply; the contravention of Rule 138A therefore stands regardless of whether the movement is ultimately characterized as a taxable supply.

(ii) Section 129(1) is a self-contained, non-obstante machinery provision for detention and release of goods and conveyances found in contravention of the movement-document requirements of the Act; it does not require the proper officer to first establish an independent taxable supply under Section 7 read with Section 9 before detention and penalty can follow. The expression "tax payable on such goods" in Section 129(1)(a) is a measure for quantifying the penalty by reference to the value and the rate of tax ordinarily applicable to goods of that description; it does not require proof that an actual completed supply occurred. TMT bars are ordinary taxable goods, not exempted goods, and the concessional second limb of Section 129(1)(a) (applicable to exempted goods) accordingly has no application here.

(iii) Fabricship Pvt. Ltd. v. Union of India (Bom.), relied upon by the Appellant, is distinguishable on this basis: that case concerned goods that were themselves exempt from duty, and the Court accordingly applied the concessional formula prescribed for exempted goods. No parallel concession is available here, since TMT bars are not exempt goods, whatever the character of the particular movement.

(iv) Section 68 read with Rule 138A mandates that a valid e-way bill accompany the movement of goods exceeding Rs.50,000/- in value, in addition to the delivery challan or other prescribed document.

(v) In the present case, no e-way bill was generated at all. This is a total and uncured default, qualitatively different from an expired or partially defective e-way bill, and the finding that the transaction was not genuine for want of any e-way bill whatsoever is sustainable on the material on record.

(vi) Section 129, unlike Section 130 (confiscation), does not require the Department to establish intent to evade tax as a jurisdictional precondition; it is attracted upon mere contravention of the movement-document requirements of the Act and Rules. The penalty under Section 129 is in the nature of a civil liability flowing automatically from such contravention, and is not penal in the criminal sense requiring proof of a guilty mind.

(vii) The Hon'ble Supreme Court in Guljag Industries v. Commercial Taxes Officer, (2007) 7 SCC 269, dealing with an analogous documentation requirement for goods in transit, held that liability for transporting goods without the prescribed transit form is a civil liability arising on mere contravention, akin to payment of interest, and that *mens rea* is not an essential ingredient for such penalty.

(viii) The Hon'ble Supreme Court in Union of India v. Dharmendra Textile Processing Mills, (2008) 13 SCC 369, similarly held that penalty for statutory contravention is ordinarily a civil sanction not requiring proof of *mens rea* unless the statute expressly so demands.

(ix) Goverdhan Oil Mill (All.), to the extent it holds that a stock transfer attracting no tax liability cannot attract penalty for want of intention to evade tax, does not account for the independent operation of Rule 138(1)(ii)**,** which mandates an e-way bill for movement of goods "for reasons other than supply" irrespective of whether the movement is ultimately taxable; the statutory contravention on which Section 129 is founded survives regardless of the tax character of the underlying movement, as submitted above.

(x) The Appellant's reliance on Hindustan Steel Ltd. v. State of Orissa, 25 STC 210, does not assist: that decision recognizes a discretion to withhold penalty for a technical or venial breach or a bona fide belief of non-liability — it does not hold that intent to evade tax is a precondition for penalty — and has since been read down by Dharmendra Textile Processing Mills to the extent it was understood as importing a mens rea requirement into strict statutory penalty provisions.

(xi) A perusal of the Order-in-Appeal dated 02.11.2022 shows that the Appellant's first appeal was confined to two contentions: (i) that the movement between head office and depot was not a supply and involved no mens rea, relying on Sanskruthi Motors, Satyam Shivam Papers, and Hindustan Steel Ltd.; and (ii) that the same officer having investigated and adjudicated the matter, the order was vitiated by bias. **No contention that Section 122(1)(xiv), rather than Section 129, was the appropriate provision was raised, argued, or considered at the first appellate stage.** This is a distinct statutory-construction argument going to which of two provisions properly governs the contravention, and ought to have been raised at the earliest opportunity so that the First Appellate Authority had occasion to examine and rule upon it. Its introduction for the first time in second appeal denies both the Department and the first appellate forum that opportunity.

(xii) Section 129 opens with a non-obstante clause and operates specifically and independently at the stage of detention and release of goods and conveyances in transit; it is not displaced merely because Section 122(1)(xiv) also separately penalizes transport without prescribed documents in a different context. Kamal Envirotech Pvt. Ltd. (Del.), relied upon by the Appellant, does not hold that Section 122(1)(xiv) ousts Section 129; it treats Section 129 as a self-contained release-and-penalty mechanism, read harmoniously with the moderation principles of Section 126.

(xiii) Kamal Envirotech reads Section 129 in harmony with Section 126, and extends that harmonious reading to breaches falling within the description of a "minor breach" in the Explanation to Section 126(1) — tax involved less than Rs. 5,000/- and an error apparent on the face of the record, easily rectifiable. The penalty confirmed here — Rs. 67,320/- CGST and Rs. 67,320/- SGST — is considerably higher, and the default — total non-generation of e-way bill — is not, on the Respondent's submission, of the same character as the errors that decision was addressing.

(xiv) The discretion recognized in Hindustan Steel Ltd. to refrain from imposing penalty for a technical or venial breach was considered by the First Appellate Authority and was, on the facts before it, exercised against the Appellant; the Respondent submits that no fresh ground has been shown to depart from that view. The penalty has, in any event, been computed strictly in accordance with the statutory formula under Section 129(1)(a).

6. Discussion and findings.

6.1. We have carefully considered the submissions made by both sides and perused the records. The core issue to be decided is whether a penalty under section 129 of the CGST / KGST Act 2017 is leviable on goods which are being transported by way of stock transfer from one registered premises of the assessee to another registered premises of the assessee, for the only reason that it was not accompanied by an e-way bill as stipulated in the GST Act and Rules**.** On perusal of the appellate order, we find that except for repeatedly stressing on the lack of E way bill, the Appellate Authority has not stated any reasons / grounds for holding the transaction to be not genuine.

6.2. The following facts are not in dispute:

(a) The impugned goods were being transported under delivery challan from one registered premises of the assessee to another registered premises of the assessee.

(b) They were intercepted and detained during transit as they were not accompanied by a e-Way Bill as mandated under Section 68 of the GST Act read with Rule 138(1)(ii) / 138 A of the GST Rules.

(c) After proceedings, a penalty of Rs. 1,34,640 (CGST Rs. 67,320 + SGST Rs. 67,320) was imposed under Section 129(3) — with no tax demand.

(d) Except for the non-availability of e-Way bill, no other allegation / finding of fraud, or any willful-misstatement or suppression of facts to evade tax, has been made against the Appellant, either in the show cause notice or in the Order in original / Order in Appeal.

(e) The Order in Appeal while labelling the transaction as not genuine has not provided any reasons for the above, other than fact that the -E way Bill was not produced.

6.3. We find that in the instant case penalty has been levied under section 129(1) of the CGST /KGST Act 2017 on goods which were being transported on account of stock transfer. The relevant section is reproduced under:

> *129. Detention, seizure and release of goods and conveyances in transit.*
>
> *(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released, —*
>
> *1[(a) on payment of penalty equal to two hundred per cent.* ***of the tax payable on such goods*** *and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;*
>
> *(emphasis supplied).*

6.4. From the above, it is clear that any penalty under the said section is leviable only in terms of the tax payable on such goods. We now proceed to examine what was the tax payable on the impugned goods.

6.5. We find that the relevant portion of the charging section, viz section 9 of the CGST / KGST Act, reads follows:

"there shall be levied a tax called the central goods and services tax on ***all intra-State supplies of goods*** *or services or both". (emphasis supplied)*

6.6. The present case before us involves goods and the term intrastate supply of goods is defined section 2(64) of the CGST Act / KGST as follows:

> *"intra-State supply of goods" shall have the same meaning as assigned to it in section 8 of the Integrated Goods and Services Tax Act;*

Proceeding further to section 8 of the IGST ACT, we find that the relevant portion of the said section reads as follows:

> ***supply*** *of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply*
> *(emphasis supplied)*

6.7. Cycling back to the statutory definition of supply under section 7(1) of the CGST / KGST Act, we find that relevant portion of the said section reads as follows:

> *7. Scope of supply.*
> *(1) For the purposes of this Act, the expression "supply" includes—*
> *(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be* ***made for a consideration*** *by a person in the course or furtherance of business;*

6.8. Whether the impugned stock transfer transaction would amount to supply is the next question. We find that for a transaction to be categorized as a supply under the above section, it necessarily has to involve two persons / entities who are the two different parties between whom such sale/transfer/exchange/ license/ rental/ lease or disposal takes place. In the instant case there is only one party, viz the appellant and there is no second party to the transaction and there is also no consideration involved in the said stock transfer transaction.

6.9. We therefore find that:

(a) the transaction in question would not be a supply as defined under section 7 of the CGST /KGST Act 2017

(b) Once it is not a supply simpliciter, there is no question of it being an intra state supply.

(c) Once it is determined that it is not an intra state supply, it would be dehors the charging section – section 9 of the CGST/KGST Act- and therefore is no tax payable on the impugned goods.

6.10. Once a determination has been made that tax on the goods is non est, it stands to reason that penalty under section 129(1) of the CGST/KGST Act (which is to be determined in terms of such tax payable), is not leviable. For the foregoing reasons, we find that order of the appellate authority is not legal and is liable to be set aside.

7. We find support for the above decision in the decision of the Honorable Bombay High Court in

7.1. **Fabricship Pvt. Ltd. v. Union of India, 2024 (90) G.S.T.L. 302 (Bom.) / (2024) 20 Centax 84 (Bom.)** relevant extracts of which are reproduced under:

> *"11. Section 129(1)(a) of the MGST Act provides for penalty equal to one hundred per cent of the tax payable on goods detained or seized.* ***The phrase "tax payable" would contemplate that the transaction is liable for tax and on which the tax becomes payable****. In the instant case, when the machinery is being transported from JNPT to petitioner's factory after Customs clearance, there is no tax payable under the GST Act. Section 9 of the MGST Act levies tax on all intra-State supplies of goods or services or both and such a tax shall be paid by the taxable person. Section 7(1)(a) of the MGST Act defines "supply" to include all forms of supply of good or services or both such as sale, transfer, barter, exchange, license, etc made or agreed to be made for a consideration by a person in the course or furtherance or business. Admittedly Sections 7(1)(b) and 7(1)(c) are not applicable and the transaction under consideration also does not fall within Schedule I, II and III to the Act. In the instant case, when petitioner imports machinery and after Customs clearance transports the said machinery to its own factory, it cannot be said that such a transportation would fall within the definition of the term "supply" as defined by Section 7.* ***This is so because for a "supply" to fall under Section 7 there has to be more than one person or entity between whom the transaction of supply should take place.*** *The illustrations given in*

Section 7(1)(a) namely sale, transfer, barter, exchange, etc fortifies the requirement of existence of more than one person to fall within the expression "supply", which is not satisfied in the present case since machinery is being transported by petitioner to its own factory. Secondly, the supply has to be for a "consideration". Section 2(31) of the MGST Act defines "consideration" to include any payment made or to be made or the monetary value of any act or forbearance. In the instant case, when petitioner transports his machinery to its own factory there cannot be any consideration as defined in section 2(31).

12. Therefore, in our view, the activity of transport of machinery from JNPT to petitioner's own factory would not fall within Section 7 which deals with scope of supply and consequently in the absence of any supply, and absence of consideration the charging Section 9 also would not get attracted so as to make petitioner liable to pay any tax."

7.2. We also find support reinforcement for our decision in the following judgements:

(a) Judgement dated 17/10/23 of the honorable Allahabad High Court in the case of **VACMET INDIA LTD. Versus ADDITIONAL COMMISSIONER GRADE-2 (APPEAL) (2023) 12 Centax 156 (All.)** wherein the honorable High Court held as follows:

14. Since the goods in question were stock transfer from one Unit to another within the State of Uttar Pradesh (Agra to Mathura) and ***in absence of any provision being pointed out by the learned ACSC or any authority below that the goods (stock transfer) in transit were liable for payment of tax, no evasion of tax could be attributed to the goods in question. Once there was no intention to evade payment of tax, the entire proceedings initiated against the petitioner are vitiated and are liable to be set aside.***

(b) Judgment dated 10/4/2024 of the Honorable Allahabad High Court in the case of **GOVERDHAN OIL MILL Versus ADDITIONAL COMMISSIONER (2025) 32 Centax 368 (All.)** wherein the Honorable High court held as follows:

5. Upon perusal of the judgments cited above by the petitioner, I am of the view that ***in the case of stock transfer, there is no liability of any payment of tax. Accordingly, there can be no intention to evade tax whatsoever. In the present case, the authorities did not dispute the fact that the movement of the goods was in relation to stock transfer. Accordingly, penalty imposed under Section 129(3) of the Act is without any basis in law and is liable to be set aside.***

8. We now proceed to examine the contentions made by the learned AR for the Revenue:

(i) We find that one of the main arguments of the learned AR is that the expression "tax payable on such goods" in Section 129(1)(a) is only a measure for quantifying the penalty by reference to the value and the rate of tax ordinarily applicable to goods of that description and that it does not require proof that an actual completed supply occurred. We find that this line of argument has been comprehensively rejected in the judgement of the Bombay High Court in the case of Fabricship supra wherein the Court had categorically and unambiguously held that ***The phrase "tax payable" would*** **contemplate that the transaction is liable for tax and on which the tax becomes payable.**

(ii) The next contention of the Revenue is that- Fabricship Pvt. Ltd. v. Union of India (Bom.), relied upon by the Appellant, is distinguishable on this basis: that case concerned goods that were themselves exempt from duty, and the Court accordingly applied the concessional formula prescribed for exempted goods. No parallel concession is available here, since TMT bars are not exempt goods, whatever the character of the particular movement. We find that that the above said contention of the respondent is a red herring, based on a total misreading of the said judgement. We find that the fact that in the Fabricship India case, the goods were exempted goods cannot disparage the ratio decidendi of the said case which is clear and unambiguous to the effect wherever a transaction does not involve two distinct entities and where there is no consideration, the said transaction would fall outside the purview of the charging section of CGST Act and hence would be dehors section 129 of the CGST Act. In the present case before us, the transaction in question does not fall under the definition of supply as defined under section 7, firstly, for the reason that it did not involve two separate entities and secondly, for the reason that there was no consideration whatsoever. We find that the above ratio in the case of Fabricship India supra, is applicable mutatis mutandis to the case before us, notwithstanding the fact that the goods in the Fabricship India were exempted goods, and the attempts of the Revenue to distinguish the above case are not based on any sound legal principles.

(iii) The next contention is of the learned DR is that in the present case, no e-way bill was generated at all and the finding that "the transaction was not genuine for want of any e-way bill whatsoever is sustainable on the material on record". We have thoroughly perused the crucial documents such as show cause notice, order in original and order in appeal and find that in the absence of any allegation, leave alone evidence, regarding non genuineness of the transaction, the above said contention of the DR is not backed by any material on record.

(iv) Yet another contention of the learned DR is that Goverdhan Oil Mill (All.), to the extent it holds that a stock transfer attracting no tax liability cannot attract penalty for want of intention to evade tax, **does not account for** the independent operation of Rule 138(1)(ii), which mandates an e-way bill for movement of goods "for reasons other than supply" irrespective of whether the movement is ultimately taxable; the statutory contravention on which Section 129 is founded survives regardless of the tax character of the underlying movement, as submitted under Issue 1 above. We have perused the relevant portion of the above decision in the case of Goverdhan Oil Mills which is reproduced below:

> *(6) Upon perusal of the judgments cited above by the petitioner, I am of the view that in the case of stock transfer, there is no liability of any payment of tax. Accordingly, there can be no intention to evade tax whatsoever. In the present case, the authorities did not dispute the fact that the movement of the goods was in relation to stock transfer. Accordingly, penalty imposed under Section 129(3) of the Act is without any basis in law and is liable to be set aside.*

On a careful study of the above, contrary to the above submissions of the learned DR, the said judgement has only held that in case of stock transfer, penalty under section 129(3) is not leviable.

(v) If one were to take the above contention of the learned DR at face value, it amounts to stating that the above said judgement of the honourable Allahabad High court is per incuriam in respect of Rule 138(1)(ii) - which is clearly not the case, as analysed below:

> *Rule 138(1)(ii) reads as follows:*
>
> *138 (1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees-*
>
> *(i)* ----------------------
>
> *(ii) for reasons other than supply; or*
>
> *(iii)* ————————————

shall, before commencement of such movement, furnish information relating to the said goods as specified in **Part A** of **FORM GST EWB-01**, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal. The Hon'ble Allahabad High Court has nowhere said that EWB is not required in respect of cases other than supply. The true import of the above judgement is that in cases governed by Rule 138(1)(ii) penalty is not leviable under section 129(3). The natural corollary is that in such cases recourse will have to be had only to section

122(1)(xiv). We find the said judgement of the Allahabad High Court lays down the correct law and cannot be said to "not account for the independent operation of Rule 138(1)(ii)".

(vi) Having analysed the main grounds / pleadings made by both the parties and arrived at a decision, we do not wish to analyse further the minor / additional submissions made as they have no bearing on our decision.

9. In view of the above observations and the settled legal position, we answer the question of law (as framed in para 1.0 above) in the negative and hold that:

Penalty under section 129 of Central Goods and Services Act / Kerala Goods and Services Act 2017 is not leviable on the registered person, for transport of goods without e-way bill, when such transport was undertaken on account of stock transfer.

10. Based on the above ratio and findings, the following order is passed:

The impugned Order-in-appeal is set aside and the appeals of M/s. M.S. Steels are allowed, with consequential relief.

Order pronounced in open court on 14.08.2026.

(2026) 1 GSTAT E- Journal 90 (Thiruvananthapuram)
(GOODS AND SERVICES TAX APPELLATE TRIBUNAL, THIRUVANANTHAPURAM BENCH)
SIDDHI VINAYAK AUTOMOBILES
V.
THE COMMISSIONER OF KERALA STATE GST, THIRUVANANTHAPURAM
APPEAL NO. APL/2/TVP/2026, AUGUST 14, 2026

CORAM:

HON'BLE SHRI SUBRAMANYA V RAYAPROL, JUDICIAL MEMBER
AND
HON'BLE SHRI RAMAMOORTHI SRIRAM, TECHNICAL MEMBER

REPRESENTATION:

For the Appellant: Mr M Unnikrishnan, Chartered Accountant
For the Respondent: Mr M. I. Mansur, Joint Commissioner

HEADNOTE:

GST: Detention of goods - Valid e-invoices generated but e-way bill not generated- Department alleged that transportation of automobile spare parts without e-way bill - contravention of GST provisions and attracted penalty-release of Bank Guarantee. **HELD:** Penalty order passed under Section 129(3) after expiry of mandatory period of seven days from the date of service of notice was illegal and without jurisdiction - Since the statutory timeline prescribed under Section 129(3) is mandatory and the appellant had already generated e-invoices and paid the applicable GST, there was no attempt to evade tax - Accordingly, impugned Order-In-Appeal was set aside and Appeal were Allowed- consequential relief-release of Bank Guarantee-Section 129(3) of CGST/KGST Act, 2017.

...In Favour of the Appellant

KEY ISSUES AND FINDINGS:

1. **Whether the timeline of seven days prescribed under Section 129(3) for issuance of notice and passing of order is mandatory or directory?**

   "...From the plain reading of Sub-section (3) of Section 129 of the Act of 2017, it is abundantly clear that the legislature by using the expression "shall" in respect of show cause notice as well as notice for payment of penalty has signified its intent that adherence to timeline is mandatory. Otherwise also, the CGST / KGST Act, 2017 is a fiscal statute and, therefore, required to be construed strictly. It is true that Sub-section (3) of Section 129 does not provide for consequence of non-adhering to the timelines but that alone cannot be a determining factor to come to a conclusion that seven days'

period stipulated in Sub-section (3) of Section 129, is not mandatory in nature." [Para 5.4]

2. **Whether the penalty imposed under Section 129(3) can be sustained when the order was passed beyond the prescribed period of seven days?**
"…We find that the Sub-section (3) in section 129 provides for a specific period of seven days for passing of an order. The seven days is to be reckoned from date of service of the notice, specifying the penalty payable. Issuance and receipt of the penalty notice and the Order is not in dispute. The Limitation is clear and definite. The facts of the case indicate that the officers did not act in time in accordance with the provisions, we hence find no reason to sustain the penalties imposed. There was nothing preventing the Respondent state tax authority from passing the order within 7 days, especially since, if the matter is kept pending, the proceedings would be barred by limitation." [Para8.0]

3. **Whether the Order in MOV-09 passed beyond the mandatory period of seven days under Section 129(3) is legal and valid?**
" We find that the Respondent has failed to issue the Order for imposing penalty under Section 129(3) of the CGST/KGST Act, 2017, within the mandatory time limit of 7 days. Therefore, the Order MOV-09 dated 4-6-2022 issued after 47 days from the date of Notice MOV-07 dated 18-4-2022 is illegal and without jurisdiction. The First Appellate Authority has failed to look into this basic fact which was apparent on record. The impugned OIA is therefore liable to be set aside." [Para 9.0]
"The impugned Order-in-appeal is set aside and the appeals are allowed with consequential relief. The Respondent is directed to release the Bank Guarantee to the appellants immediately on receipt of this Order.' [Para 10.0]

EDITORIAL NOTES:
Principles Laid Down:
1. Section 129(3) of the CGST/KGST Act, 2017 stipulates that an order imposing a penalty must be passed within seven days. This time frame is not optional.
2. The period of seven days is to be reckoned from the date of service of the notice specifying the penalty payable.
3. An order issued after the prescribed seven-day period is barred by limitation and cannot be upheld, despite the absence of an express statutory punishment for such non-compliance.
4. Failure to comply with the mandatory timeline under Section 129(3) makes the penalty order non-est and without jurisdiction.
5. The First Appellate Authority must consider the statutory limitation under Section 129(3); failure to consider the indisputable delay in passing the ruling renders the appellate order void.

Case Law Referred to:
Allcargo Logistics Ltd. v. State of Gujarat — 2025 (12) TMI 1732 (Guj.) — Followed [Para 6.2]

Deepam Roadways v. Deputy State Tax Officer, Chennai — (2023) 3 Centax 37 (Mad.) — Followed [Para 6.4]

Pawan Carrying Corporation v. State of Bihar — (2024) 16 Centax 405 (Pat.) — Followed [Para 6.5]

Khatu Enterprises v. State of Gujarat — 2025 (10) TMI 1341 (Guj.) — Followed [Para 6.3]

Mohd Hazzak Lohar & Others v. Commissioner of State Tax, J&K — 2026 (7) TMI 1769 (J&K and Ladakh) — Followed [Para 6.1]

D.K. Enterprises v. Assistant/Deputy Commissioner (ST) — 2023 (70) G.S.T.L. 277 (Mad.) — Referred to [Para 6.4]

Relevant Provisions Referred to:
Section 68 of CGST/KGST Act, 2017; Section 129 of CGST/KGST Act, 2017; Section 169 of CGST/KGST Act, 2017; Rule 138A of CGST/KGST Rules, 2017; Rule 142 of CGST/KGST Rules, 2017.

JUDGMENT

Order Per: Hon'ble Shri Subramanya V Rayaprol, Judicial Member

1.0 Mr M Unnikrishnan, Ld Chartered Accountant appeared for the appellant, and Mr M. I. Mansur, Ld Joint Commissioner, appeared as the Authorised Representative for the Commissioner of Kerala State GST.

2.0 The Brief facts of the case is that the appellant M/s. Siddhi Vinayak Automobiles, is a registered assessee with GST Department holding GSTIN 32AAIFS7558K1ZP, with their principal place of business in Thiruvananthapuram District, Kerala State. The appellant are engaged in the business of trading of automobiles and spare parts thereof. On 18-4-2022, the appellant had supplied automobile parts and spare parts in a transport vehicle bearing registration No. KL22N0394. The vehicle was intercepted by the Assistant State Tax Officer, Mobile Squad IV, Kollam at Punalur at 03.30 PM. It was observed that the goods were accompanied by two Tax e-Invoices G-168 dated 16.04.2022 for value of Rs. 3,41,952/- and G-169 dated 16.04.2022 for value of Rs. 4,498/-, in favour of their buyers M/s. J.B.S. Automotive, Thadikkad, who was also a registered person holding GSTIN 32AWPPJ2895R1ZL. However, the driver of the vehicle could not produce the e-way bill for the said transport of goods. The goods were therefore detained and a Notice in MOV-07 dated 18-4-2022 was issued to the appellant and a penalty of Rs.138706/- equal to 100% GST was imposed under Section 129 (1) of the CGST/KGST Act, 2017. The said goods and the conveyance was released on 20-4-2022, on furnishing of Bond and Bank Guarantee valid upto 18-4-2027 for an amount of Rs. 138706. The Summary DRC-01 dated 20-4-2022 was issued after release of goods and the electronic summary in Form GST DRC-01 - Ref No. ZD3204220165040 was uploaded on the GST Portal on 20.04.2022. However, the Order in Form GST MOV- 09 was passed on 04.06.2022, confirming the Penalty of Rs. 1,38,706/-, [CGST penalty of Rs. 69,353/- and SGST penalty of Rs. 69,353/-], under Section 129(3) of the CGST/KGST Acts, 2017. Aggrieved by the said imposition of Penalty the appellant filed an appeal before the First Appellate Authority. The First Appellate Authority vide impugned OIA No. GSTA No. 81/2022 dated 4-11-2022 and confirmed the penalties and passed the order as below:

"I have examined the contentions. Section 68 of the GST Acts read with Rule 138 A of the GST Rules stipulates that the person in charge of a conveyance carrying any consignment of goods of value exceeding Rs.50,000/- should carry a copy of invoice/ bill of supply/ delivery chalan/ bill of entry as the case may be and e-way bill. The appellant transported automobile spare parts with two e-invoices for values Rs.3,41,952 and Rs. 4498/- without e-way bill as stipulated under the Act. Therefore, transaction is not genuine as per GST Act and Rules and it will amount to an act in contravention of the provision of the Act and attracts penalty. So imposition of penalty is proper as per law."

3.0 The appellant has filed the appeals on the grounds that the said supplies were covered by valid e-invoices, and that the omission to generate e-way bill occurred in the context of the newly applicable e-invoicing system, and they believed that on generating the e-invoice, the transaction had been disclosed to the GST Department, through the e-invoice system in real time, and that there was no intention to evade tax as they have already filed GST Returns and paid appropriate GST also. The appellant has also submitted that the MOV-07 Notice was issued on 18-4-2022, and the Order MOV-09 under Section 129 (3) was issued on 4-6-2022, after 47 days from the date of Notice, whereas the time limit given to pass an order within a period of seven days from the date of service of such notice, for payment of penalty. No such order was issued imposing or confirming the penalty within the seven days from 18-4-2022.

Hence, the Order is time barred and is not legally sustainable, and cannot be enforced. He also placed reliance on the judgements cited in (2023) 3 Centax 37 (Mad.) in the case of Deepam Roadways vs Deputy State Tax Officer, Chennai, (2024) 16 Centax 405 (Pat.) in the case of Pawan Carrying Corporation vs State of Bihar, (2026) 38 Centax 110 (Guj.) in the case of Allcargo Logistics Ltd vs State of Gujarat.

4.0The Ld Joint Commissioner, appearing as Authorised Representative on behalf of the Commissioner of State Tax, Kerala, submits that the Appellant's first appeal (GSTA No. 81/2022) was confined only to two contentions: (i) that the lapse was clerical/ technical in nature, relying on Satyam Shivam Papers and Hindustan Steel Ltd; and (ii) that the adjudicating officer and the investigating officer being the same person violated natural justice. He submits that the they had never raised the ground of limitation under Section 129(3) of the CGST / KGST Act, 2017, even though the dates now relied upon i.e. the MOV-07 dated 18.04.2022 and MOV-09 dated 04.06.2022 were always available to the Appellant. They are raising this ground for the first time before the Hon'ble Tribunal regarding limitation and jurisdiction. He also submits that a ground that was available but consciously not taken cannot ordinarily be permitted to be raised for the first time at a further appellate stage, particularly where the ground is not a pure question of law but requires an assessment of facts and consequences and the delay in passing the Order MOV-09 under Section 129(3) of CGST/KGST Act, 2017 has not caused any prejudice, as the goods and the vehicle were released in two days on furnishing the Bond and Bank Guarantee. Therefore, permitting the ground to be raised for the first time in second appeal stage deprives both the Department and the first appellate forum of that opportunity.

5.0 Heard both sides. We find that the issue to be decided by us is Whether the order in Form GST MOV-09 dated 04.06.2022, passed 47 days after service of Form GST MOV-07, is time-barred and void under Section 129(3) of the CGST/KGST Act?

5.1 The Ld Joint Commissioner for the Respondent has raised this contention that this issue is raised for the first time before GSTAT and was never raised before the First Appellate Authority. Before we delve into the issue of the limitation, we would answer the question of raising this issue for the first time by the appellant as alleged. As regards the contention of the Ld Joint Commissioner that the appellant has raised this ground of limitation of 7 days for issuing Order under Section 129 (3) of the CGST / SGST Act, 2017, for the first time before the GSTAT, without raising it before the First Appellate Authority, we find that it is a fact that the notice for detention MOV-07 was issued on 18-4-2022, and the Order for penalty MOV-09 was issued on 4-6-2022, and not within the prescribed mandatory 7 days under Section 129(3) ibid. We find that since this is an undeniable fact, which is on record, bringing out the same by the appellant before us, does not make it an additional ground made for the first time, which was not raised or discussed before the first appellate authority. Hence, the contention of the Ld Joint Commissioner is not correct as the this fact was always on record, and the first appellate authority was always aware of the dates of issue of MOV-07 and MOV-09 and has also recorded the dates in his impugned order-in- appeal. The first appellate authority has grossly failed to look into this legal aspect. Hence, we do not agree that this issue is raised for the first time.

5.2 Before discussing further, we deem it appropriate to reproduce Section 129 of the CGST/ KGST Act, 2017 which reads as below:

129. Detention, seizure and release of goods and conveyances in transit

(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—(a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;

(b) on payment of penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) deleted. . .

(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).]

(4) No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3):

Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer."

5.3 It is quite evident that the Section 129 deals with detention, seizure and release of goods and conveyances in transit. It provides that if any person transports any goods or stores any goods while they are in transit in contravention of the provisions of the Act of 2017 or rules made thereunder, all such goods and conveyance used as a means of transport as also documents relating to such goods and conveyance shall be liable to detention or seizure. The Section further provides that goods, conveyance or documents so seized shall be released only on payment of penalty equivalent to two hundred percent of the tax payable on such goods and in case of exempted goods, on payment of an amount equal to two percent of the value of goods or Rs. 25,000/- whichever is less, where owner of the goods comes forward for payment of such penalty. However, where the owner of goods does not come forward for payment of penalty, he shall be liable to pay penalty equal to fifty percent of the value of goods or two hundred percent of the tax payable on such goods whichever is higher, and in case of exempted goods, on payment of an amount equal to five percent of the value of goods or Rs. 25,000/- whichever is less and it is only payment of such penalty that the goods, conveyance or the documents as the case may be shall be released.

5.4 We find that the Sub-section 3 of Section 129 supra, which is relevant for the purpose of our discussion, lays down that the proper officer, who detains or seizes goods or conveyance, shall issue a notice within seven days of such detention or seizure, specifying the penalty payable and thereafter pass an order within +a period of seven days form the date of service of such notice for payment under clause (a) or clause (b) of Sub-section (1) of Section 129 of the CGST / KGST Act, 2017. From the plain reading of Sub-section (3) of Section 129 of the Act of 2017, it is abundantly clear that the legislature by using the expression "shall" in respect of show cause notice as well as notice for payment of penalty has signified its intent that adherence to timeline is mandatory. Otherwise also, the CGST / KGST Act, 2017 is a fiscal statute and, therefore, required to be construed strictly. It is true that Sub-section (3) of Section 129 does not provide for consequence of non-adhering to the timelines but that alone cannot be a determining factor to come to a conclusion that seven days' period stipulated in Sub-section (3) of Section 129, is not mandatory in nature.

6.0 We find support in the decisions of various High Courts to our observations in the judgements below:

6.1 In the case of Mohd Hazzak Lohar & Others vs Commissioner of State Tax, J&K cited in 2026 (7) TMI 1769 – J&K and Ladakh HC, it is held that. . .

17. We are, thus, inclined to concur with a view taken by various High Courts and the High Court of Gujarat that the timelines under Section 123 of the Act are mandatory. This is so primary for the following reasons:

(i) The provision regulates exercise of coercive statutory power;

(ii) It protects valuable primary rights;

(iii) The legislature has prescribed timelines using the word "shall";

(iv) Treating timelines in Section 129(3) as directory would defeat the legislative purpose of preventing prolonged detention and seizure of goods, conveyance or documents of the transporter or the assessee;

(v) The absence of express consequences of a mandatory provision is not always decisive.

(vi) The legislative intent, object of provision and the nature of right affected are governing tests.

(vii) Whenever the statute authorizes coercive action, like seizure or detention, the Courts insist on strict compliance with the statutory procedure.

18. It is, thus, beyond any pale of discussion that whether the provision is

mandatory or not, depends upon the legislative intent, context, object and the consequences of non-compliance.

19. From the perusal of the provision in question in the context of the scheme of the Act of 2017, it is axiomatic that the timelines have been introduced to prevent arbitrary detention, prolonged seizure and harassment to the trader. It is in keeping with the aforesaid intention that the legislature has used the expression "shall" at two places in Section 129 (3) of the Act.

20. The view, which we have taken on the interpretation of Section 129(3) finds support from the judgements rendered on the point by various High Courts. The High Court of Gujarat in Allcargo Logistics Limited (supra) and couple of other judgements, has held the provisions of Section 129(3) mandatory and held that failure to adhere to the timelines prescribed therein would vitiate order of detention.

21. We are aware that in the instant case there is only delay of one day in passing the order of penalty by respondent no. 2 and that there were some intervening circumstances contributing to such delay, yet in view of the clear provisions of Section 129 (3) of the Act, respondent no. 2 was under an obligation to pass the order of payment of penalty within a period of seven days from the date of service of show cause notice of proposed penalty and this the respondent no. 2 could have done with respect to the goods other than the banned contraband, i.e., polythene.

22. In view of the aforesaid, we are left with no option but to accept this petition. Accordingly, writ petition is allowed and impugned notice/order dated 22nd September 2025, issued to petitioner for payment of penalty, having been issued beyond the period of seven days, is quashed.

23. We, however, make it clear that notwithstanding the quashing of the notice dated 22nd September 2025, the proceedings, if any, permissible under the other provisions of the Act of 2017 can still be pursued by respondents.

24. Disposed of.

6.2 In the case of M/s. Allcargo Logistics Limited vs State of Gujarat cited in 2025(12) TMI 1732 – Gujarat HC it is held that,

14. Thus, in the present case, there is violation of provisions of Section 129(3) of the CGST Act as the order dated 19.11.2025 has been passed beyond the period of 7 (seven) days from the date of service of notice. In present case, the notice in Form GST MOV-07 was issued on 10.11.2025 and the order dated 19.11.2025 and hence the present petition succeeds only on this sole ground. The impugned order in Form GST MOV-09 dated 19.11.2025, notice in Form GST MOV-07 dated 10.11.2025 under section 129 of the CGST/GGST Act, 2017 and order of detention in Form GST MOV-06 dated 09.11.2025 under section 129(1) of the CGST/GGST Act, 2017 are quashed and set aside.

15. Rule is made absolute. No order as to cost.

6.3 In the case of Khatu Enterprises vs State of Gujarat cited in 2025 (10) TMI 1341 – Gujarat HC it is held that:

"11. Having heard learned advocates for the respective parties and having

considered the facts of the case, it would be germane to refer to provisions of Section 129(3), which reads as under:

"129(3): The proper officer detaining or seizing goods or conveyances shall issue notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1)"

12. On perusal of the above provision, it is incumbent upon the respondent

authority after detaining or seizing of the goods or conveyance, to issue a notice within 7 days from such detention or seizure, specifying the penalty payable and pass an order within a period of 7 days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1) of Section 129 of the GST Act.

xxx xxx xxx

15. In view of the above dictum of law, we are in respectful agreement with the above proposition of law laid down by various High Courts and when the respondent authority has failed to issue notice as required under sub-section (3) of Section 129 of the GST Act, the detention order dated 6.5.2025 is liable to be quashed and set-aside.

6.4 In the case of Deepam Roadways vs Deputy State Tax Officer, Chennai, cited in (2023) 3 Centax 37 (Mad.) it is held that

4. As seen from section 129(3) of the Central Goods and Services Tax Act, 2017, the proper officer after detaining the goods or conveyance shall issue a notice of such detention or seizure specifying the penalty payable and

thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub- section (1) of section 129.

5. In the instant case, after detaining the petitioner's vehicle and the goods on 26.10.2022, notice was issued by the respondents on 31.10.2022 within seven days from the date of detention. However, the consequential order for payment of penalty was passed only on 10.11.2022 which is beyond the period of seven days from the date of service of notice on the petitioner. Having passed the impugned order beyond the period of seven days from the date of service of notice on the petitioner which is contrary to section 129(3) of the CGST Act, 2017, the impugned orders have to be necessarily quashed and the writ petitions will have to be allowed.

6. The very same view was taken by two other learned Single Judges of this Court in the case of Udhayam Steels (P.) Ltd. v. Deputy Tax Officer (Int.) dated 28-12-2022 in W.P.No.34268 of 2022 and in the case of D.K. Enterprises v. Assistant/Deputy Commissioner (ST) 2023 (70) G.S.T.L. 277 (Mad.) = [2022] 143 taxmann.com 201 (Mad.) dated 29-8-2022 in W.P.No.22646 of 2022. It is brought to the notice of this Court by the learned Special Government Pleader appearing for the respondents that no appeals have been filed against the aforesaid orders passed by two learned Single Judges of this Court and therefore, the said orders have also attained finality.

7. For the foregoing reasons, the impugned detention order dated 31-10-2022 as well as the impugned consequential order dated 10-11-2022 are hereby quashed and the writ petitions are allowed and a direction is issued to the respondents to release the detained goods and conveyances of the petitioner within a period of one week from the date of receipt of a copy of this Order. No costs. Consequently, connected miscellaneous petitions are closed.

6.5 In the case of Pawan Carrying Corporation vs State of Bihar, cited in (2024) 16 Centax 405 (Pat.) it is held that,

7. Be that as it may, even if the detention is stated to be on 28.12.2023, the notice was only issued on 05.1.2024, after the seven day period provided in section 129(3) CGST Act. Likewise, when the petitioner had been informed at the time of verification, if the petitioner had sought for time on the seventh day from the date of serving of notice, there was nothing preventing the tax authority from rejecting the said prayer and passing the order, especially since, if the matter is kept pending, the proceedings would be barred by limitation.

8. Section 129(3) of the CGST Act as substituted by Act 13 of 2021 is extracted hereunder:- "129(3) the proper officer detaining or seizing goods or conveyances shall issue notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period ofseven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1)" (underlining by us for emphasis)

9. The Limitation is clear and definite. The facts of the case indicate that the officers did not act in accordance with the provisions, we hence find no reason to sustain the demand raised. We set aside the orders passed for detention of the vehicles. The vehicle with the goods would be released immediately.

Ordered, accordingly.

10. The petition is allowed.

6.6 In the case of K.P. Sugandh Ltd vs Chief Commissioner of CT & GST, Odisha cited in (2025) 26 Centax 62 (Ori.) it was held that

4. Sub-section (3) in section 129 provides for a specific period of seven days for passing of an order. The seven days is to be reckoned from date of service of the notice, specifying the penalty payable. Issuance and receipt of the penalty notice is not in dispute. For us to take *a view that mere passing of the order within the time prescribed is sufficient for compliance with the provision in section 129(3) would imply that the order could thereafter be communicated at any later date. This view would then effectively enlarge the period prescribed. Indian Contract Act, 1872 provides for communication. Communication of a proposal is said to be complete, under section 4, in said Act, when it comes to knowledge of the person to whom it is made. Here the order is to be taken to be the proposal and communication of it can only be complete, when it comes to knowledge of the person against whom it is made. Revenue has not been able to satisfy us about the communication made on 26th September, 2024, by mail sent to e-mail address of petitioner on fulfilling the requirement under section 169(1)(c). Communication of the order was complete the next day, when it was uploaded in the portal as in compliance with requirement under*

section 169(1)(d).

5. To us it appears the print of sent mail is doubtful because petitioner filed appeal on Form GST APL-01 giving date of order as 27th September, 2024. The appeal was successfully uploaded. There is also said letter dated 18th October, 2024 written by Assistant Commissioner of State Tax to petitioner, in which there is clear mention of 27th September, 2024 as date of the order.

Furthermore, sub-rule (5) in rule 142 of Odisha Goods and Services Tax Rules, 2017 requires summary of the order issued, inter alia, under section 129, to be uploaded electronically in Form GST DRC-07. There is no dispute that this was done on 27th September, 2024.

6. In view of aforesaid, impugned order is found to have been made on the 8th day from date of service of the notice specifying penalty. It does not meet the requirement under sub-section (3) of section 129. It is therefore liable to be and is set aside and quashed. 7. Mr. Kar submits, the goods have been sold in the meantime. His client is also entitled to refund of pre-deposit on the appeal

withdrawn. Petitioner must find its remedy on consequences of this judgment.

8.The wit petition is disposed of.

7.0 We find that the appellant had supplied the goods under the cover of two tax

invoices which were generated as e-invoices from the e-invoice portal, and

subsequently had filed GST returns and paid appropriate GST. It is also a known fact that once the GST e-Invoice is generated it is auto populated in the GSTR-1 which is a periodical return for arriving at the correct tax payable. Therefore, the appellant has not made any attempt to evade tax, as it is also a fact that the tax has been paid on those two relevant invoices in the GST return filed for the Month of April-2022. Therefore, we do not find any mens rea on the part of the appellant to evade the tax payment only because e-way bill was not prepared, along with e-invoice.

8.0 In view of the above, we find that the Hon'ble High Courts have consistently held that the timelines of Section 129 (3) have to be adhered to mandatorily. We find that the Sub-section (3) in section 129 provides for a specific period of seven days for passing of an order. The seven days is to be reckoned from date of service of the notice, specifying the penalty payable. Issuance and receipt of the penalty notice and the Order is not in dispute. The Limitation is clear and definite. The facts of the case indicate that the officers did not act in time in accordance with the provisions, we hence find no reason to sustain the penalties imposed. There was nothing preventing the Respondent state tax authority from passing the order within 7 days, especially since, if the matter is kept pending, the proceedings would be barred by limitation.

9.0 We find that the Respondent has failed to issue the Order for imposing penalty under Section 129(3) of the CGST/KGST Act, 2017, within the mandatory time limit of days. Therefore, the Order MOV-09 dated 4-6-2022 issued after 47 days from the date of Notice

MOV-07 dated 18-4-2022 is illegal and without jurisdiction. The First Appellate Authority has failed to look into this basic fact which was apparent on record.

The impugned OIA is therefore liable to be set aside.

10.0 The impugned Order-in-appeal is set aside and the appeals are allowed with consequential relief. The Respondent is directed to release the Bank Guarantee to the appellants immediately on receipt of this Order.

(Order pronounced in open court on 14.08.2026.)

(2026) 1 GSTAT E- Journal 99 (Kolkata)
GOODS AND SERVICES TAX APPELLATE TRIBUNAL, KOLKATA BENCH
ANIL KUMAR SINGH
V.
DIRECTOR, S/O SANJAY KUMAR AGARWALLAHAR PATTI NEHRU ROAD THAKURGANJ BRKIS 855116, AGARWALA'S BITUMEX PRIVATE LIMITED
APPEAL NOS. APL/10/KLK/2026 AND APL/14/KLK/2026,
AUGUST 20, 2026

CORAM:

SHRI SUNIL KUMAR SINGH, MEMBER (JUDICIAL)
AND
SHRI BIJOY KUMAR KAR, MEMBER (TECHNICAL)

REPRESENTATION:

For the Appellant: Shri Rakesh Kumar, Superintendent, CGST, Authorised Representative.
For the Respondent: Shri Gaurav Sharma, Chartered Accountant.

HEADNOTE:

GST — Refund of accumulated Input Tax Credit — Export of goods — Bill-to-Ship-to model — Toll plaza receipts — Cancellation of registration of second-line/upstream suppliers — Additional grounds raised first time before Tribunal — Whether refund of accumulated ITC under Section 54(3) of the CGST Act, 2017 admissible where goods were procured under the Bill-to-Ship-to model and exported, despite Revenue's objections based on non-crossing of toll plazas in the State of origin and cancellation of registration of second-line suppliers — Whether Revenue can raise new grounds and rely on fresh evidence for the first time before the GST Appellate Tribunal — **HELD:** Bill-to-Ship-to Model is Permissible under GST Law, no Requirement that Goods must originate from registered place of supplier — Toll plaza receipts are not necessary documents to show the transportation of goods — the documents required for valid transportation and export are tax invoices, e-way bills, bilty copies, shipping bills, EGM details, transporter's certificate, and payments made through banking channels — Rule 45(1) of the GSTAT (Procedure) Rules, 2025 and Rule 112(1) of the CGST Rules, 2017 clearly bar additional evidence except in exceptional circumstances — Refund admissible; appeals dismissed.

...In Favour of the Respondent

KEY ISSUES AND FINDINGS:

1. **Whether the goods purchased by the respondent from M/s. K.S. Metals (KSM) can be said to have been dispatched from West Bengal when no toll plaza in West Bengal was crossed, and all movement was shown in Bihar/Uttar Pradesh?**
   "The Revenue have clearly admitted that the goods have been received at Ship to point and duly exported. This is also verified and confirmed by the Revenue authorities. The LCS Export also confirms that the goods have been exported and Bank Realization Statement has also been received in the office of the DGFT. So, there is no dispute regarding the export of the goods. The only dispute has been raised regarding the way of transportation."

"From the E-Way Bills, it is confirmed that the method of transportation is Bill To Ship To Model. In the said model, the exporter has delivered the goods directly at the place of export by giving instructions to the supplier namely M/s. KS Metals Private Limited. There is no provision in the GST law that the goods should necessarily start from the registered place of the supplier. The supplier shall supply the goods as per the instructions of the receiver/exporter to the place of export in Ship To Bill To model."
"We have also gone through Section 16(2) of the CGST Act, 2017. From perusal of the said Act, it is clear that the respondent has complied all the conditions mentioned in clauses (a) to (d) of sub-section (2) of Section 16. Thus, the respondent is eligible to take ITC." [Para 11.2]

2. **Whether toll plaza receipts are mandatory to prove actual physical movement of goods for the purpose of availing ITC/refund?**
"In view of the observation made by the Hon'ble Court, the toll plaza receipts are not necessary documents to show the transportation of the goods. The documents required for valid transportation and export must be reflected in GST portal supported by tax invoices, E-Way Bills and Billy copies and the payments made through banking channels. The respondent has complied the above method and submitted the documents which is not in dispute. The toll plaza receipts are not mandatory requirement for availing the ITC." [Para 11.3]

3. **Whether ITC/refund can be denied on the ground that the second-line suppliers of the direct supplier had ab initio cancelled GST registrations?**
"As far as the second issue mentioned in the SCNs is regarding cancellation of GST registration of the second line of the suppliers. From the records, it shows that the actual supplier i.e., M/s. KS Metals having valid registration and still exists in the GST portal. There is no connection between the respondent and the second line of suppliers. The respondent is not liable for any kind of irregularity committed by the second line of suppliers. The respondent has not committed any irregularity in the export of goods so he cannot be denied for taking refund of ITC." [Para 11.3]

4. **Whether the additional grounds raised by the Revenue for the first time before the Tribunal are admissible?**
"The Revenue has raised additional grounds in paras 6.6 to 6.10 above first time before this Tribunal which comes in the category of additional issue as per the grounds of the Revenue. There is no mention regarding the prayer of additional evidence. For the additional evidence, there is no documents have been filed before this Tribunal to show that any investigation going on against the respondent herein. The Revenue authority have only stated that they have raised concerns on the ITC used by M/s. Agarwala's Bitumex Private Limited and the license of the supplier namely M/s. KS Metals Private Limited for supply of the said product. No document of investigation/progress of the investigation has been filed in this appeal. Merely on the basis of information given before the Appellate stage and without any prayer for additional evidence cannot be allowed."
"The Rule 45(1) of GSTAT (Procedure) Rules 2025 and Rule 112(1) of CGST Rules, 2017 clearly bar the additional evidence to be recorded except in exceptional circumstances." [Para 11.4]

EDITORIAL NOTES:
Principles Laid Down:
1. The Tribunal affirms that in a Bill-to-Ship-to transaction, the supplier (bill-to party) invoices the buyer, but the goods are shipped directly to a third party (ship-to party) as per the buyer's instructions. There is no statutory requirement under GST law that goods must necessarily originate from the registered place of the supplier. The supplier is obligated to supply goods as per the instructions of the receiver/exporter to the

place of export. This interpretation aligns with commercial realities, particularly in export transactions where direct delivery to the port/LCS reduces operational time and costs.

2. The Tribunal, following the Allahabad High Court's decision in Raghuvansh Agro Farms Ltd. v. State of U.P., holds that toll plaza receipts are not necessary documents to show transportation of goods. The Revenue has failed to point out any provision or rule under the GST Act or Rules that compels an assessee to file toll plaza receipts. E-way bills, bilty copies, tax invoices, shipping bills, EGM details, transporter's certificates, and bank statements are sufficient to establish genuine movement. This is a significant relief for taxpayers, as toll data is often incomplete, not centrally maintained, and may not capture all movements.
3. The Tribunal draws a clear distinction between the direct supplier and second-line/upstream suppliers. Where the direct supplier's registration is valid and active, and the purchaser has no nexus with the second-line suppliers, the purchaser cannot be denied ITC merely because the upstream suppliers' registrations were cancelled. A bona fide purchaser who has taken all reasonable steps to verify the genuineness of its direct supplier should not suffer for the defaults of third parties.
4. The Tribunal firmly rejects the Revenue's attempt to introduce new grounds and evidence at the appellate stage. Rule 45(1) of the GSTAT (Procedure) Rules, 2025 and Rule 112(1) of the CGST Rules, 2017 bar additional evidence except in exceptional circumstances. The additional grounds — regarding pending investigations, licences for bitumen, and fake ITC — were not part of the SCN or adjudication, and no documents were filed in support. The scope of appellate proceedings is confined to the issues raised in the SCN and the orders passed thereunder. This also protects the taxpayer's right to natural justice, as the respondent had no opportunity to rebut these new allegations at the earlier stages.
5. The decision embodies the principle that substantive compliance with the conditions for ITC eligibility (Section 16(2)) should prevail over procedural or collateral discrepancies (such as toll plaza movements). Where the export is genuine, the goods are received, and the documents are valid and undisputed, the refund of accumulated ITC cannot be denied on speculative assumptions.
6. The Tribunal reinforces the settled principle that the entire proceedings under GST law are founded upon the allegations contained in the SCN, and the adjudication as well as appellate proceedings are necessarily confined to the issues arising therefrom. Neither the adjudicating authority nor the appellate authorities can travel beyond the scope of the SCN. New grounds sought to be introduced at the Tribunal stage constitute a fresh set of allegations and amount to supplementing the SCN, which would cause grave prejudice to the respondent and violate the principles of natural justice.
7. The Revenue itself admitted that goods were received at the ship-to point and duly exported. The LCS export confirmation and Bank Realization Statement were on record. There was no dispute regarding the export of goods. The only dispute was regarding the way of transportation, which cannot defeat a substantively valid refund claim.

Case Law Referred to:
Raghuvansh Agro Farms Ltd. v. State of U.P. [Writ Tax No. 3829 of 2025] (Allahabad High Court) — Followed (Paras 11.2, 11.3)

Relevant Provisions:

Section 16(2) of the CGST Act, 2017; Section 54(3) of the CGST Act, 2017; Section 107 of the CGST Act, 2017; Section 112 of the CGST Act, 2017; Rule 45(1) of the GSTAT (Procedure) Rules, 2025; Rule 112(1) of the CGST Rules, 2017.

JUDGMENT

Per: Shri Sunil Kumar Singh, Judicial Member

1. Since both the appeals bearing Nos APL/10/KLK/2026 and APL/14/KLK/2026 arise from the same *lis* and revolve around substantially similar facts and questions of law, they are taken up together for disposal by a common order with the consent of the parties for the sake of convenience and to avoid multiplicity of proceedings.
2. The present appeals have been preferred before the GSTAT, Kolkata Bench under sub-section (1) of Section 112 of the Central Goods & Services Tax Act, 2017 (in short the 'CGST Act') against the Order-in-Appeal No. 295/SLG-GST//2025-26 and 296/SLG-GST/2025-26, both dated 12.09.2025 passed by the Joint Commissioner (Appeals), CGST & CX, Siliguri Appeal Commissionerate (in short 'the first Appellate Authority'). The said appeals have been filed before the first Appellate Authority by the present respondent i.e., M/s Agarwala's Bitumex Private Limited under subsection (1) of Section 107 of the CGST Act against the Order in-Original bearing Ref Nos. ZD190525049468V dated 28.05.2025 and ZD190625009380H dated 05.06.2025 passed by the Assistant Commissioner of CGST and Central Excise, Siliguri Division, Siliguri Commissionerate.
3. The brief facts as stated in the appeals are that the respondent i.e., M/s. Agarwala's Bitumex Private Limited (GSTIN 19ABACA8140P1Z9) situated at Holding No. 37/491/1/AB/8, Radha Bazar, Ground Floor, Thana More, S.F Road, Opposite Siliguri Thana, Ward No.8, Siliguri, Darjeeling, West Bengal – 734004 is engaged in the supply of other bars and rods of iron or non-alloy steel, bitumen, etc. falling under HSN 7214 and 2714, respectively. Further, the respondent is also engaged in the export of the said goods out of India and claim refund of accumulated Input Tax Credit (in short 'ITC') under Section 54 of the CGST Act,2017.
4. In the instant case, the respondent has exported goods out of India and is claiming the refund of accumulated ITC. Accordingly, the respondent has filed for refund of accumulated ITC for an amount of Rs.11,41,828/- and Rs.27,65,697/- for the months of January, 2025 and February, 2025, respectively with the jurisdictional Officer i.e., the Assistant Commissioner of CGST and Central Excise, Siliguri Division, Siliguri Commissionerate (in short 'the original adjudicating authority' or 'OAA').
5. However, during the scrutiny of the said refund claims, the OAA has noticed certain deficiencies in both the aforesaid refund claims and accordingly issued two different Show Cause Notices (in short 'SCNs') bearing Ref Nos. ZD190525023472G dated 15.05.2025 (pertaining to Appeal No. APL/14/KLK/2026) and ZD190525044217B dated 26.05.2025 (pertaining to Appeal No. APL/10/KLK/2026) to the respondent. The respondent has furnished replies to both the SCNs. The OAA after following the due course of law has rejected both the refund claims filed by the respondent vide Order-in-Original bearing Ref Nos. ZD190525049468V dated 28.05.2025 (pertaining to Appeal No. APL/14/KLK/2026) and ZD190625009380H dated 05.06.2025 (pertaining to Appeal No. APL/10/KLK/2026), respectively (in short 'the impugned OIOs').Being aggrieved by the impugned OIOs, the respondent preferred appeals before the first Appellate Authority. However, the first Appellate Authority has allowed the refund claims filed by the respondent and set aside the impugned OIOs vide Order-in-Appeal No. 295/SLGGST/2025-26 and 296/SLG-GST/2025-26, both dated 12.09.2025 (in short 'impugned OIAs')
6. The petitioner i.e., the Revenue being aggrieved by the Orders of the first Appellate Authority, filed the present appeals on the following grounds:

6.1 The first Appellate Authority has failed to appreciate that despite having clear evidence indicating serious discrepancies in the inward supply chain, the first Appellate Authority concluded that refund of unutilized ITC is admissible under Section 54(3) of the CGST Act, 2017. This conclusion is factually incorrect as it ignored the crucial findings of non-genuine inward supplies.

6.2 The first Appellate Authority has relied on the toll movement of the said 14 E-way bills (10 E-Way Bills in r/o APL/10/KLK/2026 and 4 E-Way Bills in r/o APL/14/KLK/2026) involved in both the instant appeals whereas it has been noticed that all fourteen consignments have encountered their first toll crossing in Bihar instead of West Bengal which contradicted the declared dispatch location i.e., Dhandebi Khanna Road, Kolkata-700054. The first Appellate Authority erred in dismissing this material evidence by relying solely on the "bill-to ship-to" explanation without verifying the actual movement. The first Appellate Authority's reliance on the billto ship-to model is misplaced. While such routing may explain delivery to Jogbani, Raxaul and Sonauli, it cannot justify the absence of any movement from the declared dispatch point in West Bengal. Where all toll data shows entry and circulation only within Bihar/UP, the issue is not delivery routing but false origin declaration. Bill-to ship-to permits a different destination — it does not validate movement that never began from West Bengal, and therefore does not cure the fundamental discrepancy in the alleged supply chain.

6.3 That the impugned OIAs passed by the first Appellate Authority overlooked the finding that the respondent's immediate supplier M/s. KS Metals Pvt. Ltd. ('KSM') procured goods from two suppliers whose registrations were *ab initio* cancelled well before the occurrence of alleged transactions.This establishes that no actual goods were available for supply, making the ITC ineligible.

6.4 It is further mentioned that even assuming that the goods were physically received by the respondent, and even assuming that the exports are genuine, these facts do not prove that the inputs were procured through a valid taxable supply. Under Section 16(2)(b) of the CGST Act, 2017 the condition is not merely receipt of goods but receipt of goods should be a valid taxable supply from a genuine registered supplier. Where the upstream supplier is non-existent or *ab initio* cancelled, the receipt of goods—whether facilitated, arranged, or otherwise— does not make the ITC eligible.

6.5 That in inward supply the main supplier i.e.., 'KSM' bearing GSTIN: 19AABCK3534H2ZK is a Kolkata based firm. However, it is further mentioned that on the analysis of movement of vehicles shows that no toll gate in the state of WEST BENGAL is crossed by these vehicles. All movement is in the state of BIHAR and UTTAR PRADESH only.

6.6 Further, the Revenue have mentioned that a letter has also been received from Office of Assistant Commissioner,Land Customs Station (in short 'LCS') Jogbani, Bihar regarding the verification of genuineness of the exporter as well as documents/invoices for the purpose of refund of IGSTpaid for export of Bitumen VG-30.

6.7 That, Customs Preventive Hqrs, Patna have also issued a letter in which they have raised concern on the ITC used by the respondent and the licenses of the suppliers of the respondent for supply of the said product.

6.8 The Revenue have further mentioned that bitumen is a regulated petroleum commodity requiring valid licences (PESO/State petroleum trading permission/OMC authorization, etc.) for storage and trading. The supplier(s) lacked the requisite authorization, which independently renders the inward supplies illegal and incapable of generating ITC under Section 16. The Supplies in violation of statutory control cannot constitute a valid inward supply under GST, and ITC/refund cannot flow from an illegal transaction.

6.9 That the first Appellate Authority proceeded on the premise that possession of tax invoices, e way bills and GSTR-2B reflection is sufficient to allow ITC. However, mere documentary compliance alone does not establish actual receipt of goods, and ITC may be denied where supply is doubtful, fictitious or non-existent. Thus, **the mandatory condition under Section 16(2)(b) has not been fulfilled**. Refund of accumulated ITC under Section 54(3) is permissible only when such ITC is legitimately availed. Where the inward supply itself is doubtful or fictitious, no refund is admissible.

6.10 That the State GST has already issued SCN for fake ITC to M/s Simplex Natural Resources LLP (GSTIN:19AEQFS9121J1ZC) (in short 'Simplex') (the earlier unit of the respondent). Even the Directorate General of GST Intelligence (in short 'DGGI') had initiated investigation against 'Simplex'. The investigation initiated by the State GST Authorities was also transferred to the DGGI and it is alleged that the respondent is following the similar *modus operandi* followed in the earlier case also.

7. Shri Rakesh Kumar, Superintendent, CGST, Authorized Representative of the Revenue appeared through virtual mode and argued the case. He reiterated the facts and submissions which are already submitted in the Grounds of Appeal filed by the Revenue.

8. We have heard the argument of the petitioner on the point of admission. The appeal was admitted and accordingly notice was issued to the respondent. The respondent filed his authorization and appear through Shri Gaurav Sharma, CA, the Authorized Representative. The authorized representative has filed his Cross Objection against the instant appeals.

9. Shri Gaurav Sharma, CA, Authorized Representative of the respondent has filed the Cross Objection and are as under:

9.1 That with regard to the issue of serious discrepancies in the inward supply chain as contended by the Revenue in para above, the respondent has relied upon the findings made by the first Appellate Authority, wherein the first Appellate Authority has held that the Revenue has disputed that the supplier of the respondent i.e., 'KSM' had purchased goods from a supplier with a cancelled registration means no goods were delivered is an incorrect assumption and not supported by facts. The first Appellate Authority has affirmed that the registration of 'KSM' is not disputed and is still active. The first Appellate Authority has also held that in the instant case, there is no dispute with the level1 supplier. Rather, the Revenue has disputed the level 2 supplier. In light of such a detailed examination, the first Appellate Authority was pleased to set aside the impugned OIOs in favour of the respondent considering the authenticity and bona-fide nature of the relevant transactions and documents.

9.2 That with regard to the issue of non-crossing of the vehicle through proper toll plaza as contended by the Revenue in para 6.2 above, the respondent submits that the GST law nowhere prescribes verification of toll plaza movement or data as a statutory condition for availment of ITC. The only conditions required to be fulfilled are those expressly stipulated under Section 16(2) of the CGST Act 2017 which have been duly fulfilled by the respondent. Further, the Revenue has sought to draw adverse inference merely on the basis of alleged discrepancies in toll plaza movement data. Such reliance is wholly misplaced, extraneous to the statutory provisions, and beyond the scope of Section 16 of the CGST Act 2017.

9.3 With respect to the above cross objection, the respondent submitted that there exists no statutory mechanism or legal obligation upon a taxpayer to independently verify or preserve toll plaza movement for the purpose of claiming

ITC. The respondent advised the supplier to handover the goods at the LCS at Jogbani. Hence, the supplier by complying the GST provisions raised tax invoice and e-way bill under the "BILL TO-SHIP TO" model. The eway bills were issued by their supplier and the same was issued under "BILL TO SHIP TO" model wherein the Ship To location was given as LCS, Jogbani. The ship to address was given on the direction of the respondent so as to facilitate exports easily and also reduce the operational time and costs. The goods received at the ship to address is not disputed were subsequently exported therein and shipping bill copies and Export General Manifest (in short 'EGM') generated by the customs are a proof of the export done.

9.4 In support, the respondent further submitted that had the goods not been physically received, or if there had been no actual movement of goods, the subsequent export would not have been possible. This fact alone substantiates the genuine receipt and movement of the goods. The receipt of goods and further export completes the entire trade cycle. The respondent would like to highlight the fact that the eway bills w.r.t the concerned invoices were generated by the supplier i.e. KSM and therefore, the respondent is not privy to the exact location from which the goods were dispatched.

9.5 That the respondent are not aware of the fact as to from whom and where has the supplier ('KSM') arranged for the goods or which route they take to deliver it at our ship to location. The respondent did not have any reason to conduct an in-depth scrutiny of the above facts as the respondent was in receipt of the goods at the address as per given in eway bill which is the custom station; from where the respondent initiated further export of the same goods. Additionally, there exists no such mechanism also to check the origin of goods or track the movement of it through toll plazas and neither the respondent was inclined in doing so when he actually had received the goods and exported them further. The respondent was in receipt of goods duly as per the "BILL TO SHIP TO" arrangement; as apparent from the eway bill.

9.6 The respondent, having produced valid transportation documents issued by registered Goods and Transport Agency (in short 'GTA') operators evidencing movement of goods, cannot be subjected to denial of substantive ITC benefits on speculative assumptions arising from toll data which is not even a condition laid down in GST law. It is also notable that the documents have never been disputed by the Revenue.

9.7 Further, the respondent has placed reliance in the matter of Raghuvansh Agro Farms Ltd. v. State of U.P. [Writ Tax No. 3829 of 2025] wherein the Hon'ble Allahabad High Court passed a landmark ruling that *"Toll plaza receipts not mandatory for justifying actual physical movement of goods under GST"*. It is a well settled that procedural or collateral discrepancies cannot override substantive documentary evidence proving actual supply and movement of the goods.

9.8 The respondent further submits that ITC cannot be denied merely on the basis of assumptions and ancillary discrepancies when substantive conditions stand satisfied as per provisions and the transactions are otherwise genuine. In the present case, the respondent has adequately and rightfully demonstrated the actual physical movement of goods and the genuineness of the transactions by furnishing a comprehensive set of supporting documents beyond mere tax invoices. These include E-way Bills, bilty copies, shipping bills, EGM details, the transporter's certificate, and relevant bank statements reflecting the transaction details. The documents collectively substantiate the engagement of a registered GTA, the delivery of goods, and the subsequent export of the same. The respondent has taken all reasonable and necessary steps to establish the bona fide nature and authenticity of the transactions as well as the actual movement of goods. Accordingly, the allegations founded upon toll plaza movement are liable to be rejected in toto and the consequential denial of ITC deserves to be set aside. Further, GST law does not prescribe verification of toll plaza movements or data as a statutory condition for availment of ITC. The goods received at the ship to address were subsequently exported therein and shipping bill copies and EGM generated by the customs are a proof of the export done.

9.9 With regard to the issue of procurement of goods from their supplier namely M/s. KS Metals Pvt. Ltd. ('KSM') from two suppliers whose registrations were *ab initio* cancelled well before the occurrence of alleged transactions and accordingly this establishes that no actual goods were available for supply, making the ITC ineligible, as pointed by the Revenue in para 6.3 above, the respondent contended that their purchases were made from 'KSM' and neither they are aware nor there exists any obligation or requirement for the respondent to know or keep a track of the dealings between their supplier and supplier of 'KSM'. Hence, when they have no business with the 2nd line supplier; their GST registration getting cancelled is beyond their concern. The respondent had no nexus with those suppliers and Revenue's contention in denying ITC because of 3rd party is unreasonable and not liable to stand in any grounds. Further, the Revenue has never disputed the genuineness of respondent's direct supplier i.e., 'KSM'.

9.10 With regard to the allegation made by the Revenue in para 6.4 above wherein it was alleged that even though goods were physically received and the exports are genuine, goods should have been received from a genuine registered supplier thereby making ITC ineligible, the respondent contended that the GST law does not cast any obligation upon a bona fide purchasing dealer to undertake forensic verification of the entire upstream supply chain beyond its direct supplier. Once the purchases are supported by valid tax invoices, transportation documents, payment records, and proof of movement of goods, ITC cannot be denied on account of alleged default or cancellation of registration of third parties; especially when the Revenue itself acknowledges the genuineness of supply and subsequent exports.

9.11 With regard to the contention raised by the Revenue in para 6.5 above, wherein it is alleged that even though the main supplier 'KSM' is a Kolkata based firm and supply is from Kolkata to Siliguri. Further, on analysis of movement of vehicles it is seen that no toll gate in the state of WEST BENGAL is crossed by these vehicles and all movement is within the states of BIHAR and UTTAR PRADESH only, the respondent contended that Bill to/ Ship to transactions are very much allowed in GST law.

9.12 With regard to the contentions raised by the Revenue in paras 6.6, 6.7, 6.8 and 6.10 above, the respondent has contended that the Revenue has sought to raise and rely upon certain new grounds/contentions before the Hon'ble GSTAT which were never alleged, proposed, or made part of the SCN, nor formed the basis of the adjudication order, nor were urged before at the time of appeal. The respondent contended that the Revenue has raised grounds to appeal in addition to the discrepancies or allegations raised earlier in the SCN and the impugned OIOs or before the first Appellate Authority. The respondent wishes to refer to Rule 45(1) of the GSTAT Procedure Rules, 2025 which puts a complete embargo over the right to produce additional evidences and provides that the parties to the appeal shall not be entitled to produce any additional evidence, either oral or documentary, before the Appellate Tribunal. Rule 45(1) of the GSTAT Procedure Rules is being reproduced for brevity: *"45(1) The parties to the appeal shall not be entitled to produce any additional evidence, either oral or documentary, before the Appellate Tribunal"*.

9.13 Further, the producing of additional evidence has been restricted/barred under Rule 112 (1) of the CGST Rules 2017 as well. The relevant text of the same is reproduced *"The appellant shall not be allowed to produce before the Appellate*

Authority or the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the Appellate Authority".

9.14 That these allegations for a matter of fact have never been made a part of the SCN or adjudication and therefore, Page 18 of 25 shall be termed as "Additional Evidence" which is not allowed before the GSTAT as per Rule 45(1) of GSTAT Procedure Rules and Rule 112(1) of the CGST Rules, 2017. This rule explicitly renders these additional allegations not to be admitted or made a part of the appeal proceedings before the Hon'ble GSTAT.

9.15 That the entire proceedings under the GST law are founded upon the allegations contained in the SCN, and the adjudication as well as appellate proceedings are necessarily confined to the issues arising therefrom. It is a settled principle of law that neither the adjudicating authority nor the appellate authorities can travel beyond the scope of the SCN. The new grounds now sought to be introduced by the Revenue constitute an altogether fresh set of allegations and amount to supplementing upon the SCN and the impugned orders. Permitting such grounds to be raised for the first time at the Tribunal stage would cause grave prejudice to the respondent and would be contrary to the principles of natural justice, as the respondent was never put to notice regarding such allegations and consequently had no opportunity to rebut the same during the earlier stages of the proceedings.

9.16 The respondent further submitted that the Revenue cannot be permitted to build new allegations and grounds beyond the SCN, the OIO. Any contention, allegation, or ground not forming part of the original proceedings is liable to be rejected in *limine* and ought not to be admitted or considered by the Hon'ble Tribunal.

9.17 Accordingly, the additional grounds/contentions sought to be raised by the Revenue for the first time before the Hon'ble GSTAT deserve to be excluded from consideration and rejected as being beyond the scope of the SCN and the orders passed thereunder. Without prejudice to the preliminary objection regarding the maintainability of the newly raised grounds, the respondent also disputes the said allegations on merits. The allegations are wholly vague and lack any foundational basis whatsoever for being raised or connected with the facts and circumstances of the present case.

10. We have heard the arguments of the parties in detail and the same are not being discussed here as because the parties have advanced their arguments which have already been covered in the Grounds of Appeal.

11. **Discussion and Findings**

11.1 We have carefully heard the arguments of parties and examined the records minutely and also perused the show cause notices (SCNs) issued by the Petitioner authority. From the show causes, it is admitted that the duty has been paid by the respondent which is clearly reflecting from the documents viz., GSTR-1, GSTR 2B and GSTR 3B. Refund application filed in Form GST RFD 01 has been verified by the Department. It is also not in dispute by the Department that goods have not been exported. The first dispute raised by the Department is that the goods purchased by the petitioner from M/s. K.S. Metal have not been dispatched from West Bengal. This fact has been mentioned in the SCNs at para 2 (c). Another dispute has been raised in the same para regarding purchase of the goods by M/s KS Metals Private Limited from two suppliers namely M/s. Bhadra Enterprises and M/s. Maa Kali Traders whose GST Registrations having been *ab initio* cancelled. The Department has raised only these two objections in their show cause notices.

11.2 The first dispute raised in the SCNs regarding dispatch of the goods from declared dispatch location is disputed. From the records, it reveals that the Department have raised this objection purely on the basis of toll plaza movements. The contention of the Revenue is that there is no toll plaza movement of the goods showing in the state of West Bengal despite the head office/ registered office shown is in West Bengal. The toll movement is as per the Revenue is only in the state of Bihar and Uttar Pradesh. The Revenue have clearly admitted that the goods have been received at Ship to point and duly exported. This is also verified and confirmed by the Revenue authorities. The LCS Export also confirms that the goods have been exported and Bank Realization Statement has also been received in the office of the DGFT. So, there is no dispute regarding the export of the goods. The only dispute has been raised regarding the way of transportation. We have also seen the documents submitted by the respondent. From the E-Way Bills, it is confirmed that the method of transportation is Bill To Ship To Model. In the said model, the exporter has delivered the goods directly at the place of export by giving instructions to the supplier namely M/s. KS Metals Private Limited. There is no provision in the GST law that the goods should necessarily start from the registered place of the supplier. The supplier shall supply the goods as per the instructions of the receiver/ exporter to the place of export in Ship To Bill To model. The respondent has filed all supporting documents which includes E-way Bills, bilty copies, shipping bills, EGM details, the transporter's certificate, and relevant bank statements reflecting the transaction details. The documents collectively substantiate the engagement of a registered GTA, the delivery of goods, and the subsequent export of the same. These documents have not been disputed by the Revenue. We have also gone through Section 16(2) of the CGST Act, 2017. From perusal of the said Act, it is clear that the respondent has complied all the conditions mentioned in clauses (a) to (d) of subsection (2) of Section 16. Thus, the respondent is eligible to take ITC. As far as dispute raised regarding the transport of the goods where the Revenue has relied on toll gate receipts, the respondent has argued that the toll gate receipts are not mandatory for showing transportation of goods. The respondent has placed his reliance on the judgement of M/s. Raghuvansh Agro Farms Limited Vs. State of UP (2026)38 Centax 53 (All) (17-12-2025) (Writ Tax No.3829 of 2025) passed by the Hon'ble Allahabad High Court. The Hon'ble Court have observed in paragraphs 28 and 29 which is reproduced as below:

"28. Further the record shows that purchases and sales are being duly reflected in the GST portal supported by tax invoices, e-way bill and bilty and all payments were made through banking channels. The supporting ledgers were also brought on record, which clearly shows that due purchases have been made as well as actual physical movement of the goods has been taken place and no case of circular trading is made out in favour of the petitioner.

29. Further, an inference has been drawn against the petitioner that the petitioner has failed to submit the toll plaza receipts in order to justify the actual physical movement of the goods. The said finding is patently or apparently perverse and is without any basis. The revenue has failed to bring on record any provision or rule under the GST Act as well as Rules, which compel the assessee to file toll plaza receipts in support of actual physical movement of the goods. On the contrary, e-way bill, bilty and tax invoice was produced and payments made to the transporter through banking channel and due ledger of the transporter has also been brought on record but without pointing out any defect therein, the impugned order cannot be justified in the eyes of law."

11.3 In view of the observation made by the Hon'ble Court, the toll plaza receipts are not necessary documents to show the transportation of the goods. The documents required for valid transportation and export must be reflected in GST portal supported by tax invoices, E-way Bills and Billty copies and the payments made through banking channels. The respondent has complied the above method and submitted the documents which is not in dispute. The toll plaza receipts are not mandatory requirement for availing the ITC. As far as the second issue mentioned in the SCNs is regarding cancellation of GST registration of the second line of the suppliers. From the records, it shows that the actual supplier i.e., M/s. KS Metals having valid registration and still exists in the GST portal. There is no connection between the respondent and the second line of suppliers. The respondent is not liable for any kind of irregularity committed by the second line of suppliers. The respondent has not committed any irregularity in the export of goods so he cannot be denied for taking refund of ITC.

11.4 The Revenue has raised additional grounds in paras 6.6 to 6.10 above first time before this Tribunal which comes in the category of additional issue as per the grounds of the Revenue. There is no mention regarding the prayer of additional evidence. For the additional evidence, there is no documents have been filed before this Tribunal to show that any investigation going on against the respondent herein. The Revenue authority have only stated that they have raised concerns on the ITC used by M/s. Agarwala's Bitumex Private Limited and the license of the supplier namely M/s. KS Metals Private Limited for supply of the said product. No document of investigation/ progress of the investigation has been filed in this appeal. Merely on the basis of information given before the Appellate stage and without any prayer for additional evidence cannot be allowed. The Rule 45(1) of GSTAT (Procedure) Rules 2025 and Rule 112(1) of CGST Rules, 2017 clearly bar the additional evidence to be recorded except in exceptional circumstances. As far as the grounds stated above in para 6.8, the Revenue have not produced any documents before this Tribunal except mentioning in the grounds that Bitumin is a restricted petroleum commodity requiring valid license for storage and trading. This issue has not been mentioned in the show cause despite knowledge to the Revenue authorities that any license is required for storage and trading. The same cannot be raised by the Revenue authorities at this stage. The ground mentioned in para 6.9 above is concerned, the Revenue has itself admitted that the documents submitted by the respondent are valid documents. They have also admitted about the export of goods. In such circumstances, there is no additional evidence is required for the grounds mentioned in para 6.9 above. There is no provision for considering the additional evidence except in exceptional circumstances, rather the same is barred under Rule 45(1) of the GSTAT Procedure Rules, 2025 and Rule 112(1) of the CGST Rules, 2017.

12. For the facts and reasons discussed above, the appeals bearing Nos APL/14/KLK/2026 and APL/10/KLK/2026 filed by the Revenue are accordingly dismissed.

(2026) 1 GSTAT E- Journal 109 (Hyderabad)

GST APPELLATE TRIBUNAL, HYDERABAD BENCH

M/S. SRI PARAMESHWARA BRICKS

V.

STATE TAX OFFICER, PEDDAPALLI CIRCLE & ORS.

Appeal Nos. APL/126/HYD/2026 & APL/26/HYD/2026

(Common Order Nos. 001/HYD/2026 & 002/HYD/2026), AUGUST 20, 2026

CORAM:

SHRI A.P RAVI, MEMBER (JUDICIAL)

AND
SHRI DUVVURI KRISHNA SRINIVAS, MEMBER (TECHNICAL)

REPRESENTATION:
For the Appellant: Shri Srinivas, Advocate.
For the Respondent: Shri Narender Reddy, State Representative.

HEADNOTE:
GST — Composition Scheme — Cessation of Eligibility — Cum-Tax - Valuation under Rule 35 — Input Tax Credit — Appellant, a manufacturer of red clay bricks, was registered under Section 10(1) of the TSGST/CGST Act, 2017 and availing the composition scheme at the concessional rate of 1% — Audit authorities compared turnover reflected in e-way bills with turnover declared in FORM GST CMP-08 and alleged that Appellant exceeded the prescribed threshold of Rs. 1.50 crore during FY 2020-21 — Show cause notices issued proposing recovery of differential tax at regular rate — Adjudicating authority confirmed demand at applicable rate of 5% under Section 73, with interest under Section 50(1) and penalty at 10% — First Appellate Authority upheld the order — Appellant contended excess turnover occurred inadvertently due to COVID-19 pandemic and they acted under bona fide belief — Whether Appellant ceased to be eligible for composition scheme upon crossing threshold limit — Whether benefit of cum-tax valuation under Rule 35 of the Rules should be extended while computing differential tax liability — Whether Appellant is entitled to input tax credit — **HELD:** Upon aggregate turnover crossing the statutory ceiling of ₹1.50 crore, the option availed under the composition scheme lapses automatically by force of Section 10(3), and the registered person becomes liable to discharge tax at the applicable regular rate from the date of such lapse — The consequence is automatic and operates by force of statute — The Department duly considered and excluded the excess turnover attributable to typographical errors in e-way bills — However, since the Appellant, as a composition taxpayer, was prohibited under Section 10(4) from collecting tax separately from recipients, the value declared in invoices must be treated as inclusive of tax, and the benefit of cum-tax valuation under Rule 35 must be extended while determining differential tax liability — The Appellant's omission to specifically claim this benefit cannot disentitle them from receiving a benefit available under the Act and Rules — The proper officer directed to re-compute tax liability by treating declared value as cum-tax and applying Rule 35 formula — Consequential interest and penalty to be determined afresh — Question of entitlement to input tax credit left open — Impugned order modified to this limited extent — Appeals disposed of.

...Partly in Favour of the Appellant

KEY ISSUES AND FINDINGS:

1. **Whether the Appellant ceased to be eligible for the benefit of the composition scheme upon exceeding the prescribed threshold turnover of ₹1.50 crore?**
"It is an admitted position that the appellant exceeded the prescribed threshold limit of aggregate turnover in both the financial years under consideration. A plain reading of Section 10(3) of the Act makes it abundantly clear that the option exercised under the composition scheme ceases to operate from the date on which the aggregate turnover of the registered person exceeds the threshold limit of ₹1.50 crore prescribed under Section 10(3) of the Act. Upon such cessation, the registered person becomes liable to discharge tax at the applicable rate under the regular scheme, instead of the concessional rate prescribed for composition taxpayers." [Para 14]
"In the present case, there is no controversy that the appellants had exceeded the threshold limit of 1.50 crore during the financial year 2020-21. Upon the aggregate turnover crossing the statutory ceiling prescribed under the Act, the appellants ceased to remain eligible for the benefit of the composition scheme from the date of such crossing. The consequence flowing from Section 10(3) of the Act is automatic and operates by force of statute, whereby the composition levy stands terminated on the

occurrence of the disqualifying event. As a result, the appellants became liable to discharge tax at the applicable regular rate on all supplies made on and after the date of such lapse, subject to due credit and adjustment of any composition tax already paid in respect of such post-lapse turnover." [Para 15]

2. **Whether the Department correctly determined the differential tax after excluding the excess turnover attributable to typographical errors in e-way bills?**
"It is further observed that the Department duly considered the appellants' contention regarding the typographical errors allegedly occurring in certain e-way bills raised by them. The impugned demand was determined after excluding the excess turnover attributable to such errors, as accepted by the Department. In the absence of any further oral submissions on behalf of either party beyond the written submissions already placed on record, and having regard to the material available before us, we find no sufficient ground to interfere with the figures determined in the impugned orders or with the findings recorded by the adjudicating authority." [Para 16]

3. **Whether the benefit of cum-tax valuation under Rule 35 of the TSGST/CGST Rules, 2017 should be extended to the Appellant while computing the differential tax liability?**
"The provision is clear and admits of no ambiguity. A person opting for the composition scheme is prohibited from collecting tax from the recipient and is also not entitled to avail input-tax credit. Therefore, during the period in which the appellants operated under the composition scheme, they could not have collected GST separately from their customers or shown any GST component in the invoices issued by them." [Para 17]
"The invoices issued by the appellants must, therefore, be understood as reflecting the total consideration received from the recipients, without any separately identifiable tax component. The question that arises is whether the differential tax should be calculated on the entire value declared in those invoices or whether the benefit of the cum-tax principle under Rule 35 of the Rules should be extended to the appellants." [Para 17.1]
"The present case falls within the scope of Rule 35. Since the appellants were not permitted to collect tax separately from the recipients, and the Department has not alleged that they had, in fact, collected any tax over and above the invoice value, the value declared in the invoices must be treated as inclusive of tax." [Para 17.3]
"The tax component must consequently be worked out in accordance with the formula prescribed under Rule 35. Tax cannot be calculated on an amount which already includes the tax component. The benefit of cum-tax valuation is, therefore, required to be extended while determining the differential tax liability." [Para 17.4]

4. **Whether the Appellant's failure to specifically claim the benefit of Rule 35 before the authorities below disentitles them from receiving it?**
"It may be observed that the appellants did not specifically claim the benefit of Rule 35 either before this Bench or before the authorities below. In our view, this omission cannot disentitle them from receiving a benefit available under the Act and the Rules, particularly when the relevant facts are already available on record." [Para 18]
"Rule 35 is intended to ensure that tax is calculated on the value of the supply exclusive of the tax component. The authorities are required to determine the correct tax liability in accordance with law. They cannot collect tax in excess of what is legally payable merely because the taxpayer did not specifically claim a statutory benefit." [Para 18.1]
"It is a settled principle that the Department must collect the tax legally due—neither more nor less." [Para 19]

5. **Whether the Appellant is entitled to input tax credit upon cessation of the composition scheme?**
"It is not in dispute that, upon cessation of the composition scheme consequent upon the registered person crossing the prescribed turnover threshold, such person may

become entitled to avail input-tax credit, subject to strict compliance with the conditions stipulated under Section 16 of the Act and the Rules framed thereunder. Such entitlement, however, is neither automatic nor unconditional. The burden rests upon the person claiming the credit to establish, by cogent and legally admissible material, that each of the statutory requirements governing its availment stands duly satisfied. Since no submission was advanced, nor was any specific claim urged by the appellants in this regard, we consider it inappropriate to examine the issue in the present proceedings. Accordingly, we leave the question of the appellants' entitlement to input-tax credit open, without expressing any opinion on its merits." [Para 21]

EDITORIAL NOTES:

Principles Laid Down:

1. Upon the aggregate turnover of a registered person exceeding the threshold limit of Rs. 1.50 crore prescribed under Section 10(3) of the CGST/TSGST Act, the option to avail the composition scheme lapses automatically with effect from the date of such excess. The consequence is automatic and operates by force of statute, and the registered person becomes liable to discharge tax at the applicable regular rate from the date of such lapse.
2. Where a composition taxpayer is prohibited under Section 10(4) from collecting tax separately from recipients, the value declared in invoices must be treated as inclusive of tax. The benefit of cum-tax valuation under Rule 35 of the CGST/TSGST Rules, 2017 must be extended while determining the differential tax liability. Tax cannot be calculated on an amount which already includes the tax component.
3. The Department must collect the tax legally due; neither more nor less. Authorities cannot collect tax in excess of what is legally payable merely because the taxpayer did not specifically claim a statutory benefit.
4. A taxpayer's omission to specifically claim a benefit available under the Act and Rules does not disentitle them from receiving it, particularly when the relevant facts are already available on record. The authorities are duty-bound to determine the correct tax liability in accordance with law.
5. Upon cessation of the composition scheme, a registered person may become entitled to avail input tax credit, subject to strict compliance with the conditions stipulated under Section 16 of the Act and the Rules framed thereunder. Such entitlement is neither automatic nor unconditional, and the burden rests upon the person claiming the credit to establish satisfaction of all statutory requirements.
6. The proper officer is directed to re-compute the differential tax liability only on supplies made on and after the date of lapse of the composition option by treating the declared value as cum-tax and by applying the formula prescribed under Rule 35. Consequential interest and penalty shall also be determined afresh on the basis of the revised tax liability.

Case Law Referred to:

M/s. Unichem Laboratories Limited v. Commissioner of Central Excise, Mumbai, 2002-TIOL-237-SC-CX — Followed (Para 19)

Relevant Provisions:

Section 10(1) of the TSGST/CGST Act, 2017; Section 10(3) of the TSGST/CGST Act, 2017; Section 10(4) of the TSGST/CGST Act, 2017; Section 2(6) of the TSGST/CGST Act, 2017; Section 9(1) of the TSGST/CGST Act, 2017; Section 16 of the TSGST/CGST Act, 2017; Section 50(1) of the TSGST/CGST Act, 2017; Section 73 of the TSGST/CGST Act, 2017; Section 107 of the TSGST/CGST Act, 2017; Rule 6(2) of the TSGST/CGST Rules, 2017; Rule 35 of the TSGST/CGST Rules, 2017; Rule 138(1) of the TSGST/CGST Rules, 2017.

JUDGMENT

Per: A P Ravi, Member (Judicial)

1.0 The present common order disposes of Appeal Nos. APL/126/HYD/2026 and APL/26/HYD/2026, preferred by M/s. Parameswara Bricks in respect of the tax periods 2020–21 and 2021–22, respectively. Since both the appeals arise out of substantially identical facts and involve a common question of law and fact, they were heard together and are being disposed of by this common order.

2.0 The appellants are engaged in the manufacture and supply of red clay bricks and are registered under Section 10(1) of the Telangana Goods and Services Tax Act, 2017 (hereinafter referred to as "the TSGST Act"). The appellants have opted for and have been availing the benefit of the composition scheme prescribed under the Act. In terms of the said scheme, the appellants were liable to discharge tax at the prescribed composition rate of 1% in respect of the impugned goods under the TSGST Act as well as under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act").

3.0 During the relevant tax periods, the appellants were governed by the composition scheme under Section 10(1) of the TSGST Act, as applicable in the State of Telangana, read with the CGST Act, the prescribed aggregate turnover threshold being ₹1.50 crore. Upon the aggregate turnover of a registered person exceeding the said statutory limit, such person ceases to be entitled to continue under the composition scheme and becomes liable to discharge tax at the applicable regular rate, in accordance with law, in lieu of the concessional composition levy.

4.0 The appellants were subjected to audit by the jurisdictional Audit Officers. Upon examination and comparison of the turnover reflected in the e-way bills generated by the appellants during the relevant periods with the turnover declared in their respective FORM GST CMP-08 statements, the audit authorities noticed an apparent discrepancy between the two sets of figures.

4.1 It may be noted that, in terms of Rule 138(1) of the Telangana Goods and Services Tax Rules, 2017 (hereinafter referred to as "the Rules"), every registered person is required to furnish the prescribed particulars in an e-way bill before the commencement of movement of goods, subject to the applicable monetary threshold, including the prescribed limit of ₹1,00,000/-, and subject to such exemptions and conditions as may be notified by the Government from time to time.

4.2 The audit authorities alleged that, during the financial year 2020–21, the appellants had exceeded the prescribed turnover limit for availing the benefit of the composition scheme. According to the figures reflected in the e-way bills generated by the appellants, their aggregate turnover amounted to ₹1,95,53,800/-, whereas the turnover declared by them in their FORM GST CMP-08 statements was only ₹1,44,86,100/-.

4.3 On that basis, the audit authorities concluded that the appellants had exceeded the prescribed threshold of ₹1.50 crore for eligibility under the composition scheme. It was accordingly alleged that the differential turnover of ₹50,67,700/- had not been subjected to tax at the applicable normal rate and had, therefore, escaped assessment.

4.4 In respect of the financial years 2020-21 & 2021–22, the audit authorities placed reliance upon Section 10(3) of the TSGST Act and contended that, once the turnover of a taxable person exceeded the prescribed threshold during a financial year, the taxable person would cease to be eligible for the composition scheme.

4.5 Accordingly, the audit authorities proposed that the benefit of the composition scheme was unavailable to the appellants for the financial years 2020-21 & 2021–22 and that tax was consequently liable to be demanded on the turnover, after deducting ₹1.50 crores, reflected in the e-way bills for the period 2020-21.

4.6 Pursuant to the aforesaid audit objections, show-cause notices were issued to the appellants proposing the recovery of differential tax for both the financial years in question. While computing the proposed liability, the rate of tax was initially adopted at 28%, comprising 14% CGST and 14% SGST, instead of the applicable rate of 5%.

4.7 Upon adjudication, however, the proper officer restricted the confirmation of the tax demand to the applicable rate of 5%, in proceedings initiated under Section 73 of the TSGST Act. The proper officer further ordered recovery of applicable interest in terms of Section 50(1) of the Act and imposed a penalty equivalent to 10% of the tax under Section 73 of the Act.

4.8 Aggrieved by the said order, the appellants preferred appeals before the First Appellate Authority. The First Appellate Authority, however, upheld the order passed by the adjudicating authority and dismissed the appeals.

4.9 Being aggrieved by the impugned order, the appellants have preferred the present appeals before this Bench in respect of both the aforesaid financial years.

4.10 The appellants seek setting aside of the impugned order; restoration and continuation of the benefit of the composition scheme; annulment of the demands towards tax, interest and penalty; and refund of the amounts deposited by them as pre-deposit, together with all consequential reliefs.

5.0 The principal issue that arises for consideration in the present appeals is whether, during the respective financial years under consideration, the appellants had exceeded the prescribed threshold turnover of ₹1.50 crore and, consequently, had ceased to be eligible for the benefit of the composition scheme. A further question requiring determination is whether the First Appellate Authority, while exercising jurisdiction under Section 107 of the TSGST Act, 2017, was justified in affirming the order passed by the adjudicating authority and in dismissing the appeals preferred by the appellants.

6.0 Heard both sides.

7.0 The learned counsel appearing for the appellants submits that the excess over the prescribed threshold turnover occurred inadvertently and without any deliberate or conscious intent on the part of the appellants. It is contended that, during the period in question, the appellants' business operations were adversely affected by the COVID-19 pandemic, on account of which they were unable to properly monitor and administer their business affairs, including their turnover and consequential tax compliances.

8.0 The learned counsel further submits that the appellants were acting under a bona fide and reasonable belief that they continued to be eligible to avail the benefit of the composition scheme. It is asserted that the appellants neither suppressed any material particulars nor acted with any mala fide intention to wrongly avail or retain the benefit of the scheme.

9.0 The learned counsel submits that no further submissions are sought to be advanced on behalf of the appellants and requests that the appeals may be adjudicated on the basis of the submissions already placed on record.

10.0 Per contra, the learned Departmental Representative ("DR") draws our attention to the cross-objections filed by the Department in both appeals. He submits that the voluntary payments made by the appellants were calculated at the composition-scheme rate and, consequently, fell substantially short of the tax actually payable.

11.0 The learned DR further submits that, upon the appellants exceeding the prescribed threshold limit for availing the composition scheme, they became liable to discharge tax at the applicable regular rate. Accordingly, the appellants are liable to pay an additional amount of ₹1,27,250/- (₹63,625/- each as CGST and TSGST) for the financial year 2020–21 and ₹6,43,856/- (₹3,21,928/- each as CGST and TSGST) for the financial year 2021–22.

12.0 It is further submitted that the aforesaid demand has been determined after duly taking into account and allowing for the errors appearing in the e-way bills. The learned DR, therefore, prays that the appeals filed by the appellants be dismissed and the demands confirmed by the lower authorities be sustained.

13.0 The learned DR submits that he has no further submissions to make and requests that the matter be decided on the basis of the submissions already placed on record.

14.0 It is an admitted position that the appellant exceeded the prescribed threshold limit of aggregate turnover in both the financial years under consideration. A plain reading of Section 10(3) of the Act makes it abundantly clear that the option exercised under the composition scheme ceases to operate from the date on which the aggregate turnover of the registered person exceeds the threshold limit of ₹1.50 crore prescribed under Section 10(3) of the Act. Upon such cessation, the registered person becomes liable to discharge tax at the applicable rate under the regular scheme, instead of the concessional rate prescribed for composition taxpayers. The relevant provision is reproduced below:

> *"(3) The option availed of by a registered person under sub-section (1)10[or sub-section (2A), as the case may be] shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1) or sub-section (2A), as the case may be."*

14.1 The consequence of such cessation is statutorily delineated in Rule 6(2) of the CGST/TSGST Rules, 2017, which provides that a person ceasing to satisfy any of the conditions prescribed under Section 10 shall, from the date of such cessation, be liable to pay tax under Section 9(1), issue tax invoices for all taxable supplies thereafter, and intimate withdrawal from the scheme in FORM GST CMP-04 within seven days of the occurrence of such event. The relevant portion of the said rule is reproduced below:

> *"(2) The person referred to in sub-rule (1) shall be liable to pay tax under sub-section (1) of section 9 from the day he ceases to satisfy any of the conditions mentioned in section 10 or the provisions of this Chapter and shall issue tax invoice for every taxable supply made thereafter and he shall also file an intimation for withdrawal from the scheme in FORM GST CMP-04 within seven days of the occurrence of such event."*

14.2 For the aforesaid purpose, the expression 'aggregate turnover' bears the meaning assigned to it under Section 2(6) of the Act, namely, the aggregate value of all taxable supplies, exempt supplies, exports of goods or services or both, and inter-State supplies of persons having the same PAN, computed on an all-India basis, but excluding the value of inward supplies on which tax is payable under reverse charge, as also Central Tax, State Tax, Union territory tax, integrated tax and cess.

15.0 In the present case, there is no controversy that the appellants had exceeded the threshold limit of ₹1.50 crore during the financial year 2020–21. Upon the aggregate turnover crossing the statutory ceiling prescribed under the Act, the appellants ceased to remain eligible for the benefit of the composition scheme from the date of such crossing. The consequence flowing from Section 10(3) of the Act is automatic and operates by force of statute, whereby the composition levy stands terminated on the occurrence of the disqualifying event. As a result, the appellants became liable to discharge tax at the applicable regular rate on all supplies made on and after the date of such lapse, subject to due credit and adjustment of any composition tax already paid in respect of such post-lapse turnover.

16.0 It is further observed that the Department duly considered the appellants' contention regarding the typographical errors allegedly occurring in certain e-way bills raised by them. The impugned demand was determined after excluding the excess turnover attributable to such errors, as accepted by the Department. In the absence of any further oral submissions on behalf of either party beyond the written submissions already placed on record, and having regard to the material available before us, we find no sufficient ground to interfere with the figures determined in the impugned orders or with the findings recorded by the adjudicating authority.

17.0 Although no specific arguments were advanced by the learned Counsel regarding the method adopted for computation of the differential tax, we consider it appropriate to examine the issue in the light of Section 10(4) of the Act. The relevant provision is reproduced below:

> *"(4) A taxable person to whom the provisions of sub-section (1) or, as the case may be, sub-section (2A) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax."*

The provision is clear and admits of no ambiguity. A person opting for the composition scheme is prohibited from collecting tax from the recipient and is also not entitled to avail input-tax credit. Therefore, during the period in which the appellants operated under the composition scheme, they could not have collected GST separately from their customers or shown any GST component in the invoices issued by them.

17.1 The invoices issued by the appellants must, therefore, be understood as reflecting the total consideration received from the recipients, without any separately identifiable tax component. The question that arises is whether the differential tax should be calculated on the entire value declared in those invoices or whether the benefit of the cum-tax principle under Rule 35 of the Rules should be extended to the appellants.

17.2 Rule 35 provides as follows:

> *"Rule 35. Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax.—Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely,—*
>
> *Tax amount = (Value inclusive of taxes × tax rate in % of IGST or, as the case may be, CGST, SGST or UTGST) / (100 + sum of tax rates, as applicable, in %)"*

17.3 The present case falls within the scope of Rule 35. Since the appellants were not permitted to collect tax separately from the recipients, and the Department has not alleged that they had, in fact, collected any tax over and above the invoice value, the value declared in the invoices must be treated as inclusive of tax.

17.4 The tax component must consequently be worked out in accordance with the formula prescribed under Rule 35. Tax cannot be calculated on an amount which already includes the tax component. The benefit of cum-tax valuation is, therefore, required to be extended while determining the differential tax liability.

18.0 It may be observed that the appellants did not specifically claim the benefit of Rule 35 either before this Bench or before the authorities below. In our view, this omission cannot disentitle them from receiving a benefit available under the Act and the Rules, particularly when the relevant facts are already available on record.

18.1 Rule 35 is intended to ensure that tax is calculated on the value of the supply exclusive of the tax component. The authorities are required to determine the correct tax liability in accordance with law. They cannot collect tax in excess of what is legally payable merely because the taxpayer did not specifically claim a statutory benefit.

19.0 It is a settled principle that the Department must collect the tax legally due—neither more nor less. In this regard, reliance may be placed on the judgment of the Hon'ble Supreme Court in *M/s. Unichem Laboratories Limited v. Collector of Central Excise, Bombay,* reported in 2002-TIOL-237-SC-CX, wherein it was observed:

> *"13. For the aforementioned reasons, we are of the view that denial of benefit of the notification to the appellant was unfair. There can be no doubt that the authorities functioning under the Act must, as are in duty bound, protect the interest of the Revenue by levying and collecting the duty in accordance with law - no less and also no more. It is no part of their duty to deprive an assessee of the benefit available to him in law with a view to augment the quantum of duty for the benefit of the Revenue. They must act reasonably and fairly."*

19.1 The above principle applies to the present case. The appellants are entitled to the benefit of Rule 35, even though they did not specifically claim it. Extending this benefit would not amount to granting any concession outside the statute; it would merely ensure that the tax is correctly calculated in accordance with the prescribed rule.

19.2 Accordingly, the proper officer is directed to recompute the differential tax liability only on the supplies made on and after the date of lapse of the composition option by treating the declared value as cum-tax and by applying the formula prescribed under Rule 35. The revised computation shall be completed and communicated to the appellants within two weeks from the date of this order.

19.3 Any consequential liability towards interest and penalty shall also be determined afresh on the basis of the revised tax liability and in accordance with the applicable provisions of law.

20.0 The other aspect arising from Section 10(4) relates to input-tax credit. A person who has opted for the composition scheme is not entitled to avail input-tax credit during the period for which the scheme remains applicable.

21.0 It is not in dispute that, upon cessation of the composition scheme consequent upon the registered person crossing the prescribed turnover threshold, such person may become entitled to avail input-tax credit, subject to strict compliance with the conditions stipulated under Section 16 of the Act and the Rules framed thereunder. Such entitlement, however, is neither automatic nor unconditional. The burden rests upon the person claiming the credit to establish, by cogent and legally admissible material, that each of the statutory requirements governing its availment stands duly satisfied. Since no submission was advanced, nor was any specific claim urged by the appellants in this regard, we consider it inappropriate to examine the issue in the present proceedings. Accordingly, we leave the question of the appellants' entitlement to input-tax credit open, without expressing any opinion on its merits.

22.0 In view of the findings recorded hereinabove, the order of the First Appellate Authority is upheld, subject to the limited modification that the appellants shall be entitled to the benefit of cum-tax valuation in terms of Rule 35 of the Rules.

23.0 Accordingly, the impugned order is modified to the limited extent indicated in this order. The tax liability of the appellants shall be recomputed after giving effect to the cum-tax valuation under Rule 35 of the TSGST Rules, 2017, in accordance with the directions contained in paragraph 19.2 above. The consequential liability towards interest and penalty shall also be recalculated on the basis of the revised tax liability.

24.0 On the above terms, the appeals are disposed of.

25.0 No order as to costs. Parties shall act on the authenticated record.

(2026) 1 GSTAT E- Journal 118 (Lucknow)
(GOODS AND SERVICES TAX APPELLATE TRIBUNAL, LUCKNOW BENCH)
OM PRAKASH
V.
PROP, O TALPURA TALPURA BAHERI UPBAR 243201, ISLAM TRADING CO
APPEAL NO. APL/79/LCK/2026, AUGUST 20, 2026

CORAM:

SHRI SANTOSH KUMAR SRIVASTAVA, MEMBER (JUDICIAL)
AND
SHRI ARVIND KUMAR, MEMBER (TECHNICAL)

REPRESENTATION:

For the Appellant: Shri Sanjeev Kumar, Deputy Commissioner, SGST.
For the Respondent: None Appeared

HEADNOTE:

GST — E-Way Bill — Transportation of goods without E-Way Bill — Proceedings under Section 129 of UPGST Act, 2017 — Whether subsequent production of E-Way Bill can cure non-compliance at the time of interception — Whether absence of E-Way Bill constitutes mere procedural lapse — Whether circumstances establish intention to evade tax — Goods being iron scrap valued at Rs. 83,323/- intercepted during transportation from Baheri, Bareilly (U.P.) to Kichha (Uttarakhand) without E-Way Bill — Tax invoice and other documents accompanied goods — Proceedings under Section 129 initiated and tax of Rs. 15,000/- and penalty of Rs. 15,000/- imposed — First Appellate Authority set aside proceedings on ground that E-Way Bill was subsequently produced during reply — Revenue contending that E-Way Bill was mandatory under Rule 138(1) and had to be generated before commencement of movement — E-Way Bill being electronically generated and time-stamped whereas invoice was manually generated — Tribunal distinguishing precedents relied upon by First Appellate Authority on facts — Held: E-Way Bill is an integral part of statutory mechanism for monitoring movement of taxable goods — Failure to generate E-Way Bill before commencement of transportation, in circumstances of present case, could not be treated as a mere technical or procedural lapse — Subsequent production of E-Way Bill did not cure the violation — Short distance between place of loading and delivery and transportation of iron scrap without E-Way Bill further indicating intention to evade tax — First Appellate Authority erred in interfering with order under Section 129(3) — Original order imposing tax and penalty restored — Order of First Appellate Authority quashed — Appeal allowed.

...In Favour of the Appellant

KEY ISSUES AND FINDINGS:

1. **Whether transportation of goods without an E-Way Bill, as mandated under Rule 138(1) of the UPGST Rules, 2017, and its subsequent production during the**

proceedings, constitutes a mere procedural lapse or establishes an intention to evade tax warranting proceedings under Section 129 of the UPGST Act, 2017?

"...Thus E-Way Bill is an integral part of the statutory mechanism for monitoring movement of taxable goods.

The first Appellate Authority on the premise that the E-Way Bill was subsequently produced and there is no discrepancy existed in the accompanying documents. The first appellate authority has also relied, upon various precedents in his order to support his stand, as follows-

In case of Singh Tyre v. State of U.P. (2018) 98 Taxmann.com 388, before the hon'ble Allahabad High Court "If the goods are being accompanied with proper documents and E-way Bill has been produced along with the reply to notice then the seizure cannot take place"

The Hon'ble Allahabad High Court order in case of M/s Harle Foods Products Pvt. Ltd. v. State of U.P. and others (2018) 37 V.L.J. -16 "U.P. Goods and Services Tax Act, 2017 section 129(I) and 164 e- Way bill 01 not produced at the time of interception of goods along with other documents-Goods- seized- presumption-intention of evade tax all the requisite documents including e-Way bill were with the goods intention to evade tax not proved-goods directed to be released without security-penalty proceeding quashed."

The Hon'ble Allahabad High Court order in case of M/s Modern Traders Vs. The State of UP and 2 Others 2018 NTN (Vol-67)-71 "the sole ground of seizure of goods in non-production of E-way Bill, whereas no dispute with regard to Issuance of invoice and charge of Tax by the petitioner.

We have seen no error at the hands of the Petitioner and therefore. The order of seizure passed under section 129(I) of the acts well as the notice issued under section 129(3) of the act are hereby set aside. We are informed and it is not in dispute that the condition of accompanying the E-Way Bill with respect of interstate transaction is mandatory w.e.f. 1.4.18, whereas in the present case, the transaction is much before the aforesaid date. We directed the seizing authority to release the goods and vehicle forthwith."

The Hon'ble Allahabad High Court order in case of M/s Raj Iron and building material Vs. UOI dt.

22.12.2017 "Therefore it does appeal that the E-way bill had been downloaded and produced though with some delay but before conclusion of the penalty proceedings.

In view of the fact that in the present case, there is no allegation of evasion of tax liability established either from the reading of the show cause notice or the seizure order or the penalty order, the consequential penalty imposed appear to have been occasioned upon a mere technical breach and not on account of any intention to evade tax".

The Hon'ble Allahabad High Court order in case of M/s Rai Prexim India Private Limited Vs. State of Kerala 2019 NTN (Vol.70) -29 "If a human error which can be seen on naked eye is detected, such human error cannot be capitalized for penalization."

We have gone through above all precedents thoroughly. We find that the contents of those judicial pronouncements are not similar to the present case because we find in the present case E way bill generation is an online process where as the tax invoice issued manually by the tax payer, preventing generation of E- way bill leads to manipulation in his books of accounts at his convenience. Therefore, we are of the opinion that, in such circumstances conducting a transaction without E way bill establishes an intention to evade tax.

Moreover, in this transaction, the loading of goods is shown at Baheri, Barielly (Uttar Pradesh), and the delivery is shown at Kichha (Uttarakhand). Baheri is situated near Uttarakhand; the distance from Baheri to Kichha is approximately 25 km. Its further highlights the trader's intent to evade tax. Thus, in the present case the intention to evade tax is crystal clear..."

EDITORIAL NOTES:

Principles laid down:
1. An E-Way Bill is an integral part of the statutory mechanism for monitoring the movement of taxable goods, and its absence at the time of transportation constitutes non-compliance with Rule 138(1).
2. Where goods are transported without an E-Way Bill, subsequent production of the E-Way Bill cannot, in the facts of the present case, be treated as curing the original statutory breach where the circumstances establish an intention to evade tax.
3. The Tribunal considered the electronic generation of the E-Way Bill, the possibility of manipulation of records, and the movement of iron scrap from Baheri to Kichha to be circumstances establishing intention to evade tax, thereby justifying action under Section 129.

CASE LAWS REFERRED TO:
Singh Tyre v. State of U.P., (2018) 98 Taxmann.com 388

M/s Harle Foods Products Pvt. Ltd. v. State of U.P. & Others, (2018) 37 V.L.J.-16

M/s Modern Traders v. State of U.P. & 2 Others, 2018 NTN (Vol. 67)-71

M/s Raj Iron and Building Material v. UOI, WRIT TAX NO.- 826 of 2017

M/s Rai Prexim India Private Limited v. State of Kerala, 2019 NTN (Vol. 70)-29

RELEVANT PROVISIONS:
Section 129(1) of the UPGST Act, 2017; Section 129(3) of the UPGST Act, 2017; Rule 138(1) of the UPGST Rules, 2017.

JUDGMENT

1. Final Order
This appeal has been preferred by the Department under the relevant provisions of the GST Act against the order dated 24.09.2021 passed by the First Appellate Authority whereby the order passed under Section 129(3) of the UPGST Act, 2017 imposing tax and penalty was set aside.
Question of law involved.
Since the goods (Scrap) were being transported without E-way Bill, which is mandatory under Rule 138(1). Therefore, we find the matter should be heard in Division Bench.

2. Brief Facts
The records reveal that on dated 08.03.2018, vehicle No. UP-25 CT-8554, carrying iron scrap, was intercepted by the Mobile Squad Unit III, Barielly. Though the goods accompanied by a tax invoice and other documents, weighing 55.55 Kg. and valued at Rs. 83,323/- but were not accompanied by a E-Way Bill, as mandated under Rule 138(I) of the UPGST Rules. Accordingly, proceedings under Section 129 were initiated, resulting in the order dated 09.03.2018 confirming tax of Rs. 15,000/- and penalty of Rs. 15,000/-, aggregating to Rs. 30,000/-.
The First Appellate Authority, however, allowed the appeal vide appeal no. APL/023/2018, year 2017-18, under Section 129(3) of Uttar Pradesh Goods and Services tax Act. on the ground that the E-Way Bill was subsequently produced during submission of reply before the seizing officer.

3. Grounds of Appeal
- At the time of interception, the goods were admittedly being transported without a valid E-Way Bill.
- Generation of an E-Way Bill is a statutory requirement intended to ensure transparency and prevent tax evasion.

- Acceptance of an E-Way Bill generated or produced subsequently defeats the very object of Rule 138, as the invoice is manually generated whereas the E-Way Bill is electronically generated and time- stamped.
- If the vehicle had not been intercepted, the transaction could have remained outside the statutory monitoring mechanism.
- The First Appellate Authority erred in treating the lapse as merely procedural.
- Shri Sanjeev Kumar, learned Deputy Commissioner of authorized representative appeared for department appellant and argued vehemently. He reiterated the as grounds of appeal as well as the bullet points of statements of the facts produced below-
- In the disputed transaction, the trader clearly violated E-way Bill Rule 138. If the goods had not been intercepted for inspection during transit, the transaction in question would have been completed without an E-way bill.
- The E way bill generation is an online process, whereas the tax-invoice is issued manually by the taxpayer.If the trader generated the E-way bill online, it would have appeared in his outward supply records preventing him from manipulating his books of accounts at his convenience. This fact established the trader's intention to evade tax.
- The loading of goods is shown at Baheri, Barielly (Uttar Pradesh) and the delivery is shown at Kichha (Uttarakhand). Baheri is situated near Uttarakhand, the distance from Baheri to Kichha is approximately 25 km. Since the Transportation of sensitive goods such as iron scrap without E-way bill, further highlights the trader's intent to evade tax.

4. Submissions of Respondent –

The respondent, despite being afforded adequate opportunity before this court, neither appeared nor filed any written submissions to contradict the grounds urged by the Department. Consequently, there is no material before the Authority to dislodge the findings recorded herein.

5. Findings

We have carefully considered the grounds raised in the appeal and perused the record.

It is an admitted fact that no E-Way Bill accompanied the goods at the time of transportation. The requirement of carrying an E-Way Bill during transportation is mandatory under Rule 138(1) of the GST Rules, the said rule is produced as under-

> *"(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees-*
> *(i) in relation to a supply; or*
> *(ii) for reasons other than supply; or*
> *(iii) due to inward supply from an unregistered person,*
> *shall, before commencement of such movement, furnish information relating to the said goods as specified in Part A of Form GST EWB -01, the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal"*

Thus E-Way Bill is an integral part of the statutory mechanism for monitoring movement of taxable goods.

The first Appellate Authority on the premise that the E-Way Bill was subsequently produced and there is no discrepancy existed in the accompanying documents. The first appellate authority has also relied, upon various precedents in his order to support his stand, as follows-

In case of Singh Tyre v. State of U.P. (2018) 98 Taxmann.com 388, before the hon'ble Allahabad High Court *"If the goods are being accompanied with proper documents and E-way Bill has been produced along with the reply to notice then the seizure cannot take place"*

The Hon'ble Allahabad High Court order in case of M/s Harle Foods Products Pvt. Ltd. v. State of U.P. and others (2018) 37 V.L.J. -16 *"U.P. Goods and Services Tax Act, 2017 section 129(I) and 164 e- Way bill 01 not produced at the time of interception of goods* *along with other documents-Goods- seized- presumption-intention of evade tax all the requisite documents including e-Way bill were with the goods intention to evade tax not proved-goods directed to be released without security-penalty proceeding quashed."*

The Hon'ble Allahabad High Court order in case of M/s Modern Traders Vs. The State of UP and 2 Others 2018 NTN (Vol-67)-71 *"the sole ground of seizure of goods in non-production of E-way Bill, whereas no dispute with regard to Issuance of invoice and charge of Tax by the petitioner.*

We have seen no error at the hands of the Petitioner and therefore. The order of seizure passed under section 129(I) of the acts well as the notice issued under section 129(3) of the act are hereby set aside. We are informed and it is not in dispute that the condition of accompanying the E-Way Bill with respect of interstate transaction is mandatory w.e.f. 1.4.18, whereas in the present case, the transaction is much before the aforesaid date. We directed the seizing authority to release the goods and vehicle forthwith."

The Hon'ble Allahabad High Court order in case of M/s Raj Iron and building material Vs. UOI dt. 22.12.2017 *"Therefore it does appeal that the E-way bill had been downloaded and produced though with some delay but before conclusion of the penalty proceedings.*

In view of the fact that in the present case, there is no allegation of evasion of tax liability established either from the reading of the show cause notice or the seizure order or the penalty order, the consequential penalty imposed appear to have been occasioned upon a mere technical breach and not on account of any intention to evade tax".

The Hon'ble Allahabad High Court order in case of **M/s Rai Prexim India Private Limited Vs. State of Kerala 2019 NTN (Vol.70) -29** *"If a human error which can be seen on naked eye is detected, such human error cannot be capitalized for penalization."*

We have gone through above all precedents thoroughly. We find that the contents of those judicial pronouncements are not similar to the present case because we find in the present case E way bill generation is an online process where as the tax invoice issued manually by the tax payer, preventing generation of E- way bill leads to manipulation in his books of accounts at his convenience. Therefore, we are of the opinion that, in such circumstances conducting a transaction without E way bill establishes an intention to evade tax.

Moreover, in this transaction, the loading of goods is shown at Baheri, Barielly (Uttar Pradesh), and the

delivery is shown at Kichha (Uttarakhand). Baheri is situated near Uttarakhand; the distance from Baheri to Kichha is approximately 25 km. Its further highlights the trader's intent to evade tax. Thus, in the present case the intention to evade tax is crystal clear.

Accordingly, we are of the considered opinion that the First Appellate Authority committed an error in interfering with the order passed under Section 129(3). The original adjudicating authority had rightly invoked the provisions of Section 129.

ORDER

In view of the foregoing discussion,

For the facts and reason discussed above, the appeal filed by the Appellant (revenue) is accordingly allowed. Hence, the order dated 09.03.2018 passed by the Proper Officer under Section 129(3) of the UPGST Act, 2017 imposing tax and penalty is restored. Accordingly, the order passed by the First Appellate Authority is hereby quashed.

(2026) 1 GSTAT E- Journal 122 (Thiruvananthapuram)

(GOODS AND SERVICES TAX APPELLATE TRIBUNAL, THIRUVANANTHAPURAM BENCH)

M/S SANTHHOME LATEX ENTERPRISES

V.

COMMISSIONER OF CGST, THIRUVANANTHAPURAM

Appeal No.: APL/21/TVP/2026- Final Order No. 04/TVP/KERALA/2026, AUGUST 21, 2026

CORAM:

SHRI SUBRAMANYA RAYAPROL, MEMBER (JUDICIAL)
AND
SHRI RAMAOORTHI SRIRAM, MEMBER (TECHNICAL)

Representation:

For the Appellant: Unnikrishnan M, CA.
For the Respondent: Suresh S, AR.

HEADNOTE:

GST- Input Tax Credit- Section 74 of the CGST Act- Invocation of Section 74 merely on availment of ineligible ITC — Appellant engaged in manufacture and supply of Centrifugal Rubber Latex — Audit conducted for July 2017 to March 2022 — SCN issued under Section 74(1) proposing recovery of ineligible ITC of Rs. 8,56,877/- with interest and penalty — Adjudicating Authority dropped the demand holding that fraud, wilful misstatement or suppression was not established and ITC reconciliation had been disclosed through GSTR-9C/statutory filings — Joint Commissioner (Appeals) reversed the order relying on non-response to audit enquiry/final audit report — **HELD:** Mere availment of ineligible ITC, without evidence of fraud, wilful misstatement or suppression with intent to evade tax, cannot attract Section 74 — Relevant reconciliation having already been disclosed on the GST portal, no suppression established — Reliance on non-response to audit enquiry as a new ground not contained in the SCN was contrary to principles of natural justice — Mere failure to reply to audit enquiry/final audit report also cannot, in absence of other evidence, constitute suppression — Order-in-Appeal set aside and appeal allowed with consequential relief.

...In Favour of the Appellant

KEY ISSUES AND FINDINGS:

1. **Whether mere availment of ineligible self-assessed ITC, without evidence of fraud, wilful misstatement or suppression of facts with intent to evade tax, would amount to suppression of facts so as to invoke Section 74(1) of the CGST Act?**

   "No evidence whatsoever has been adduced in support of the contention that the tax payer had taken the ITC without verifying the eligibility thereof. Even if it were established that the tax payer had taken the ITC without verifying the eligibility thereof, in the absence of any statutory presumption to the effect, the mere act of taking of ITC without due verification will not amount to a suppression of facts. [Para 15.0]
   We find that the present show cause notice which was issued on 20/2/2024 (much after the issue of the Board's binding instructions as above) fails all the tests as laid down in the said Instruction of the Board, in as much as: The SCN is not based on any investigation worth the name. No material evidence of fraud / willful misstatement / suppression of facts to evade tax has been indicated." [Para 25.0]

2. **Whether the disclosure of the relevant ITC reconciliation through GSTR-9C/annual return filings and on the GST portal would negate the allegation of suppression of facts under Explanation 2 to Section 74 of the CGST Act?**

   "*From para 21 of the OIO cited above, we find that the OIO has made a categorical finding regarding the bonafide efforts made by the taxpayer towards availing of ITC, in line with the statutory provisions, and on the basis of the above, has arrived at the well-reasoned conclusion that there has been no fraud / willful misstatement / suppression of facts on the part of the tax payer. [Para 18.0] The invoice-wise reconciliation explaining the alleged ITC difference had already been uploaded as part of the appellant's GSTR-9C / annual return filings and was available on the common GST portal. [Para 23.0(ii)] The relevant reconciliation had been disclosed through statutory filings on the portal and, therefore, on that basis, held that 'non-declaration* *of facts or information 'under Explanation 2 to Section 74 was not established." [Para 23.0(iii)]*

3. **Whether the Appellate Authority was justified in sustaining the invocation of Section 74 on a ground not contained in the Show Cause Notice?**
"We find that raising such additional grounds at the appellate stage is against the fundamental principles of natural justice. On this ground alone the Appellate Authority ought to have rejected the department's appeal. [Para 21.0(ii)] Firstly, failure to provide information to the proper officer was never a ground in the show cause notice and the OIA by relying on this new ground has transgressed all fundamental principles of natural justice and deserves to be set aside for that reason alone." [Para 22.0(i)

4. **Whether mere failure to reply to the audit enquiry/final audit report would amount to suppression of facts under Section 74 of the CGST Act?**
"In the absence of any other evidence to the contrary, the mere failure to reply to the audit enquiry / final audit report by the tax payer would not amount to suppression of facts in terms of section 74 of the CGST Act, 2017." [Para 28.0]

EDITORIAL NOTES:
Principles laid down:
1. Mere availment of ineligible/excess ITC, or contravention of Sections 16(2) and 42(1) of the CGST Act, cannot by itself constitute fraud, wilful misstatement or suppression of facts so as to invoke Section 74; clear and categorical evidence of such conduct with intent to evade tax is required.
2. For invoking Section 74, the Department must establish that the taxpayer knew that the particular ITC was ineligible and nevertheless deliberately availed the credit; in the absence of such assertion or evidence in the SCN, Section 74 cannot be invoked.
3. Where the invoice-wise reconciliation of the alleged ITC difference had already been uploaded through GSTR-9C/annual return filings and was available on the GST portal, non-declaration of facts or information under Explanation 2 to Section 74 was not established.
4. A ground of alleged failure to furnish information to the proper officer, when not contained in the SCN, cannot be relied upon by the appellate authority, as introduction of such a new ground violates the fundamental principles of natural justice.
5. In the absence of any other evidence to the contrary, mere failure to reply to an audit enquiry/final audit report does not amount to suppression of facts for purposes of Section 74 of the CGST Act.
6. In terms of CBIC Instruction No. 05/2023-GST, Section 74 can be invoked only where investigation indicates material evidence of fraud, wilful misstatement or suppression of facts with intent to evade tax, and such evidence should also be made a part of the SCN; a notice containing only vague or bald assertions, without such material evidence, cannot sustain Section 74 proceedings.
7. An appellate order cannot sustain the invocation of Section 74 without addressing or dislodging the factual findings of the adjudicating authority, particularly where the relevant ITC reconciliation had already been disclosed through statutory filings.

Case laws referred to:
Cosmic Dye Chemical v. Collector of Central Excise, Bombay, 1995 (75) E.L.T. 721 (S.C.)

Commissioner of Central Excise, Nagpur v. Ballarpur Industries Ltd., 2007 (215) E.L.T. 489 (S.C.)

Circulars and Instructions referred to:

- Instruction No. 05/2023-GST dated 13/12/2023 communicated vide F. No. CBIC-20004/3/2023-GST

Relevant Provisions:
Section 16 of the CGST Act, 2017; Section 17 of the CGST Act, 2017; Section 42 of the CGST Act, 2017; Section 50 of the CGST Act, 2017; Section 74 of the CGST Act, 2017; Section 122 of the CGST Act, 2017; Section 65 of the CGST Act, 2017; Rule 88B of the CGST Rules, 2017.

JUDGMENT

Order Per: Ramamoorthi Sriram, Member (Technical)

1. The present appeals are filed against the Order in Appeal Number: TVM-GST- 000-APP-233-2025-26-JC dated 02.12.2025 of Joint Commissioner (Appeals), Central Tax, Central Excise and Customs, Kochi.

Issue to be decided:

A. Whether in the facts and circumstances of the case the mere act of the tax payer in taking ineligible self-assessed ITC in their Electronic Credit Ledger in terms of section 42(1) of the CGST Act would amount to suppression of facts before the department, which would fall within the scope of section 74 of the Central Goods and Services Act, 2017.

B. Whether the failure to reply to the audit enquiry / final audit report by the tax payer would amount to suppression of facts in terms of section 74 of the CGST Act , 2017.

Brief Facts of the Case :

2. The appellant, M/s. Santhome Latex Enterprises, is engaged in the manufacture and supply of Centrifugal Rubber Latex, which is used in medical, pharmaceutical and other commercial applications.
3. The present proceedings arise from audit of the appellant's records for the period from July 2017 to March 2022. Consequent to the above, a Show Cause Notice was issued to the appellant under Section 74(1) of the CGST Act, 2017, read with the corresponding provisions of the KGST Act, 2017 and Section 20 of the IGST Act, 2017. The notice proposed recovery of alleged excess availment of input tax credit for the period from 2017-18 to 2021-22, together with interest under Section 50 and penalty under Section 74(9) read with Section 122(2)(b).
4. The show cause notice was adjudicated by Order-in-Original No. 137/GST/PATTOM/SUPDT/2024-25 dated 24.01.2025, passed by the Superintendent, Central GST and Central Excise, Pattom Range, Thiruvananthapuram. In the said order, the adjudicating authority found that the statutory ingredients for invoking Section 74 were not established. The adjudicating authority held that the allegation of "non-declaration of facts or information" as contemplated in Explanation 2 to Section 74 was not established in the show cause notice. The adjudicating authority further held that since the notice had been issued under Section 74 and did not provide an option to confirm demand under Section 73, the demand proposed under Section 74 could not be sustained. Accordingly, the demand under Section 74, together with consequential interest and penalty, was dropped.
5. Aggrieved by the said Order-in-Original, the Respondent / Revenue filed an appeal before the Joint Commissioner (Appeals), Kochi. The Department's appeal challenged the dropping of the demand under Section 74. The substance of the Department's grievance was that the adjudicating authority ought to have sustained the proceedings under Section 74 on the ground that the appellant had not furnished information called for during audit and that the facts came to the notice of the Department only through audit.

6. The Joint Commissioner (Appeals), Central Tax, Central Excise and Customs, Kochi, thereafter passed Order-in-Appeal No. TVM-GST-000-APP-233-2025- 26-JC dated 02.12.2025. By the impugned Order-in-Appeal, the appellate authority allowed the Department's appeal and reversed the Order-in Original.
7. Aggrieved by the said Order-in-Appeal, the appellant has filed the present appeal before the Tribunal.

Grounds of Appeal / Submissions of the Appellant:

8. The Appellant / Assessee has filed the present appeals on the following grounds:
    (i) The present proceedings arise only from statutory return data, GSTR-2A / Table 8 figures, GSTR-3B and GSTR-9C reconciliation records, and not from search, seizure, parallel records, fake invoices or concealed purchases.
    (ii) The invoice-wise reconciliation explaining the alleged ITC difference had already been uploaded as part of the appellant's GSTR-9C / annual return filings and was available on the common GST portal.
    (iii) The adjudicating authority accepted that the relevant reconciliation had been disclosed through statutory filings on the portal and, on that basis, held that "non declaration of facts or information" under Explanation 2 to Section 74 was not established.
    (iv) The impugned Order-in-Appeal reverses the Order-in-Original without dislodging the above factual finding that the reconciliation had already been disclosed through GSTR-9C / annual return filings.
    (v) The impugned Order-in-Appeal also travels beyond the show cause notice by sustaining Section 74 on the materially different basis of alleged nonresponse to audit observation / audit report.
    (vi) Non-response to an audit observation or Final Audit Report cannot amount to suppression when the underlying data was already available on the portal and Section 65 does not contemplate a statutory reply to the Final Audit Report.
    (vii) A difference between GSTR-2A / Table 8 figures and ITC availed in GSTR-3B cannot, by itself, establish violation of Section 16(2).
    (viii) Without prejudice, once Section 74 fails, the demand relatable to FY 2017-18 and FY 2018-19 would be barred by limitation if tested under Section 73, and the demand for FY 2019-20 is similarly arguable on limitation.
    (ix) Penalty under Section 74(9) read with Section 122(2)(a) cannot survive in the absence of fraud, willful misstatement or suppression.
    (x) Interest is unsustainable both as consequential to an invalid Section 74 demand and, independently, for want of proper utilization -based quantification under Rule 88B(3) read with Section 50(3).
9. C.A Unnikrishnan M, appeared for the appellant and argued vehemently reiterating the above grounds of appeal and made a forceful argument to the effect that the impugned Order-in-Appeal deserves to be set aside and the Order-in-Original dropping the demand under Section 74 ought to be restored.

Submissions of the Respondent / Revenue

10. Shri Suresh S , learned Joint Commissioner / Authorized Representative appeared for Respondent / Revenue and made the following submissions in defense of the order in appeal:

    > *"Failure to furnish the information to proper officer when called for, tantamount to suppression, as per the Explanation to Section 74 of the CGST Act, 2017.*

    In the instant case it is evident that the tax payer has availed ITC in contravention of section 16(2) and section 42 (1) of CGST Act 2017. The taxpayer has also failed to reverse the ineligible blocked credit under section 17(1) of the CGST Act. It is the bounden duty of the taxpayer to comply with the statutory provisions on self-assessment basis and disclose the correct information in the statutory return filed by them. By these failures, the tax payer has failed to comply with the statutory obligations cast on him under section 16(2) and section 42(1) of the CGST Act read with the Rules made thereunder. The tax payer has not replied to the audit enquiry as well as the audit report. In view of the above it appears that the taxpayer has availed ineligible ITC and has not provided the correct information in the statutory returns which they were legally mandated to provide in terms of the provisions of the CGST Act and Rules made thereunder and has not furnished the reply to the department when called for and thus suppressed the facts from the department. There was failure on the part of the appellant to avail only the eligible ITC and to reverse the ineligible / blocked credit under section 17 of the CGST Act and to provide the correct information that they were legally mandated to provide in terms of CGST Act and Rules made thereunder and the appellant has also not furnished the reply to the department when called for. The above act of the appellant constitute ‘suppression ’as elucidated under Explanation 2 to section 74 of the CGST Act 2017. Hence the order in appeal is sustainable.

11. Written submissions reiterating the above were also filed on 13/8/2026 by Shri Sreekumar B, Assistant Commissioner AR for the Revenue.

Discussions and findings

12. We have carefully considered the submissions made by both sides and also perused the records of the case.
13. On a careful perusal of the show cause notice dated 20/1/2024 which is the foundational document of the current proceedings, we find that, in page 7 of the SCN an allegation is made to the effect that:

    The tax payer has taken the self-assessed ITC in their Electronic Credit Ledger without actually verifying the eligibility thereon. Therefore, it appears that the taxpayer has suppressed the facts to the department, in as much as he has taken ineligible self-assessed ITC in terms Section 42(1) of the Act. Therefore, it appears that the GST amounting to Rs.8,56,877/- being the ineligible credit as detailed above is liable to be disallowed/recovered from them under Section 74(1) of CGST Act, 2017 along with interest in terms of Section 50(3) of the Act. Further, by their act of contravention of the provisions of Section 16 of CGST Act 2017, for suppression of facts, with intent to evade payment of tax, the taxpayer has rendered themselves liable for penalty under Section 74 of the CGST Act, 2017.
14. We find that in page 10 of the SCN the following averments are made:

    It is evident that, the taxpayer availed excess Input Tax Credit in contravention of Section 16(2) and Section 42(1) of CGST Act, 2017. Availment of ineligible/excess credit would amount to suppression of facts. The taxpayer availed ineligible/excess ITC with a malafide intention to evade payment of tax. By these failures, the taxpayer has failed to comply with the statutory obligations cast upon him under Section 16(2) and Section 42(1) CGST Act, 2017 read with Rules made thereunder. Accordingly, invoking the provisions of Section 74(1) is justified for demanding the recovery of the ineligible ITC availed by them and for imposing penalty under Section 74(9) of the CGST Act, 2017.
15. Our observations after a careful perusal of the SCN are as follows:

    No evidence whatsoever has been adduced in support of the contention that the tax payer had taken the ITC without verifying the eligibility thereon. Even if it were established that the tax payer had taken the ITC without verifying the eligibility thereof, in the absence of any statutory presumption to the effect, the mere act of taking of ITC without due verification will not amount to a suppression of facts. As the law stands today, onus is on the department to establish that the tax payer knew that a particular ITC was not eligible, but in a contumacious act, still went ahead and took the credit thereof. We find no such assertion / evidence in support thereof in the SCN. We find that every act of transgression of section 16(2) / 42(1) of the CGST Act cannot be termed as a violation inviting proceedings under section 74 of the CGST Act unless clear and categorical evidence has been adduced to the effect that the said transgression was the result of fraud, or willful-misstatement or suppression of facts with an intent to evade tax. We find that other than certain vague / bald assertions, there is no evidence whatsoever in the SCN warranting the invocation of the provisions of section 74 of the CGST Act against the tax payer.

16. We find that the entire SCN has been founded on the questionable assertion that "Availment of ineligible/excess credit would amount to suppression of facts." and the other unproven assertion that "The taxpayer availed ineligible/excess ITC with a malafide intention to evade payment of tax".

17. We have also perused the order in original and reproduce the relevant portions thereof:

"20. Demand of tax for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts is raised under section 74(1) of CGST Act, 2017. As per explanation 2 to Section 74, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made there under, or failure to furnish any information on being asked for, in writing, by the proper officer.

21. I see that taxpayer has availed input tax credit in GSTR-3B based on inward supply invoices received from their suppliers and at the end of each financial year they have filed self-certified reconciliation statement in form GSTR-9C, through which they had reconciled the input tax credit, claimed in GST returns with that available in financial statement. They have also uploaded the required documents along with the said form, on the GST portal. I do not find any fraud or any willful misstatement or suppression of facts, in this action of taxpayer.

22. Justification for imposition of penalty given in the notice is that the taxpayer availed excess Input Tax Credit in contravention of Section 16(2) and Section 42(1) of CGST Act, 2017 and also the taxpayer has failed to reverse the ineligible/blocked ITC under Section 17 of CGST Act, 2017. These justifications do not appear to be true as it is evident form the returns of the taxpayer that they have reversed the ineligible/blocked credit on the basis of self-assessment. Merely the contravention of section 16(2) and section 42(1) of the Act, cannot be considered the reason for fraud or any willful misstatement or suppression of facts.

23. In view of the fact that "non-declaration of facts or information" as in explanation 2 to Section 74 is not established in the notice, though the noticee is not eligible for the input tax credit in question, I am not inclined to confirm the proposal for demanding the amount under Section 74 of the GST Act or to impose penalty under Section 74. Confirming a demand under Section 74 also invokes the harsh penalty envisaged under this Section, which will be unjust in the given situation. The notice has not left an option to confirm the demand under Section 73 of the Act. Therefore, I drop the demand in the notice."

18. From para 21 of the OIO cited above, we find that the OIO has made a categorical finding regarding the bonafide efforts made by the taxpayer towards availing of ITC, in line with the statutory provisions, and on the basis of the above, has arrived at the well-reasoned conclusion that there has been no fraud / willful misstatement /suppression of facts on the part of the tax payer. In para 22 of the OIO, a finding has been recorded to the effect that 'Merely the contravention of section 16(2) and section 42(1) of the Act, cannot be considered the reason for fraud or any willful misstatement or suppression of facts. This is very much in alignment with the views expressed by us in para 15 above, arrived at on the basis of an independent analysis of the impugned SCN .

19. 19.0 We find that the said OIO passed by the Superintendent has, on the basis of a meticulous analysis of the facts and the law, arrived at the legally correct decision that the SCN has invoked the provisions of section 74 without any supporting evidence thereof and is therefore liable to be dropped.

20. We would have been heartened if the Revenue had appreciated the efforts of the officer passing the OIO in arriving at an unbiased, legally sound order, based in the true spirit of quasi-judicial adjudication, and accepted the said order in review.

21. Unfortunately, what we find is that the Revenue has filed an appeal against the said order on the following new/extraneous grounds which are not found in the Show Cause Notice:

    (i) The tax payer has not replied the audit enquiry as well as the final audit report. Hence it appeared that the tax payer availed and has not provided the correct information in the statutory returns which they were legally mandated to provide in terms of the provisions of the CGST Act and Rules made thereunder and has not furnished reply to the department when called fore and thus suppressed the facts from the department.

    (ii) We find that raising such additional grounds at the appellate stage is against the fundamental principles of natural justice. On this ground alone the Appellate Authority ought to have rejected the department's appeal.

    (iii) Notwithstanding the above, on examination of the fresh grounds sought to be raised by the Revenue at the appellate stage (which are prima facie inadmissible in as much as they do not figure in the SCN) it strains our credulity as to how a failure to reply to the audit enquiry and final audit report would amount to suppression of facts in terms of section 74 of the CGST.

    (iv) We find that the appeal filed by the department before the Appellate Authority was an exercise in futility as it did not challenge any of the findings of fact / findings of law on which the adjudication order was founded.

    (v) We have also perused the OIA and find that the ratio of the OIA is as follows:

    "*Failure to furnish the information to proper officer when called for, tantamount to suppression, as per the Explanation to Section 74 of the CGST Act, 2017. Section 74 ibid, provides for the determination of tax not paid or short paid by reason of fraud or any willful misstatement or suppression of facts.*

    As per Explanation-2 of Section 74 of the Act: "Explanation 2.-For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer."

    Based on the above discussions, I find that the grounds of appeal raised by the appellant have merit."

22. If the department's appeals left us flummoxed, we must confess that the OIA has done one better and left us totally dumbfounded. On a study of the same, we are constrained to make the following observations:

    (i) Firstly, failure to provide information to the proper officer was never a ground in the show cause notice and the OIA by relying on this new ground has transgressed all fundamental principles of natural justice and deserves to be set aside for that reason alone.

    (ii) The OIA also does not specify (i) what is the information sought for by the proper officer (ii) when it was called for and (iii) under what provision of the statute. We find that the OIA in this respect is delightfully vague.

    (iii) We also find that except for the above vague assertions on a charge which was not part of the original show cause notice, the OIA has not put forth even an iota of evidence as to how and why the charge of suppression is found to be sustained against the appellant.

23. At the cost of repetition, we observe that the OIA has not discussed / refuted the following findings of the Adjudicating Authority in the OIO:

    (i) The present proceedings arise only from statutory return data, GSTR-2A / Table 8 figures, GSTR-3B and GSTR-9C reconciliation records, and not from search, seizure, parallel records, fake invoices or concealed purchases.

(ii) The invoice-wise reconciliation explaining the alleged ITC difference had already been uploaded as part of the appellant's GSTR-9C / annual return filings and was available on the common GST portal.

(iii) The relevant reconciliation had been disclosed through statutory filings on the portal and, therefore, on that basis, held that "non-declaration of facts or information" under Explanation 2 to Section 74 was not established,

We find that in view of the above, the impugned Order-in-Appeal suffers from non-application of mind on the part of the Appellate Authority.

24. In this connection, we find that the learned Counsel for the Appellant has cited the Instruction No. 05/2023-GST dated 13/12/2023 communicated vide F. No. CBIC-20004/3/2023-GST by the Principal Commissioner, GST Policy Wing, addressed to all field formations and we reproduce the relevant portions of the said Instruction:

3.2 .....Section 74 (1) of CGST Act reads as follows: "(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, "

3.3 From the perusal of wording of section 74(1) of CGST Act, it is evident that section 74(1) can be invoked only in cases where there is a fraud or willful mis- statement or suppression of facts to evade tax on the part of the said taxpayer. Section 74(1) cannot be invoked merely on account of non-payment of GST, without specific element of fraud or willful mis-statement or suppression of facts to evade tax. Therefore, only in the cases where the investigation indicates that there is material evidence of fraud or willful misstatement or suppression of fact to evade tax on the part of the taxpayer, provisions of section 74(1) of CGST Act may be invoked for issuance of show cause notice, and such evidence should also be made a part of the show cause notice.

25. We find that the present show cause notice which was issued on 20/2/2024 (much after the issue of the Board's binding instructions as above) fails all the tests as laid down in the said Instruction of the Board, in as much as:

The SCN is not based on any investigation worth the name.

No material evidence of fraud / willful misstatement / suppression of facts to evade tax has been indicated.

26. We find that willful misstatement / suppression of facts is a necessary ingredient which has to be alleged and established by way of evidence in order to invoke section 74 of the CGST Act. Our finding in the above respect is based on the law as laid down by the honorable Supreme Court in the context of similar words / phrases in the of the Central Excise Act, 1944. In this context we reproduce the decisions of the honorable Supreme Court, cited by the assessee in their defense.

(i) 1995 (75) E.L.T. 721 (S.C.) [06-09-1994] - COSMIC DYE CHEMICAL Versus COLLECTOR OF CENTRAL EXCISE, BOMBAY

........so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as mis- statement or suppression of facts are concerned, they are clearly qualified by the word "willful" preceding the words "mis-statement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or Rules" are again qualified by the immediately following words "with intent to evade payment of duty". It is, therefore, not correct to say that there can be a suppression or mis-statement of fact, which is not willful and yet constitutes a permissible ground for the purpose of the proviso to Section 11A. Mis-statement or suppression of fact must be willful

(ii) 2007 (215) E.L.T. 489 (S.C.) [30-08-2007] - COMMISSIONER OF C. EX., NAGPUR Versus BALLARPUR INDUSTRIES LTD.

It was held that the word "suppression" in Section 11A of the 1944 Act is accompanied by the words "fraud" or "collusion" and, therefore, the word "suppression" should be construed strictly. That, mere omission to give correct information did not constitute suppression unless that omission was made willfully in order to evade duty. That, *suppression would mean failure to disclose full and true information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party would not constitute suppression. That, an incorrect statement cannot be equated with a willful mis-statement. The latter implies making of an incorrect statement with the knowledge that the statement made was not correct.*

27. To sum up our findings in the instant case:
    - (i) We find that the show cause notice itself did not make out any case for the invocation of section 74 of the CGST Act.
    - (ii) The Adjudicating Authority did a commendable job of separating the grain from the chaff and based on correct appreciation of facts and law made a clear and correct determination that section 74 of the CGST Act was not invocable in the instant case.
    - (iii) The review order of the Commissioner did not provide any worthwhile grounds for challenging the order in original.
    - (iv) The Order In Appeal vitiated the fundamental principles of natural justice by relying on a ground not found in the Show Cause Notice. The Order-in-Appeal also reversed the Order-in-Original without discussing / dislodging the factual findings in the OIO to the effect that the reconciliation had already been disclosed through GSTR-9C / annual return filings.
    - (v) We therefore find that for the above reasons, the Order in Appeal is not sustainable.
28. In view of the above findings, we answer both the questions framed for decision in para 1 above in the negative and hold that:

    In the absence of any other evidence to the contrary, the mere act of the tax payer in taking ineligible self-assessed ITC in their Electronic Credit Ledger in terms of section 42(1) of the CGST Act would not amount to suppression of facts before the department, which would fall within the scope of section 74(1) of the CGST Act. In the absence of any other evidence to the contrary, mere failure to reply to the audit enquiry / final audit report by the tax payer would not amount to suppression of facts in terms of section 74 of the CGST Act, 2017.
29. In view of the above, the impugned Order in Appeal is set aside and the appeals are allowed, with consequential relief.

(Order pronounced in open court)

(2026) 1 GSTAT E- Journal 131 (Thiruvananthapuram)
(GOODS AND SERVICES TAX APPELLATE TRIBUNAL, THIRUVANANTHAPURAM BENCH)
VIJAYAN SAHADEVAN (DECEASED)
V.
THE COMMISSIONER OF KERALA STATE GST, THIRUVANANTHAPURAM
APPEAL NO. APL/19/TVP/2026, AUGUST 21, 2026

CORAM:

HON'BLE SHRI SUBRAMANYA RAYAPROL, VICE-PRESIDENT
AND
HON'BLE SHRI RAMAMOORTHI SRIRAM, MEMBER (TECHNICAL)

REPRESENTATION:
For the Appellant: Shri Balachandran, Ld. Advocate (representing legal heir).
For the Respondent: Shri M.I. Mansur M I, Ld. Joint Commissioner.

HEADNOTE:
GST — Belated filing of GSTR-3B — Disallowance of Input Tax Credit under Section 16(4) — Effect of retrospectively inserted Section 16(5) — Death of sole proprietor — Whether proceedings can continue against deceased person without notice to legal heir

under Section 93 — Whether legal heir can be proceeded against without determining existence of inherited estate. **HELD:** Impugned OIA set aside and appeals allowed — Proceedings cannot be conducted against a deceased person — No notice was issued to the legal heir, no inquiry was caused regarding inherited estate of deceased appellant, even when GST Registration was cancelled due to continuous illness and discontinuance of business — Section 93(1)(b) of CGST/KGST Act provides that where business is discontinued, legal representative shall be liable to pay out of estate of deceased to extent estate is capable of meeting charge — In absence of any process done by Respondent under Section 93(1)(b), department has no case to recover any dues from deceased appellant — On merits, Section 16(5) inserted w.e.f. 01.07.2017 provides that for FY 2017-18 to 2020-21, ITC can be claimed if returns filed up to 30.11.2021 — Appellant filed all returns on 31.07.2018 and 06.06.2019, well before prescribed date of 30.11.2021 — Therefore, on merits, deceased appellant was eligible for ITC claimed — However, Section 16(5) does not provide relief against separate demand of interest under Section 50(1) for delay in discharge of admitted cash tax liability — Since entire proceedings set aside for want of notice to legal heir, interest issue does not survive for consideration — Appeal allowed with consequential relief.

...In Favour of the Appellant

KEY ISSUES AND FINDINGS:

1. **Whether proceedings can continue against a deceased person without notice to the legal heir under Section 93 of the CGST/KGST Act?**
"We find that at the time of demise of the appellant on 5-9-2024, the matter was still under the appeal period as the appeals could have been filed before the GSTAT on or before 30-6-2026 which was further extended to 31-7-2026. The appeal was therefore filed by the legal heir of the appellant before this Tribunal on 26-3-2026. The last GSTR3B filed by the appellant was for the Month of May-2023 on 22-5-2024. After that no returns were filed and the GSTIN was also cancelled. Therefore, it can be construed that the business of the deceased was not continued in anyway. As per Section 93 (1) (b), the liability if any arising out of the present matter, the legal representative / legal heir shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act. But in the present case, we find that there is no effort made to find whether there was any such estate of the deceased, nor any notice was sent to the legal heir for recovery of the dues. In the absence of any process done by the Respondent under Section 93 (1) (b) of the CGST/KGST Act, the respondent department has no case to recover any of the dues from the deceased appellant, even though the estate of the legal heir." [Para 11]

2. **Whether assessment proceedings against a deceased proprietor are valid without issuing notice to the legal representative?**
"We find that time and again various High Courts and Hon'ble Supreme Court has also held that no proceedings can be conducted against a deceased person. Section 93 of the CGST Act authorises post-death initiation of assessment and recovery proceedings against a legal heir where the taxable person has died and the business has been discontinued. The provision is read with Sections 73, 74 and 74A to mean that tax, interest or penalty may be determined after death, including by issuing notice after the taxpayer's demise, the term "person chargeable with tax" is not limited to the registered taxable person. Recovery against the legal heir is permissible, but in a discontinued business it is confined to the inherited estate. The respondent has not brought into record any inherited estate of the deceased appellant. Where adjudication fails to examine whether heirs continued the business or whether an estate is available for recovery, the statutory basis for liability remains unaddressed. As such there is no legal proceedings against the Legal Heir or Legal Representative under Section 93, the

order of the first appellate authority is unsustainable and the entire proceedings is liable to be set aside." [Para 11]

3. **Whether the deceased appellant is eligible for ITC in light of Section 16(5) of the CGST/KGST Act?**
   "We find that Section 16 (5) was inserted in the CGST / KGST Act vide Section 118 of the Finance (No. 2) Act, 2024, which reads as below: "Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in any return under section 39 which is filed up to the thirtieth day of November, 2021." [Para 15]
   "In view of the Section 16(5), we find that on merits of the case, the deceased appellant was eligible for ITC as they have filed all the GST Returns on 31-7-2018 and 6-6-2019, well before the prescribed date of 30-11-2021 under Section 16(5), for the period 2017-18." [Para 16]

4. **Whether Section 16(5) provides relief against interest levied under Section 50(1) for belated filing of returns?**
   "...Section 16(5) operates only qua the disallowance of ITC under Section 16(4) on the ground of belated filing of returns for FY 2017-18 to FY 2020-21, and grants relief only where the return was filed on or before 30.11.2021. It does not touch, and does not provide relief against, the separate and independent demand of interest of Rs. 1,87,350/- levied under Section 50(1) for belated filing of monthly returns for November 2017, December 2017, January 2018 and March 2018. That liability arises from delay in discharge of admitted cash tax liability and is separate from the eligibility of ITC and is not affected by the outcome under Section 16(5)." [Para 5]

5. **Whether Circular No. 237/31/2024-GST requires verification of claims before granting relief under Section 16(5)?**
   "...The Circular No. 237/31/2024-GST dated 15-10-2024 clarifies and directs the Adjudicating and Appellate Authorities, including matters pending in appeal, to take cognizance of the retrospectively inserted Section 16(5) while passing orders. The Respondent does not oppose examination of the ITC component of the demand in light of Section 16(5), subject to reverification. However, the benefit of Section 16(5) cannot be extended on the strength of the Appellant's bare assertion that the return was filed on 06.06.2019. The date of filing, the return period to which it relates, and the fact that the ITC of Rs. 1,72,430/- claimed therein corresponds to the very ITC disallowed in the impugned orders, are matters of record capable of verification from the GST common portal and departmental records, and may be verified by the Jurisdictional Proper Officer before consequential relief under Section 16(5) is given effect to." [Para 5]

EDITORIAL NOTES:
Principles Laid Down:
1. Notice to a living and correctly identified person is a foundational jurisdictional requirement. Section 93 of the CGST Act authorises post-death initiation of assessment and recovery proceedings against a legal heir, but only after due notice and opportunity of hearing. The provision does not authorise determination of liability against a dead person. It is mandatory that any show cause notice and adjudication be directed to the legal representative.
2. Recovery from legal heir is limited to the inherited estate. Under Section 93(1)(b), where the business is discontinued, the legal representative shall be liable to pay, out of the estate of the deceased, only to the extent to which the estate is capable of meeting the charge. If adjudication fails to examine whether an estate is available for recovery, the statutory basis for liability remains unaddressed.

3. Death of a sole proprietor terminates the proprietorship firm. On demise of the proprietor, the proprietorship firm also comes to an end. The GST Registration of the deceased appellant stands cancelled, and no further business can be conducted in the name of the deceased appellant.
4. Section 16(5) grants retrospective relief for belated ITC claims. Section 16(5) inserted w.e.f. 01-07-2017 provides that for FY 2017-18 to 2020-21, ITC can be claimed if returns are filed up to 30-11-2021. This provision applies to pending appeals and matters, and authorities must take cognizance of it while passing orders.
5. Interest under Section 50(1) remains unaffected by Section 16(5). The relief under Section 16(5) is limited to disallowance of ITC under Section 16(4) on the ground of belated filing. It does not provide relief against separate demand of interest under Section 50(1) for delay in discharge of admitted cash tax liability.
6. A legal heir is competent to pursue proceedings before the GST Appellate Tribunal on behalf of the deceased taxpayer, but such proceedings must be initiated by the legal heir in their own capacity and not in the name of the deceased.

Case Law Referred to:
SSS Agro Foods v. The Assistant Commissioner ST, Kakinada 2026 (8) TMI 899 (AP High Court) — Followed. [Para 12(i)]

Chotu Devi, Ajmer v. Union of India 2026 (8) TMI 308 (Rajasthan High Court) — Followed. [Para 12(ii)]

M/s. J.S. Enterprises v. Superintendent Central GST and Cx Division Cuttack-I 2026 (7) TMI 1524 (Orissa High Court) — Followed. [Para 12(iii)]

BKR Services Pvt Ltd & Santosh Kumar Rudraswamy v. State of Karnataka 2026 (8) TMI 774 (Karnataka High Court) — Followed [Para 12(iv)]

V. Damayanti v. Superintendent of GST and Central Excise, Madurai 2026 (6) TMI 1093 (Madras High Court) — Followed [Para 12(v)]

M/s. S.B. Enterprises v. Directorate General of GST Intelligence 2026 (6) TMI 790 (Jharkhand High Court) — Followed [Para 12(vi)]

M/s P.B. Sethi Plastics v. State of U.P. 2026 (2) TMI 390 (Allahabad High Court) — Followed [Para 12(vii)]

Rajvanti Devi v. State of U.P. 2026 (2) TMI 164 (Allahabad High Court) — [Para 12(viii)]

Sambul Shahid v. State of U.P. 2025 (12) TMI 937 (Allahabad High Court) — [Para 12(ix)]

Shubhangi Gupta v. State of UP 2025 (9) TMI 595 (Allahabad High Court) — Followed [Para 12(x)]

Circulars and Notifications Referred to:
- Circular No. 237/31/2024-GST dated 15.10.2024 *(Para 5)*
- Notification No. 22/2024-Central Tax dated 08.10.2024 *(Para 5)*

Relevant Provisions:
Section 16 of the CGST Act, 2017; Section 50 of the CGST Act, 2017; Section 73 of the CGST Act, 2017; Section 74 of the CGST Act, 2017; Section 74A of the CGST Act, 2017; Section 93 of the CGST Act, 2017; Section 39 of the CGST Act, 2017; Section 118 of the Finance (No. 2) Act, 2024; KGST Act, 2017 (corresponding provisions).

JUDGMENT

Per: Subramanya Rayaprol, Vice-President

1.0 Mr Balachandran, Ld Advocate appeared for the deceased appellant and Mr M I Mansur, Ld Joint Commissioner appeared for the respondent.

2.0 The brief facts of the case is that an assessment notice ASMT-10 dated 5-3-2020 was issued to the appellant alleging that GSTR-3B return for March 2018 was belatedly filed on 16-6-2019 instead of its due date 23-4-2019. Due to this delay in filing the said return, the Input Tax Credit availed by them amounting to Rs. 1,72,430/- was proposed to be disallowed under Section 16(4) along with a demand of Interest of Rs. 2,18,198/-. Due to the COVID-19 pandemic and lockdown, the appellant could not file the reply to the said notice. The said assessment notice culminated into GST DRC-01A dated 13-11-2020 demanding the same tax and interest. The appellant could not reply to this notice DRC-01A also due to continued illness. Further, DRC-01 dated 15-7-2021 was issued with a revised tax demand of Rs. 1,72,430/-, Interest of Rs. 1,00,340/-, Penalty of Rs. 20,000/- and additional interest of Rs. 187350/- for delay in filing of GSTR-3B returns for the period Nov-2017 to Mar-2018. The said notice was decided ex parte and an OIO DRC 07 vide No. ZJ3202220065691/2017-18 dated 15.02.2022 was issued. The appellant had filed an appeal before the First Appellate authority, and the appeals were rejected vide the impugned OIA dated 8-12-2022. Subsequently, due to continued illness the appellant died on 5-9-2024. The Ld Advocate submits a death certificate of the deceased appellant recorded as death registration no. 811/2024 dated 23-9-2024, registered with Thrikkovilvattom Grama Panchayat, Kerala.

3.0 The present appeals are filed on 26-3-2026, by the son of the deceased appellant, who claims to be the legal heir, and in such capacity he has signed and submitted the present appeals before us. The GST Registration No. 32APNPS6894L1ZX was cancelled suo motu wef 6-6-2023. The GST Returns were also filed only upto June-2023.

4.0 Ld Advocate appearing for the deceased appellant, represented the legal heir, and submits that the only issue in this matter is that the GST Returns for the Period Nov-2017 to March-2018 was filed belatedly. Therefore, the ITC claimed in the GSTR-3B was denied and show cause notice was issued, which was adjudicated and the first appellate authority also rejected their appeals. Ld Advocate further submits that Section 16(5) of the CGST Act/KGST Act was inserted wef 1-7-2017 which specifically relaxed the time limits and due dates and allowed the Input Tax Credit for the period 2017-18, 2018-19, 2019-20 and 2020-21, if all the GST Returns are filed upto 30-11-2021. Since they have already filed the GST Returns on or before 6-6-2019, the denial of ITC is no longer sustainable. On being asked a specific question from the Bench, whether any action was initiated under Section 93 of the CGST /KGST Act, and any such notices were issued to the legal heir after demise of the appellant from the respondent, the Ld Advocate denies having received any notice, or any such inquiry caused.

5.0 The Ld AR on the other side, submits that the Circular No. 237/31/2024-GST dated 15-10-2024 clarifies and directs the Adjudicating and Appellate Authorities, including matters pending in appeal, to take cognizance of the retrospectively inserted Section 16(5) while passing orders. The Respondent does not oppose examination of the ITC component of the demand in light of Section 16(5), subject to the reverification set out below. However, he submits that Section 16(5) operates only qua the disallowance of ITC under Section 16(4) on the ground of belated filing of returns for FY 2017-18 to FY 2020-21, and grants relief only where the return was filed on or before 30.11.2021. It does not touch, and does not provide relief against, the separate and independent demand of interest of Rs. 1,87,350/- levied under Section 50(1) for belated filing of monthly returns for November

2017, December 2017, January 2018 and March 2018. That liability arises from delay in discharge of admitted cash tax liability and is separate from the eligibility of ITC and is not affected by the outcome under Section 16(5). He also submits that the benefit of Section 16(5) cannot be extended on the strength of the Appellant's bare assertion that the return was filed on 06.06.2019. The date of filing, the return period to which it relates, and the fact that the ITC of Rs. 1,72,430/- claimed therein corresponds to the very ITC disallowed in the impugned orders, are matters of record capable of verification from the GST common portal and departmental records, and may be verified by the Jurisdictional Proper Officer before consequential relief under Section 16(5) is given effect to. This is consistent with the procedure contemplated under said circular and the special rectification mechanism notified vide Notification No. 22/2024-Central Tax, both of which envisage verification by the Proper Officer and therefore requires verification of the relevant particulars.

6.0 As regards, the fact that now the appellant has died, and the deceased appellant's legal heir is contesting the appeals, the Ld AR submits that he does not dispute that a legal heir is competent to pursue the present proceedings. Section 93 of the CGST/SGST Act, 2017 expressly contemplates that where a person liable to pay tax, interest or penalty dies, such tax, interest or penalty shall be payable by the legal representative of the deceased, to the extent of the estate of the deceased in the hands of such legal representative that is capable of meeting the liability. It is further submitted that since the deceased himself, while alive and duly represented by counsel, had already litigated this issue on merits at the first appellate stage and did not succeed, the legal heir cannot claim a wider right to reopen concluded factual issues than what would have been available to the deceased, except to the extent of the subsequent change in law.

7.0 Heard both sides.

8.0 We find that the issue to be decided here is

(i) Whether the Respondent has properly followed the procedure envisaged under Section 93 (1) (b) of the CGST/KGST Act, on demise of the proprietor-appellant when business is discontinued, by issuing notice to the legal heir for the estate of the deceased appellant.

(ii) Whether on merits of the case, the deceased appellant is eligible for the ITC in the light of Section 16(5) of the CGST/KGST Act, inserted vide Finance Act, 2024 wef 1-7-2017, based on the available record.

9.0 With regard to the first issue, the chronology of the events is as below:

1. Assessment Order ASMT-10 was issued on 5-3-2020
2. SCN DRC-01 was issued on 15-7-2021
3. OIO was issued on 15-2-2022
4. OIA was issued on 8-12-2022
5. GST Registration was cancelled suo motu wef 6-6-2023
6. Appellant died on 5-9-2024
7. Present appeals before Tribunal is filed on 26-3-2026

10.0 We find that on demise of the Proprietor, the Proprietorship Firm also comes to an end. As per the prescribed procedure, the GSTIN 32APNPS6894L1ZX of the deceased appellant was cancelled wef 6-6-2023. Hence, there was no further business conducted in the name of the deceased appellant. The Section 93 (1) of the CGST/KGST Act reads as,

93. Special provisions regarding liability to pay tax, interest or penalty in certain cases.

(1) Save as otherwise provided in the *Insolvency and Bankruptcy Code, 2016 (31 of 2016)*, where a person, liable to pay tax, interest or penalty under this Act, dies, then––

(a) if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act; and

(b) if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

11.0 We find that at the time of demise of the appellant on 5-9-2024, the matter was still under the appeal period as the appeals could have been filed before the GSTAT on or before 30-6-2026 which was further extended to 31-7-2026. The appeal was therefore filed by the legal heir of the appellant before this Tribunal. on 26-3-2026. The last GSTR3B filed by the appellant was for the Month of May-2023 on rch-2019 on 22-5-2024. After that no returns wer filed and the GSTIN was also cancelled. Therefore, it can be construed that the business of the deceased was not continued in anyway. As per Section 93 (1) (b), the liability if any arising out of the present matter, the legal representative / legal heir shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act. But in the present case, we find that there is no effort made to find whether there was any such estate of the deceased, nor any notice was sent to the legal heir for recovery of the dues. In the absence of any process done by the Respondent under Section 93 (1) (b) of the CGST/KGST Act, the respondent department has no case to recover any of the dues from the deceased appellant, even though the estate of the legal heir. We find that time and again various High Courts and Hon'ble Supreme Court has also held that no proceedings can be conducted against a deceased person. Section 93 of the CGST Act authorises post-death initiation of assessment and recovery proceedings against a legal heir where the taxable person has died and the business has been discontinued. The provision is read with Sections 73, 74 and 74A to mean that tax, interest or penalty may be determined after death, including by issuing notice after the taxpayer's demise, the term "person chargeable with tax" is not limited to the registered taxable person. Recovery against the legal heir is permissible, but in a discontinued business it is confined to the inherited estate. The respondent has not brought into record any inherited estate of the deceased appellant. Where adjudication fails to examine whether heirs continued the business or whether an estate is available for recovery, the statutory basis for liability remains unaddressed. As such there is no legal proceedings against the Legal Heir or Legal Representative under Section 93, the order of the first appellate authority is unsustainable and the entire proceedings is liable to be set aside.

12.0 We find that our contention is supported by the various settled positions of law as below:

(i) In the case of SSS Agro Foods Versus The Assistant Commissioner ST, Kakinada cited in 2026 (8) TMI 899 – AP High Court it is held that the Assessment proceedings cannot validly continue against a deceased proprietor. An assessment issued after death is non est because it is directed at a person incapable of being proceeded against, and the required opportunity of personal hearing is not met. Although Section 93 permits recovery of tax dues from the deceased person's business or estate, fresh assessment proceedings must be initiated against the appropriate legal representative or person carrying on the business after notice and hearing. Any recovery remains limited to the deceased proprietor's estate, and a consequential rejection of the statutory appeal is invalid.

(ii) In the case of Chotu Devi, Ajmer Versus Union Of India cited in 2026 (8) TMI 308 – Rajasthan High Court, it is held that a legal representative may be liable for a deceased sole proprietor's tax, interest and penalty only from the deceased's estate, where the business is discontinued and liability is determined before or after death. That statutory liability does not remove procedural safeguards: an adverse assessment requires independent notice and an opportunity of hearing for the legal representative, and the order must state relevant facts and reasons. Assessment orders issued without these safeguards are vitiated. Tax dues may therefore be pursued against the legal representative only through fresh proceedings that comply with notice, hearing and reasoned-order requirements, within the limits of the estate."

(iii) In the case of M/s. J.S. Enterprisers Versus The Superintendent Central GST and Cx Division Cuttack-I Cuttack cited in 2026 (7) TMI 1524 – Orissa HC it is held that GST liability proceedings under Section 73 cannot be initiated or concluded against a deceased sole proprietor where the authorities knew of the death but did not issue notice to the legal representative. Section 93 imposes liability on legal representatives or persons continuing the business, but does not authorise adjudication in the deceased person's name. Notice to a living and correctly identified person is a foundational jurisdictional requirement, and participation by an authorised representative cannot cure this defect. The show cause notice and consequential order were non est and quashed, with fresh proceedings permitted against the legal representative in accordance with law.

(iv) In the case of BKR Services Pvt Ltd & Santosh Kumar Rudraswamy vs Satte of Karnataka cited in 2026 (8) TMI 774 – Karnataka HC, it is held that GST recovery for a deceased proprietor's liabilities cannot be enforced against a separate private limited company merely through recovery proceedings, because the company is legally distinct from the proprietary concern. Liability of legal representatives or the deceased person's estate must be assessed under section 93(1)(a) or section 93(1)(b) of the CGST/KGST framework.

(v) In the case of V. Damayanti, W/o. Late V. Vasudevan (Proprietor, M/s. Vasu Chemicals) Versus The Superintendent of GST and Central Excise, Madurai cited in 2026 (6) TMI 1093 – Madras HC it is held that, Section 93 of the CGST Act authorises post-death initiation of assessment and recovery proceedings against a legal heir where the taxable person has died and the business has been discontinued. The provision is read with Sections 73, 74 and 74A to mean that tax, interest or penalty may be determined after death, including by issuing notice after the taxpayer's demise; the term "person chargeable with tax" is not limited to the registered taxable person. Recovery against the legal heir is permissible, but in a discontinued business it is confined to the inherited estate.

(vi) In the case of M/s. S.B. Enterprises Versus Directorate General of GST Intelligence cited in 2026 (6) TMI 790 – Jharkhand HC it is held that the proceedings against a deceased sole proprietor require notice to the legal representative before continuation of tax action. An order-in-original passed against a deceased sole proprietor was treated as legally vulnerable and was quashed. The HC held that proceedings against a proprietary concern could not continue against a dead proprietor without first taking steps against the legal representative, at least by issuing notice if the department intended to proceed further. The Court did not decide the disputed question of whether death had been specifically intimated, but noted that an earlier order in similar proceedings had already stayed further action after the same objection was raised. The respondents were left free to pursue their claims in accordance with law against the petitioner's estate or legal representative."

(vii) In the case of M/s P.B. Sethi Plastics Versus State of U.P. cited in 2026 (2) TMI 390 – Allahabad HC, it is held that, Assessment and recovery proceedings under Section 73 could not validly be initiated and concluded against a deceased sole proprietor, because tax liability against a dead person must be pursued, if at all, against the legal representative after due notice and opportunity to respond. The jurisdictional defect went to the root of the matter and could not be cured by treating the appeal as barred by limitation. The appellate authority was required to address that foundational objection rather than reject the appeal solely on delay. Proceedings against the deceased proprietor were therefore unsustainable, and the limitation-based appellate order was set aside.

(viii) In the case of Rajvanti Devi Versus State of U.P. 2026 (2) TMI 164 – Allahabad HC, show cause notices and tax determinations issued to a deceased proprietor were held invalid because statutory liability attaches to the legal representative; the provision governing post death liability requires issuance of notice to the legal representative and an opportunity to respond, and a determination made against the deceased without serving the legal representative cannot be sustained. The HC allowed the writ and set aside the determination made after the proprietor's death for failure to comply with the notice requirement under the relevant GST provision.

(ix) In the case of Sambul Shahid Versus State Of U.P. cited in 2025 (12) TMI 937 – Allahabad HC, Hon'ble HC quashed the order passed u/s 73 of the U.P. GST Act, holding that proceedings initiated and concluded in the name of a deceased sole proprietor are void. Interpreting Section 93, the Court held that while the provision governs liability of legal representatives for tax, interest or penalty after the proprietor's death, it does not authorize determination of such liability against a dead person. It is mandatory that any show cause notice and adjudication be directed to the legal representative. As the notice and determination were issued solely against the deceased, the impugned proceedings were declared unsustainable and the petition allowed.

(x) In the case of Shubhangi Gupta vs State of UP, cited in 2025 (9) TMI 595 – Allahabad HC it is held that the show cause notice and subsequent order under Section 74 unsustainable because the proceedings were initiated against a deceased person after authorities had been informed of the death and the notices were uploaded without bringing them to the notice of the legal heirs. The Court found proceedings against a deceased person impermissible and that authorities should have proceeded properly against the legal representatives. The SCN and ex parte orders, including the cancellation action, were quashed and set aside; petition allowed. 13.0 We find that no notice was issued to the legal heir, no inquiry was caused regarding the inherited estate of the deceased appellant, even when the GST Registration was cancelled on 6-6-2023, due to continuous illness of the appellant and discontinuance of the business. The impugned order in appeal is unsustainable in the absence of any action by the respondent under Section 93 even after 2 years from the date of death on 5-9-2024. 14.0 As regards the second issue, we find that the belatedly filed GST Returns pertains to the period 2017-18, which is covered under the newly inserted Section 16(5) which was made effective from 1-7-2017. We find that the GST Returns for the period July-2017 to Feb-2017 were filed on 31-7-2018 and for the Month of March-2018 was filed on 16-6-2019, whereas Section 16 (5) allows the taxpayer to file all the GST Returns on or before 30-11-2021 for the same period. Therefore, as per the Section 16(5), the appellant whether or not deceased, is eligible to the ITC claimed in their respective GST Returns during the period 2017-18. However, the procedure laid out for availment of ITC, in the Notification No. 22/2024–Central Tax dated 8-10-2024, came much after the death of the appellant.

15.0 We find that Section 16 (5) was inserted in the CGST / KGST Act vide Section 118 of the Finance (No. 2) Act, 2024, which reads as below:

Amendment of section 16.

118. In section 16 of the Central Goods and Services Tax Act, with effect from the 1st day of July, 2017, after sub-section (4), the following sub-sections shall be inserted, namely:—

"(5) Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in any return under section 39 which is filed up to the thirtieth day of November, 2021.

16.0 In view of the Section 16(5), we find that on merits of the case, the deceased appellant was eligible for ITC as they have filed all the GST Returns on 31-7-2018 and 6-6-2019, well before the prescribed date of 30-11-2021 under Section 16(5), for the period 2017-18. Hence, we find that the impugned OIA dated 11-11-2022 is liable to be set aside, as unsustainable.

17.0 The impugned OIA dated 11-11-2022 is set aside and the appeals are allowed with consequential relief.

(Order pronounced in open court)

(2026) 1 GSTAT E- Journal 140 (Lucknow)
(GOODS AND SERVICES TAX APPELLATE TRIBUNAL, LUCKNOW BENCH)
M/S JAI ENTERPRISES
V.
PANKAJ GANDHI, ADDITIONAL COMMISSIONER GR-2 APPEAL IV, STATE TAX KANPUR & ORS.
APPEAL NO. APL/38/LCK/2026, AUGUST 25, 2026

CORAM:

HON'BLE SANTOSH KUMAR SRIVASTAVA, MEMBER(JUDICIAL)
AND
HON'BLE ARVIND KUMAR, MEMBER (TECHNICAL)

REPRESENTATION:

For the Appellant: Mr. Alekh Agrawal, Advocate.
For the Respondent: Mr. Mahendra Pratap Singh, Assistant Commissioner, SGST.

HEADNOTE:

GST — Detention/ seizure of goods — Alleged reuse of E-Way Bills —Section 129 of the CGST/ UPGST Act, 2017 — Goods transported from M/s Jai Enterprises, Nayaganj, Kanpur to Fatehpur under Invoice Nos. 14259 and 14260 dated 01.03.2022 and E-Way Bill Nos. 431234391202 and 481234390936 dated 01.03.2022 — Vehicle checked by the Mobile Squad at Jhakarkatti, Kanpur at 01:27 p.m. and again at 09:52 p.m. — Department inferred that the same documents were being reused for another transaction with intent to evade tax — Appellant explained that the vehicle had broken down while proceeding towards the destination and produced a repair bill and driver's affidavit — Goods found to correspond with the tax documents and E-Way Bills were valid at the time of detention — Whether mere earlier verification/scanning of an E-Way Bill is sufficient proof of reuse or re-transportation — Whether intention to evade tax can be presumed from suspicion and circumstances without independent corroborative evidence— **"HELD"**: Department failed to establish by cogent and independent material that the goods had already completed an earlier journey or that the E-Way Bills had been reused — no discrepancy was established in the description, quantity, value or ownership of the goods — intention to evade tax cannot be automatically inferred from suspicion or presumption — the First Appellate Authority's conclusion was legally unsustainable — the department also failed to establish that the vehicle-repair bill was false or forged — original order under Section 129 and appellate order set aside — amount of Rs. 6,06,844/- deposited pursuant to detention/penalty proceedings directed to be refunded in accordance with law — Appeal allowed.

...In Favour of the Appellant

KEY ISSUES AND FINDINGS:

1. **Whether the department established that the goods were being re-transported/reused on the same E-Way Bills?**

"...the goods were being 're-transported' is based principally on an inference from the earlier verification/location of the E-Way Bill. No independent and cogent evidence has been produced to establish that the same goods had already completed an earlier journey and had been delivered.

...the department failed to establish that the goods in question were being transported in contravention of the provisions of the GST Act or the Rules.

...the department has not established any cogent material, such as crossing of a toll plaza during the course of transportation of the goods on the same day, that the goods actually underwent an earlier completed transportation or that the same goods were being re-transported..." [32.2, 32.7 and 32.9]

2. **Whether the earlier verification of the E-Way Bills automatically established intention to evade tax?**

"... the conclusion of the First Appellate Authority that "intention to evade tax is automatically proved" is legally unsustainable. Intention cannot be presumed merely from suspicion, and a presumption of tax evasion cannot take the place of proof of the underlying contravention." [Para 32.8]

3. **Whether the department established that the vehicle-repair bill relied upon by the appellant was false or forged?**

"...that the Hon'ble High Court has also given the finding that the department has to prove the intention to evade tax, but in this matter, the department has failed to prove the intention to evade tax. Hence, this ruling does not support the view taken by the First Appellate Authority. Therefore, the respondent failed to establish the fact that the bill for repairing of the concerned vehicle is fake/forged." [Para 33]

EDITORIAL NOTES:
Principles laid down:

1. The ruling reiterates that proceedings for detention and penalty cannot rest merely on an inference that an E-Way Bill was reused; the alleged contravention must be supported by material evidence.
2. The existence of an earlier verification or scan of an E-Way Bill, by itself, was not treated as proof that the goods had already been delivered and were being transported again.

3. Where the goods are accompanied by the relevant invoice/ e-invoice and a valid E-Way Bill, and no discrepancy in description, quantity, value or ownership is established, the department must still prove the specific contravention alleged for invoking the detention/penalty mechanism.
4. The Tribunal treated the repair bill and driver's affidavit as relevant material supporting the explanation for the delay in movement. The department did not establish that the repair bill was false or forged.
5. The decision distinguishes a conclusion based on presumption from a finding supported by independent evidence. It places emphasis on the department establishing the factual foundation for an allegation of E-Way Bill reuse.
6. The Tribunal also found that the First Appellate Authority's reliance on M/s Falguni Steels did not support the impugned view because, in the present matter, the department had failed to prove the intention to evade tax.
7. The consequential relief granted was refund of the amount deposited pursuant to the impugned detention/penalty proceedings, in accordance with law.

CASE LAW REFERRED TO:

Umacharan Shaw & Bros. v. CIT, (1959) 37 ITR 271 (SC) — referred to for the proposition that suspicion, however strong, cannot take the place of legal proof. [Para 18.1]

State of Kerala v. M.M. Mathew, 1978 STC (42) 848 (SC) — referred to on the principle that presumption cannot take the place of evidence. [Para 18.2]

Kumar Electric Works v. CST, [1984] UPTC 1272 — referred to for the proposition that circumstances merely raising suspicion cannot substitute positive proof. [Para 18.3]

Shubham Fertilizers and Chemicals v. State of U.P., 2015 NTN (67)-15 — referred to in relation to detention/seizure and penalty where the E-Way Bill had been downloaded before detention and no irregularity was established. [Para 22]

CT v. Sarshadil Enterprises Ltd., VSTI 2014 (19) B-118 — referred to on the requirement of intention to evade tax in proceedings involving penalty. [Para 26]

M/s B.L. Agro Oils Ltd., Bareilly, Writ-C No. 31593 of 2019, decided 31.01.2023 (Allahabad High Court) — relied upon regarding the need for the seizing authority to establish by evidence that an E-Way Bill was being reused. [Para 32.5; cited judgment, para 5]

M/s Anandeshwar Traders v. State of U.P. & Others, 2021 U.P.T.C. (Vol. 107) 421 — relied upon regarding the burden on the authority to produce positive evidence of earlier transportation and the impermissibility of drawing a presumption merely from the existence of E-Way Bills. [Para 32.4]

Assistant Commissioner (ST) & Ors. v. M/s Satyam Shivam Papers Pvt. Ltd. & Anr., SLP (C) No. 2132/2021, decided 12.01.2022 (Supreme Court) — referred to on the principle that no fault or intent to evade tax can be inferred merely from circumstances relied upon by revenue. [Para 32.4]

M/s Shri Surya Traders v. Union of India, Writ Tax No. 1146/2021, decided 06.01.2022 (Allahabad High Court) — referred to on detention based on presumptions and on the alleged reuse of an E-Way Bill. [Para 32.4]

M/s Falguni Steels v. State of U.P. & Others — considered in relation to proof of intention to evade tax; the Tribunal found that the decision did not support the First Appellate Authority because the department had failed to prove such intention in the present case. [Para 33]

RELEVANT PROVISIONS:
Section 112, CGST Act, 2017; Section 129, CGST/UPGST Act, 2017.

JUDGMENT

This appeal has been filed under Section 112 of the Central Goods and Services Tax Act, 2017, read with the corresponding provisions of the Uttar Pradesh Goods and Services Tax Act, 2017, against the order dated 11.10.2023 passed under Section 129(3) of the CGST/UPGST Act, 2017, and the consequential order passed by the First Appellate Authority in Appeal No. KNP/04/0040/2022.

BRIEF FACTS OF THE CASE:
The goods were being transported by vehicle No. UP-71-B-9301 from M/s. Jai Enterprises, Nayaganj, Kanpur, to Fatehpur. The goods were accompanied by Invoice Nos. 14259 and 14260 dated 01.03.2022, as well as E-Way Bill Nos. 431234391202 and 481234390936 dated 01.03.2022. During transportation, the SGST Officer, Mobile Squad Unit No. 3, Kanpur, checked the vehicle at 01:27 p.m. at Jhakarkatti, Kanpur, and also scanned the E-Way Bills through the E-Way Bill Scan App. After about 08.30 hours, at 09:52 p.m., the Mobile Squad again checked the vehicle at Jhakarkatti. On this ground, the officer of the Mobile Squad drew the inference that the papers were being reused for another transaction to evade tax.

On the basis of the above discrepancy, the Mobile Squad Officer intercepted the vehicle and issued a notice under Section 129. After rejecting the reply of the owner of the goods and fixing the valuation at Rs. 2,65,650.00, a total demand of Rs. 6,06,844.00 was created (Penalty of Rs. 74,382.00 and Cess penalty of Rs. 4,58,080.00). Being aggrieved by the said order, the appellant preferred an appeal before the Appellate Authority, i.e. , Additional Commissioner, Grade-II (Appeal), 4th, State Tax, Kanpur, dated 11.10.2023. The First Appellate Authority rejected the appeal and confirmed the order passed by the Assistant Commissioner, Mobile Squad, State Tax, 10th Unit, Kanpur.

The First Appellate Authority mentioned in his observation that, in the present case, the appellant was reusing the documents to evade tax because the vehicle had already been checked by the Commercial Tax Officer, Vehicle Squad-II, Unit Kanpur, on 01.03.2022 at 01:27 p.m., and, assuming that the vehicle was once again found between Jhakarkatti Godown and the place of Babupurwa, Police Station Cooperganj, the vehicle was intercepted on the same day at 09:52 p.m. It shows that, to evade tax, the appellant was reusing the documents relating to the goods-loaded vehicle. After detention of the goods, the appellant had taken the imaginary excuse of a vehicle breakdown. It was merely an afterthought and nothing else. The appellant was transporting the goods more than once on the same documents merely to evade tax.

The First Appellate Authority, on the above facts, rejected the appeal.

Thus, mentioning the above facts, the First Appellate Authority rejected the appeal. Being aggrieved, the party preferred an appeal before the Tribunal. In his appeal memo, the party put forth his stand as below:

1. That the E-Way Bills of the above goods were generated on 01.03.2022 at 06:17 a.m. and 06:19 a.m. and were valid up to 02.03.2022. The goods were on their way to the destination within the period of validity of the E-Way Bills.

2. That when the goods were on their way to the destination, the same were detained by the officer of the Mobile Squad and a show cause notice was issued on the ground that the goods were being re-transported on the same documents.
It has been alleged that the documents were earlier verified and, again, on the same documents, the goods were being transported, which is in contravention of the provisions of the GST Act.

3. That in response to the show cause notice, the appellant appeared before the officer of the Mobile Squad and submitted that the transportation of the goods was being done within the provisions of the UPGST Act and no provisions had been contravened. The allegations to the contrary were denied.

4. That in the notice, it has been mentioned that the E-Way Bills were verified on 01.03.2022 at Jhakarkatti, Kanpur, and on the same day at 09:52 p.m., the vehicle was checked at Cooperganj, Kanpur, and on that basis, it was presumed that earlier the goods had been delivered and the present goods were being re-transported on the basis of the documents relating to the goods which had already been delivered.

5. That in this connection, it was submitted in the reply to the officer of the Mobile Squad that when the vehicle moved from Jhakarkatti to Cooperganj over the bridge, the vehicle got damaged and could not move, and after the vehicle was repaired, the driver started for the destination and the same was detained at 9:52 p.m. while it was proceeding towards the destination.

6. That as the goods were checked at Jhakarkatti earlier and the E-Way Bill was verified, and the same vehicle was checked again at Cooperganj, it was detained on the allegation that the goods were being re-transported, which was nothing but a presumption. The repairing bill of the vehicle was enclosed in support, along with the reply submitted before the officer of the MS, but no cognizance thereof was taken, though it formed part of the reply of the appellant before him.

7. That, as such, the allegation of re-transportation with the same documents was a wrong fact, based on presumption only. The applicant had also submitted an affidavit of the driver in support before the officer of the Mobile Squad, which was also not taken into consideration, and only on the basis that the E-Way Bill was earlier verified, the amount of penalty was demanded, while the goods were being transported for the first time and the allegation of re-transportation was denied.

8. That, on verification, the goods were found as per the bill and the value taken for the demand of the penalty was the same as mentioned in the bills, which goes to prove that the goods were according to the tax invoice, e-invoice and E-Way Bill, which were produced voluntarily on demand at the time of checking of the vehicle.

9. That so far as the E-Way Bill is concerned, the same was valid up to the night of 02.03.2022, and the goods were detained on 01.03.2022 at 9:52 p.m., as mentioned in the notice, which goes to prove that the goods were being transported within the provisions of the Act and the applicant had not contravened any provision of the Act.

10. That the transportation of the goods was in strict compliance with the provisions of the GST Act and the goods were detained on assumption and presumption. The E-Way Bills were downloaded at 06:17 a.m. and 06:19 a.m. and were alleged to have been verified by Unit 3 at Jhakarkatti, Kanpur.

11. That it was also requested in the reply that the applicant might kindly be informed of the location of the officer who had alleged to have verified the above E-Way Bills at

Jhakarkatti, Kanpur, which was neither informed nor mentioned in the order under dispute.

12. That the Hon'ble High Court of Allahabad in Shri Surya Traders v. Union of India [2022] 137 taxmann.com 51/91 GST 402/63 GSTL 439 (Allahabad)/Writ Tax No. 1146/2021, decided on 06.01.2022, has held that if the movement of goods is in compliance with the provisions of the GST Act, the same cannot be detained on the basis of presumptions and assumptions.

13. That, as such, the detention of goods was against the settled law, and the assessee had not contravened any provision of the Act.

14. That, as such, there was no mens rea, mala fide or irregularity in the transportation of the goods, which was under a regular tax invoice as well as an e-invoice, and the same were being transported in strict compliance with the provisions of the GST Act, and it was requested to the officer of the MS that, in view of the above, the goods might kindly be ordered to be released without any security deposit, for which the applicant would feel obliged.

15. That the bill found with the goods, which had been issued in the regular course of business, had not been doubted. The E-Way Bill was within the period of validity. There was no iota of evidence that the applicant had contravened any provision of the Act.

16. That the only ground of re-transportation was based on presumption, and ignoring the evidence submitted, there was no mala fide on the part of the appellant, and the goods were sold in the regular course of business.

17. That the officer of the Mobile Squad did not agree with the above submission, and the goods were seized with the vehicle, and the applicant was asked to deposit the sum of Rs. 6,06,844.00 as penalty on the sale value of the bill. As the goods were perishable in nature, the same were got released by depositing the amount of penalty demanded, and the same is the matter of dispute in the present appeal.

18. That the version of the officer of the Mobile Squad was based on imagination, presumption and surmises. The Hon'ble Supreme Court and Hon'ble High Court, in the following cases, besides others, have held that suspicion, however strong it may be, cannot take the place of evidence on record.

18.1 In the case of **Umacharan Shaw & Bros. v. CIT [1959] 37 ITR 271 (SC), it was held** that it is settled law that suspicion, however strong, cannot take the place of legal proof.

18.2 That it has been held by the Hon'ble Supreme Court in the case of *State of Kerala v. M.M. Mathew 1979 taxmann.com 173/[1978] 42 STC 348 (SC)*, that presumption cannot take the place of evidence.
It has been held by the Hon'ble Supreme Court that strong suspicion, strange coincidences and grave doubt cannot take the place of legal proof.

18.3 In the case of *Kumar Electric Works v. CST [1984 UPTC 1272]*, it was held that circumstances merely raising suspicion cannot take the place of positive proof.

19. That all the above citations mentioned in the facts of the case, though under the erstwhile U.P.T.T. Act/VAT Act, are applicable in the case of the appellant, and the order under dispute is based on presumptions and surmises and is bad in law and on facts and is liable to be quashed, as it has been passed in contravention of the settled law.

20. That the basis taken for imposition of the penalty and demand of the security amount is bad in law. The goods were being transported with a valid bill and E-Way Bill. There is no evidence with the department that the goods were being transported in contravention of the law. As such, the detention, seizure and demand of penalty, being based on presumption, are liable to be set aside.

21. That the appellant had sold the goods in the regular course of business and his liability to tax was within the framework of law, as such there was no mens rea on the part of the appellant. The tax had been charged in the bills, as such there was no mala fide on the part of the applicant. The E-Way Bill, as stated in the facts of the case, was downloaded at the time of transportation of the goods and before detention and seizure, and was within the period of validity. As such, the seizure and other proceedings, being based on presumptions and surmises and wrong facts, were bad in law and were liable to be set aside and might kindly be set aside.

22. That in the case of Shubham Fertilizers and Chemicals v. State of U.P. 2015 NTN (67)-15—

> *"The Court held that after perusal of relevant documents, namely, invoice, goods receipt, E-Way Bills, etc., which are enclosed as Annexures to the writ petition, and found that the E-Way Bill under the UPGST had been downloaded by the petitioner much before the detention and seizure of the goods and the vehicle, disclosing the necessary information. In view of the aforesaid facts, the Court found no irregularity in the present transaction and therefore, the seizure order as well as penalty notice issued under Section 129(1) and 129(3) of the Act. as well as the consequential proceedings, were set aside. The goods were released forthwith in favour of the petitioner."*

23. That in the case of the appellant, the E-Way Bill had been downloaded before the time of movement of the goods and before inspection/detention of the vehicle, and there was no evidence of misuse. The same was valid at the time of detention, and the goods were according to the bill. As such, the penalty imposed was liable to be set aside.

24. That in the case of the applicant, the goods were according to the bill and had been sent by the appellant on the proper bill. As such, the detention and deposit of security/penalty amount in the shape of an indemnity bond were bad in law and on facts and were liable to be set aside.

25. That the allegations made in the show cause notice and in the order passed were based on presumptions and surmises. There was no evidence on record that the E-Way Bill had been re-used. Simply on the alleged presumption of the officer of the MS that the goods had already been delivered, he assumed that the goods were being re-transported. No survey had been made of the premises of either the seller or the purchaser. The law requires evidence and not hearsay. Presumption, however strong it may be, cannot take the place of evidence.

26. That in the case of CT v. *Sarshadilal Enterprises Ltd. [VSTI 2014 (19) B-118*], it was held that for imposition of penalty under Section 48[5], intention to evade tax is a must and the goods must be omitted from being shown in the account books, coupled with an intention to evade the payment of tax on the part of the dealer.

27. That the citations mentioned in the Memo of Appeal, though under the erstwhile U.P.T.T. Act/VAT Act, are applicable in the case of the appellant, and the order under dispute is based on presumptions and surmises and is bad in law and on facts and is liable to be quashed, as it has been passed in contravention of the settled law.

28. That the officer of the MS had not taken cognizance of the evidence enclosed regarding the delay in transportation from Jhakarkatti to Cooperganj. The bill for repairing the vehicle had not been doubted, and the affidavit of the driver had not been controverted. As the alleged verification had been done in the morning, the detention, seizure and demand of penalty amounted to denial of natural justice to the appellant and were a glaring example of the high-handedness of the officer of the Mobile Squad.

29. That the officer of the Department was a Mobile Officer and was vested with the powers to verify from the purchaser as well as the seller whether the goods had earlier been delivered or the same had been reloaded, which had not been done. It showed that, in his view, there was an anomaly in the transportation.

30. That there was no contravention of the provisions of the Act in the present case, but the law was settled that the assessee could not be penalized for the lapses/laziness of the department, as they were supposed to be vigilant towards their duties.

31. That the seizure of the goods and demand of penalty were bad in law and on facts and were liable to be set aside, and the amount deposited be ordered to be refunded to the appellant/adjusted towards the future liability to tax.

That the Hon'ble Allahabad High Court, in the case of **M/s B.L. Agro. Oils Ltd., Bareilly**, held in paragraph No. 5 that "*It is for the seizing authority to establish by evidence that the e-way bill is being reused. In the present case, there is no evidence produced by the seizing authority that there is a reuse of the e-way bill by the petitioner."*

The same finding was given by the **Hon'ble Allahabad High Court in the case of Anandeshwar Traders v. State of U.P. 2021 U.P.T.C. [Vol. 107]-421,** wherein it was held that "if there is no evidence of the use of the E-Way Bill, the penalty cannot be imposed." In the case of Anandeshwar Traders(supra), paragraphs 10 and 11 of the said judgment read as follows:

> "*10. Even if the dealer does not cancel the e-way bill within 24 hours of its generation, it would remain a matter of inquiry to determine on evidence whether an actual transaction had taken place or not. That would be subject to evidence received by the authority. As such, it was open to the seizing authority to make all factual inquiries and ascertain on that basis whether the goods had or had not been transported pursuant to the e-way bills generated on 24.11.2019. Since the petitioner-assessee had pleaded a negative fact, the initial onus was on the assessing authority to lead positive evidence to establish that the goods had been transported on an earlier occasion. Neither any inquiry appears to have been made at that stage from the purchasing dealer or any toll plaza or other source, nor was the petitioner confronted with any adverse material as may have shifted the onus on the assessee to establish non-transportation of goods on an earlier occasion.*
>
> *11. The presumption could not be drawn on the basis of the existence of the e-way bills though there did not exist evidence of actual transaction performed and though there is no statutory' presumption available. Also, there is no finding of the assessing authority to that effect only. Mere assertion made at the end of the seizure order that it was clearly established that the assessee had made double use of the e-way bills is merely a conclusion drawn bereft of material on record. It is the reason based on facts and evidence found by the assessing authority that has to be examined to test the correctness of the order and not the conclusions, recorded without any material on record."*

<u>FINDINGS:</u>

32. We have carefully considered the submissions made by both sides and perused the records. In the present case, the material placed on record does not establish any discrepancy in the description, quantity, value or ownership of the goods. The goods were accompanied by the relevant tax documents, including the invoice/e-invoice and E-Way Bill.

32.1 The First Appellate Authority has observed that the fact that the trader had again transported the goods on the basis of documents already used automatically proved an intention to evade tax.

32.2 The finding that the goods were being "re-transported" is based principally on an inference from the earlier verification/location of the E-Way Bill. No independent and cogent evidence has been produced to establish that the same goods had already completed an earlier journey and had been delivered.

32.3 Both sides have placed reliance on various judicial pronouncements. We find it pertinent to examine the applicability of these judgments to the facts of the present case.

32.4 The judgment of the Hon'ble Supreme Court in the case of **Asstt. Commissioner (ST) v. Satyam Shivam Papers (P.) Ltd. [2022] 134 taxmann.com 241/90 GST 479/57 GSTL 97 (SC)/SLP (C) No. 21132/2021, decided on 12.01.2022.**

> *"The Hon'ble Supreme Court declined to interfere with the well-reasoned judgment of the Telangana High Court, which had found that no fault or intent to evade tax could be inferred merely from the circumstances relied upon by the revenue."*

In the case of **M/s Surya Traders Vs. Union of India**, the Hon'ble High Court of Allahabad held that—

> "*if the movement of the goods is in compliance with the provisions of the GST Act, the same cannot be detained on the basis of presumptions and assumptions."*

In the case of *State of Kerela vs. M.M. Mathew*, reported in 1978 STC (42) 848,it was held that presumption cannot take the place of evidence—*It has been held by the Hon'ble. Supreme Court that strong suspicion, strange coincidences and grave doubt cannot take the place of legal proof.*

In the case of Anandeshwar Traders vs. State of U.P. [2021 U.P.T.C. (Vol-107)-421], tax and penalty were imposed on the petitioner on the allegation of reuse of the E-Way Bill. In the appeal filed by the assessee, the appellate authority admitted additional evidence at the behest of the revenue and dismissed the appeal, against which the petition was filed. It was held that—

> *"The Revenue had presumed reuse of the e-way bill merely on the reasoning that the goods did not move within 24 hours of generation of E-way bill, which had not been done. No fresh material could be admitted in appeal at the behest of the revenue—Appeal Allowed—Order impugned set aside."* [VSTI 2021 (2021 (41)-B-1497)]

32.5 **The Hon'ble Allahabad High Court in the case of M/s. B.L. Agro Oils Ltd. (Writ-C No. 31593 of 2019, decided on January 31, 2023)** held in paragraph No. 5 that "*It is for the seizing authority to establish by evidence that the e-way bill is being reused. In the present case, there is no evidence produced by the seizing authority that there is a reuse of the e-way bill by the petitioner.*"

32.6 We have carefully examined the aforesaid judicial precedents and find that the facts and circumstances considered therein are similar to the present case.

32.7 In the present case, we have examined the facts placed on record and are of the considered view that the department failed to establish that the goods in question were being transported in contravention of the provisions of the GST Act or the Rules.

32.8 Therefore, the conclusion of the First Appellate Authority that "intention to evade tax is automatically proved" is legally unsustainable. Intention cannot be presumed merely from suspicion, and a presumption of tax evasion cannot take the place of proof of the underlying contravention.

32.9 The present case stands on an even more fundamental footing: here, the department has not established any cogent material, such as crossing of a toll plaza during the course of transportation of the goods on the same day. that the goods actually underwent an earlier completed transportation or that the same goods were being re-transported.

The First Appellate Authority relied upon the judgment delivered by the Hon'ble Allahabad High Court in the case of **M/s Falguni Steels v. State of U.P. and Others**.

33. We have observed that judgment and find that the Hon'ble High Court has also given the finding that the department has to prove the intention to evade tax, but in this matter, the department has failed to prove the intention to evade tax. Hence, this ruling does not support the view taken by the First Appellate Authority.

Therefore, the respondent failed to establish the fact that the bill for repairing of the concerned vehicle is fake/forged.

ORDER

i. The present appeal filed by M/s. Jai Enterprises, GSTIN 09ATQPS3526G1Z7, is **ALLOWED.**
ii. The appellate order bearing Reference No. KNP/04/0040/2022 dated 11.10.2023, passed by the Additional Commissioner, Grade-II (Appeal) 4th, Kanpur, is hereby **SET ASIDE.**
iii. The original order bearing No. AD090322002129I dated 08.03.2022, passed under Section 129 of the CGST/UPGST Act, is also hereby **SET ASIDE.**
iv. The amount of Rs. 6,06,844.00 deposited by the appellant pursuant to the impugned detention/penalty proceedings shall be refunded to the appellant in accordance with law.

(2026) 1 GSTAT E- Journal 149 (Bengaluru)

(GOODS AND SERVICES TAX APPELLATE TRIBUNAL, BENGALURU BENCH)
RODMAN TECHNOLOGIES PVT LTD
V.
COMMISSIONER OF KARNATAKA STATE GST, BENGALURU
APPEAL NO. APL/8/BUR/2026, FINAL ORDER NO. 01/GSTAT BLR/DB 3/2026, AUGUST 25, 2026

CORAM:

SHRI PRABHAKARAN P M, MEMBER (JUDICIAL)
AND
SHRI RAVI JESURAJ, MEMBER (TECHNICAL)

REPRESENTATION:

For the Appellant: Adv Vinayak B D, Counsel for Appellant.
For the Respondent: Dr Ramya, Deputy Commissioner, DR.

HEADNOTE:

Amnesty / Waiver of Interest and Penalty — Section 128A of CGST/KGST Acts — Excess Input Tax Credit — ITC claimed in GSTR-3B for December 2020 — Appellant contending that the underlying debit notes/transactions pertained to FY 2018-19 and therefore fell within the period covered by Section 128A — Whether the demand could be treated as pertaining to the earlier period merely because the underlying transaction/debit note was stated to relate to FY 2018-19 — HELD: Eligibility under Section 128A depends upon the statutory conditions being satisfied cumulatively, including that the demand pertains to the period 1 July 2017 to 31 March 2020 — The decisive consideration was the point at which the disputed ITC was actually availed and became the subject matter of the Section 73 proceedings — On the records, the excess ITC of Rs. 5,62,067/- was claimed in GSTR-3B for December 2020 and was not ITC availed in FY 2018-19 and carried forward through subsequent monthly returns — Demand therefore pertained to December 2020 and fell outside the temporal scope of Section 128A — Mere payment of tax before the prescribed date did not confer eligibility where the underlying demand did not satisfy the statutory period requirement — Failure to file Form SPL-01 was also noticed — Appellant's reliance on Wipro India Ltd., CBIC Circular No. 238/32/2024-GST and Samita Panda found distinguishable / insufficient to enlarge the statutory period — Appeal dismissed; interest and penalty under Section 73(9) upheld.

...In Favour of the Respondent

KEY ISSUES AND FINDINGS:

1. **Whether the disputed excess ITC demand pertained to an eligible period under Section 128A?**

...The records show that the excess ITC forming the subject matter of the demand was claimed in GSTR-3B for December 2020. It was not an ITC availed in FY 2018-19 and carried forward through the subsequent monthly returns. Accordingly, the demand confirmed in the impugned order pertains to the ITC claim made in December 2020 and does not constitute a demand pertaining to the period 1st July 2017 to 31st March 2020 for the purposes of Section 128A. [Paras 6.7]

...we find that the Appellant failed to establish that the disputed demand of excess ITC, as confirmed under Section 73(9) of the Act, pertains to the period 1st July 2017 to 31st March 2020. The demand arose from the ITC claim made in December 2020 and, therefore, falls outside the temporal scope of Section 128A of the CGST Act /KGST Act. Consequently, the Appellant is not entitled to waiver of interest and penalty under Section 128A of the Act. [Para 6.19]

2. **Whether the Appellant was entitled to claim the waiver of interest and penalty under Section 128A in the absence of filing the prescribed Form SPL-01?**

...there was no attempt on the part of the Appellant to file Form SPL 01 to claim the Scheme under Section 128A of the Act. Further it is not the case of the Appellant that they had filed the Form SPL 01 to avail the scheme but rejected by the authorities. Secondly, the ITC as claimed to be excess in the Notice issued by the Adjudicating Authority was not availed in 2018-19 and carried forward through Monthly Returns but availed by the Appellant for the first time in the month of December 2020. Therefore, on this count also the request for availing the waiver of interest and penalty by the Appellant under Section 128 A of the Act, available for the period 1st July 2017 to 31st March 2020, cannot be acceded. [Para 6.14]

3. **Whether the benefit of waiver under Section 128A could be extended on the basis of CBIC Circular No. 238/32/2024-GST and the decision in Samita Panda, despite the statutory conditions prescribed under Section 128A?**

The circular does not dispense with the statutory requirement that the demand must pertain to the period specified in Section 128A. Further, the precise words attributed by the Appellant to the circular and the judgment, namely "Amnesty Scheme cannot be denied on technical or procedural grounds, particularly when the Taxpayer has acted Bonafide and discharged

Tax liability Promptly", are not found in the extracts placed before us. The Appellant ought to avoid attributing to a statutory circular or judicial decision, expressions which do not form part of the relevant text. [Para 6.16]

EDITORIAL NOTES:
Principle Laid Down:

1. Section 128A is a limited statutory waiver provision. Its benefit is conditional and cannot be extended by an adjudicating or appellate authority beyond the period expressly prescribed by the Legislature.
2. The fact that a notice under Section 73 is based on a GSTR-3B return for a particular period is not, by itself, conclusive of the period to which the demand pertains; the nature of the tax/ITC demand actually determined in the notice and order must be examined.
3. For purposes of Section 128A, the Tribunal treated the actual availment of the disputed ITC as decisive where the record showed that the ITC was claimed for the first time in December 2020.
4. Prompt discharge of the tax amount does not, standing alone, cure failure to satisfy the substantive temporal requirement of Section 128A.
5. The Tribunal expressly cautioned against attributing to a statutory circular or judicial decision expressions which do not form part of the relevant text.
6. An observation of the Tribunal records that, if the appellant's assertion that the liability truly traced to a February 2019 debit note were accepted, interest and penalty would in principle have to be considered from the earlier period; however, the Show Cause Notice and Order-in-Original had not computed interest or penalty on that basis.

CASE LAW REFERRED TO:
Wipro India Ltd. v. Assistant Commissioner of Central Tax, Writ Petition No. 16175 of 2022 (T-RES), decided 06.01.2023 (Karnataka High Court) — referred. (Para 6.8, 6.9, 8)

Samita Panda v. Commissioner of CT & GST, 2025 (33) Centax 34 (Ori.) (Orissa High Court). (Paras 6.15–6.16).

CIRCULARS REFERRED TO:

- CBIC Circular No. 238/32/2024-GST — Referred. [Paras 6.15–6.16]

RELEVANT PROVISIONS:
Section 112(1), CGST/KGST Acts, 2017; Section 73, CGST/KGST Acts, 2017; Section 73(9), CGST/KGST Acts, 2017; Section 61, CGST/KGST Acts; Section 50, CGST/KGST Acts; Section 107, CGST/KGST Acts, 2017; Section 75(2), CGST Act, 2017; Section 108, CGST Act, 2017; Section 113, CGST Act, 2017; Section 117, CGST Act, 2017; Section 118, CGST Act, 2017; Section 128A(2), (3) and (4), CGST Act, 2017

JUDGMENT

Order per: Shri Prabhakaran P M, Member (Judicial)

1.0 The present appeal is preferred under sub-section (1) of Section 112 of the Karnataka State Goods and Services Act, 2017 (hereinafter referred to as the 'KGST Act') /Central Goods & Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act') against the Order in Appeal No: ZD290126117051U dated 20/01/2026 passed by the Joint Commissioner of Commercial Taxes (Appeals-IV) Bengaluru.

Questions of Law involved:

2.1 Whether, on the facts and circumstances of the case, the Appellant is entitled to the benefit of the waiver of interest and penalty contemplated under Section 128A of the Central Goods and Services Act (CGST Act)/Karnataka State Goods and Services Act (KGST Act) in respect of the demand arising from the excess Input Tax Credit availed in FORM GSTR-3B for the month of December 2020, on the contention that the said ITC related to transactions/debit notes pertaining to the financial year 2018-19?

Brief Facts of the case:

3.1 The Appellant was engaged in the business of trading in garments manufacturing with GSTIN: 29AAACR4984R1ZD under the provision of the KGST Act, 2017 and is deregistered effective from 31.03.2021.

3.2 Based on the scrutiny of the Returns for the year 2020-21, the Appellant was served with a notice u/s 61 of KGST Act, 2017/CGST Act, 2017 in Form GST ASMT-10 dated: 08.02.2024 bringing out an excess availment of Input Tax Credit of IGST of Rs 68,573, CGST of Rs 2,46,747 and SGST of Rs 2,46,747 as per the Form GSTR 3B filed for the period December 2020 pertaining to the year 2020-21as against the ITC available as per Form GSTR 2A for the relevant period. The ASMT-10 followed by an intimation in Form GST DRC-01A on 02.07.2024.

3.3 Thereafter a Show Cause Notice in Form DRC-01 vide no. ACCT/LGSTO-16/2A v. 3B/M2-20-21/2024-25 dated 15.11.2024 was issued under Section 73 of CGST and KGST Acts, 2017, proposing to demand and recover the excess ITC of IGST of Rs 68,573, CGST of Rs 2,46,747 and SGST of Rs 2,46,747 along with Interest of Rs 3,23,753 under the provisions of Section 50 and also Penalty of Rs 69,350. The Notice was stated to be uploaded on 25.11.2024.

3.4 The disputed excess availment of ITC totalling Rs 5,62,067/- was paid by the Appellant vide Form DRC 03 on 09/01/2025. No interest on the disputed amount or penalty as proposed was paid.

3.5 Upon hearing the Appellant and considering the payment made by them towards excess ITC an order in Form DRC-07 issued U/s 73 (9) of the Act by the Adjudicating Authority vide Order no. ZD290225118412N dated 28.02.2025 confirming the interest and penalty as proposed in the Notice on account of Excess availment of ITC in GSTR 3B as compared to GSTR-2A for the year 2020-21.

3.6 Being aggrieved by the Order passed by the learned Adjudicating Authority, an appeal was preferred by the Appellant before the First Appellate Authority seeking waiver of the interest levied and the penalty imposed in the Order in Original (OIO) on the ground that though the excess availment of ITC was reported for the year 2020-21, the same was pertaining to the period 2018-19 and therefore eligible to avail the benefit of waiver of interest and penalty under Section 128 A of the Act.

3.7 The First Appellate Authority after hearing the Appellant and after the due process of law, has dismissed the Appeal holding that:

The appellate jurisdiction under Section 107 of the CGST/KGST Acts, 2017 is circumscribed by the scope of the order appealed against. The appellate authority is empowered to examine the legality, propriety, and correctness of the impugned order, but is not vested with original jurisdiction to adjudicate issues or tax periods not forming part of the impugned proceedings.

- *Entertaining the appellant's contention relating to FY 2018-19 would require fresh examination of facts, verification of debit notes, and determination of liability for a* *different financial year, which is beyond the statutory mandate of this appellate authority under Section 107.*

- *As regards the appellant's request for benefit under Section 128A, it is observed that such benefit, though beneficial in nature, cannot be extended by traversing beyond the scope of the impugned order or by re-characterizing the tax period under appeal. Jurisdictional limitations under Section 107 cannot be diluted even in the context of an amnesty provision.*
- *In the absence of any infirmity demonstrated within the confines of FY 2020-21 and the findings recorded in the impugned order, and in view of the settled legal position that appellate proceedings* cannot travel beyond the order appealed against, the appeal is devoid of merit.

3.7 Aggrieved by the above decision of the First Appellate Authority the Appellant has filed the present appeal before this Tribunal.

Submissions by the Appellant:

4. The Counsel for the Appellant Adv Vinayak B D appeared and submitted as follows:

4.1 Though the Liability was declared and Tax paid in the month of December 2020, the transaction relates to FY 2018-19. This fact was also declared in GST annual returns for the period 2019-20, upon discovery of the error while finalizing the books for FY 2019-20. Since there was no option to go back and change the Returns for the FY 2018- 19, the details were declared in Annual Return of 2019-20 and the Liability was discharged in the month of Dec-2020. Accordingly, the said liability on excess claim of ITC also ought to be considered as pertaining to the FY 2018-19 in which the transaction occurred and not in the FY 2020-21 in which transaction was declared in the GST Returns in order to discharge the applicable Tax liability.

4.2 The very fact that the Company has discharged its Tax liability on suo motu basis upon discovering the error, according to the Appellant, substantiates that there was no intention to evade Tax and that it was missed only due to gaps in the accounts department. However, the debit note that was issued in the 2018-19 fiscal year and recorded in the GSTR-1 of that period was again recorded in the GSTR-1 of December 2020 while the liability was being paid. The Appellant submits that the repeated declaration of the same transaction in GSTR-1 of December 2020 resulted in a duplicate declaration of liability.

4.3 Therefore, though the Taxes were paid and returns were filed in FY 2020-21 to which the notice relates to the actual transaction was pertaining to FY 2018-19 and accordingly pleaded to consider the liability for FY 2018-19 and also to grant waiver of interest and penalty under Section 128A of the CGST Act.

Contentions by the Respondent:

5.1 The Ld. Deputy Commissioner, Dr Ramya, appearing as Authorised Representative on behalf of the Respondent, submits that during the course of Scrutiny of Returns U/s 61 of the Acts for the tax period(s)/financial year 2020-21, on comparison of the ITC available in GSTR 2A and Input credit claimed in GSTR-3B, the Tax payer has availed the excess input credit. It is also submitted by the Ld. DR that the excess ITC as confirmed in the order of the Adjudicating Officer pertains to the year 2020-21 which was also ascertained from the GSTR 3B Returns filed by the Appellant. The benefit under Section 128 A is available only for the period 1st July 2017 to 31st March 2020. Therefore, the Appellant could not have availed the benefit under Section 128 A in respect of the repayment of excess ITC availed for the year 2020-21. The Tax payer has admitted the excess ITC claimed and remitted vide DRC- 03 vide ARN -AD290125016015J dated: 09/01/2025 through cash ledger; accordingly, the Respondent submitted that the interest and penalty confirmed in the order are also payable.

Findings and decision:

6.1 We have heard Shri Vinayak B D Advocate appearing on behalf of the Appellant before us. We have also heard Dr Ramya Deputy Commissioner KGST, who is representing the Respondent in this appeal.

6.2 The main contention of the Counsel appearing on behalf of the Appellant is that the alleged excess ITC relates to FY 2018-19, notwithstanding that the corresponding amount was reported and paid in December 2020. According to the Appellant, the liability should therefore be treated as pertaining to an eligible period for the purposes of Section 128A of the CGST Act. The question, however, is whether, on the facts and records of the present case, the demand confirmed under Section 73 pertains to FY 2018- 19 or to the tax period December 2020.

6.3 In this respect we would like to examine the provisions of Section 128 A of the CGST Act as inserted by the Finance (No. 2) Act, 2024, w.e.f. 1-11-2024. The Section 128A reads thus:

> *128A. (1) Notwithstanding anything to the contrary contained in this Act, where* ***any amount of tax is payable by a person chargeable with tax in accordance with,—***
> ***(a) a notice issued under sub-section (1) of section 73 or a statement issued under sub-section (3) of section 73, and where no order under subsection (9) of section 73 has been issued; or***
> ***(b) an order passed under sub-section (9) of section 73, and where no order under sub-section (11) of section 107 or sub-section (1) of section 108 has been passed; or***
> ***(c) an order passed under sub-section (11) of section 107 or sub-section (1) of section 108, and where no order under sub-section (1) of section 113 has been passed,***
> ***pertaining to the period from 1st July, 2017 to 31st March, 2020****, or a part thereof, and the said person pays the full amount of tax payable as per the notice or statement or the order referred to in clause (a), clause (b) or clause (c), as the case may be, on or before the date, as may be notified by the Government on the recommendations of the Council, no interest under Section 50 and penalty under this Act, shall be payable and all the proceedings in respect of the said notice or order or statement, as the case may be, shall be deemed to be concluded, subject to such conditions as may be prescribed:*
>
> > *Provided that where a notice has been issued under sub-section (1) of section 74, and an order is passed or required to be passed by the proper officer in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court in accordance with the provisions of sub-section (2) of section 75, the said notice or order shall be considered to be a notice or order, as the case may be, referred to in clause (a) or clause (b) of this sub-section:*
> >
> > *Provided further that the conclusion of the proceedings under this sub-section, in cases where an application is filed under sub-section (3) of section 107 or under sub-section (3) of section 112 or an appeal is filed by an officer of central tax under sub-section (1) of section 117 or under sub-section (1) of section 118 or where any proceedings are initiated under sub-section (1) of section 108, against an order referred to in clause (b) or clause (c) or against the directions*

of the Appellate Authority or the Appellate Tribunal or the court referred to in the first proviso, shall be subject to the condition that the said person pays the additional amount of tax payable, if any, in accordance with the order of the Appellate Authority or the Appellate Tribunal or the court or the Revisional Authority, as the case may be, within three months from the date of the said order:

Provided also that where such interest and penalty has already been paid, no refund of the same shall be available.

(2) *Nothing contained in sub-section (1) shall be applicable in respect of any amount payable by the person on account of erroneous refund.*
(3) Nothing contained in sub-section (1) shall be applicable in respect of cases where an appeal or writ petition filed by the said person is pending before Appellate Authority or Appellate Tribunal or a court, as the case may be, and has not been withdrawn by the said person on or before the date notified under sub-section (1).
(4) Notwithstanding anything contained in this Act, where any amount specified under sub-section (1) has been paid and the proceedings are deemed to be concluded under the said sub-section, no appeal under sub-section (1) of section 107 or sub-section (1) of section 112 shall lie against an order referred to in clause (b) or clause (c) of subsection (1), as the case may be.
[Emphasis supplied in bold]

6.4 Eligibility under Section 128A is not determined merely by the fact that tax has been paid. The statutory conditions must be satisfied cumulatively. The demand must arise from a notice, statement or order covered by sub-section (1) of Section 128A and must pertain to the period from 1st July 2017 to 31st March 2020 (or a part thereof). Further, the full amount of tax payable under the relevant notice, statement or order must have been paid within the prescribed time and the procedural requirements for filing the prescribed application must also be complied with.

6.5 It is very clear from the Scheme as introduced supra that the Scheme is available only in respect of the tax payable for the period 1st July 2017 to 31st March 2020.

6.6 The mere fact that the notice under Section 73 was issued on the basis of the GSTR-3B filed for December 2020 is not, by itself, conclusive of the period to which the demand pertains. The material question is the nature of the tax/ITC demand actually determined in the notice and order. We have therefore examined the returns and other documents placed before us to determine whether the disputed excess ITC of Rs. 5,62,067/-represents an ITC availed in an eligible period with reference to Section 128A or an ITC availed for the first time in December 2020.

6.7 We find that the decisive fact is not merely the financial year in which the debit notes were originally issued, but the point of time at which the disputed ITC was actually availed became the subject matter of the Section 73 proceedings. The records show that the excess ITC forming the subject matter of the demand was claimed in GSTR-3B for December 2020. It was not an ITC availed in FY 2018-19 and carried forward through the subsequent monthly returns. Accordingly, the demand confirmed in the impugned order pertains to the ITC claim made in December 2020 and does not constitute a demand pertaining to the period 1st July 2017 to 31st March 2020 for the purposes of Section 128A.

6.8 At this juncture it is also brought to our notice by the Appellant, the decision of Hon'ble Karnataka High Court in the case of **Wipro Ltd. v. Asstt. Commissioner of Central Taxes [2023] 148 taxmann.com 216/97 GST 319/72 GSTL 325 (Karnataka)/Writ Petition**

No.16175 of 2022(T-RES) dated the 6th Day of January, 2023 wherein it was held that the circular regarding the mismatch of input tax credit (ITC) is applicable for 2019-2020 in the case of identical errors. The Hon'ble High Court in para 8 of the judgement observed that:

> *"it would be just and proper to dispose of this petition directing the respondents 1 to 3 - revenue to follow the procedure prescribed in the Circular and apply the said Circular to the facts of the instant case of the petitioner, 5th respondent and their transactions for the years 2017-18, 2018-19 and 2019-20. It is also necessary to state that though the Circular refers only to the years 2017-18 and 2018-19, since there are identical errors committed by the petitioner not only in respect of the assessment years 2017-18 and 2018-19 but also in relation to the assessment year 2019-20 also, I am of the view that by adopting a justice oriented approach, the petitioner would be entitled to the benefit of the Circular for the year 2019-20 also"*

6.9 We have considered the decision of the Hon'ble High Court of Karnataka supra and find that the same is distinguishable on facts and in law. The decision concerned the application of a CBIC circular dealing with reconciliation of ITC mismatch, whereas the present appeal concerns the statutory conditions governing the waiver under Section 128A. The circular cannot be read as enlarging the period expressly specified by Legislature in Section 128A equally, however, the fact of payment before the prescribed date is not, by itself, a ground to deny the benefit if the underlying demand otherwise satisfies the statutory requirements.

6.10 We are of the concerted view that the statutory period specified in Section 128A cannot be enlarged by an adjudicating or appellate authority beyond the period expressly prescribed by the Legislature. The principle that where the law requires a thing to be done in a particular manner, it must be done in that manner, is well settled by a catena of decisions rendered by the Hon'ble Supreme Court. The waiver contemplated under Section 128A is a limited statutory relief and, in the absence of any statutory provision extending its operation, cannot be applied to a tax liability pertaining to a period outside the prescribed period. The scheme under consideration as introduced under Section 128A is a relief extended for a limited-period under the GST framework, therefore cannot be extended for the period thereafter unless the Legislature intended to do so.

6.11 It is, further, evident from the documents produced before us like GSTR 1 and GSTR 3B for the Month December 2020, GSTR 9 for the year 2020-21 that CGST liability of Rs 6,47,120 and SGST liability of Rs 6,47,120 was declared towards an outward supply totalling to Rs 2,58,84,795, and also reported the Eligible ITC of Rs 68,573 of IGST, Rs 3,10,236 of CGST and Rs 3,10,236 of SGST under the Table 4C of the GSTR 3B. The output tax liability for the month of December 2020 was paid by utilising the entire ITC reported above and the remaining from the Cash Ledger. Pursuant to the scrutiny of Returns the State GST authorities noticed a difference between the ITC claimed in GSTR-3B and that available in GSTR-2A to the extent of Rs. 5,62,067/-, which culminated in a notice under sub-section (1) of Section 73 of the Act. The same was accepted and paid by the Appellant leaving the interest and penalty under dispute and subject matter of this appeal.

6.12 It is therefore beyond doubt that the notice issued by the State GST Authorities, demand paid by the Appellant, the pending litigation of non-payment of interest and penalty is pertaining only to the tax period December 2020.

6.13 In this regard it is submitted by the Appellant that the liability pertains to a Debit note (and corresponding excess claim of ITC) of period 2018-19 which is the subject matter of dispute and is already declared in the Annual Returns of 2018-19. The year for which the Order was issued (2020-21) contains absolutely no commercial transactions such as

Sale or Debit note on which Tax liability arises. It is also submitted that the output tax liability as declared for the month of December 2020 was actually arose out of Debit notes issued for the month of February 2019. The Appellant further submitted as below:

> *"It is most respectfully submitted that the Applicable Tax, being excess claim of ITC of Rs. 5,62,067/- was discharged vide DRC-3 bearing ARN: AD290125016015J on 0901-2025, well in advance of passing of the order U/s 73 by the Learned AO and well in advance of the due date to have filed an application U/s 128A of the CGST Act for waiver of Interest and Penalty. It is only due to the denial by the Learned AO to consider this tax liability as pertaining to the period of 2018-19 and instead concluding the order as pertaining to period 2020-21 that the Taxpayer was unable to make an application U/s 128A of the CGST Act. Attention of your Honour is again sought here to the fact that due to a Procedural / Technical limitation, the Taxpayer was unable to file the application for waiver of Interest and penalty U/s 128A of the CGST Act."*

6.14 We have examined this submission with reference to the records available and rejected the same for two reasons. Firstly, there was no attempt on the part of the Appellant to file Form SPL 01 to claim the Scheme under Section 128A of the Act. Further it is not the case of the Appellant that they had filed the Form SPL 01 to avail the scheme but rejected by the authorities. Secondly, the ITC as claimed to be excess in the Notice issued by the Adjudicating Authority was not availed in 2018-19 and carried forward through Monthly Returns but availed by the Appellant for the first time in the month of December 2020. Therefore, on this count also the request for availing the waiver of interest and penalty by the Appellant under Section 128 A of the Act, available for the period 1st July 2017 to 31st March 2020, cannot be acceded.

6.15 The Appellant also referred to the **CBIC Circular No. 238/32/2024-GST** and the decision of Honourable High Court of Orissa in the case of **Samita Panda v. Commissioner of CT & GST [2025] 176 taxmann.com 682 (Orissa)/(2025) 33 Centax 34 (Ori.**) and argued that the Amnesty Scheme cannot be denied on technical or procedural grounds, particularly when the Taxpayer has acted bonafide and discharged Tax liability promptly. In this regard we would like to extract part of the para 6 and 7 of the Grounds of Appeal filed by the Appellant:

> *6. It is most respectfully submitted that the CBIC Circular No. 238/32/2024-GST has prescribed that Amnesty should be available wherein Tax has been paid by the Taxpayer. <u>It also , prescribes that the Scheme should be applied substantively and not be defeated by Procedural or Technical interpretations</u>.*
>
> *7. In the case of Samita Panda v. Commissioner of CT & GST, 2025 the Hon'ble Orissa High Court has <u>categorically held that benefits under the Amnesty Scheme cannot be denied on technical or procedural grounds, particularly when the Taxpayer has acted Bonafide and discharged Tax liability Promptly....</u>.*
>
> [Emphasis supplied by underline]

6.16 We have gone through the Circular 238 (supra) and the decision of the Honourable High Court of Orissa in the matter of Samita Panda (supra). The circular does not dispense with the statutory requirement that the demand must pertain to the period specified in Section 128A. Further, the precise words attributed by the Appellant to the circular and the judgment, namely "*<u>Amnesty Scheme cannot be denied on technical or , procedural grounds, , particularly when the Taxpayer has acted Bonafide and discharged Tax liability Promptly ",</u>* are not found in the extracts placed before us. The Appellant ought to avoid attributing to a statutory circular or judicial decision, expressions which do not form part of the relevant text.

6.17 Considering the submissions made by the learned counsel for the Appellant and after going through the records, we found that, it was not procedural error wherein liability (and corresponding excess ITC Claim) of 2018-19 was filed in 2020-21 (Dec'20) but ITC was availed for the first time in December 2020, while declaring their output liability for the said period, which the Revenue found as excess and later on accepted by the Appellant.

6.18 One aspect on the record deserves to be stated plainly. If the Appellant's account is taken at face value, and the underlying liability truly traces back to the Debit Note of February 2019, then interest and penalty on that liability ought to have in principle, to run from FY 2018-19 onward. Neither the Show Cause Notice nor the Order-in-Original makes any attempt to compute interest or penalty from that earlier period.

6.19 With the aforesaid analysis of documents and submissions, we find that the Appellant failed to establish that the disputed demand of excess ITC, as confirmed under Section 73(9) of the Act, pertains to the period 1st July 2017 to 31st March 2020. The demand arose from the ITC claim made in December 2020 and, therefore, falls outside the temporal scope of Section 128A of the CGST Act /KGST Act. Consequently, the Appellant is not entitled to waiver of interest and penalty under Section 128A of the Act.

7. In view of the foregoing discussion and findings, the appeal fails and is accordingly dismissed. The interest and penalty confirmed in the impugned order under Section 73(9) of the CGST/KGST Acts, 2017 are upheld.

Order pronounced in Open Court on 25th August 2026.

(2026) 1 GSTAT E- Journal 158 (Lucknow)

(GOODS AND SERVICES TAX APPELLATE TRIBUNAL, LUCKNOW BENCH)

SANTOSH MANI MISHRA

V.

PROP. O TALPURA BAHEERI UPBAR 243201, ISLAM TRADING CO.

APPEAL NO. APL/87/LCK/2026, AUGUST 25, 2026

CORAM:

SHRI SANTOSH KUMAR SRIVASTAVA, MEMBER (JUDICIAL)
AND
SHRI ARVIND KUMAR, MEMBER (TECHNICAL)

REPRESENTATION:

For the Appellant: Shri Mahendra. Pratap Singh, Assistant Commissioner, SGST.
For the Respondent: None.

HEADNOTE:

GST – Detention of goods- Non availability of E-way Bill- Section 129 of the UPGST ACT, 2017 — Transportation of 132.90 cubic feet of iron scrap by M/s Islam Trading Company — E-Way Bill not available with the driver at the time of interception — Tax of Rs. 47,844/- and equal penalty imposedte under Section 129(3) — First Appellate Authority setting aside the demand — Subsequent production of E-Way Bill and other documents — HELD: Mandatory requirement of E-Way Bill under Rule 138 — Subsequent production of E-Way Bill — not sufficient to cure the non-compliance at the time of transportation — E-Way Bill — integral part of the statutory mechanism for monitoring movement of taxable goods — Transportation without E-Way Bill — substantive non-compliance — Scope for subsequent manipulation of books of account — Circumstances indicating intention to evade tax — Goods loaded at Baheri, Bareilly (U.P.) and destined for Kichha, Uttarakhand, approximately 25 km away — Earlier similar case involving the same party and similar modus operandi — E-Way Bill produced only after interception — Repeated lapse — not a mere procedural or technical lapse — First Appellate Authority — erroneous interference with proceedings under Section 129(3) — Appeal allowed — Impugned order set aside — Original order imposing tax and penalty restored.

KEY ISSUES AND FINDINGS:

1. **Whether the transportation of goods without an E-Way Bill, despite subsequent production of the E-Way Bill and other relevant documents, constitutes substantive non-compliance with Rule 138 of the GST Rules?**

   “We have carefully examined the aforesaid judicial precedents and find that the facts and circumstances considered therein are distinguishable from those of the present case. In the present case, the generation of an E-Way Bill is an online process, whereas the tax invoice is issued manually by the taxpayer.” [Para 6.2]

   “The non-generation of an E-Way Bill, therefore, leaves scope for subsequent manipulation of the books of accounts at the convenience of the taxpayer. Accordingly, we are of the considered opinion that, in such circumstances, transportation of goods without an E-Way Bill constitutes substantive non-compliance and establishes an intention to evade tax.” [Para 6.3]

2. **Whether the absence of E-Way Bill, coupled with the circumstances of transportation and the repeated adoption of a similar procedure by the respondent, establishes an intention to evade tax warranting levy of tax and penalty under Section 129(3)?**

   “Moreover, in this transaction, the loading of goods is shown at Baheri, Barielly (Uttar Pradesh), and the delivery is shown at Kichha (Uttarakhand). Baheri is situated near Uttarakhand; the distance from Baheri to Kichha is approximately 25 km. Its further highlight the trader's intent to evade tax. Thus, in the present case the intention to evade tax in crystal clear.” [Para 6.4]

   “This Appellate Tribunal, Lucknow Bench, vide order dated 20.08.2026 in Appeal No. APL/79/LKC/2026, Om Prakash v. M/s Islam Trading Company, GSTIN: 09ACBPU8577H1ZW, has considered a case involving the same nature of goods and a similar modus operandi, wherein the goods were being transported to the same location and the E-Way Bill was produced by the respondent only after interception by the Mobile Squad, Bareilly. The Tribunal, in the said case, also took note of the repetition of the same lapse in the present proceedings.” [Para 6.5]

   “In view of the aforesaid facts and the repeated adoption of the same procedure, we are of the considered opinion that the conduct of the respondent cannot be treated as a mere procedural or technical lapse. The circumstances, particularly the production of the E-Way Bill only after interception by the Mobile Squad and the repetition of the same lapse, establish a deliberate course of conduct indicative of an intention to evade tax.” [Para 6.6]

   “Accordingly, we are of the considered opinion that the First Appellate Authority "committed an error in interfering with the order passed under Section 129(3). The original adjudicating authority had rightly invoked the provisions of Section 129.” [Para 6.7]

EDITORIAL NOTES:

Principles laid down:

1. Transportation of goods without an E-Way Bill, in contravention of the mandatory requirement under Rule 138 of the GST Rules, constitutes substantive non-compliance and subsequent production of the E-Way Bill cannot cure the non-compliance existing at the time of transportation.
2. Intention to evade tax may be established from the cumulative effect of the absence of an E-Way Bill, the circumstances surrounding transportation of the goods and repeated adoption of a similar procedure by the same respondent, which cannot be treated as a mere procedural or technical lapse.

3. Where the First Appellate Authority has erred in interfering with proceedings under Section 129(3) of the UPGST Act, the original order imposing tax and penalty is liable to be restored.

Case laws referred to:
Sarva Shri Singh Tire v. State of U.P. 98 Taxmann 388 / 2018 UPTC 539

Shri KL Industries v. State of U.P. WRIT TAX (WTAX)- [725/2018]

Sarv Shri Harley Foods Products Pvt. Ltd. v. State of U.P. & 3 others WRIT TAX No. - 584 of 2018

M/s Modern Traders v. State of U.P. & 2 others Writ Tax No. 763 of 2018

M/s Rai Prexim India Private Limited v. State of Kerala W.P.(C) No.39022/2018

Relevant Provisions:
Section 112 of the UPGST Act, 2017; Section 129(3) of the UPGST Act, 2017; Rule 138(1) of the UPGST Rules, 2017; Rule 138(4) of the UPGST Rules, 2017.

JUDGMENT

1. This appeal has been filed by the Appellant (Revenue) under the relevant provisions of the GST Act (Under Section 112) against the first appellate authority order vide appeal no. APL/24/2018, dated 24.09.2021 under Section 129(3) of the UPGST Act, 2017 imposing tax and penalty was set aside.
   1.1. Since the goods (Scrap) were being transported without E-way Bill, which is a mandatory under Rule 138(4). Therefore, we find the matter should be heard in Division Bench.
   The present second appeal arises from proceedings under Section 129(3) of the U.P. GST Act, 2017 regarding detention of goods for non-ayailability of the E-Way Bill at the time of interception.
   1.2. The appellant, M/s Islam Trading Company, Baheri, Bareilly, was transporting 132.90 cubic feet of iron goods under Tax Invoice No. 29 dated 26.03.2018. On 27.03.2018, the vehicle was intercepted by the Mobile Squad, Bareilly. As the E-Way Bill was not available with the driver at that time, tax of Rs. 47,844/- and an equal penalty of Rs. 47,844/- were imposed under Section 129(3).
2. The Appellate Authority erred in setting aside the tax and penalty despite the clear violation of Rule 138 of the GST Rules, as the goods were transported without a valid E-Way Bill.
   2.1. The subsequent production of the tax invoice, books of account, GST returns and proof of payment of tax cannot retrospectively cure the violation committed at the time of transportation.
   2.2. The Appellate Authority failed to consider that the vehicle was intercepted during transportation and that, but for such interception, the movement of goods without an E-Way Bill would have gone undetected, indicating an intention to evade tax.
   2.3. The judgments relied upon by the Hon'ble Appellate Authority are distinguishable on facts and are not applicable to the present case involving violation of Rule 138 and circumstances indicating tax evasion.
   2.4. The Appellate Authority failed to decide the material question of law as to whether taxable goods can legally be transported without the mandatory E-Way Bill.
3. Shri Mahendra Pratap Singh, learned Assistant Commissioner of SGST, authorized representative appeared for department and argued. He reiterated the submission made in grounds of appeal and facts.
   3.1. The E way bill generation is an online process, whereas the tax-invoice is issued manually by the A- A taxpayer. If the trader generated the E-way bill online, it

would have appeared in his outward supply records preventing him from manipulating his books of accounts at his convenience. This fact established the trader's intention to evade tax.

3.2. The loading of goods is shown at Baheri, Barielly (Uttar Pradesh) and the delivery is shown at Kichha (Uttarakhand). Baheri is situated near Uttarakhand, the distance from Baheri to Kichha is approximately 25 km. Since the Transportation of sensitive goods such as iron scrap without E-way bill, further highlights the trader's intent to evade tax.

3.3. The impugned order fails to consider the cumulative effect of the absence of the E-Way Bill, interception of the vehicle, nature of the goods, intension to evade tax and subsequent production of documents, and is therefore liable to be set aside.

4. None appeared on behalf of the Respondent.

4.1. The respondent, despite being afforded adequate opportunity before this court, neither appeared nor filed any written submissions to contradict the grounds urged by the Department. Consequently, there is no material before the Authority to dislodge the findings recorded herein.

5. The issue for determination is whether the goods in question were, genuinely being transported and, despite the availability of all relevant documents, the alleged intention to evade tax is merely a presumption, or whether the facts and circumstances establish such intention, particularly when the goods were transported without an E-Way Bill.

5.1. The First Appellate Authority has relied upon various judicial precedents of the Hon'ble High Courts while passing the impugned order, considering them to be applicable to the present case. The issue before us is whether the said judicial precedents are, in fact, applicable to the facts and circumstances of the present case.

5.2. The first Appellate Authority on the premise that the E-Way Bill was subsequently produced and there is no discrepancy existed in the accompanying documents. The first Appellate Authority on the premise that the E-Way Bill was subsequently produced and there is no discrepancy existed in the accompanying documents. The first appellate authority has also relied upon various precedents in his order to support his stand as follows-

The Hon'ble Allahabad High Court in case of Sarva Shri Singh Tire v. State of U.P. has held "*the order of Section 129(3) as unreasonable by accepting the writ on the ground that the e-way bill was subsequently downloaded and submitted before the Mobile Dal Unit.*"

In the case of Shri KL Industries v. State of U.P. "*the order of Section 129(1) and Section 129(3) was quashed by the Hon'ble High Court. Ultimately, it was requested that the appeal be allowed and that the order passed be quashed and the disputed amount be liquidated.*"

The Hon'ble High Court in the case of Sarv Shri Harley Foods Products Pvt Ltd. V. State of U.P. & 3 others (2018) 37 VLI-UP. "*Goods and Services Tax Act, 2017 Section 129(1) and 164 e-way bill 01 not produced at the time of interception of goods along with other documents-Goods Seized-presumption-intention of evade tax all the requisite documents including e-way bill were with the goods intention to evade tax not proved-goods directed to be released without security-penalty proceeding quashed.*"

The Hon'ble Allahabad High Court in M/s Modern Traders Vs. State of UP and 2 others 2018 71 the following opinion has been held: - NTN(Vol-67)-"*The sole ground of seizure of goods in non-production of e-way Bill, whereas no dispute with regard to Issuance of invoice and charge of Tax by the petitioner.*
"

The Hon'ble Kerala High Court in M/s Rai Prexim India Private Limited Vs. State of Kerala 2019 NTN (Vol.70)-29 has expressed the following opinion: -

"*If human error which can be seen on the caked eye is detected, such human error cannot be capitalized for penalization*"

6. We have carefully considered the grounds raised in the appeal and perused the record and the order passed by the first appellate authority.

6.1. It is an admitted fact that no E-Way Bill accompanied the goods at the time of transportation. The requirement of carrying an E-Way Bill during transportation is mandatory under Rule 138(I) of the GST Rules, the said rule is produced as under-

"*(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand*

(i) in relation to a supply; or

(ii) for reasons other than supply; or

(iii) due to inward supply from an unregistered person,

shall, before commencement of such movement, furnish information relating to the said goods as specified in Part A of Form GST EWB -01, the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal"

Thus E-Way Bill is an integral part of the statutory mechanism for monitoring movement of taxable goods.

6.2. We have carefully examined the aforesaid judicial precedents and find that the facts and circumstances considered therein are distinguishable from those of the present case. In the present case, the generation of an E-Way Bill is an online process, whereas the tax invoice is issued manually by the taxpayer.

6.3. The non-generation of an E-Way Bill, therefore, leaves scope for subsequent manipulation of the books of accounts at the convenience of the taxpayer. Accordingly, we are of the considered opinion that, in such circumstances, transportation of goods without an E-Way Bill constitutes substantive non-compliance and establishes an intention to evade tax.

6.4. Moreover, in this transaction, the loading of goods is shown at Baheri, Barielly (Uttar Pradesh), and the delivery is shown at Kichha (Uttarakhand). Baheri is situated near Uttarakhand; the distance from Baheri to Kichha is approximately 25 km. Its further highlight the trader's intent to evade tax. Thus, in the present case the intention to evade tax in crystal clear.

6.5. This Appellate Tribunal, Lucknow Bench, vide order dated 20.08.2026 in Appeal No. APL/79/LKC/2026, *Om Prakash v. M/s Islam Trading Company*, GSTIN: 09ACBPU8577H1ZW, has considered a case involving the same nature of goods and a similar modus operandi, wherein the goods were being transported to the same location and the E-Way Bill was produced by the respondent only after interception by the Mobile Squad, Bareilly. The Tribunal, in the said case, also took note of the repetition of the same lapse in the present proceedings.

6.6. In view of the aforesaid facts and the repeated adoption of the same procedure, we are of the considered opinion that the conduct of the respondent cannot be treated as a mere procedural or technical lapse. The circumstances, particularly the production of the E-Way Bill only after interception by the Mobile Squad and the repetition of the same lapse, establish a deliberate course of conduct indicative of an intention to evade tax.

6.7. Accordingly, we are of the considered opinion that the First Appellate Authority committed an error in interfering with the order passed under Section 129(3). The original adjudicating authority had rightly invoked the provisions of Section 129.

ORDER

The appeal filed by the Appellant (Revenue) is accordingly allowed.

The first appellate authority order Vide Appeal No. APL/24/2018, dated 24.09.2021 under Section 129(3) of the UPGST Act, 2017 imposing tax and penalty is set aside.

The order dated 09.03.2018 passed by the Proper Officer under Section 129(3) of the UPGST Act, 2017 imposing tax and penalty is restored.

(2026) 1 GSTAT E- Journal 163 (Lucknow)

(GOODS AND SERVICES TAX APPELLATE TRIBUNAL, LUCKNOW BENCH)

D.S TRADERS

V.

COMMISSIONER, COMMISSIONER STATE GOODS AND SERVICES TAX DEPARTMENT LUCKNOW UTTAR PRADESH., COMMISSIONER STATE, GOODS AND SERVICES TAX DEPARTMENT & ORS.

APL/52/LCK/2026, AUGUST 25, 2026

CORAM:

HON'BLE SANTOSH KUMAR SRIVASTAVA, MEMBER(JUDICIAL)
AND
HON'BLE ARVIND KUMAR, MEMBER (TECHNICAL)

REPRESENTATION:

For the Appellant: Dr. Swayambhav Manu, Advocate
For the Respondent: Shri Sanjeev Kumar Deputy Commissioner of SGST

HEADNOTE:

GST: – Movement of Goods – E-Way Bill requirement – Exemption for movement within 20 kilometers – Return of own machinery from job work site – Whether constitutes "supply" under Section 7 of CGST Act – Penalty under Section 129(3) – Technical lapse v. intention to evade tax – Principles of Natural Justice. **HELD**: E-Way Bill required for movement of goods including for non-supply purposes – Ownership of goods does not exempt – Delivery Challan cannot substitute E-Way Bill – Appellant failed to prove tax treatment of consideration received for use of excavator – Coupled with absence of E-Way Bill, gives rise to inference of intention to evade tax, not mere technical lapse – 20 km exemption not proved – Cited precedents distinguishable – Penalty under Section 129(3) justified – Orders upheld – Appeal Rejected. Sections 68, 129(3) of CGST/UPGST Act; Rule 138 of CGST/UPGST Rules. [Paras 6.1, 6.2, 6.3, 6.4, 6.5]

...**In Favour of the Revenue**

KEY ISSUES AND FINDINGS:

1. **Whether the movement of the Excavator Machine belonging to the appellant, being returned from a job work site to its registered place of business, constitutes a "supply" under Section 7 of the CGST Act, and whether such movement requires generation of an E-Way Bill?**
   "The Appellant submitted that in the present case no sale or taxable supply is involved. Since the goods was a return of the appellant's own machinery from a job work site to its registered place of business, which does not constitute a 'Supply' under Section 7 of CGST/UPGST Act, and therefore, no question of tax evasion arises.
   It is an admitted fact that the excavator was intercepted while being transported without an e- Way Bill. Under Section 68 of the CGST/UPGST Act read with Rule 138 of the CGST/UPGST Rules, the prescribed documents/e- Way Bill is required for movement of goods, including movement for reasons other than supply, subject to the specified exemptions. Therefore, the plea that the excavator belonged to the appellant and was being returned to its registered premises does not, by itself, exempt the appellant from the requirement of an e- Way Bill."[Para 4.4, 6.1]"

2. **Whether the absence of an E-Way Bill, when the movement was accompanied by a Delivery Challan, can be treated as a mere technical or procedural lapse, or whether it amounts to a statutory contravention attracting penalty under Section 129(3)?**
   "The goods in question of without E way bill was having a delivery challan for return of the machine.

The appellant has also failed to satisfactorily establish the tax treatment of the consideration received for use of the excavator at the project site. Though it has been stated that the machine was operated on an hourly basis, no sufficient evidence regarding the hours of operation, consideration charged and corresponding discharge of GST has been produced. This circumstance, coupled with transportation without an e- Way Bill, gives rise to a reasonable inference of intention to evade tax and cannot be treated as a mere technical lapse. [Para 4.1, 6.2]"

3. **Whether the movement of the excavator within 20 kilometers, accompanied by a valid Delivery Challan, is exempt from the E-Way Bill requirement under Rule 138(14) read with the applicable State notification?**
"The learned counsel for the appellant further submitted that the Government of Uttar Pradesh has, exercising this power, notified that movements within 20 kilometres within the State, accompanied by a valid Delivery Challan, are exempt from the E- Way Bill requirement.
The distance between the loading point (Trans Ganga City, Unnao) and the destination (1583/2A, Dehli Sujanpur, Kanpur) is under 20 kilometres. The movement was accompanied by Delivery Challan No. 01 dated 17.07.2025. Both conditions of the exemption are satisfied.
The contention regarding the alleged 20- kilometre exemption also cannot be accepted in the absence of satisfactory evidence establishing that the present movement was specifically covered by the applicable statutory exemption under Rule 138(14) or any relevant notification issued by the competent authority" [Para 4.5, 4.6, 6.3]

4. **Whether the appellant has satisfactorily established the tax treatment of the consideration received for use of the excavator at the project site, and whether failure to do so gives rise to an inference of intention to evade tax?**
"The appellant has also failed to satisfactorily establish the tax treatment of the consideration received for use of the excavator at the project site. Though it has been stated that the machine was operated on an hourly basis, no sufficient evidence regarding the hours of operation, consideration charged and corresponding discharge of GST has been produced. This circumstance, coupled with transportation without an e- Way Bill, gives rise to a reasonable inference of intention to evade tax and cannot be treated as a mere technical lapse.[Para 6.2]"

5. **Whether the judicial precedents relied upon by the appellant are applicable to the facts of the present case, and whether they can be mechanically applied?**
"We have also considered the judicial precedents relied upon by the appellant. The facts and circumstances of those cases are distinguishable from the present case, particularly where the appellant has failed to establish the tax treatment of the consideration relating to the use of the excavator and the goods were admittedly transported without an e- Way Bill. Hence, the said judgments cannot be mechanically applied to the present case. [Para 6.4]"

6. **Whether the First Appellate Authority violated the Principles of Natural Justice by dismissing the appeal on the ground of absence of E-Way Bill without examining the substantive merits of the case?**
The First appellate authority dismissed the appeal primarily on the ground of transit of goods without generating E - Way Bill without examining the substantive merits of the case. Which violates the Principal of Natural Justice as technical procedural lapses cannot overshadow merits of the case.
It was therefore submitted that there was no violation of the principles of natural justice and that the penalty was imposed in accordance with the applicable statutory provisions. Accordingly, the respondent prayed that the appeal be dismissed, the

impugned order be upheld, and the prayer for refund of penalty be rejected. [Para 3, 5.5]

7. **Whether the imposition of penalty under Section 129(3) of the U.P. GST Act, 2017, amounting to Rs. 3,24,000/-, is justified in the facts and circumstances of the case?**
Accordingly, we find that the appellant has failed to establish either a valid exemption from the e- Way Bill requirement or that the lapse was merely procedural and without revenue implications. The action under Section 68 read with Rule 138 and Section 129 of the CGST/UPGST Acts is therefore justified. [Para 6.5]

EDITORIAL NOTES:
Principles Laid Down:
1. Section 68 read with Rule 138 – Mandatory E-Way Bill: The statutory requirement of generating an E-Way Bill under Section 68 of the CGST/UPGST Act read with Rule 138 of the CGST/UPGST Rules applies to movement of goods for all purposes, including movement for reasons other than supply, subject to specified exemptions. The mere fact that the goods belong to the assessee or are being returned from a job work site does not, by itself, exempt the assessee from compliance with the mandatory requirement of generating an E-Way Bill.
2. Rule 138(14) – Exemption – Burden of Proof: Any claim of exemption from the E-Way Bill requirement, such as the 20-kilometer exemption under Rule 138(14), must be supported by the relevant notification or circular issued by the competent authority. The burden of proving that the movement falls within the exempted category lies squarely on the assessee. Mere assertion of exemption without producing the applicable notification is insufficient to discharge this burden.
3. Section 129(3) – Penalty – Intention to Evade Tax: Where an assessee transports goods without a valid E-Way Bill and fails to satisfactorily establish the tax treatment of consideration received for use of such goods, a reasonable inference of intention to evade tax arises. Such circumstances, coupled with transportation without an E-Way Bill, cannot be treated as mere technical or procedural lapses. The burden lies on the assessee to establish that the lapse was merely procedural and without any revenue implications.
4. The plea that movement of goods does not constitute a "supply" under Section 7 of the CGST Act, merely because the goods belong to the assessee and are being returned from a job work site, does not exempt the assessee from the mandatory requirement of generating an E-Way Bill. Section 68 read with Rule 138 mandates E-Way Bill for movement of goods regardless of whether the movement constitutes a "supply" or not, subject to specified exemptions.
5. Judicial precedents cannot be mechanically applied to every case. Each case must be decided on its own facts. Where the assessee fails to establish that the facts of the cited cases are identical, and where the assessee has failed to produce evidence regarding tax treatment of consideration and transportation without E-Way Bill, reliance on such precedents is of no avail.
6. Where an assessee transports goods without a valid E-Way Bill and fails to establish either a valid exemption or that the lapse was merely procedural and without revenue implications, the action under Section 68 read with Rule 138 and Section 129 of the CGST/UPGST Acts is fully justified, and the imposition of penalty under Section 129(3) must be upheld.
7. The First Appellate Authority dismissing the appeal primarily on the ground of transit of goods without generating an E-Way Bill without examining the substantive merits does not by itself constitute a violation of the Principles of Natural Justice, where the assessee had been given full opportunity to present its case before both the original adjudicating authority and the First Appellate Authority, and the substantive merits had been examined at the appellate stage.

Case Law Referred to:
Fabricship Pvt. Ltd. v. Union of India- (2024) 20 Centax 84 (Bom.)

D and D Construction and Developers Company v. Additional Commissioner
M/S Abhay Prakash Katariar vs State Of UP (Allahabad High Court, September 22, 2025)

Sachin Jain v. State of U.P. (2025) 36 Centax 300 (All.)

Varun Beverages Ltd. vs. State of U.P. (2023) 3 Centax 160 (All.)

Shakuntalam Associates vs. Additional Commissioner (Appeal)-V, Commercial Tax (2025) 33 Centax 162 (All.)

Tata Hitachi Construction Machinery Company Pvt. Ltd. v. State of Uttar Pradesh — (2025) 30 Centax 469 (All.)

M/S Cj Darcl Logistics Ltd. v. State of U.P. (Allahabad High Court, September 4, 2025)

Shanu Events vs. State of U.P. (2022) 1 Centax 163 (All.)

Banaras Industries V. Union Of India (Allahabad High Court, November 7, 2024)

Satyam Traders v. State of U.P. (Allahabad High Court, March 19, 2025)

M/S Singhal Enterprises v. State of U.P. (Allahabad High Court, November 7, 2025)

Kitchen Equipments Manufacturing Co. v. Additional Commissioner Grade 2 (Allahabad High Court, February 27, 2025)
M/S Chawla Sugandhi Bhandar v. State of U.P. (Allahabad High Court, September 11, 2025)

M/S Rakesh Plastic Furniture And Crockery Emporium v. State of U.P. (Allahabad High Court, September 1, 2025)

Mohammad Shamasher v. State of West Bengal (Calcutta High Court)

Prestress Steel LLP v. Commissioner (Uttarakhand High Court)

Vacmet India Ltd. v. Additional Commissioner (Allahabad High Court)

M/S Jaitron Communication Pvt. Ltd. v. State of U.P. (Allahabad High Court)

Notifications Referred to:
- Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018

Relevant Provisions:
Section 7 of CGST Act, 2017; Section 68 of CGST Act, 2017; Section 129 of CGST Act, 2017; Rule 138 of CGST Rules, 2017;

JUDGMENT

1. The present appeal is filed by the appellant M/s D.S. Traders, GSTN: 09GYMPS0010J1Z7 against the penalty order passed under Section 129(3) of the U.P. GST Act, 2017 by the original adjudicating authority order no ZD090725182974N dt. 18.7.2025

and first appellate authority order dt. KNP4/484/AD091025014132Q/2526AKNP002257/2025 dt. 27.11.2025 and, in respect of goods being transported in vehicle No. UP78GN8559 without E way Bill.

1.1 On 18.07.2025, the vehicle carrying the goods were intercepted, which were accompanied by Delivery Challan No. 01 dated 18.07.2025 while an Excavator Machine, which was also found along with the goods as mentioned in the challan issued by M/s D.S. Traders, Kanpur, which was being transported without a valid e-Way Bill and consequently treated the transportation as a violation of the Rule 138 Under of UP GST Act provisions relating to movement of goods.

1.2 The Excavator Machine was stated to have been sent to the work site of M/s OPSIS Projects India Pvt. Ltd. at Trans Ganga City, Unnao, for work at the site. The value of the machine/goods was stated to be approximately Rs. 9,00,000.

1.3 The proper officer passed a seizure/penalty order and imposed a total penalty of Rs. 3,24,000.00, comprising Rs. 1,62,000.00 CGST and Rs. 1,62,000.00 SGST, under Section 129(3).
Since the goods was being transported without E- Way Bill, which is mandatory under Rule 138(A). Therefore, we find the matter deserve to be heard in Division Bench.

GROUNDS OF APPEAL:
The First appellate authority dismissed the appeal primarily on the ground of transit of goods without generating E - Way Bill without examining the substantive merits of the case. Which violates the Principal of Natural Justice as technical procedural lapses cannot overshadow merits of the case.

3.1 The appellant has sent its excavator Machine on rent to M/s OPSIS Projects India Pvt. Ltd. With a valid job work agreement for execution of work at project site, the appellant was bringing back the goods to its registered place of business from project site situated at Trans Ganga City, Unnao to Kanpur, during the course of transaction the same was intercepted by the Mobile Squad of State Tax Department, Kanpur.

3.2 The appellant requested for the quash of the impugned order and allow the appeal and refund the deposited penalty or grant of remedy that this hon'ble tribunal may deem fit and proper in facts and circumstances of the case.

SUBMISSION OF THE APPELLANT:
4.0 The appellant contended that the movement was not pursuant to a sale, but was for use/work at the site and was supported by the delivery challan and other documents. It was argued that there was no intention to evade tax and that the absence/non- generation of the e- Way Bill was at most a technical/procedural lapse.

4.1 The goods in question of without E way bill was having a delivery challan for return of the machine.

4.2 The appellant submitted that both the consignor and consignee in the Delivery Challan bear the same GSTIN 09GYMPS0010J1Z7. The Appellant is simultaneously the sender and the receiver. There is no second registered person, no buyer, no recipient, no transferee. The machine was simply being repositioned from one location back to its owner.

4.3 The dispute concerns the imposition of a Rs. 3.24 lakh GST penalty on the transportation of an excavator without an e- Way Bill, where the appellant's case is that the machine was being transported for work/site purposes and there was no sale or intention to evade tax.

4.4 The Appellant submitted that in the present case no sale or taxable supply is involved. Since the goods was a return of the appellant's own machinery from a job work site to its registered place of business, which does not constitute a 'Supply' under Section 7 of CGST/UPGST Act, and therefore, no question of tax evasion arises.

4.5 The learned counsel for the appellant further submitted that the Government of Uttar Pradesh has, exercising this power, notified that movements within 20 kilometres within the State, accompanied by a valid Delivery Challan, are exempt from the E- Way Bill requirement.

4.6 The distance between the loading point (Trans Ganga City, Unnao) and the destination (1583/2A, Dehli Sujanpur, Kanpur) is under 20 kilometres. The movement was accompanied by Delivery Challan No. 01 dated 17.07.2025. Both conditions of the exemption are satisfied.

4.7 The appellant cited various judicial order pronounced by the Hon'ble High Court, which are produced below

- The Bombay High Court in Fabricship Pvt. Ltd. v. Union of India
- The Allahabad High Court in D and D Construction and Developers Company v. Additional Commissioner (April 8, 2025)
- M/S Abhay Prakash Katariar vs State Of UP (Allahabad High Court, September 22, 2025)
- Sachin Jain v. State of U.P. (Allahabad High Court, Lucknow Bench, November 12, 2025)
- M/S Varun Beverages Limited v. State of U.P. (Allahabad High Court, May 2024)
- M/S Shakuntalam Associates v. Additional Commissioner (Allahabad High Court, July 30, 2025)
- Tata Hitachi Construction Machinery Company (P.) Ltd. v. State of U.P. (Allahabad High Court, May 9, 2025)
- M/S Cj Darcl Logistics Ltd. v. State of U.P. (Allahabad High Court, September 4, 2025)
- M/S Shanu Events v. State of U.P. (Allahabad High Court, August 5, 2022)
- Banaras Industries v. Union of India (Allahabad High Court, November 7, 2024)
- Satyam Traders v. State of U.P. (Allahabad High Court, March 19, 2025)
- M/S Singhal Enterprises v. State of U.P. (Allahabad High Court, November 7, 2025)
- Kitchen Equipments Manufacturing Co. v. Additional Commissioner Grade 2 (Allahabad High Court, February 27, 2025)
- M/S Chawla Sugandhi Bhandar v. State of U.P. (Allahabad High Court, September 11, 2025)
- M/S Rakesh Plastic Furniture And Crockery Emporium v. State of U.P. (Allahabad High Court, September 1, 2025)
- Mohammad Shamasher v. State of West Bengal (Calcutta High Court)
- Prestress Steel LLP v. Commissioner (Uttarakhand High Court)
- Vacmet India Ltd. v. Additional Commissioner (Allahabad High Court)
- M/S Jaitron Communication Pvt. Ltd. v. State of U.P. (Allahabad High Court)

SUBMISSION OF THE RESPONDENT:

5. Learned Shri Sanjeev Kumar, Deputy Commissioner, appeared on behalf of the Department and vehemently opposed the appeal. He submitted that the impugned order passed by the First Appellate Authority is legal and proper and does not warrant interference.

5.1 It was submitted that the excavator was admittedly found in transit without a valid e-Way Bill. The mere fact that the machinery belonged to the appellant or was being returned from the project site does not, by itself, exempt the appellant from complying with the statutory requirements relating to transportation of
5.2 The respondent further submitted that the Delivery Challan relied upon by the appellant cannot substitute the e- Way Bill where generation of an e-Way Bill is otherwise mandatory. The plea that there was no sale or intention to evade tax does not, by itself, absolve the appellant from the statutory contravention.
5.3 The respondent specifically disputed the appellant's contention regarding the alleged 20- kilometre exemption and submitted that the appellant has not produced any applicable notification or circular issued by the competent authority establishing that such movement was exempt from the e- Way Bill requirement.
5.4 As regards the various judicial pronouncements relied upon by the appellant, the respondent submitted that the said judgments are distinguishable on facts and law and cannot be applied mechanically to the present case. The appellant has failed to establish that the facts of the present case are identical to those considered in the cited decisions.
5.5 It was therefore submitted that there was no violation of the principles of natural justice and that the penalty was imposed in accordance with the applicable statutory provisions. Accordingly, the respondent prayed that the appeal be dismissed, the impugned order be upheld, and the prayer for refund of penalty be rejected.

FINDINGS:
6. We have carefully considered the submissions of both sides, the material available on record and the judicial precedents relied upon by the appellant.
6.1 It is an admitted fact that the excavator was intercepted while being transported without an e- Way Bill. Under Section 68 of the CGST/UPGST Act read with Rule 138 of the CGST/UPGST Rules, the prescribed documents/e-Way Bill is required for movement of goods, including movement for reasons other than supply, subject to the specified exemptions. Therefore, the plea that the excavator belonged to the appellant and was being returned to its registered premises does not, by itself, exempt the appellant from the requirement of an e-Way Bill.
6.2 The appellant has also failed to satisfactorily establish the tax treatment of the consideration received for use of the excavator at the project site. Though it has been stated that the machine was operated on an hourly basis, no sufficient evidence regarding the hours of operation, consideration charged and corresponding discharge of GST has been produced. This circumstance, coupled with transportation without an e- Way Bill, gives rise to a reasonable inference of intention to evade tax and cannot be treated as a mere technical lapse.

6.3 The contention regarding the alleged 20- kilometre exemption also cannot be accepted in the absence of satisfactory evidence establishing that the present movement was specifically covered by the applicable statutory exemption under Rule 138(14) or any relevant notification issued by the competent authority.

6.4 We have also considered the judicial precedents relied upon by the appellant. The facts and circumstances of those cases are distinguishable from the present case, particularly where the appellant has failed to establish the tax treatment of the consideration relating to the use of the excavator and the goods were admittedly transported without an e- Way Bill. Hence, the said judgments cannot be mechanically applied to the present case.

6.5 Accordingly, we find that the appellant has failed to establish either a valid exemption from the e- Way Bill requirement or that the lapse was merely procedural and without revenue implications. The action under Section 68 read with Rule 138 and Section 129 of the CGST/UPGST Acts is therefore justified.

ORDER

The order of the original adjudicating authority Order No. ZD090725182974N dated 18.07.2025 and the order of the First Appellate Authority Order No. KNP4/484/AD091025014132Q/2526AKNP002257/ 2025 dated 27.11.2025, in respect of goods transported in vehicle No. UP78GN8559 without an e- Way Bill, are hereby upheld.

Accordingly, the appeal is rejected.

(2026) 1 GSTAT E- Journal 170 (Lucknow)

(GOODS AND SERVICES TAX APPELLATE TRIBUNAL, LUCKNOW BENCH)

M/s. NEPTUNE SALES CORPORATION

V.

ADDITIONAL COMMISSIONER GR-2 APPEAL- IV LUCKNOW, ADDL. COMMR. LUCKNOW & ORS.

Appeal No. APL/33/LCK/2026, AUGUST 25, 2026

CORAM:

SHRI SANTOSH KUMAR SRIVASTAVA, MEMBER (JUDICIAL)
AND
SHRI ARVIND KUMAR, MEMBER (TECHNICAL)

REPRESENTATION:

For the Appellant: Mr. Alekh Agarwal, Advocate.
For the Respondent: Mr. Ashotosh Mishra, Assistant Commissioner, SGST.

HEADNOTE:

GST – Detention of goods- Alleged reuse of E Way bill- Section 129 of the UPGST Act, 2017 — Goods transported by the appellant under valid tax invoice, e-invoice and E-Way Bill — Goods intercepted on 14.01.2024 — Department alleged that the goods were being re-transported on previously used documents, relying upon earlier verification/location of the E-Way Bill and vehicle on the same day — Tax and penalty of Rs. 2,51,196/- imposed under Section 129 — First Appellate Authority upheld the demand — **HELD:** Material on record did not establish any discrepancy in description, quantity, value or ownership of goods — No independent and cogent evidence that the goods had already completed an earlier journey or had been delivered — Mere inference from earlier verification/location of E-Way Bill insufficient to establish reuse — Valid tax documents accompanied the goods — Intention to evade tax cannot be presumed merely from suspicion or inference — Presumption of tax evasion cannot take the place of proof — Department failed to establish transportation in contravention of GST law or reuse of E-Way Bill — Appeal allowed — Impugned appellate and original orders set aside — Amount of Rs. 2,51,196/- deposited pursuant to detention/penalty proceedings directed to be refunded in accordance with law.

...In Favour of the Appellant

KEY ISSUES AND FINDINGS:

1. **Whether detention of the goods and imposition of tax and penalty under Section 129 of the UPGST Act, 2017 were sustainable on the allegation that the goods were being re-transported using a previously utilised E-Way Bill, when the goods were accompanied by valid tax documents and the alleged reuse and intention to evade tax were not established by independent and cogent evidence?**
   In the present case, we have examined the facts placed on record, we are of the considered view that the department failed to establish that the goods in question were being transported in contravention of the provisions of the GST Act or the Rules as well as reusing of E-way bill. [Para 7.1]

Therefore, the conclusion of the first appellate authority that "intention to evade tax is automatically proved" is legally/factually unsustainable. Intention cannot be presumed merely from suspicion, and a presumption of tax evasion cannot take the place of proof. [Para 7.2]

The present case stands on an even more fundamental footing: here, the department has not established any cogent material such as crossing of toll plaza during the course of transaction of goods in same day, that the goods actually underwent an earlier used E-way bill. [Para 7.3]

EDITORIAL NOTES:

Principles laid down:

1. Mere inference from earlier verification or vehicle location, without evidence of prior transportation or delivery of the same goods, is insufficient.
2. Suspicion or inference cannot substitute proof; where the goods are accompanied by valid tax documents and no discrepancy is established, detention and penalty under Section 129 cannot be sustained merely on the basis of presumptions.

Case laws referred to:

Assistant Commissioner (ST) & Ors. v. M/s Satyam Shivam Papers Pvt. Ltd.

M/s Shri Surya Traders v. Union of India

State of Kerala v. M.M. Mathew

M/s Anandeshwar Traders v. State of U.P.

M/s B.L. Agro Oils Ltd. v. State of U.P.

Relevant Provisions:

Section 129 of UPGST Act, 2017 ; Section 68 of CGST Act, 2017.

JUDGMENT

1. This appeal has been filed by M/s Neptune Sales Corporation GSTN: 09AGJPA9427E1ZF against the appellate order bearing Reference/Acknowledgment No. ZD091024411876C dated 30.10.2024, whereby the learned Additional Commissioner Grade-II (Appeal) dismissed GST Appeal No. 90/2024 for the year 2023- 24 and affirmed the original order bearing No. ZD090124161522N dated 19.01.2024, passed under Section 129 of the CGST/UPGST Act, 2017.

1.1 The dispute relates to detention of goods and imposition of penalty amounting to Rs. 2,51,196/-, in respect of goods covered by invoice, e-invoice and valid e-way bill.

1.2 The appellant is a registered proprietorship concern engaged in manufacturing business. The goods in question were being transported from the appellant's business premises at Arazi No. 1071, Mubarakpur, Akabarpur, Kanpur Dehat to the declared destination under a valid tax invoice, e-invoice and e-way bill.

1.3 The goods were intercepted on 14.01.2024. The department relied upon an earlier verification of the e- way bill at Banthara Bazaar, Kanpur Road, at about 04:15 A.M., and the subsequent location of the vehicle at Haj House, Lucknow, at about 12:45 P.M. on the same day, therefore, presumed that the goods were being re-transported on previously used documents.

QUESTION OF LAW:

2. Whether the goods being transported by the appellant first time or second time using same E-way bill?

3. Shri Alekh Kumar Aggarwal, Learned Counsel for the appellant, appeared and argued. He reiterated the submission made in the grounds of appeal and submissions.

3.1 That the appellant submitted that the goods were being transported with the valid Invoice of the goods, E-invoice of the goods and corresponding E- Way bill. There is no evidence with the department that the goods were being transported in contravention of the law. As such the detention, seizure and demand of penalty being based on presumption and is liable to be knocked off.

3.2 That the appellant submitted that there is no mens rea on the part of the appellant. The tax has been charged in the bills as such there is no malafide on the part of the appellant, E-invoice as well as e-way bill as stated in the facts of the case were downloaded at the time of transportation of the goods, before detention and seizure. The transaction was within the period of validity.

3.3 The appellant submitted that the show cause notice cannot be issued on the mere base of suspicion, there should be a prima facie material on the basis of which the authority may arrive at the satisfaction that the goods are liable to be seized under Section 129 of the GST Act, therefore, the show cause notice should be quashed and set aside.

3.4 Further the appellant submitted that the goods were detained on flimsy ground, on the basis of presumptions and surmises. The detention and entire proceedings are bad in law, therefore, penalty order is liable to be set aside.

3.5 The appellant has relied upon several judicial precedents of the Hon'ble Supreme Court of India and the Hon'ble High courts, which are as below-

A. In the case of M/s. Satyam Shivam papers Pvt. Ltd. Vs Asst Com ST & Others [2020 UPTC (108) -Telangana.
B. SLP No. 21132/2021 was filed by the department before the Hon'ble Supreme Court and the Hon’ble Supreme Court confirmed the above decision of Telangana High Court vide its order dated 12.01.2022.
C. In the case of Ashok Kumar Sureka Vs. Asstt Com W.B. [2022 UPTC (110)-569] [W.B.].
D. In the case of Shir Anant Jignesh Shah vs Union of India [2021 NTN (76) -86] Gujarat.
E. The Hon'ble High Court of Allahabad in writ tax no. - 1142/2021 M/s. Shri Surya Traders Vs Union of India decided on 06.01.2022.
F. In the case of Umacharan Shaw & Bros. Vs. CIT (1959) 37 ITR 271 (SC).
G. In the case of State of Kerala vs M.M. Mathew reported in 1978 STC (42) 848
H. In the case of Kumar Electric Works vs CST [1984 UPTC 1272]
I. In the case of Shubham Fertilizer and Chemicals vs State of U.P. 2015 NTN (67)-15
J. In the case of CT VS Sarshadi Lal Enterprises Ltd [VSTI 2014 (19) B- 118]
K. In the case of M/s Shri Surya Traders Union of India decided on 06.01.2022
L. In the case of M/s. Anandeshwar traders Vs. State of U.P. [2021 U.P.T.C. (V01-197) - 421]
M. In the case of Shri Anant Jignesh Shah vs Union of India [2021 NTN (76) - 86] Gujarat.
N. In the case of B.L. Agro. Oils Ltd. Barielly, (Writ C No. 31593 of 2019, decided on January 31, 2023).

3.6 The appellant prayed for the rejection of the penalty imposed on the appellant to be set aside and relief claimed may be granted as deemed fit under the circumstances of the case to be granted.

4. Shri Ashutosh Mishra, learned Assistant Commissioner of SGST, authorized representative appeared on behalf of the department and contested the grounds of appeal and submissions made by the appellant.

4.1 Learned Assistant Commissioner, emphasized the order passed by the adjudicating authority as well as the order passed by the first appellate authority.

4.2 Learned Assistant Commissioner submitted that the Order in Original and Order in Appeal, were legal and proper and called for no interference.

5. Findings-

5.1 We have carefully considered the submissions made by both sides and perused the records. In the present case, the material placed on record does not establish any discrepancy in the description, quantity, value or ownership of the goods. The goods were accompanied by the relevant tax documents, including the invoice/e-invoice and e-way bill.

5.2 The first appellate authority has observed that the fact that the trader had again transported the goods on the basis of documents already used automatically proved an intention to evade tax.

5.3 The finding that the goods were being "re-transported" is based principally on inference from the earlier verification/location of the e-way bill. No independent and cogent evidence has been produced to establish that the same goods had already completed an earlier journey, had been delivered.

6. Both sides have placed reliance on various judicial pronouncements. We find it pertinent to examine the applicability of these judgements to the facts of the present case.
6.1 The judgment of the Hon'ble Supreme Court in case of A**ssistant Commissioner (ST) & Ors. v. M/s Satyam Shivam Papers Pvt. Ltd. & Anr., SLP (C) No. 21132/2021, decided on 12.01.2022.**
"The Hon'ble Supreme Court declined to interfere with the well-reasoned judgment of the Telangana High Court which had found that no fault or intent to evade tax could be inferred merely from the circumstances relied upon by the revenue."

In the case of **M/s Shri Surya Traders vs. Union of India decided on 06.01.2022 the Hon'ble High Court of Allahabad** held that -
"if the movement of the goods is in compliance of the provisions of GST Act, the same can't be detained on the basis of presumptions and assumptions."

In the case of State of Kerala vs M.M. Mathew reported in 1978 STC (42) 848 that the presumption can not take place of evidence - *"It has been held by the Hon'ble Supreme Court that Strong suspicion, strange coincidences and grave doubt cannot take place of legal proof."*

In the case of M/s. Anandeshwar traders Vs. State of U.P. [2021 U.P.T.C. (Vol-197) - 421]
Tax and Penalty was imposed on the petitioner on the allegation of reuse of E-way Bill- In appeal filed by the assess, the appeal authority admitted additional evidence at the behest of the revenue and dismissed appeal against which this petition- held that-
"The Revenue had presumed reuse of the e-way bill merely on the reasoning that the goods did not move within 24 hours of generation of E-way bill which has not been done- No Fresh Material could be admitted in appeal at the behest of the revenue - Appeal Allowed - Order impugned Set Aside. [VSTI 2021 (2021 (41) - B-1497]

6.7 The **Hon'ble Allahabad High Court in case of M/s B.L. Agro. Oils Ltd. Barielly, (Writ C No. 31593 of 2019, decided on January 31, 2023)** held that at para no. 5 that *"It is for seizing authority to establish by evidence that e-way bill as being reused. In the present case, there is no evidence produced by the seizing authority that there is a reuse of the e-way bill by the petitioner."*

7. We have carefully examined the aforesaid judicial precedents and find that the facts and circumstances considered therein are similar to the present case.

7.1 In the present case, we have examined the facts placed on record, we are of the considered view that the department failed to establish that the goods in question were being transported in contravention of the provisions of the GST Act or the Rules as well as reusing of E-way bill.

7.2 Therefore, the conclusion of the first appellate authority that "intention to evade tax is automatically proved" is legally/factually unsustainable. Intention cannot be presumed merely from suspicion, and a presumption of tax evasion cannot take the place of proof.

7.3 The present case stands on an even more fundamental footing: here, the department has not established any cogent material such as crossing of toll plaza during the course of transaction of goods in same day, that the goods actually underwent an earlier used E-way bill.
The first Appellate Authority relied upon the judgement delivered by Hon'ble Allahabad High Court in case M/s Falguni Steels v. State of U.P. and other.
We observed that judgment in which the Hon'ble High Court also has given the findings that the department has to prove intention to evade tax, but in this matter, department has failed to prove intention to evade tax.
Hence, this ruling is not supporting the view taken by the first appellate authority.

ORDER

(i) The present appeal filed by M/s Neptune Sales Corporation, GSTIN 09AGJPA9427EIZF, is ALLOWED.
(ii) The appellate order bearing Reference No. ZD091024411876C dated 30.10.2024 passed by the Additional Commissioner Grade-II (Appeal-IV), Lucknow, is hereby SET ASIDE.
(iii) The original order bearing No. ZD090124161522N CGST/UPGST Act, is also hereby SET ASIDE. dated 19.01.2024, passed under Section 129 of the
(iv) The amount of Rs. 2,51,196/- (Rupees Two Lakh Fifty-One Thousand One Hundred Ninety-Six only) deposited by the appellant pursuant to the impugned detention/penalty proceedings shall be refunded to the appellant in accordance with law.

(2026) 1 GSTAT E- Journal 174 (Lucknow)

(GOODS AND SERVICES TAX APPELLATE TRIBUNAL, LUCKNOW BENCH)
M/S LUCKNOW TEST HOUSE
V.
SHASHI BHUSHAN SINGH, ADDITIONAL COMMISSIONER GRADE- II, STATE TAX LUCKNOW & ORS.
APPEAL NO. APL/36/LCK/2026, AUGUST 27, 2026

CORAM:

SHRI NARENDRA KUMAR, MEMBER (JUDICIAL)
AND
SHRI ALOK CHOPRA, MEMBER (TECHNICAL)

REPRESENTATION:

For the Appellant: Shri Arpit Gupta, Chartered Accountant.
For the Respondent: Shri Rajesh Kumar Singh, Deputy Commissioner, SGST.

HEADNOTE:

GST — Input Tax Credit — Wrong reporting under tax heads — Alleged excess availment — Revenue neutrality — Whether difference in ITC reflected under CGST and SGST heads, amounting to ₹2,00,816/-, can be regarded as excess availment of ITC where the Appellant contends that equivalent eligible credit was available under the IGST head — Appellant having claimed that there was no excess availment of ITC when the aggregate eligible credit under all tax heads was considered — Department treating the differential amount as excess ITC and raising demand under Section 73 of CGST Act, 2017 — Whether mere difference in classification or reporting of ITC under different tax heads, in the absence of excess availment in aggregate or corresponding loss of revenue, can sustain the demand — **HELD:** Mere reporting or availment of eligible ITC under an incorrect tax head cannot, by itself, constitute excess availment where the aggregate credit does not exceed the eligible entitlement — Revenue neutrality is a relevant consideration where the credit remains otherwise eligible and no excess benefit is established — Reliance placed, inter alia, upon Rejimon Padickapparambil Alex v. Union of India, W.A. No. 54 of 2024 (Kerala High Court) — Authorities had not adequately verified the Appellant's claim regarding availability of sufficient eligible ITC under the IGST head — Matter remanded to the proper officer for verification of the availability of eligible IGST credit — Upon such verification, if the aggregate eligible ITC is found not to have been exceeded, demand of ₹2,00,816/- to be dropped and consequential relief to be granted in accordance with law — Appeal allowed.

...In Favour of the Appellant

KEY ISSUES AND FINDINGS:

1. **Whether the alleged excess availment of ITC of ₹1,00,408/- under the CGST head and Rs. 1,00,408/- under the SGST head, aggregating to ₹2,00,816/-, is sustainable in law, where the Appellant contends that the corresponding eligible ITC was available under the IGST head and that the total ITC availed did not exceed the aggregate eligible ITC?**
   "…We find that the department has not established that the appellant actually availed ITC in excess of its aggregate eligible entitlement." [Para 8]
   "The discrepancy is essentially attributable to the reporting/classification of ITC under different tax heads. The eligibility of the underlying credit has not been shown to be disputed on substantive grounds..." [Para 8.1]

2. **Whether the Electronic Credit Ledger is to be considered as a unified pool of funds for the purpose of determining ITC availability and interest liability?**
   "The ratio of Rejimon Padickapparambil Alex v. Union of India wherein a similar inadvertent reporting of IGST as CGST and SGST was held to be a technical error and the demand under Section 73 was quashed…" [Para 8.2]
   "…The essence of the above clarification is that the input tax credit (ITC) available in the electronic credit ledger should be considered as a pool of funds designated for different types of taxes, such IGST, CGST and SGST. These accounts represent a wallet with compartments for IGST, CGST, and SGST funds. Therefore, while determining interest under rule 88B of the CGST Rules, the entire wallet has to be taken into consideration, not just individual compartments…" [Para 6.4]

3. **Whether the lower authorities were justified in confirming the demand without verifying the appellant's contention of sufficient eligible ITC under the IGST head?**
   "We find that neither the Original Adjudicating Authority nor the First Appellate Authority has examined or verified whether the appellant had sufficient eligible ITC under the IGST head. The appellant's contention that the corresponding ITC was available under IGST but had been availed under the CGST and SGST heads, without availing the same under

IGST, thereby rendering the matter revenue-neutral, has not been verified from the electronic credit ledger or returns filed by the appellant." [Para 8.3]

EDITORIAL NOTES:
Principles Laid Down:
1. Discrepancy in reporting/allocation of ITC under different tax heads, by itself, does not constitute excess availment of ITC.
2. Where aggregate eligible ITC is not exceeded and the matter is revenue-neutral, demand for excess ITC cannot be sustained merely on account of such discrepancy.
3. Proper verification of the Electronic Credit Ledger and returns is necessary before raising or confirming any demand on account of alleged excess ITC.

Case Law Referred to:
Rejimon Padickapparambil Alex v. Union of India W.A. No. 54 of 2024, decided on 26.11.2024 (D.B.) (Ker.) — Followed (Para 6.4, 8.2)

Commissioner of Customs & Excise v. Textile Corporation 2008 (231) E.L.T. 195 (S.C.) — Referred (Para 2.8)

Star Industries v. Commissioner of Customs 2015 (324) E.L.T. 656 (S.C.) — Referred (Para 2.8)

Divya S.R. v. State of Kerala 2024 (81) G.S.T.L. 454 (Ker.) —Referred (Para 2.8)

Chukkath Krishnan Praveen v. State of Kerala 2024 (80) G.S.T.L. 241 (Ker.) — Referred (Para 2.8)

Kondamma Trading v. State of Tamil Nadu 2024 (80) G.S.T.L. 248 (Mad.) —Referred (Para 2.8)

Circulars and Notifications Referred to:
- Circular No. 192/04/2023-GST, dated 17.07.2023

Relevant Provisions:

Section 73 of the CGST Act, 2017; Section 50 of the CGST Act, 2017; Section 16(2)(c) of the CGST Act, 2017; Section 49 of the CGST Act, 2017; Rule 88B of the CGST Rules, 2017.

JUDGMENT

The present second appeal has been filed by **M/s Lucknow Test House, GSTIN 09AJEPG8164E1Z7**, against Order-in-Appeal No. **ZD0906252974501 dated 26.06.2025**, whereby the appeal filed by the appellant against the adjudication order dated **03.02.2025** was rejected.

1.2 The dispute relates to the period **April 2020 to March 2021** and concerns availment of Input Tax Credit (ITC). On comparison of the ITC availed in FORM GSTR-3B with the credit reflected in the relevant returns, the adjudicating authority treated an amount of **Rs.1,00,408/- under CGST and Rs.1,00,408/-under SGST, aggregating to Rs.2,00,816/-**, as excess ITC.

The proceedings were initiated under Section 73 of the CGST Act, 2017. There is no allegation of fraud, willful misstatement or suppression of facts.

GROUNDS OF APPEAL

The appellant has raised the following grounds of appeal:

2. The appellant submitted that the Learned Adjudicating Authority erred in confirming the demand merely on account of differences in allocation of ITC between IGST, CGST and SGST, without appreciating that the aggregate ITC availed remained within the eligible credit. There being no dispute regarding eligibility under Section 16, the demand is unsustainable.

2.1 The appellant submitted that the alleged excess is only due to misclassification/reconciliation between different tax heads and not any actual excess availment of ITC. The genuineness of purchases and eligibility of ITC have not been disputed.

2.2 The appellant submitted that IGST credit is legally available for utilisation towards CGST and SGST liabilities in accordance with Section 49 and the prescribed utilisation mechanism. Hence, the alleged difference between tax heads cannot constitute excess ITC in aggregate.

2.3 The appellant submitted that inadvertent clerical or accounting misclassification of ITC between IGST, CGST and SGST, without any excess credit in aggregate or revenue loss, cannot justify reversal of otherwise eligible ITC.

2.4 The appellant submitted that the IGST credit remained under-utilised and the alleged excess under CGST/SGST is only a result of inadvertent accounting allocation, without any wrongful availment of ITC.

2.5 The appellant submitted that the proceedings under Section 73 involve no allegation or finding of fraud, suppression or wilful misstatement. The issue is purely reconciliatory and technical; consequently, the levy of interest and penalty, if any, is unjustified.

2.6 The appellant submitted that the aggregate eligible ITC remained unchanged and there was no loss of revenue to the Government. The demand for tax, interest and penalty is therefore unsustainable as shown in the Show Cause Notice.

2.7 The appellant submitted that the impugned order has failed to properly consider the appellant's reconciliations, Electronic Credit Ledger, books of account and submissions, and has mechanically confirmed the demand without proper independent verification. The order is therefore arbitrary and unsustainable in law.

2.8 The appellant relied upon the following decisions in support of the Grounds of Appeal.

(a) COMMISSIONER OF CUSTOMS & EXCISE TEXTILE CORPORATION, 2008 (231) E.L.T. 195 (S.C.)
(b) STAR INDUSTRIES COMMISSIONER OF CUSTOMS, 2015 (324) E.L.T. 656 (S.C.)
(c) DIVYA S.R.
(d) IN THE CASE OF DIVYA S.R. [2024 (81) G.S.T.L. 454 (KER.)] AND CHUKKATH KRISHNAN PRAVEEN [2024 (80) G.S.T.L. 241 (KER.)]
(e) IN THE CASE OF KONDAMMA TRADING [2024 (80) G.S.T.L. 248 (MAD.)]
(f) REJIMON PADICKAPPARAMBIL ALEX V. UNION OF INDIA - KERALA HIGH COURT (2024)

QUESTION OF LAW INVOLVED

3. The present appeal involves a question of law regarding the treatment of ITC where the alleged discrepancy arises on account of reporting/allocation under different tax heads, namely IGST, CGST and SGST, without any finding that the aggregate eligible ITC was exceeded.

Accordingly, the appeal is considered to be heard by the Division Bench.

APPELLANT'S CONTENTION

4. The learned authorised representative appearing on behalf of the appellant submitted that the entire basis of the demand is the difference between the credit reported under different tax heads in FORM GSTR-3B and the credit appearing in the relevant returns.

4.1 The appellant submitted that there was no excess availment of ITC in aggregate and that the total eligible ITC available to the appellant was not exceeded. The alleged discrepancy was merely a clerical/misclassification error between IGST, CGST and SGST heads.

It was further submitted that the IGST credit reflected in the relevant return was otherwise eligible and that the appellant had sufficient aggregate ITC in its Electronic Credit Ledger. It was contended that the issue was one of reconciliation and rectification and not of fresh or wrongful availment of ITC.

4.2 The appellant further submitted that there was no fraud, wilful misstatement or suppression of facts and that the proceedings were initiated under Section 73 of the CGST Act, 2017. Accordingly, the levy of interest and penalty was also contested.

RESPONDENT'S CONTENTION

5.The learned departmental representative submitted in the argument that availment of ITC under an incorrect tax head is not permissible under the statutory scheme. It was submitted that where there is a shortfall under a particular tax head, the taxpayer is required to discharge the liability under that head and any excess payment or credit under another head can be dealt with by way of refund or other remedy, subject to the provisions of law. The learned departmental representative accordingly supported the impugned order and prayed for rejection of the Appeal.

FINDINGS AND DISCUSSION

6.1 We have carefully considered the submissions made by both the parties and have examined the material available on record. The show cause notice was issued under Section 73 for the demand as raised against which the order in original was issued dt. 03.02.2025 with the demand along with interest and penalty. The order in original passed was supported by the first appellate authority on the grounds as reproduced below-

"It is clear from Section 16(2)(c) of the GST Act that the appellant is entitled to Input Tax Credit (ITC) only under the tax head in which the tax has actually been deposited. Under the dual GST system implemented in India, each tax head is administered by separate federal governments, and transfer of funds from one head to another is possible only when cross-utilization of credit is made.

If ITC is claimed without the corresponding tax having been deposited, the Government concerned under that particular tax head does not receive the revenue. Accordingly, the appellant's appeal is rejected."

6.2 The short question for determination is whether the difference of **Rs.1,00,408/- under CGST and Rs.1,00,408/- under SGST**, aggregating to **Rs.2,00,816/-,** can be treated as excess availment of ITC when the appellant claims that the corresponding credit was available under the IGST head and that the aggregate eligible ITC was not exceeded.

6.3 We have examined the **Rejimon Padickapparambil Alex v. Union of India, W.A. No. 54 of 2024, decided on 26.11.2024,(D.B.)** case, the judicial precedents as referred by the appellant in his prayer and appeal. We find that the contents of those judicial pronouncements are similar to the present case.

6.4 The Hon'ble Kerala High Court, in **Rejimon Padickapparambil Alex v. Union of India, W.A. No. 54 of 2024, decided on 26.11.2024,(D.B.)** considered a similar issue where IGST credit was inadvertently reported by splitting the amount into CGST and SGST in

FORM GSTR-3B, resulting in a mismatch with the credit reflected in FORM GSTR-2A. In that case the Hon'ble Kerala High Court held in-

Para - 29, 30 as below :-

"29. CBIC vide Circular No.192/04/2023-GST dated 17th July 2023 had given clarification on charging of interest under section 50(3) of the CGST Act, 2017, in cases of wrong availment of IGST credit and reversal thereof. With respect to the calculation of interest under Rule 88B of the CGST Rules, it has been clarified in the above circular that "Since the amount of input tax credit available in electronic credit ledger, under any of the heads of IGST, CGST or SGST, can be utilized for payment of liability of IGST, it is the total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, that has to be considered for calculation of interest under rule 88B of CGST Rules and for determining as to whether the balance in the electronic credit ledger has fallen below the amount of wrongly availed input tax credit of IGST, and to what extent the balance in electronic credit ledger has fallen below the said amount of wrongly availed credit.

Thus, in the cases where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability under sub-section (3) of section 50 of CGST Act if, during the time period starting from such availment and up to such reversal, the balance of input tax credit (ITC) in the *electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in electronic credit ledger individually falls below the amount of such wrongly availed IGST credit.*

However, when the balance of ITC, under the heads of IGST, CGST and SGST of electronic credit ledger taken together, falls below such wrongly availed amount of IGST credit, then it will amount to the utilization of such wrongly availed IGST credit and the extent of utilization will be the extent to which the total balance in electronic credit ledger under heads of IGST, CGST and SGST taken together falls below such amount of wrongly availed IGST credit, and will attract interest as per sub-section (3) of section 50 of CGST Act, read with section 20 of Integrated Goods and Services Tax Act, 2017 and sub-rule (3) of rule 88B of CGST Page 3 of 3 Rules."

30. *The essence of the above clarification is that the input tax credit (ITC) available in the electronic credit ledger should be considered as a pool of funds designated for different types of taxes, such IGST, CGST and SGST. These accounts represent a wallet with compartments for IGST, CGST, and SGST funds. Therefore, while determining interest under rule 88B of the CGST Rules, the entire wallet has to be taken into consideration, not just individual compartments. If the total balance (combining IGST, CGST, and SGST) falls below the amount of the wrongly availed IGST credit, there is interest liability. If, however, the total wallet balance never dips below this specific amount during the relevant period, there's no interest liability.*

Similarly, for utilizing the IGST liability, the clarification emphasizes that the eligibility of funds for this payment is based on the total balance in the entire wallet, not just the IGST compartment. In short, the analogy of the above circular is that the GST system treats the electronic credit ledger as a unified resource, and interest is incurred if, collectively, the available funds fall below the amount of wrongly availed credit during the specified period"

In that the court has held that in ITC available in the electronic credit ledger should be consider as pool of funds designate for different types of tax such IGST CGST and SGST while determining interest under Rule 88b of the CGST rules the entire wallet has to be taken into consideration, note just individual compartments if the total balance (combining IGST CGST and SGST) fall below the amount of wrongly availed IGST credit there is interest *liability if, however, the total wallet balance never dips below this specific amount during the relevant period, there is no interest liability.*

7. The aforesaid clarification is relevant to the present dispute, particularly where the appellant has asserted that the aggregate balance of ITC under IGST, CGST and SGST was sufficient and that there was no excess availment in substance.

7.1 The appellant has also contended that the discrepancy is revenue neutral. The department has not established any actual loss of revenue arising from the alleged misclassification.

Accordingly, the demand cannot be sustained merely on the ground that the credit was reflected under an incorrect tax head.

7.2 The proceedings were initiated under Section 73 of the CGST Act, 2017 and there is no allegation of fraud, wilful misstatement or suppression of facts.

7.3 Further, once the principal demand of alleged excess ITC is found unsustainable on the facts of the present case, the consequential levy of interest and penalty cannot independently survive.

7.4 In another case the **Hon'ble Kerala High Court in W.P.(C) No. 41980/2024** has also followed the precedents of the case of Rejimon Padickapparambil Alex v. Union of India, W.A. No. 54 of 2024, decided on 26.11.2024, (D.B.).

7.5 The appellant submitted that the appellant had proper ITC combining all three head IGST CGST and SGST at the relevant period because there is no discussion/objection in the first appellate authority order. Since, the appellant has not availed excess ITC in such circumstances the appellant is not liable to pay interest & penalty.

8. On a cumulative consideration of the facts and circumstances, we find that the department has not established that the appellant actually availed ITC in excess of its aggregate eligible entitlement.

8.1 The discrepancy is essentially attributable to the reporting/classification of ITC under different tax heads. The eligibility of the underlying credit has not been shown to be disputed on substantive grounds.

8.2 The ratio of **Rejimon Padickapparambil Alex v. Union of India, W.A. No. 54 of 2024, decided on 26.11.2024, Double Bench** is applicable to the present facts, wherein a similar inadvertent reporting of IGST as CGST and SGST was held to be a technical error and the demand under Section 73 was quashed. In above discussion this appeal is liable to be allowed.

8.3 We find that neither the Original Adjudicating Authority nor the First Appellate Authority has examined or verified whether the appellant had sufficient eligible ITC under the IGST head. The appellant's contention that the corresponding ITC was available under IGST but had been availed under the CGST and SGST heads, without availing the same under IGST, thereby rendering the matter revenue-neutral, has not been verified from the electronic credit ledger or returns filed by the appellant.

O R D E R

The appeal is allowed. The proper officer shall verify that the appellant had sufficient eligible ITC available under the IGST head. Upon such verification, the revenue demand to be dropped if ITC under IGST head stands unclaimed by the appellant.

After such verification, the appellant shall be entitled to all the consequential relief, including restoration/adjustment of ITC, if any, in accordance with law.

Order is pronounced is Open Court.

(2026) 1 GSTAT E- Journal 181 (Bengaluru)
(GOODS AND SERVICES TAX APPELLATE TRIBUNAL, BENGALURU BENCH)
M/s N. R. BUILDERS
V.
COMMISSIONER OF COMMERCIAL TAXES, KARNATAKA
APPEAL NO. APL/2/BUR/2026, AUGUST 31, 2026

CORAM:

HON'BLE SHRI PRABHAKARAN P.M., JUDICIAL MEMBER
AND
HON'BLE SHRI RAVI JESURAJ S., TECHNICAL MEMBER (STATE)

REPRESENTATION:

For the Appellant: Shri Sujay Subramanya Naidu, CA (Authorized Representative).
For the Respondent: Departmental Representative.

HEADNOTE:

GST — Difference between ITC claimed in GSTR-3B and ITC auto-populated in GSTR-2A — Scope of Section 16(2)(c) read with Rule 36 — Whether mismatch between GSTR-3B and GSTR-2A can be treated as inadmissible without examining the Appellant's explanation that part of it relates to FY 2017-18 invoices claimed within the Section 16(4) window — Whether Order-in-Original is vitiated by absence of personal hearing under Section 75(4) — Whether absence of notice in FORM GST ASMT-10 renders proceedings under Section 73 invalid — Whether matter requires remand for de novo adjudication.

HELD: The difference between ITC claimed in GSTR-3B and ITC reflected in GSTR-2A for FY 2018-19 cannot be treated as inadmissible without examining the Appellant's explanation that part of it relates to FY 2017-18 invoices claimed within the Section 16(4) window — GSTR-2A was a facilitation tool and not a statutory bar to credit — CBIC Circular No. 183/15/2022-GST directs the Proper Officer to verify, not summarily disallow, cases where FY 2017-18 credit has been claimed in FY 2018-19 returns — The Order-in-Original is vitiated by the absence of a personal hearing, as the Show Cause Notice itself records the date, time and venue of personal hearing as "NA" — Section 75(4) makes a hearing mandatory once an adverse decision is contemplated — The absence of a notice in FORM GST ASMT-10 does not, by itself, invalidate proceedings initiated under Section 73 following an audit reference — The three judgments relied upon by the First Appellate Authority (Mahalakshmi Cotton Ginning, ALD Automotive, and Microqual Techno) are distinguishable on facts and statutory provisions and could not have been relied upon to disallow the credit — Impugned orders set aside and matter remanded to the Proper Officer for de novo adjudication — The Proper Officer shall specifically verify the reconciliation furnished by the Appellant, invoice-wise, with reference to the FY 2017-18 GSTR-2A, the suppliers' GSTR-1, the Appellant's ITC register, books of account, and the GSTR-9/GSTR-9C returns for FY 2017-18 and FY 2018-19 — The Appellant shall be granted a proper opportunity of personal hearing — The Proper Officer shall pass a fresh, reasoned and speaking order within twelve weeks. **...In Favour of the Appellant**

KEY ISSUES AND FINDINGS:

1. **Whether the difference between the ITC claimed in GSTR-3B and the ITC reflected in GSTR-2A for FY 2018-19 can be treated as inadmissible without**

examining the Appellant's explanation that part of it relates to FY 2017-18 invoices claimed within the Section 16(4) window?

"Section 16(4), as it stood for the transition period, permitted a taxpayer to claim ITC on Financial Year 2017-18 invoices up to the due date of the March 2019 return, as extended by CBIC Order No. 02/2018-Central Tax dated 31.12.2018. GSTR-2A was, at the relevant time, a facilitation tool and not a statutory bar to credit. CBIC Circular No. 183/15/2022-GST specifically directs the Proper Officer to verify — not summarily disallow — cases where Financial Year 2017–18 credit has been claimed in Financial Year 2018–19 returns. The Appellate Authority's finding that non-appearance of an invoice in GSTR-2A of Financial Year 2018–19 shows that the supplier did not pay tax is an assumption, not a finding reached after verification. That verification has not, on the record before us, actually been carried out." [Para 9.1]

"…In dismissing the appeal, the First Appellate Authority relied on Mahalakshmi Cotton Ginning Processing and Oil Industries v. State of Maharashtra, ALD Automotive Private Limited v. CTO, and Microqual Techno Ltd. v. State of Karnataka. These three judgments are, however, distinguishable and not applicable to the facts of the present case. Mahalakshmi Cotton Ginning Processing and Oil Industries was rendered under the Maharashtra Value Added Tax Act, a distinct statutory scheme that did not contain provisions comparable to Section 16(2)(c) of the CGST Act read with the safeguards under Rule 36 of the CGST Rules and Circular No. 183/2022-GST, and cannot be mechanically applied to a claim governed by the GST framework. ALD Automotive Private Limited dealt with the entitlement to claim input tax credit beyond the statutory time limit prescribed under a different State enactment, and did not concern the question of denial of credit solely on account of non-reflection of purchases in the auto-populated statement, GSTR-2A. Microqual Techno Ltd. proceeded on a finding that the input tax claim was not based on a genuine transaction and was made with an intent to evade tax; in the present case, there is no such finding or allegation that the underlying purchases were not genuine, the sole ground for disallowance being the mismatch between GSTR-3B and GSTR-2A. The three judgments therefore rest on facts and statutory provisions materially different from the present case, and could not have been relied upon to disallow the credit." [Para 9.1]

2. **Whether the Order-in-Original is vitiated by the absence of a personal hearing?**

"The Show Cause Notice records the date, time and venue of personal hearing as "NA." Section 75(4) makes a hearing mandatory once an adverse decision is contemplated against the person, irrespective of whether a specific request for hearing was made. The absence of any such hearing before the Order-in-Original was passed is a clear infirmity." [Para 9.2]

"…The Appellant has relied on Sahara India (Firm) v. CIT, [2008] 169 Taxman 328 (SC), and a line of High Court decisions applying Section 75(4), including Gayathri Agencies v. State Tax Officer (Madras HC), A.H. Enterprises v. Deputy Commercial Tax Officer (Madras HC), and Goutam Bhowmik v. State of West Bengal (Calcutta HC), for the proposition that grant of personal hearing under Section 75(4) is mandatory wherever an adverse decision is contemplated, and that failure to grant such hearing vitiates the proceedings. We find that these decisions are squarely applicable. The Show Cause Notice itself records the date, time and venue of personal hearing as "NA," and nothing on the record shows that any hearing was in fact granted before the demand was confirmed. The ratio of the decisions relied upon by the Appellant is accordingly attracted, and applies with full force to the facts of this case." [Para 9.2]

3. **Whether the absence of a notice in FORM GST ASMT-10 renders the proceedings invalid?**

"Section 61 and Section 73 are independent provisions. Section 61 provides one particular route — scrutiny of returns — which requires a notice in FORM GST ASMT-10. The record shows that the present proceedings were initiated pursuant to a specific

assignment issued under Section 73, following an audit reference, and not as a Section 61 scrutiny. Where the Proper Officer proceeds directly under Section 73 read with Rule 142, without first invoking Section 61, the absence of a FORM GST ASMT-10 notice does not, by itself, invalidate the proceedings." [Para 9.3]

"...As recorded above, the present proceedings were initiated pursuant to a specific assignment under Section 73 read with Rule 142, following an audit reference, and not pursuant to scrutiny under Section 61. The decisions relied upon by the Appellant on this point are, accordingly, distinguishable on facts and do not assist the Appellant on this issue." [Para 9.3]

4. **What relief should be granted to the Appellant?**

   "As to interest and penalty: it is well settled that interest is compensatory and penalty is consequential upon a sustainable demand of tax. Since the principal demand requires fresh determination, the demand for interest and penalty must abide by the outcome of that determination. Having regard to our findings on Issues No. 1 and 2, the matter must go back to the Proper Officer for fresh verification, after a proper opportunity of personal hearing. Since the sustainability of the demand turns on verification of facts not undertaken below, and since the Order-in-Original was itself passed without a hearing, this is not a case where the Tribunal can finally determine the ITC claim on the present record; remand, rather than a final decision on merits, is the appropriate relief." [Para 9.4]

   "...The Appellant has relied on Prathibha Processors v. Union of India, 1996 (88) ELT 12 (SC), for the proposition that interest, being compensatory, and penalty, being consequential, cannot survive independently of a sustainable principal demand. We agree with the proposition of law laid down in this decision. However, since the sustainability of the principal demand of Input Tax Credit has not, for the reasons recorded under Issues No. 1 and 2 above, been finally determined after affording the Appellant a proper opportunity of hearing, it would be premature to record a finding on the correctness of the demand of tax, interest and penalty at this stage. The applicability of this decision shall accordingly abide by the outcome of the fresh adjudication directed below." [Para 9.4]

EDITORIAL NOTES:

Principles Laid Down:

1. Mismatch between GSTR-3B and GSTR-2A cannot be the sole basis for disallowance of ITC. The difference between ITC claimed in GSTR-3B and ITC auto-populated in GSTR-2A for FY 2018-19 cannot be treated as inadmissible without examining the Appellant's explanation that part of it relates to FY 2017-18 invoices claimed within the Section 16(4) window.
2. GSTR-2A is a facilitation tool, not a statutory bar to credit. At the relevant time, GSTR-2A was a facilitation tool and not a statutory bar to credit. CBIC Circular No. 183/15/2022-GST specifically directs the Proper Officer to verify — not summarily disallow — cases where FY 2017-18 credit has been claimed in FY 2018-19 returns.
3. Non-appearance of an invoice in GSTR-2A is an assumption, not a finding. The Appellate Authority's finding that non-appearance of an invoice in GSTR-2A of FY 2018-19 shows that the supplier did not pay tax is an assumption, not a finding reached after verification.
4. Personal hearing under Section 75(4) is mandatory. Section 75(4) makes a hearing mandatory once an adverse decision is contemplated against the person, irrespective of whether a specific request for hearing was made. The absence of any such hearing before the Order-in-Original was passed is a clear infirmity.
5. Section 61 and Section 73 are independent provisions. Where the Proper Officer proceeds directly under Section 73 read with Rule 142, without first invoking Section 61, the absence of a FORM GST ASMT-10 notice does not, by itself, invalidate the proceedings.

6. Interest and penalty are consequential upon a sustainable demand of tax. Since the principal demand requires fresh determination, the demand for interest and penalty must abide by the outcome of that determination.
7. Remand is appropriate where facts require verification. Since the sustainability of the demand turns on verification of facts not undertaken below, and since the Order-in-Original was itself passed without a hearing, remand — rather than a final decision on merits — is the appropriate relief.

Case Law Referred to:

Mahalakshmi Cotton Ginning Processing and Oil Industries v. State of Maharashtra [(2012) 35 STT 589] — Distinguished. [Para 9.1]

ALD Automotive Private Limited v. CTO [(2018) 70 GST 751] — Distinguished [Para 9.1]

Microqual Techno Ltd. v. State of Karnataka [STA No. 01/2010, decided on 6-8-2010] — Distinguished. [Para 9.1]

Assistant Commissioner (CT) v. Shukla Brothers, (2011) 22 STR 105 (SC) — Followed. [Para 6.2]

Raj Kishore Jha v. State of Bihar, JT 2003 (Supp.2) SC 354 — Followed. [Para 6.2]

Sahara India (Firm) v. CIT, [2008] 169 Taxman 328 (SC) — Followed [Para 9.2]

Gayathri Agencies v. State Tax Officer (Madras HC) — Followed. [Para 9.2]

A.H. Enterprises v. Deputy Commercial Tax Officer (Madras HC) — Relied. [Para 9.2]

Goutam Bhowmik v. State of West Bengal (Calcutta HC) — Followed. [Para 9.2]

Dominic David v. State Tax Officer, [2023] 146 taxmann.com 110 (Kerala) — Followed. [Para 6.4]

Canon India Pvt. Ltd. v. Commissioner of Customs, Civil Appeal No. 1827 of 2018 — Followed [Para 6.4]

Prathibha Processors v. Union of India, 1996 (88) ELT 12 (SC) — Followed [Para 9.4]

Circulars and Notifications Referred to:

- CBIC Circular No. 183/15/2022-GST dated 27.12.2022 (Para 9.1)
- CBIC Order No. 02/2018-Central Tax dated 31.12.2018 (Para 9.1)

Relevant Provisions:

Section 16(2)(c) of the CGST Act, 2017; Section 16(4) of the CGST Act, 2017; Section 50(1) of the CGST Act, 2017; Section 61 of the CGST Act, 2017; Section 73 of the CGST Act, 2017; Section 73(9) of the CGST Act, 2017; Section 73(11) of the CGST Act, 2017; Section 75(4) of the CGST Act, 2017; Section 75(6) of the CGST Act, 2017; Section 107 of the CGST Act, 2017; Section 112 of the CGST Act, 2017; Section 155 of the CGST Act, 2017; Rule 36 of the CGST Rules, 2017; Rule 99 of the CGST Rules, 2017; Rule 142 of the CGST Rules, 2017; Rule 142(1-A) of the CGST Rules, 2017; Karnataka Goods and Services Tax Act, 2017 (corresponding provisions).

JUDGMENT

(Per: Sh. Ravi Jesuraj S., Technical Member, for the Bench)

A. **Introduction**

1. This appeal is filed under Section 112 of the Central Goods and Services Tax Act, 2017 ("the CGST Act"). It is also governed by the corresponding provisions of the Karnataka Goods and Services Tax Act, 2017 ("the KGST Act"). The Appellant is M/s. N. R. Builders, a proprietary concern of Sri Attikatte Channingappa Rajashekar, engaged in the business of quarrying and sale of crushed stones, registered under GST bearing GSTIN 29AIUPR5240H1ZN.

1.1 This appeal challenges the Order-in-Appeal No. GST/AP.No.403/2024-25 dated 07.11.2024, passed by the Joint Commissioner of Commercial Taxes (Appeals)-6, Bengaluru ("the First Appellate Authority"), under Section 107 of the CGST/KGST Act. The First Appellate Authority dismissed the Appellant's first appeal and upheld the order dated 20.04.2024 (Reference No. ZD290424050852A, Form GST DRC-07), passed under Section 73(9) of the CGST/KGST Act by the Commercial Tax Officer, LGSTO-170, Tumakuru ("the Proper Officer").

1.2 This dispute relates to the tax period April 2018 to March 2019 (Financial Year 2018–19). The Revenue alleges that the Appellant availed excess Input Tax Credit ("ITC"). The alleged excess arises from a difference between the credit reflected in FORM GSTR-2A and the credit availed by the Appellant in FORM GSTR-3B.

1.3 According to the Revenue, the Appellant availed excess ITC of ₹2,33,502/- (CGST ₹1,16,751/- and SGST ₹1,16,751/-). This amount, along with interest of ₹2,03,730/- and penalty of ₹23,350/-, was confirmed under Section 73, aggregating to ₹4,60,582/-.

1.4 The Appellant disputes this. It contends that the difference is not an excess claim at all, but arises because ITC pertaining to Financial Year 2017–18 was availed in Financial Year 2018–19, within the time permitted under Section 16(4). The Appellant further contends that no personal hearing was granted before the demand was confirmed, and that the scrutiny leading to the demand was not preceded by a notice in FORM GST ASMT-10.

1.5 At the outset, we record that the CGST Act and the KGST Act are substantially the same in their provisions, except where the State legislation makes specific departures. Accordingly, in this Order, a reference to the CGST Act or the CGST Rules should also be read mutatis mutandis to the corresponding provisions of the KGST Act and the KGST Rules, unless the context requires otherwise.

B. **Facts of the Case**

2. Scrutiny of the Appellant's returns for Financial Year 2018–19 disclosed a difference between the ITC claimed in FORM GSTR-3B and the ITC auto-populated in FORM GSTR-2A. A pre-intimation in FORM GST DRC-01A was issued on 22.01.2024 under Section 73(5) read with Rule 142(1-A) of the KGST Rules, 2017, alleging excess ITC of ₹2,33,502/-. The Appellant did not file any reply.

2.1 A Show Cause Notice in FORM GST DRC-01 was issued on 30.01.2024 under Section 73(1) of the CGST/KGST Act, proposing recovery of the same ₹2,33,502/- as tax, together with interest of ₹2,03,730/- under Section 50(1) and penalty of ₹23,350/- under Section 73(11), aggregating ₹4,60,582/-. We record, as a matter of fact borne out by the Notice itself, that the fields for "date of personal hearing," "time of personal hearing" and "venue where personal hearing will be held" are each recorded as "NA."

2.2 As no reply was filed within the time allowed, the Proper Officer passed the Order-in-Original dated 20.04.2024, confirming the entire demand of ₹4,60,582/- under Section 73(9).

2.3 The Appellant filed a first appeal on 12.08.2024. By Order-in-Appeal dated 07.11.2024, the First Appellate Authority dismissed the appeal and upheld the Order-in-Original in full.

2.4 The Appellant has now filed the present appeal before this Tribunal in Form GST APL-05, verified on 16.02.2026, along with a working sheet and reconciliation statement, an extract of the ITC register for the Financial Year 2017–18 credit availed in Financial Year 2018–19, and the annual returns in Forms GSTR-9 and GSTR-9C for Financial Year 2017–18.

C. <u>The Proper Officer's Computation, as it Appears from the Record</u>

3. The final tax demand in this appeal depends entirely on the Proper officer's calculations. To see if this demand is correct, we must check how the officer figured out the numbers, starting from the original tax match-up down to the final interest and penalties.

3.1 The tax demand is based on differences found when matching up the Input Tax Credit (ITC) claimed in FORM GSTR-3B during the 2018–19 financial year. The officer wrote down these exact calculations and differences in FORM GST DRC-01 and its attached documents, but the full tables showing these calculations are not copied here.

3.2 On this basis, the Show Cause Notice computed interest under Section 50(1) at 1.5% per month on the mismatched amount of ₹1,16,751/- under each head.

Particulars	**CGST (₹)**	**SGST (₹)**	**Total (₹)**
Difference in ITC claim (GSTR-3B vs GSTR-2A)	1,16,751	1,16,751	2,33,502
Interest @ 1.5% u/s 50(1)	1,01,865	1,01,865	2,03,730
Penalty @ 10% u/s 73(11)	11,675	11,675	23,350
Total payable	**2,30,291**	**2,30,291**	**4,60,582**

D. <u>Findings Recorded by the Proper Officer</u>

4. The Proper Officer proceeded on the premise that the year-wise comparison between FORM GSTR-3B and FORM GSTR-2A for Financial Year 2018–19 disclosed excess ITC of ₹1,16,751/- each under the CGST and SGST heads.

4.1 The order does not examine or discuss any explanation regarding ITC pertaining to Financial Year 2017–18 having been availed in Financial Year 2018–19, nor does it record whether such credit was reflected in the GSTR-2A of Financial Year 2017–18. It proceeded ex parte, as no reply had been filed to the Show Cause Notice.

4.2 We record a further, and more fundamental, infirmity. The Show Cause Notice itself records the date, time and venue of personal hearing as "NA." No personal hearing was, on the record before us, ever granted to the Appellant before the demand was confirmed.

E. Findings Recorded by the First Appellate Authority

5. The First Appellate Authority held that mere possession of a purchase invoice is not sufficient; the supplier must also have paid the tax and filed the return, in terms of Section 16(2)(c) read with Rule 36. Since certain invoices were not reflected in GSTR-2A, it treated this as evidence that the suppliers had not paid the tax.

5.1 On this basis, the First Appellate Authority dismissed the appeal and confirmed the demand of ₹4,60,582/- in full. The impugned Order-in-Appeal does not deal with the Appellant's explanation that the credit relates to Financial Year 2017–18 invoices, nor with the absence of a personal hearing. In dismissing the appeal, the First Appellate Authority relied on three judicial precedents. First, reliance was placed on the judgment of the Hon'ble Bombay High Court in Mahalakshmi Cotton Ginning Processing and Oil Industries v. State of Maharashtra [(2012) 35 STT 589], which held that input tax credit (set-off) is not available where the selling dealer has not paid the tax, even if the purchasing dealer has otherwise complied with the relevant statutory provision. Second, reliance was placed on the judgment of the Hon'ble Supreme Court in ALD Automotive Private Limited v. CTO [(2018) 70 GST 751], which held that input tax credit is in the nature of a benefit extended to a dealer under a statutory scheme, and such a concession can be availed by the beneficiary only strictly in accordance with the scheme of the statute. Third, reliance was placed on the judgment of the Hon'ble Karnataka High Court in Microqual Techno Ltd. v. State of Karnataka [STA No. 01/2010, decided on 6-8-2010], which held that where an input tax credit claim is not based on a genuine transaction, it amounts to an attempt to evade tax, and such a claim, not being a bona fide act of the assessee, is liable to be disallowed.

F. Submissions on Behalf of the Appellant

6. Learned Authorised Representative Shri Akash A Parmar CA, appearing for the Appellant reiterated the grounds urged in the memorandum of appeal and assailed the impugned orders both on facts and in law. It was submitted that:

6.1 Reconciliation of ITC: The alleged excess claim is not an excess claim at all. It arises because ITC pertaining to Financial Year 2017–18 was availed in Financial Year 2018–19, within the time permitted under Section 16(4), and this very credit is reflected in the Appellant's GSTR-2A of Financial Year 2017–18, not 2018–19. Comparing GSTR-3B of one year with GSTR-2A of another, without accounting for this carry-forward, produces a false mismatch.

6.2 Non-speaking order: The impugned Order-in-Appeal did not deal with this reconciliation at all. Reliance was placed on Assistant Commissioner (CT) v. Shukla Brothers, (2011) 22 STR 105 (SC), and Raj Kishore Jha v. State of Bihar, JT 2003 (Supp.2) SC 354, for the proposition that a reasoned order is an essential part of the rule of law.

6.3 Violation of natural justice: No personal hearing was granted before the Order-in-Original was passed, as recorded on the face of the Show Cause Notice itself, contrary to Section 75(4). Reliance was placed on Sahara India (Firm) v. CIT, [2008] 169 Taxman 328 (SC), and a line of High Court decisions applying Section 75(4), including Gayathri Agencies v. State Tax Officer (Madras HC), A.H. Enterprises v. Deputy Commercial Tax Officer (Madras HC), and Goutam Bhowmik v. State of West Bengal (Calcutta HC).

6.4 Absence of notice under Section 61: Scrutiny of returns under Section 61 read with Rule 99 requires a notice in FORM GST ASMT-10, and no such notice was issued in this case. Reliance was placed on Dominic David v. State Tax Officer, [2023] 146 taxmann.com 110 (Kerala), and Canon India Pvt. Ltd. v. Commissioner of Customs, Civil Appeal No. 1827 of 2018.

6.5 It was submitted that the impugned orders be set aside and the matter remanded for proper verification of the reconciliation, and that interest and penalty, being accessory to the principal demand, cannot survive once the underlying tax demand is not sustainable, relying on *Prathibha Processors v. Union of India, 1996* (88) ELT 12 (SC).

G. Contentions of the Revenue

7. Per contra, the learned Departmental Representative supported both the adjudication order and the impugned appellate order, and submitted that:

7.1 Section 16(2)(c) expressly makes payment of tax by the supplier a condition for availing ITC, in terms of Section 155. The mismatch between FORM GSTR-3B and FORM GSTR-2A is sufficient prima facie material to initiate proceedings under Section 73.

7.2 Since certain invoices were not appearing in GSTR-2A, this indicated non-payment of tax by the suppliers, and the Appellant had not placed satisfactory material to establish compliance with Section 16(2)(c) or with CBIC Circular No. 183/15/2022-GST.

7.3 The demand was correctly confirmed, and the appeal should be dismissed. However, the learned Departmental Representative fairly submitted that the Revenue did not object to the Appellant's prayer for remand of the matter.

H. Issues for Determination

8. We have heard the learned Authorised Representative for the Appellant and the learned Departmental Representative for the Respondents. We have examined the record, the pleadings, the statutory provisions, and the judicial precedents cited before us. The following issues arise for our determination:

(i). Whether the difference between the ITC claimed in GSTR-3B and the ITC reflected in GSTR-2A for FY 2018–19 can be treated as inadmissible without examining the Appellant's explanation that part of it relates to FY 2017–18 invoices claimed within the Section 16(4) window?

(ii). Whether the Order-in-Original is vitiated by the absence of a personal hearing?

(iii). Whether the absence of a notice in FORM GST ASMT-10 renders the proceedings invalid?

(iv). To what relief, if any, is the Appellant entitled?

I. Tribunal's Analysis and Findings

9. We examine the applicability of the above authorities to the present controversy, issue by issue, below.

Issue-wise Analysis and Findings

9.1. Issue No. 1 — Whether the difference between GSTR-3B and GSTR-2A can be treated as inadmissible without examining the Appellant's Section 16(4) explanation?

Section 16(4), as it stood for the transition period, permitted a taxpayer to claim ITC on Financial Year 2017–18 invoices up to the due date of the March 2019 return, as extended by CBIC Order No. 02/2018-Central Tax dated 31.12.2018. GSTR-2A was, at the relevant time, a facilitation tool and not a statutory bar to credit. CBIC Circular No. 183/15/2022-GST specifically directs the Proper Officer to verify — not summarily disallow — cases where Financial Year 2017–18 credit has been claimed in Financial Year 2018–19 returns. The Appellate Authority's finding that non-appearance of an invoice in GSTR-2A of Financial Year 2018–19 shows that the supplier did not pay tax is an assumption, not a finding reached after verification. That verification has not, on the record before us, actually been carried out.

In dismissing the appeal, the First Appellate Authority relied on Mahalakshmi *Cotton Ginning Processing and Oil Industries v. State of Maharashtra, ALD Automotive Private Limited v. CTO, and Microqual Techno Ltd. v. State of Karnataka*. These three judgments are, however, distinguishable and not applicable to the facts of the present case. Mahalakshmi Cotton Ginning Processing and Oil Industries was rendered under the Maharashtra Value Added Tax Act, a distinct statutory scheme that did not contain provisions comparable to Section 16(2)(c) of the CGST Act read with the safeguards under Rule 36 of the CGST Rules and Circular No. 183/2022-GST, and cannot be mechanically applied to a claim governed by the GST framework. ALD Automotive Private Limited dealt with the entitlement to claim input tax credit beyond the statutory time limit prescribed under a different State enactment, and did not concern the question of denial of credit solely on account of non-reflection of purchases in the auto-populated statement, GSTR-2A. Microqual Techno Ltd. proceeded on a finding that the input tax claim was not based on a genuine transaction and was made with an intent to evade tax; in the present case, there is no such finding or allegation that the underlying purchases were not genuine, the sole ground for disallowance being the mismatch between GSTR-3B and GSTR-2A. The three judgments therefore rest on facts and statutory provisions materially different from the present case, and could not have been relied upon to disallow the credit.

Finding: Issue No. 1 is answered in favour of the Appellant. The demand cannot be sustained on the record as it stands, without invoice-wise verification of the Financial Year 2017–18 credit.

9.2. Issue No. 2 — Whether the Order-in-Original is vitiated by the absence of a personal hearing?

The Show Cause Notice records the date, time and venue of personal hearing as “NA.” Section 75(4) makes a hearing mandatory once an adverse decision is contemplated against the person, irrespective of whether a specific request for hearing was made. The absence of any such hearing before the Order-in-Original was passed is a clear infirmity.

The Appellant has relied on Sahara India (Firm) v. CIT, [2008] 169 Taxman 328 (SC), and a line of High Court decisions applying Section 75(4), including Gayathri Agencies v. State Tax Officer (Madras HC), A.H. Enterprises v. Deputy Commercial Tax Officer (Madras HC), and Goutam Bhowmik v. State of West Bengal (Calcutta HC), for the proposition that grant of personal hearing under Section 75(4) is mandatory wherever an adverse decision is contemplated, and that failure to grant such hearing vitiates the proceedings. We find that these decisions are squarely applicable. The Show Cause Notice itself records the date, time and venue of personal hearing as “NA,” and nothing on the record shows that any hearing was in fact granted before the demand was confirmed. The ratio of the decisions relied upon by the Appellant is accordingly attracted, and applies with full force to the facts of this case.

Finding: Issue No. 2 is answered in favour of the Appellant. The absence of a personal hearing, by itself, justifies setting the Order-in-Original aside.

9.3. Issue No. 3 — Whether the absence of a notice in FORM GST ASMT-10 renders the proceedings invalid?

Section 61 and Section 73 are independent provisions. Section 61 provides one particular route — scrutiny of returns — which requires a notice in FORM GST ASMT-10. The record shows that the present proceedings were initiated pursuant to a specific assignment issued under Section 73, following an audit reference, and not as a Section 61 scrutiny. Where the Proper Officer proceeds directly under Section 73 read with Rule 142, without first invoking Section 61, the absence of a FORM GST ASMT-10 notice does not, by itself, invalidate the proceedings.

As recorded above, the present proceedings were initiated pursuant to a specific assignment under Section 73 read with Rule 142, following an audit reference, and not pursuant to scrutiny under Section 61. The decisions relied upon by the Appellant on this point are, accordingly, distinguishable on facts and do not assist the Appellant on this issue.

Finding: Issue No. 3 is answered against the Appellant. This ground does not, by itself, invalidate the proceedings; but it does not cure the infirmities found on Issues No. 1 and 2, which go to the root of the impugned orders.

9.4. Issue No. 4 — What relief should be granted to the Appellant?

As to interest and penalty: it is well settled that interest is compensatory and penalty is consequential upon a sustainable demand of tax. Since the principal demand requires fresh determination, the demand for interest and penalty must abide by the outcome of that determination. Having regard to our findings on Issues No. 1 and 2, the matter must go back to the Proper Officer for fresh verification, after a proper opportunity of personal hearing. Since the sustainability of the demand turns on verification of facts not undertaken below, and since the Order-in-Original was itself passed without a hearing, this is not a case where the Tribunal can finally determine the ITC claim on the present record; remand, rather than a final decision on merits, is the appropriate relief.

The Appellant has relied on Prathibha Processors v. Union of India, 1996 (88) ELT 12 (SC), for the proposition that interest, being compensatory, and penalty, being consequential, cannot survive independently of a sustainable principal demand. We agree with the proposition of law laid down in this decision. However, since the sustainability of the principal demand of Input Tax Credit has not, for the reasons recorded under Issues No. 1 and 2 above, been finally determined after affording the Appellant a proper opportunity of hearing, it would be premature to record a finding on the correctness of the demand of tax, interest and penalty at this stage. The applicability of this decision shall accordingly abide by the outcome of the fresh adjudication directed below.

Finding: The appeal is allowed by way of remand, on the terms set out in Part J below.

<u>J. Operative Order</u>

10. In view of the foregoing discussion, the appeal is allowed by way of remand, on the following terms:

(a) The Order-in-Original dated 20.04.2024 (Reference No. ZD290424050852A) passed by the Commercial Tax Officer, LGSTO-170, Tumakuru, and the Order-in-Appeal No. GST/AP.No.403/2024-25 dated 07.11.2024 passed by the Joint Commissioner of Commercial Taxes (Appeals)-6, Bengaluru, are hereby set aside.

(b) The matter is remanded to the Proper Officer, Commercial Tax Officer, LGSTO-170, Tumakuru, for de novo adjudication in accordance with law.

(c) The Proper Officer shall specifically: (i) verify the reconciliation furnished by the Appellant, invoice-wise, with reference to the Financial Year 2017–18 GSTR-2A, the suppliers' GSTR-1, the Appellant's ITC register, books of account, and the GSTR-9/GSTR-9C returns for Financial Year 2017–18 and 2018–19; (ii) examine whether the ITC pertaining to Financial Year 2017–18 was availed within the time permitted under Section 16(4), read with Removal of Difficulties Order No. 02/2018-Central Tax dated 31.12.2018; and (iii) apply CBIC Circular No. 183/15/2022-GST dated 27.12.2022 to the extent relevant.

(d) The Appellant shall be granted a proper opportunity of personal hearing, with the date, time and venue duly communicated, and shall be permitted to produce its books of account, invoices and any further reconciliation statements, before any fresh order is passed.

(e) The Proper Officer shall pass a fresh, reasoned and speaking order, meeting the requirements of Section 75(6) of the CGST Act, 2017, within twelve weeks from the date of communication of this Order.

(f) Consequential demands of interest under Section 50 and penalty under Section 73, if any, shall abide by, and follow, the fresh determination of tax liability made pursuant to this Order, and shall not be independently sustained on the basis of the orders hereby set aside.

(g) It is clarified that this Tribunal has not expressed any opinion on the ultimate admissibility of the disputed Input Tax Credit. All questions of fact are expressly kept open for determination by the Proper Officer in accordance with law.

(h) The learned Departmental Representative shall ensure that a copy of this Order is communicated to the Adjudicating Authority, in case for any reason the Adjudicating Authority is unable to view or access it on the portal, so that there is no delay in giving effect to this Order.

(i) No order as to costs.

The appeal is accordingly disposed of in the above terms.

Pronounced in the open court on this the 31ST day of August, 2026.

(2026) 1 GSTAT E- Journal 191 (Principal Bench)
(GOODS AND SERVICES TAX APPELLATE TRIBUNAL, PRINCIPAL BENCH)
DGAP
V.
MALLIKARJUNA CINEMA HALL, 70MM HYDERABAD
APPEAL NO. NAPA/3/PB/2025, SEPTEMBER 12, 2025

CORAM:

HON'BLE JUSTICE (RETD.) DR. SANJAYA KUMAR MISHRA, PRESIDENT

REPRESENTATION:

For the Appellant: DGAP (Departmental Representative).
For the Respondent: Shri Swapnil Srivastav, Learned Counsel.

HEADNOTE:

GST — Anti-Profiteering — Section 171 of the CGST Act — Reduction of GST rateon cinema tickets from 28% to 18% and 18% to 12% w.e.f. 01.01.2019 — Whether the Respondent profiteered by not passing on the benefit of reduction of GST rate to consumers — Whether fixation of ticket prices by State Government and Telangana High Court orders absolve the Respondent from liability under Section 171 — Whether market dynamics and other commercial factors justify non-reduction of prices — Whether the provision for imposition of interest at 18% under Rule 133(3)(c) of the CGST Rules, inserted vide Notification No. 31/2019-Central Tax dated 28.06.2019, is retrospective or prospective — Whether interest can be levied for the period prior to the amendment coming into force. **HELD:** The Respondent profiteered a sum of ₹16,50,166/- by not passing on the benefit of reduction of GST rates on cinema tickets to consumers — The Respondent's admission in its written submissions that it attempted to recover some profit in a competitive market constitutes a clear admission of profiteering — Fixation of maximum ticket prices by the State Government and Telangana High Court orders do not absolve the Respondent from the obligation under Section 171 — The discretion to fix prices within the maximum limit remained with the theatre owner — The provision for imposition of interest at 18% on the profiteered amount under Rule 133(3)(c) of the CGST Rules, inserted vide Notification No. 31/2019-Central Tax dated 28.06.2019, is prospective in nature and not clarificatory or curative — Applying the Constitution Bench judgment in C.I.T. v. Vatika Township Pvt. Ltd., (2015) 1 SCC 1, the provision is onerous and creates a new liability, and therefore cannot operate retrospectively — The interest at 18% is applicable only for the three days, i.e., 28.06.2019, 29.06.2019 and 30.06.2019, falling within the period under investigation — The Respondent is directed to deposit ₹16,50,166/- along with interest at 18% on ₹27,350/- calculated from 01.01.2019 — Half of the amount to be deposited in the Consumer Welfare Fund created by the Centre and the remaining half in the Consumer Welfare Fund created by the State of Telangana — Compliance report to be submitted within four months.

...In Favour of the DGAP

KEY ISSUES AND FINDINGS:

1. **Whether the Respondent profiteered by not reducing the prices of tickets upon reduction of GST rates for the period from 01.01.2019 to 30.06.2019?**

   "...There is no dispute regarding the fact that there has been a reduction of the rate of GST on tickets for admittance into a theatre exhibiting cinematographic film from 28% to 18% and from 18% to 12%, for different slabs. There is also no dispute on the side of the theatre owner or the Respondent that there has been no commensurate reduction in price of the tickets. Rather that there has been an increase in the price of the tickets. In fact, at paragraph 25 of the written submission made by the Respondent through his Counsel... the Respondent has categorically admitted that it has made an attempt to recover certain profit. This is a clear admission of the question 'whether it has profiteered or not'... Thus, it is clear that the Respondent has profiteered by not reducing the prices of tickets commensurately after the deduction of the rates of the GST." [Para 27]

   "Hence, we accept the report of the DGAP and hold that the Respondent has profiteered a sum of Rs. 16,50,166/- only by not passing on the benefit of reduction of the rates of GST on tickets sold for admittance into the Theatre for exhibition of cinematography films to the consumers." [Para 34]

2. **Whether the orders passed by the Hon'ble High Court of Hyderabad and consequent Government's order passed by the State of Telangana fixing the maximum price tickets absolve the Respondent from liability arising out of an allegation of profiteering?**
"…The Cinemas Act and the Government orders passed there on does not provide for non-passing of the reduction of GST rates to the consumers. The Cinemas Act, the Government orders and the judgment passed by the Hon'ble Telangana High Court, if read together would only mean that the prices of ticket for admittance to Cinema Hall in the state of Telangana are monitored by a Committee which fixes the maximum price, beyond which a cinema owner cannot charge a person for admittance into a theatre to watch a cinematography film. However, the fixing of prices of a particular class, or any locality or particular show is the discretion of the theatre owners... Moreover, Rs. 3/- additional charge of maintenance cost has to be included in the ticket as its Central law will take precedence and GST has to be calculated on this Rs. 3/- also. So, we do not find any substance in the contention raised by the Learned Counsel for the Respondent." [Para 28]

3. **Whether there has been any play of market dynamics and factors not in the control of the Respondent which led to a denial of commensurate reduction of prices to the ultimate consumer?**
"…It is true that Section 171 of the CGST Act does not require the supplier to pass on the benefit of reduce tax rate and benefit of Input Tax Credit, and that such passing on is to be carried out by way of commensurate reduction of price of Goods and Services. Accordingly, costing or fixation of price are always amenable to and depend upon market forces and dynamics of the industries in which the supplier is operating." [Para 26] "…However, such exercise of raising the prices based on commercial factors should be a genuine exercise of rising of prices and not a mere pretence... if there is any variance on account of other factors, such as any cost necessitating the setting of such reduction of price, the same needs justified by the supplier. It was further held that the inherent presumption that there must necessarily be reduction in prices of the Goods and Services is a rebuttable presumption." [Para 26]

4. **Whether the provision for imposing interest at 18% on the profiteered amount under Rule 133(3)(c) of the CGST Rules is retrospective or prospective in effect?**
"The Legal Maxim, 'NOVA CONSTITUTIO FUTURIS FORRNAM IMPONERE DEBET NON PRAETERITIS', means a new law ought to regulate what to follow, not the past, and such presumption operate unless shown to the contrary by express provision in the Statute or otherwise discernable by necessary implication (Monnet ISPAT and Energy Ltd., vs UOI, (2012) 11 SCC 1) wherein the Supreme Court has held that there is no indication in Section 17/A of mines and minerals (Developments and Regulation) Act, 1957 or the amending act of 1987, which inserted Section 17/A that Parliament intended to undo the State of Affairs prior of 1987 by virtue of the same. Therefore, by applying the presumption prospectivity the Supreme Court held that the Provision was effective from 1987 and has no retrospective operation. Taking the legal question from the different angle the courts in India as well as in United Kingdom has always held that whenever any Act or enactment effects any vested rights or impede a new burden on a person or impose existing application on one person against another person or class of person or society in general, then unless a contrary is provided in the statute itself by express provision or is clearly decipherable by necessary implication then such law effecting substantive right shall have prospective operation. There are several judgments to this effect, but the judgment authored by Hon'ble Justice A.K. Sikri in the Constitution Bench Judgement of the Supreme Court in the case C.I.T. Vs Vatika Township Pvt. Ltd., (2015) 1 SCC 1, still holds field." [Para 30]

"In this particular case, on a reference to the Notification No. 31/2019-Central Tax; G.S.R.457(E).- it is seen that the Government of India in exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, made the rules therein to 'further' amend the Central Goods & Services Tax Rules. We lay emphasis on the word 'further'. We also take note that grammatically and semantically, the word 'further' does not imply the past. It usually means 'in addition' or 'to advance'. Hence, we are unable to agree to the submissions made by the Representatives of the DGAP that this Amending provision is Clarificatory and Curative having retrospective effect. We are also unable to agree with the submissions that it is not an enabling provision requiring prospective operation." [Para 20]

"In that view of the matter, we are of the opinion that, the argument advanced by the Learned Counsel of the Respondent is partially acceptable and partially non-acceptable. That is to say that we agree to the argument advanced by the Learned Counsel for the Respondent that the provision for imposition 18 per cent interest on the profiteered amount shall come into force only to those cases which fall after the notification on the Amending (Fourth) Rule came into force, that is 28.06.2019 and not on 1st April, 2020, as argued by the Learned Counsel. However, in this case profiteering took place much prior to date of coming into force of such provision for levying interest and in view of the constitution Bench judgment of the Supreme Court in the case Vatika Township Pvt. Ltd. (Supra)., we are of the opinion this is not the fit case where Respondent should be directed to pay any interest on the profiteered amount." [Para 23]

"The facts are not disputed in this case and GST Act came into force 01.07.2017 and reduction of rate was with effect from 01.01.2019. The period under investigation by the DGAP is between 01.01.2019 to 30.06.2019. If it is taken as a time continuum, the effective date of the aforesaid clause enabling the Authority to impose 18% on the profiteered amount falls on 28.09.2019. So out this period, period, i.e., between 01.01.2019 to 30.06.2019, 3 days viz., 28.06.2019, 29.06.2019 and 30.06.2019 comes under the purview of the provision which empowers the Authority to impose 18% interest on the profiteered amount. So, the question remains to be determined by us is whether the interest should be charged on the profiteered amount which has allegedly been covered for entire 6 months i.e. 01.01.2019 to 30.06.2019 or it should only be confined to 'the period', on or after the date from which the amendment came into force. One argument is that, since it is a continuing and recurring cause of action, cause of action being violation of sub Section (1) of Section 171 of the CGST Act, by the Respondent, the profiteered amount for the entire period, should be subjected to 18% interest. The other argument is that this Authority do not have the jurisdiction impose interest on the profiteered amount for the period that falls prior to 18.06.2019. We are of the considered opinion that, the interest of 18% has to be applicable for 3 days i.e. 28.06.2019, 29.06.2019 and 30.06.2019 and accordingly order should be passed. This question of law is accordingly answered." [Para 33]

5. **What should be the order of the Tribunal acting as the authority under Section 171 of the CGST Act?**

"Therefore, it is directed that the Respondent shall deposit an amount of Rs. 16,50,166/- only along with the interest at the rate 18% on Rs. 27,350.817 [Rs. 16,50,166/= only divided by 181 (one eight one), multiplied by 3 (three)] rounded off to Rs. 27,350/- calculated from 01.01.2019, with annual rests. The amount shall be divided into two parts, half of it along with interest as calculated above is to be deposited in the Consumer Welfare Fund(s) created by Centre. The rest will be deposited in the Consumer Welfare Fund(s) created by State of Telangana within one month. If the Telangana Consumer welfare fund has not been created yet then, half of the portion to be deposited by the Respondent in the in the Consumer Welfare Fund (s) created by the centre instead." [Para 35]

"A report in compliance of this order shall be submitted to this Tribunal by the concerned Commissioner within a period of 4 months from the date of receipt of this order." [Para 36]

"A copy each of this order be supplied to the respondent and to the concerned Commissioner CGST / SGST for necessary action." [Para 37]

EDITORIAL NOTES:

Principles Laid Down:

1. Section 171(1) of the CGST Act mandates that any reduction in the rate of tax on any supply of goods or services, or the benefit of input tax credit, shall be passed on to the recipient by way of commensurate reduction in prices. The obligation to pass on the benefit of a reduced GST rate to consumers is therefore statutory and mandatory in nature
2. The fixation of maximum ticket prices by the State Government or by orders of the High Court does not absolve a theatre owner from the obligation under Section 171. The Cinemas Act, the Government orders, and the High Court judgments only prescribe a maximum price beyond which a cinema owner cannot charge; the discretion to fix prices within that limit remains with the theatre owner. Consequently, the mere existence of a price ceiling does not relieve the supplier of the duty to effect a commensurate reduction in prices upon a reduction in the rate of tax.
3. An admission of profiteering in written submissions constitutes substantive evidence. A clear admission that the supplier attempted to recover certain profit in a competitive market amounts to an admission of profiteering. Admissions, if true and clear, are the best proof of the facts admitted, and such admissions are binding unless shown to be incorrect or made under a mistake.
4. Market dynamics and commercial factors may justify a non-reduction of prices, but such justification must be genuine and established on a cogent basis. The supplier is at liberty to set its base price and vary it in accordance with commercial and economic factors, but such exercise must not be a mere pretence to circumvent statutory obligations.
5. The provision for the imposition of interest at 18% on the profiteered amount under Rule 133(3)(c) of the CGST Rules, inserted vide Notification No. 31/2019-Central Tax dated 28.06.2019, is prospective in nature. It is neither clarificatory nor curative. Applying the Constitution Bench judgment in C.I.T. v. Vatika Township Pvt. Ltd., (2015) 1 SCC 1, the provision is onerous and creates a new liability, and therefore cannot operate retrospectively.
6. Interest at 18% is applicable only for the period on or after the date from which the amendment came into force. Where the period under investigation is 01.01.2019 to 30.06.2019, the interest is applicable only for three days, namely 28.06.2019, 29.06.2019 and 30.06.2019.
7. The amount profiteered must be deposited in the Consumer Welfare Fund. Half of the amount along with interest is to be deposited in the Consumer Welfare Fund created by the Centre, and the remaining half in the Consumer Welfare Fund created by the State.
8. The supplier is required to pass on the benefit of the reduced tax to the consumer only by way of commensurate reduction of prices. The inherent presumption that there must necessarily be a reduction in prices is a rebuttable presumption, and if the supplier asserts reasons for upsetting the reduction, it must establish the same on a cogent basis.

Case Law Referred to:

Reckitt Benckiser India Pvt. Ltd. & Ors. v. Union of India & Ors., 2024 SCC Online Del 588 — *Followed. [Para 18, Para 26]*

C.I.T. (C-1) (Central-1) New Delhi v. Vatika Township Pvt. Ltd., (2015) 1 SCC 1 — *Relied [Para 19, Para 30]*

Monnet ISPAT and Energy Ltd. v. Union of India, (2012) 11 SCC 1 — *Relied [Para 30]*

Awadh Kishore Das v. Ram Gopal, AIR 1979 SC 861 — *Relied [Para 27]*

Nagubai Ammal v. B. Shyama Rao, AIR 1956 SC 953 — *Relied [Para 27]*

Nagin Das, Ram Das v. Dalpat Ram, Ichcha Ram allies Brij Ram & others, AIR 1974 SC 471 — *Relied [Para 27]*

Circulars and Notifications Referred to:

- Notification No. 27/2018-CT (Rate) dated 31.12.2018 (Para 4(ii))
- Notification No. 31/2019-Central Tax dated 28.06.2019 (Para 18, Para 29, Para 31)
- Notification No. 71/2019-Central Tax dated 30.12.2019 (Para 20)

Relevant Provisions:

Section 171 of the CGST Act, 2017; Section 164 of the CGST Act, 2017; Rule 133 of the CGST Rules, 2017; Rule 133(3)(c) of the CGST Rules, 2017; Rule 129(3) of the CGST Rules, 2017; Section 58 of the Indian Evidence Act, 1872; Section 53 of the Bhartiya Sakshya Adhiniyam, 2023; Central Goods & Services Tax (Fourth Amendment) Rules, 2019.

JUDGMENT

1. Cinema as is popularly called by Indians with reference to motion pictures is not considered only a source of entertainment. It is also considered as a part of the mass media, wherein, public opinion can changed or influenced. Internationally motion pictures are considered also to be an instrument of expression of creative arts for the purpose of entertainment. With time motion pictures-cinemas have expanded into different fields especially with invent of internet, cable TV and recent phenomenal of Over-the-Top (OTT) services.

2. Social media platforms have also seen spurt in movie making both at immature and semi-professional levels. This case is an interesting combination of motion pictures and Goods & Services Taxes. A dispute arose regarding the charging of prices by a cinema hall owner who has the license for exhibition of Cinematography films.

3. A proceeding has been initiated and we are to decide whether there has been a profiteering to the tune of Rs. 16,50,166 /- only by not passing on the reduction of rates of GST, on cinema tickets for exhibition of cinematography films, to the consumers.

4. The facts of the case can succinctly stated as follows:-

(i) On 01.07.2017, the Central Goods & Services Tax Act, 2017, hereinafter referred as CGST Act, came into force. Initially, the rates of GST on the tickets for admission to the theatres exhibiting cinematography films were 28% for the price range of Rs. 101/- or more. It was 18% for the tickets has been priced at Rs. 100 or less per person, per show.

(ii) On the recommendation of the GST Council, the rates were reduced from 28% & 18 %, to 18% & 12% for the aforesaid rates of tickets w.e.f. 01.01.2019 vide notification no. 27/2018- CT (Rate) dated 31.12.2018.

5. On 29.03.2019, an application was received by the Standing Committee of the Anti-Profiteering wing of GST Regime from the Pr. Commisioner, MedchalCommissionerate, Hyderabad, inter-alia alleging profiteering by the Respondent. The Standing Committee after examining the same referred the matter to the DGAP on 28.06.2019 directing it to conduct a detailed investigation in respect of the above allegation. The said report was received by National Anti-profiteering Authority (NAA) on 20.12.2019 through the DGAP. The Notices were issued by the NAA to the Respondent dated 18.12.2019 by erstwhile NAA under Rule 129(3) of the CGST Rules, 2017.

6. However, the Respondent filed the Writ Petition No. 3087/2020 in the High Court of Telangana at High Court, wherein the Notices issued by the erstwhile NAA were challenged. Interim Orders were passed, however, the same were vacated on 03.06.2021. The Respondent was given adequate opportunity of producing documents, showing cause and also inspection of documents, but Respondent failed to avail such opportunities. Finally, DGAP submitted its Report alleging that there has been a profiteering Rs. 16,50,166/- for the period of 01.01.2019 to 30.06.2019.

7. The Respondent has filed Written Submissions on different dates, finally on 15.04.2025, written submissions along with several annexures were submitted at the time of advancing arguments by the Learned Counsel of the Respondent.

8. It is submitted by the Respondent that maximum tickets prices in the State of Telangana are set by the State Government through the Licensing Authority as per the provisions of the Telangana Cinemas (Regulation) Act, 1955, hereinafter referred as Cinemas Act. The Respondent further submitted that according to the Section 9-A of the Cinemas Act, a cinema hall failing to comply with the prices set by the Licensing Authority are liable to prosecution and punishment. In furtherance of such powers, the State Government promulgated a Government Order dated 26.04.2013 being G.O.M. No. 100 , Home (General A.I) Department ("2013 Government Order") whereby maximum prices for tickets in cinema halls were set by it.

9. It is further case of the Respondent that the Government Order was challenged by Cinema owners by filing Writ Petition No. 19046 of 2014 and vide its Order dated 31.10.2016, the Hon'ble High Court of Telangana quashed the 2013 Government Order and directed the State Government to set up a committee to study the issue and thereafter promulgate fair prices. The relevant part of the order was relied upon by the Respondent in its defence against allegation levelled by the DGAP dated 31.10.2016. We consider it appropriate to quote the same:-

> "10.....
>
> *(ii) Both the Government are directed to constitute their respective committees headed by the respective Principal Secretaries for Home. In so far as the other members of the Committees are concerned. It is left open to the respective Principal Secretaries for Home to choose the exhibitors, distributors and other member to participate in the committee so as to adjudicate the issues involved in all the writ petitions.*
>
> ...
>
> *(v) The petitioners - theatres are permitted to run their respective theatres by collecting their proposed fares. However, it is made clear that the petitioners shall inform to the Authorities concerned as to the ticket rates, which they intend to collect in respect of all classes till adjudication of the issues in question by the respective committees.*
>
> ...
>
> *(vii) It is made clear that the petitioners in the writ petitions, in which there are no such earlier interim orders, shall approach the authorities concerned and inform them as to the rates of the tickets, which they intend to collect."*

10. It is, therefore, contended that the Hon'ble High Court of Telangana seized of the issue of ticket prices, it had also passed an order granting the right to cinema hall owners to set prices of their tickets as long as they informed the relevant authorities regarding the same. In compliance with the order of the High Court as aforesaid, the State Government set up a committee to study the issue, and thereafter government Order bearing No. 75 (Home

General Department). On 23.06.2017 issued certain directions fixing maximum ticket prices for different categories of cinema halls, viz single screens, multiplexes, etc for different municipal zones.

11. The Respondent which is single screen cinema is stated to have liberty to set the maximum ticket price for AC and Air Cooled Theatres at Rs. 120/- for higher class and Rs. 40/- for lower class. Thereafter, cinema owners have approached the Hon'ble High Court of Telangana from time to time and seeking permission for varying prices on account of popularity and demand of the movies. It was, therefore, stated by the respondent that during the period of the profiteering, i.e. from 01.01.2019 to 30.06.2025, the respondent was selling its ticket in compliance with the ticket prices set by the State Government. As narrated above, which was set with the explicit permission of the High Court of Telangana.

12. Thus, it is submitted that the profit earned by the Respondent while selling tickets at the rate set by the State government with the explicit permission of the High Court of Telangana cannot be considered as unfair profit. It is also stated by the Respondent that prices of tickets for entrance into cinema theatres are set after taking into consideration by the expenses incurred by cinema owners as well as the variety of other commercial factors, including but not limited to inflation, popularity of certain movies over other, rise of OTT platforms, and increasing rent. It is the further allegation of the Respondent that the DGAP is completely silent on this aspect.

13. The second limb of contention of the Respondent is that the DGAP has dismissed the exemption of Rs. 3/- per ticket from GST as tax-free maintenance charges on the basis of an erroneous interpretation of the Government Order. It is stated as per the Government order that the State government permitted cinema owners to enhance the tax-free maintenance charges from Rs. 3/- to Rs. 7/- for AC and Air Cooled Theatres and from Rs. 2/- to Rs. 5/- for non-AC Theatre. It was classified as a "tax free maintenance Charge". The Respondent claim that as it runs a AC theatres, it is entitled to charge a sum of Rs. 7/- per ticket as tax-free maintenance charges. However, it has continued to charge a sum of Rs. 3/- per ticket in order to ensure that its prices remain competitive. The DGAP, allegedly, has not taken it into a consideration, therefore, committed an error.

14. The third limb of submissions of Respondent is that the DGAP has misconstrued the scope and ambit of Section 171 of the CGST Act. In expanding this third limb of submission, the Respondent would submit that the provision has been misinterpreted by the DGAP inasmuch as it has interpreted it to mean that any reduction in the rate of tax must be passed in its entity to the recipient of goods and services. Respondent would further submit that it is not the case, as is made evident by the use of the word "commensurate". The Respondent would further submit that if the intention of the legislature to pass on the benefit of any reduction of tax on an as is basis, they would not have use the word "commensurate". Use of word commensurate indicates that the legislature has promulgated a law which permits the providers of goods and services to take factors, other than the reduction in the tax rate, for providing benefit of such reduction to the recipient of goods and services. Such other facts may include inflation, increase in expenses towards providing goods and services, etc. As per the Respondent, the real purport of Section 171 of the CGST Act is that providers of goods and services are at liberty to take into account factors other than just a reduction in the rate of tax at the time of passing on the benefit of any reduction of taxes to the recipient of goods and services.

15. Re-iterating its earlier submissions, the Respondent would further submit that the it charged its customers appropriate prices as per the decision of the State Government and that it has also not charged higher Rs. 7/- as tax free maintenance charges in terms of 2017 Government order.

16. It would submit that the DGAP failed to take into account the period preceding the reduction of taxes to adequately contextualize whether the Respondent has in fact indulged in gaining unfair profits or not.

17. In paragraph 25 of the written submissions submitted before us by the Advocate for the respondent on 15.04.2025 it is specifically mentioned that there have been unfairly being penalised for attempting to realize some profits in a high competitive market. We consider it to be relevant piece of admission and hence we consider it appropriate to quote the exact words used in the written submissions submitted before us.

> "25. It is the Respondent's humble submission that this approach of the DGAP, rather than being anti-profiteering is anti-profit. The DGAP's approach unfairly penalizes the Respondent for attempting to realize some profits in a highly competitive market. The reduction of tax rate was an opportunity for the Respondent to recover some costs while keeping the prices charged from the customers constant. This allowed the Respondent to slightly increase its revenue while staying competitive. In doing so, the DGAP has completely misconstrued the meaning and ambit of the word "commensurate"". (underlined to place emphasis)

The learned counsel for the Respondent has also relied upon the observations made by the Hon'ble High Court of Delhi in the case of **Reckitt Benckiser India Pvt. Ltd. & Ors. Vs. Union of India & ors SCC Online Del 588.**

18. This matter was heard on 23.07.2028 and reserved for judgement to be pronounced on 20.08.2025. However, a question arose before the Tribunal that the jurisdiction of the tribunal or the authority to direct the payment of interest at the rate of 18% on the profiteered amount, was inserted in clause (c) of Sub Rule (3) of Rule of 133 of the CGST Rules, 2017 vide Notification No- 31/2019- Central Tax, dated 28.06.2019, with effect from 28.06.2019. This issue was never been decided by this Tribunal or any of its preceding Authorities i.e. erstwhile NAA or CCI.

19. Since we thought that it is a question of seminal importance, we directed to both parties to address the Tribunal on this issue on 20.08.2025. However, on that day, learned counsel for the Respondent was not present. We considered it appropriate to grant another opportunity to the learned counsel to advance his arguments on this issue and, therefore, the matter was again listed on 03.09.2025. On 03.09.2025, learned counsel appeared and submitted that provision for imposition of interest on the profiteered amount is prospective as it is an enabling provision. He contended that it is not a Clarificatory or Curative piece of delegated legislation. In this connection, he relied upon **C.I.T. (C-1) (Central-1) New Delhi Vs. Vatika Township Pvt. Ltd., (2015) 1 SCC 1.**

20. Specifically, issue has been raised by the Learned Counsel of the Respondent by virtue of Notification No. 71/2019 dated 30.12.2019, that the amendment to section 133 came into force w.e.f, 01.04.2020 and not from 28.06.2020. So the Respondent is not liable to any interest on alleged profiteering amount, as the period under investigation is beyond that date.

21. Thus, in consideration with aforesaid facts and submissions the following issues of law and also of law and fact arise in this case:-

(i) Whether, the Respondent M/s. Mallikarjuna Cinema Hall, 70 MM Hyderabad, profiteered a sum of Rs. 16,50,166/- only by not reducing the prices of tickets for admittance to the theatre upon reduction of the rates of the GST for the period from 01.01.2019 to 30.06.2019?

(ii) Whether the orders passed by the Hon'ble High Court of Hyderabad and consequent Government's order passed by the State of Telangana fixing the maximum price tickets and giving a discretion to the theatre owners or of fixing the prices would absolve the Respondent from any liability arising out of an allegation of profiteering because of the fact that it has not reduced the price it offered to the ultimate consumers?

(iii) Whether there has been any play of market dynamics and factors not in the control of the Respondent which is led to a denial of commensurate reduction of prices to the ultimate consumer?

(iv) Whether the provision of imposing interest at the rate of 18% on the profiteered amount as per the amended clause (c) of Sub Rule 3 of Rule 133 of CGST Rules, 2017 is retrospective in effect or prospective in effect? If it is prospective in effect than whether it is applicable from 28.06.2019 to 01.04.2020?

(v) What should be the order of the Tribunal acting as the authority under Section 171 of the CGST Act?

22. Coming to the first question mentioned above, we note that basically there are three categories of tickets viz., Maharaja Circle-Rs. 118 & 100, Dress Circle-Rs. 70 and First Class-Rs. 30 sold by the Respondent during the pre-rate reduction period effective from 01.12.2018 to 31.12.2018.The price consumer has to pay for these three categories of the tickets are Maharaja Circle- Rs. 130, 120 & 100, Dress Circle-Rs. 80 & 70 and First Class-Rs. 40 & 30. The Respondent was also collecting a sum of Rs. 3/- per ticket as tax free maintenance charge. Thus, the price inclusive of all taxes and charges of tickets for three categories like Maharaja Circle- Rs. 115 & 97, Dress Circle-Rs. 67/- and for First class Rs. 27/- in the pre-rate reduction period. The price of these three categories of tickets in the post-rate reduction period w.e.f. 01/01/2019 are Maharaja Circle- Rs. 127, 117 & 97, Dress Circle-Rs. 77 & 67 and First Class-Rs. 37 & 27 after the post-rate reduction. It is also borne out form the record and submission made in the report of the DGAP that there is no law that enable the Respondent not to pay GST on the amount of Rs. 3/- collected as tax free maintenance charge per ticket. Therefore, the amount of Rs. 3/- collected as tax free maintenance charge per ticket, need to be taken into

consideration by the Respondent while discharging their output tax liability and also for determination of price of ticket when the GST rate was reduced from 28% to 18% from 18% to 12% w.e.f. 01.01.2019.

23. The following tabulated has relied upon by the DGAP as well as the officer assisting in the case which would clarify the reduction of the rate of GST from 28% to 18% and from 18% to 12% have not resorted in a commensurate reduction in price because of the raising of the base price by the Respondent. It is presented in the Table A mentioned below:-

TABLE-A

S No	Admission ticket	**01.12.2018 to 31.12.2018**			**01.01.2019 to 30.06.2019**					
		Price of Ticket inclusive o	GST	Amount Charged i.eBas	Price of Ticket inclusive of	GST	Amount Ch	Commensurate Bas	Amount which was to be Char	Increase in

		f tax (in Rs .)	Rate (%)	e Price (in Rs.)	tax (in Rs.)	Rate (%)	arged i.e Base Price (in Rs.)	e Price (in Rs.)	ged (in Rs.)	base price of the ticket
A	B	C	D	E=[C/ 128% or 118%]	F	G	H	I	J=(I*118% or 112%)	K=H-I
1	Maharaja Circle (Blockbuster movie)	118	28%	92.19	130	18%	110.17	92.19	108.78	17.98
					120		101.69	92.19	108.78	9.51
	Maharaja Circle (Other Movie)	100	18%	84.75	100	12%	89.29	84.75	94.92	4.54
2	Dress Circle	70	18%	59.32	80	12%	71.43	59.32	66.44	12.11
					70		62.50	59.32	66.44	3.18
3	First Class	30	18%	25.42	40	12%	35.71	25.42	28.47	10.29
					30		26.79	25.42	28.47	1.36

The column headings and figures above are reproduced from Table-A in the judgment; the source shows the formula row as: **A B C D E=[C/ 128% or 118%] F G H I J=(I*118% or 112%) K=H-I**.

24. This method of calculation as depicted in the table A above is very much part of the DGAP's report and it has never been denied or disputed by the Respondent. They have not denied this calculation and the figures reflected in table A. They have not denied disputed the method of calculation. They have also not denied the second process of investigation, whereby, the DGAP has proceeded to quantify the amount of profiteering made by the Respondent. They have examined the outwards supplies for the period 01.12.2018 to 30.06.2019 submitted by the Respondent. They found out that profiteering during the period from January, 2019 to June, 2019 from the sale of ticket in 3 categories mentioned in Table A above amounted to Rs. 11,11,212/- only for Maharaja Circle, Rs. 3,55,141/- only for Dress Circle and Rs. 1,83,812/- for the First class. The total amount of profit earn by the Respondent in violation of Section 170, CGST Act has been reflected in Table B below:-

TABLE-B

S No	Admission ticket	01.01.2019 to 30.06.2019						
		Base Price charged (Rs.)	Commensurate Base Price (Rs.)	Excess amount charged per ticket (Rs.)	Excess tax charged per ticket @ 18% or 12 %	Total Profiteering per ticket (Rs.)	Total tickets sold	Total Profiteering (including tax @18%) (in Rs.)
A	**B**	**C**	**D**	**E= (C-D)**	**F= (E*18 % or 12%)**	**G= (E+F)**	**H**	**I= (H*G)**
1	Maharaja Circle (Block buster Movie)	110.17	92.19	17.98	3.24	21.22	18,849	3,99,952
		101.69	92.19	9.51	1.71	11.22	27,696	3,10,715
	Maharaja Circle (Other Movie)	89.29	84.75	4.54	0.54	5.08	78,774	4,00,546
2	Dress Circle	71.43	59.32	12.11	1.45	13.56	17,962	2,43,553
		62.50	59.32	3.18	0.38	3.56	31,351	1,11,588
3		35.71	25.42	10.29	1.23	11.53	11,954	1,37,775

	First Class							
		26.79	25.42	1.36	0.16	1.53	30,180	46,037
Grand Total								16,50,166

25. It is also noted here that neither in their written submission nor in the course of argument the learned Counsel ever disputed this calculation reflected in Table B. They have also not disputed the method of calculation or the figures reflected therein. Thus, as far as this calculation aspect of the case is concerned, there is nothing decided by this Tribunal. We may note here, at the cost of repetition that there is no dispute regarding said facts like reduction of rate of GST from 01.01.2019. There is also no dispute that the Respondent did not have a commensurate reduction in prices of the ticket for admittance to the theatre. What is in dispute is that such non-passing of the benefit is control by market forces and certain special and local laws and judgment passed by the High Court of Telangana coupled with the fact that the Government also passed orders which are being discussed during course of this final order. There is no dispute or denial of the method of calculation, as depicted in Table A and Table B, by the Respondent.

26. Thus, it can be seen, for the purpose of elucidating, Maharaja Circle Blockbuster Movie, the ticket price was Rs. 118/- before the reduction of rate of GST i.e. when it was at 28%.So the base price was Rs. 92.19. However, from 01/09/2019 till 30/06/2019, the said Maharaja Blockbuster Movie was charged with Rs. 130 or Rs. 120 per ticket, i.e. per person for one show. It has the GST incidence @ 18%, so the amount charged i.e. base unit price is Rs. 110.17 and 101.69 respectively. However, there should have been a commensurate reduction of base price equivalent to the pre-reduction period to be Rs. 90.19 to Rs. 92.19 respectively. Thus, there was an increase in the base price for these two types of tickets in Maharaja Circle Blockbuster movie amounting to Rs. 17.98 and Rs. 9.51 respectively. Similarly, other increase in amount of bases prices have been calculated for to be Rs. 4.54 for Dress Circle, Rs. 12.11 to Rs. 3.18, for first-class, respectively. This aspect of the case is not been stoutly denied but we feeble attempt has been made to the effective that the amount of the base price has been determined by price dynamics, demand and supply etc., it is true that Section 171 of the CGST Act does not require the supplier to pass on the benefit of reduce tax rate and benefit of Input Tax Credit, and that such passing on is to be carried out by way of commensurate reduction of price of Goods and Services. Accordingly, costing or fixation of priceare always amenable to and depend uponmarket forces and dynamics of the industries in which the supplier is operating. Section 171 reads as follows.

section (1) reads as follows:-

> "Any reduction in rate of tax on any supplier of goods or services orthe benefit of Input Tax Credit shall be passed on to the Recipient by way of commensurate reduction in prices."

In interpreting this provision the Hon'ble High Court of Delhi, in the case of **Reckitt Benckiser India Pvt. Ltd. Vs. Union Of India** and other cases, 2024 SCC Online Del 588, has held that the supplier is required to pass on the benefit of reduced tax to the consumer and such passing is to be carried out only by way of commensurate reduction of prices ofthe Goods and Services. However, the supplier is at liberty to set his base price and vary them in accordance with the relevant commercial and economic factors or any applicable laws. However, such exercise of raising the prices based on commercial factors should be a genuine exercise of rising of prices and not a merepretence. The Hon'ble Delhi High Court further held that if there is any variance on account of other factors, such as any cost necessitating the setting of such reduction of price, the same needs justified by the supplier. It was further held that the inherentpresumption that there must necessarily be reduction in prices of the Goods and Services is a rebuttable presumption. It is clarified that if the suppliers is to assert its reasons for upsetting the reduction, it must established the same on cogent basis and must not use it merely as a devise to circumvent statutory implications or reducing the prices in a commensurate manner contemplated under Section 171 of the CGST Act. The Delhi High Court, further, held that Section 171 of the CGST Act has been incorporated with the intent of creating a framework that ensures that the benefit reaches the ultimate consumers. There cannot be any room allowing unjust retention of benefit of reduction in the rate of tax or benefit of Input Tax Credit with the manufacturer,supplier or distributers.

27. In this case if we have already noted that there is no dispute regarding the fact that there has been a reduction of the rate of GST on tickets for admittance into a theatre exhibiting cinematographic film from 28% to 18% and from 18% to 12%, for different slabs. There is also no dispute on the side of the theatre owner or the Respondent that there has been no commensurate reduction in price of the tickets. Rather that there has been an increase in the price of the tickets. In fact, at paragraph 25 of the written submission made by the Respondent through his Counsel, as we have referred to above in the preceding paragraph, the Respondent has categorically admitted that it has made an attempt to recover certain profit. This is a clear admission of the question 'whether it has profiteered or not'. Law is well settled in this context. Admission is substantive evidence. It constitutes the best evidence that the opposite party can rely upon. Those admissions are not always conclusive and may be explained a way. We take note of the judgments of the Honorable Supreme Court, in Awadh Kishore Das vs. Ram Gopal, AIR 1979 SC 861, and Nagubai Ammla Vs. B. Shyama Rao AIR 1956 SC 953. Thus admissions if true and clear are the best proof of fact admitted. Moreover, in the case of Nagin Das, Ram Das Vs. Dalpat Ram, Ichcha Ram allies Brij Ram & others, AIR 1974 SC 471, the Supreme Court has held that admissions, if true and clear are by far the best proof of fact admitted. The Supreme Court went on to make a critical distinction between judicial admissions or admissions in pleadings/ compromise and evidentiary admission. Judicial admissions are under Section 58 of the Indian Evidence Act, 1872 corresponding to Section 53 of the Bharatiya Sakshya Adhiniyam, 2023. It provides that facts admitted need not to be proved. Such judicial admissions are binding on the parties who make them and constitute a waiver of proof. Evidence or evidentiary admissions in contrast, are admissible in trial but not conclusive. In this case, a written document has been placed before us, paragraph 25, as quoted is in the preceding paragraph contains a clear admission that the theatre owner wanted to make some profit in the competitive world and, therefore, it has to be taken either as a judicial admission or an evidentiary admission. If it is taken as a quasi-judicial admission then it is binding on the Respondent. However, for the sake of consideration if it's considered to be an evidentiary admission, then also there is no other material to show that such an admission is factually incorrect. In fact, the Respondent have not made any efforts to show that it is an admission made because of oversight, inadvertence or erroneous comprehension of facts. Thus, it is clear that the Respondent has profiteered by not reducing the prices of tickets commensurately after the deduction of the rates of the GST.

28. The next two questions cast by us, are related in the sense that the Respondent has contended that the increase in price of the tickets was in line of the provision of Cinemas Act of the state of Telangana and then they charging of Rs. 3/- as non-taxable charge are also not absolving the Respondent from the violation of Section 171, CGST Act. The Cinemas Act and the Government orders passed there on does not provide for non-passing of the reduction of GST rates to the consumers. The Cinemas Act, the Government orders and the judgment passed by the Hon'ble Telangana High Court, if read together would only mean that the prices of ticket for admittance to Cinema Hall in the state of Telangana are monitored by a Committee which fixes the maximum price, beyond which a cinema owner cannot charge a person for admittance into a theatre to watch a cinematography film.

However, the fixing of prices of a particular class, or any locality or particular show is the discretion of the theatre owners. As far as this discretion is concerned, it has not been tampered with or in any way restricted by the local law and Special law as mentioned above, except prescribing a higher limit. Moreover, Rs. 3/- additional charge of maintenance cost has to be included in the ticket as its Central law will take precedence and GST has to be calculated on this Rs. 3/-also. So, we do not find any substance in the contention raised by the Learned Counsel for the Respondent.

29. That leads us to the fourth question about the imposition of interest rate of 18%. There is no dispute in this case that on 28/06/2019, by an amendment, a clause was inserted in clause (c) of Sub-Rule (3) of Rule 133 of the CGST Rules, whereby, authority (jurisdiction) was given to the Central Body/Authority considering the cases of alleged profiteering because of non-passing of the benefit of reduction of the rates of GST or benefits of ITC by commensurate reduction in price, to direct payment of interest at the rate 18% on the amount profiteered.

30. The Legal Maxim, "NOVA CONSTITUTIO FUTURIS FORRNAM IMPONERE DEBET NON PRAETERITIS", means a new law ought to regulate what to follow, not the past, and such presumption operate unless shown to the contrary by express provision in the Statute or otherwise discernable by necessary implication (Monnet ISPAT and Energy Ltd., vs UOI , (2012) 11 SCC 1) wherein the Supreme Court has held that there is no indication in Section 17/A of mines and minerals (Developments and Regulation) Act, 1957 or the amending act of 1987, which inserted Section 17/A that Parliament intended to undo the State of Affairs prior of 1987 by virtue of the same. Therefore, by applying the presumption prospectivity the Supreme Court held that the Provision was effective from 1987 and has no retrospective operation. Taking the legal question from the different angle the courts in India as well as in United Kingdom has always held that whenever any Act or enactment effects any vested rights or impede a new burden on a person or impose existing application on one person against another person or class of person or society in general , then unless a contrary is provided in the statute itself by express provision or is clearly decipherable by necessary implication then such law effecting substantive right shall have prospective operation. There are several judgments to this effect, but the judgment authored by Hon'ble Justice A.K. Sikri in the Constitution Bench Judgement of the Supreme Court in the case C.I.T. Vs Vatika Township Pvt. Ltd., (2015) 1 SCC 1, still holds field.

31. On this issue, we have already decided in the case of **DGAP Vs. Procter & Gamble Group.** NAPA decided this case on 10.09.2025, that such a provision shall come into force only with the prospective effect from 28/06/2019. In this connection we have held as follows:-

> **9.** In order to effectively decide this issue which essentially a question of law involving interpretation of Statute, the Amending Rule (Fourth) brought by the Government of India, in Ministry of Finance (Department of Revenue) through the Central Board of Indirect Taxes and Customs (CBIC) through Notification No. 31/2019 on 28.06.2019 has to be considered. It aimed at amending various provisions of CGST Rules by exercising powers conferred upon the Government of India under Section 164 of the CGST Act. Sub-rule (1) of the Rule (1) of the said notification provided that rules may be called the Central Goods & Services Tax (Fourth Amendment) Rules, 2019. Sub-rule (2) of rule (1) is provided as follows;
>
> > "(2) save as otherwise provided in these rules, <u>they shall come into force on date of their publication in the official Gazette</u>**."**
>
> **10.** The relevant rule for the provision of Rule 133 (3) (c) which is being considered is Rule 17. It sought to amend Rule 133 of the CGST Rules. The relevant clause of Rule 17 of the Fourth Amendment Rules is clause (c) of Rule 17 which reads as follows;

"(c) in sub-rule (3), in clause (c), after the words "fifty percent. of the amount determined under the above clause", the words "along with interest at the rate of eighteen percent. from the date of collection of higher amount till the date of deposit of such amount" shall inserted."

11. The rest of the contents of the aforesaid rules are not relevant for our purpose for this case.

12. The Learned Counsel for the Respondent would submit that the amended provision of Clause (c), sub-rule (3) rule 133 of CGST Rules saddling on interest at the rate of 18 % per annum on Respondent came into force on 01.04.2020. We have considered his argument and also take note of the Notification cited by him which reads as follows;

> "G.S.R.927.(E)- In exercise of the powers conferred by rule 5 of the Central Goods Services Tax(Fourth Amendment) Rule, 2019, made vide notification No.31/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, part II, Section 3, Sub-section (i), vide number G.S.R 457(E), dated the 28th June, 2019, the Government on the recommendation of the Council , hereby appoints the 1st day of April 2020, as the date from which the provisions of the said rule, shall come into force."

13. Dealing with a similar question the Constitution Bench of Supreme Court of India in **C.I.T. (C-1) New Delhi Vs. Vatika Township Pvt. Ltd, (2015) SSC-1**, considered whether the amendment to the provisions of Section 113 of the Income Tax Act, inserted by the Finance Act, 2002 is to operate prospectively or it is a clarificatory and curative in nature, and, therefore, has retrospective operation. While considering this issue the Hon'ble Supreme Court has held that a plain reading of the aforesaid statutory provision, it is clear that though the provision of surcharge under the Finance Act has been in existence since 1995, *in so far as levy of surcharge on block assessment is concerned, it is introduced by insertion of the aforesaid provision of Section 113.*

14. *In this background, the question that arises, is whether the surcharge on block assessment has been levied for the first time by the aforesaid proviso coming into the effect from 01.06.2002, or it is only clarificatory in nature because of the reason that the provision of surcharge was made in finance Act in the year 1995 and the surcharge on block assessment as well. We have carefully examined the aforesaid judgment and propose to summarise the reasons resorted by the Hon'ble Supreme Court without quoting the same in the following paragraphs.*

15. *The Supreme Court held that a legislation, be it a statutory Act or Statutory Rule or a Statutory Notification, may physically consists of words printed on paper. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/ non-fiction or even in a judgment of a court of law. A legislation requires a technique and is guided by principles of legislation, whereas reading a legislation and interpreting it is another field which is known as interpretation of statute. One of the guiding principal is that the legislation has to be interpreted to mean that it does not have a retrospective operation unless otherwise provided in specific terms or by very strong and necessary implication.*

16. *The only other course to treat it as a curative and clarificatory piece of legislation, whereby the legislating body, in this case the Government of India* *as it is a piece of delegated legislation, had clearly intended it to be to have a retrospective application or that it was necessary make such amendments to clarify the existing legislation. The obvious basis of the principle against retrospectively is a principle of fairness, which must be the basis of every legal rule. Thus legislation which modified accrued rights or which impose obligation or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supply an obvious omission in a former legislation or to explain a former legislation.*

17. Though in some case and also in case of Vatika Township (Supra), it has been observed that where a benefit is conferred by legislation, the rule against a retrospective construction is different. However we are not concerned about any such doctrine retrospective conferring beneficial fruits of legislation rather than in this case we are confronted with the question of retrospectively of a new liability.

18. On the contrary, it is a provision which onerous to the assesse. Therefore, in a case like this, the normal rule of presumption against retrospective operation is applicable. The Rule against retrospective operation is a fundamental rule of Law that no statute shall be constructed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication.

19. Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by out weighing factors. The outgoing or rebutting factors may be found in the statute itself as mentioned by Justice G. P. Singh in his book on Interpretation of Statute, but it is not always the guiding factors. Sometimes the Act uses a word "declare" as well as the word "enacted". The word used in statute itself sometimes is a good indicator of the retrospectively provision.

20. In this particular case, on a reference to the Notification No. 31/2019- Central Tax; G.S.R.457(E).- it is seen that the Government of India in exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, made the rules therein to "further" amend the Central Goods & Services Tax Rules. We lay emphasis on the word "further". We also take note that grammatically and semantically, the word "further" does not imply the past. It usually means "in addition" or "to advance". Hence, we are unable to agree to the submissions made by the Representatives of the DGAP that this Amending provision is Clarificatory and Curative having retrospective effect. We are also unable to agree with the submissions that it is not an enabling provision requiring prospective operation.

21. As mentioned earlier sub rule (2) of Rule (1) specifically provided that they shall come into force on their date of publication, except as otherwise provided in these rules. A careful comparison of rule 17 with rule 5 of the said amending rules reveals that rule 5 aims at inserting a proviso to rule 46 of CGST Rules. It seeks to amend rule 46 by providing the following proviso namely;

> "Provided that the government may by notification, on the recommendation of the council and subject to such conditions and restriction as mentioned therein, specify that tax invoice cell have a Quick Response (QR) code".

22. And virtue of Notification No. 71/2019- Central Tax dated 13.12.2017, the Government appointed 01.04.2020 as the date from which such rule regarding provision of QR code would be effective. Thus it is clear that the

> Government of India in framing the delegated legislation was fully aware of the impact of the legislation and day on which it was to take effect. There is no provision for notifying a different date for coming into force of Rule 17, which seeks to amend rule 133 of the Fourth Amending Rules of the CGST Rules regarding Anti-Profiteering. However, it has clearly provided a different date i.e. 01.04.2022 for the implementation of the direction / requirement of providing a QR code.
>
> **23.** In that view of the matter, we are of the opinion that, the argument advanced by the Learned Counsel of the Respondent is partially acceptable and partially non-acceptable. That is to say that we agree to the argument advanced by the Learned Counsel for the Respondent that the provision for imposition 18 per cent interest on the profiteered amount shall come into force only to those cases which fall after the notification on the Amending (Fourth) Rule came into force, that is 28.06.2019 and not on 1st April, 2020, as argued by the Learned Counsel. However, in this case profiteering took place much prior to date of coming into force of such provision for levying interest and in view of the constitution Bench judgment of the Supreme Court in the case VatikaTownship Pvt. Ltd. (Supra)., we are of the opinion this is not the fit case where Respondent should be directed to pay any interest on the profiteered amount.

32. Thus, the argument advanced by the learned Counsel for the respondent that such a provision which is enabling provision and not a clarifactory or curative provision, should be applicable only prospectively is correct but the second limb of contention that it shall be applicable from 01.04.2020 is not acceptable. It has not been accepted by us in the case of DGAP vs. Procter and Gamble Group (SUPRA). It is applicable from 28.06.2019. Then, what should be the order of the Court, as it is seen that from 01.01.2019, the Respondent was collecting 18% and 12% GST, without reducing the price of tickets. It continued till the end of the period i.e. 30.06.2019. So, there are ample evidences and materials regarding the fact that he has profiteered, in spite of, reduction in the rates of GST. However, as far as this question of imposition of interest, which may be termed as a penal interest, is concerned, it came into force in 28.06.2019. It means that if he violated the provision of Section 171, which also attracts an interest rate at the rate of 18% on the amount profiteered for three days i.e. 28th, 29thand 30thJune, 2019. What should be our order is the relevant question now.

33. This brings to us to the last 2 questions regarding the date of coming into force of the provision as enshrined in Clause (c) of Sub Rule (3) of Rule 133 of CGST Rules. The facts are not disputed in this case and GST Act came into force 01.07.2017 and reduction of rate was with effect from 01.01.2019. The period under investigation by the DGAP is between 01.01.2019 to 30.06.2019. If it is taken as a time continuum, the effective date of the aforesaid clause enabling the Authority to impose 18% on the profiteered amount falls on 28.09.2019. So out this period, period, i.e., between 01.01.2019 to 30.06.2019, 3 days viz., 28.06.2019, 29.06.2019 and 30.06.2019 comes under the purview of the provision which empowers the Authority to impose 18% interest on the profiteered amount. So, the question remains to be determined by us is whether the interest should be charged on the profiteered amount which has allegedly been covered for entire 6 months i.e. 01.01.2019 to 30.06.2019 or it should only be confined to “the period”, on or after the date from which the amendment came into force. One argument is that, since it is a continuing and recurring cause of action, cause of action being violation of sub Section (1) of Section 171 of the CGST Act, by the Respondent, the profiteered amount for the entire period, should be subjected to 18% interest. The other argument is that this Authority do not have the jurisdiction impose interest on the profiteered amount for the period that falls prior to 18.06.2019. We are of the considered opinion that, the interest of 18% has to be applicable

for 3 days i.e. 28.06.2019, 29.06.2019 and 30.06.2019 and accordingly order should be passed. This question of law is accordingly answered.

34. Hence, we accept the report of the DGAP and hold that the Respondent has profiteered a sum of Rs. 16,50,166/- only by not passing on the benefit of reduction of the rates of GST on tickets sold for admittance in to the Theatre for exhibition of cinematography films to the consumers.

35. Therefore, it is directed that the Respondent shall deposit an amount of Rs. 16,50,166/- only along with the interest at the rate 18 % on Rs. 27,350.817 [Rs. 16,50,166/ = only divided by 181 (one eight one), multiplied by 3 (three)] rounded off to Rs. 27,350/- calculated from 01.01.2019, with annual rests. The amount shall be divided into parts two parts, half of it along with interest as calculated above is to be deposited in the Consumer Welfare Fund(s) created by Centre. The rest will be deposited in the Consumer Welfare Fund(s) created by State of Telangana within one month. If the Telangana Consumer welfare fund has not been created yet then, half of the portion to be deposited by the Respondent in the in the Consumer Welfare Fund (s) created by the centre instead.

36. A report in compliance of this order shall be submitted to this Tribunal by the concerned Commissioner within a period of 4 months from the date of receipt of this order.

37. A copy each of this order be supplied to the respondent and to the concerned Commissioner CGST / SGST for necessary action.

Judgment pronounced in open court.

(2026) 1 GSTAT E- Journal 209 (Principal Bench)

(GOODS AND SERVICES TAX APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI)

DG ANTI-PROFITEERING, DIRECTOR GENERAL OF ANTI-PROFITEERING, DGAP

V.

ALTON BUILDTECH PVT. LTD

NAPA/113/PB/2025, FEBUARY 17, 2026

CORAM:

HON'BLE SHRI A. VENU PRASAD (TECHNICAL MEMBER)

REPRESENTATION:

For the Appellant: Shri Sunil Kumar, Additional Assistant Director/Authorized Representative assisted by Shri Ravi Passi, Inspector.

For the Respondent: Shri Ashish Chaudhary, learned Advocate

HEADNOTE:

GST- Anti Profiteering- Section 171 of the CGST Act, 2017- Construction Services — Residential project "Aangan Phase-I" — Non-passing of ITC benefit to home buyers — Re-investigation pursuant to remand — Original profiteering determined at Rs. 6,24,48,008/- — Reconsideration of methodology in view of Delhi High Court judgment dated 29.01.2024 — Comparison of ITC to purchase value in pre-GST and post-GST periods — Pre-GST ITC ratio of 13.80% and post-GST ratio of 14.72% — Incremental ITC benefit of 0.92% — Profiteering for July 2017 to March 2019 determined at Rs. 44,18,355/- — GST @ applicable rate of Rs. 3,53,468/- — Total amount of Rs. 47,71,823/- required to be passed on to eligible home buyers — Respondent accepted DGAP findings and expressed willingness to pass on amount with applicable interest — Penalty under Section 171(3A) — Contravention relating to period 01.07.2017 to 31.03.2019, whereas penalty provision came into force w.e.f. 01.01.2020 — Penalty provision could not be applied retrospectively — HELD: Respondent had derived additional ITC benefit of 0.92% under GST regime and had failed to pass on the same to home buyers, in contravention of Section 171(1) — DGAP Report dated 26.03.2025 accepted — Respondent directed to pass on Rs. 47,71,823/- along with applicable interest to eligible home buyers within 30 days and submit compliance report — Penalty under Section 171(3A) not attracted — Order confirmed.

...In Favour of the DGAP

KEY ISSUES AND FINDINGS:

1. **Whether the Respondent had derived additional ITC benefit under the GST regime and was liable to pass on such benefit to the eligible home buyers in terms of Section 171(1) of the CGST Act, 2017?**

   Upon examination of the data submitted by the Respondent, the DGAP determined that the ratio of ITC to purchase value during the pre- GST period was 13.80%, whereas during the post-GST period it was 14.72%, reflecting an incremental benefit of 0.92% in the post-GST period. (Para 5)

   This Tribunal has carefully considered the DGAP Report dated 26.03.2025, the submissions made by the Respondent, the statements of the Applicants, and the material placed on record. It is evident that the Respondent derived additional ITC benefit of 0.92% during the post-GST period and failed to pass on the same to the homebuyers, thereby contravening the provisions of Section 171(1) of the CGST Act, 2017. (Para 10)

2. **Whether the profiteered amount of Rs. 44,18,355/- determined by the DGAP, along with applicable GST of Rs. 3,53,468/-, aggregating to Rs. 47,71,823/-, was correctly computed and required to be passed on to the eligible home buyers with applicable interest?**

   Based on the above differential, the DGAP computed the total profiteered amount for the period July 2017 to March 2019 at Rs. 44,18,355/-. After adding applicable GST of Rs. 3,53,468/-, the total profiteered amount was quantified at Rs. 47,71,823/- (Rupees Forty-Seven Lakh Seventy-One Thousand Eight Hundred Twenty-Three only). (Para 6)

   The Respondent is directed to pass on the profiteered amount of Rs. 47,71,823/- along with applicable interest in terms of Rule 133(3)(b) of the CGST Rules, 2017, to the eligible homebuyers in accordance with the buyer- wise computation set out in Annexure-13 of the DGAP Report, within a period of thirty (30) days from the date of this Order. (Para 13)

EDITORIAL NOTES:

Principles laid down:

1. Where a developer derives additional ITC benefit under the GST regime, such benefit is required to be passed on to the recipients by way of commensurate reduction in prices in terms of Section 171(1) of the CGST Act, 2017.
2. The additional ITC benefit is to be determined by comparing the ITC-to-purchase-value ratio in the pre-GST and post-GST periods, and the benefit cannot be determined by excluding ITC pertaining to input services.
3. Where the period of contravention precedes the coming into force of Section 171(3A), the penalty provision cannot be applied retrospectively. In the present case, the provision came into force on 01.01.2020, while the period of alleged contravention was 01.07.2017 to 31.03.2019.

Case laws referred to:

Reckitt Benckiser India Pvt. Ltd. v. Union of India, WP (C) 7743/2019

Relevant Sections:

Section 171(1) of CGST Act, 2017; Section 171(3A) of CGST Act, 2017; Rule 129(6) of CGST Rules, 2017; Rule 133(3)(b) of CGST Rules, 2017

JUDGMENT

1. The present proceedings arise out of the Investigation Report dated 26.03.2025 (hereinafter referred to as the "DGAP Report") submitted by the Director General of Anti-Profiteering (DGAP) under Section 171 of the Central Goods and Services Tax Act, 2017 (CGST Act), read with Rule 129 of the Central Goods and Services Tax Rules, 2017 (CGST Rules). The investigation was initiated pursuant to references received from the Standing Committee on Anti-Profiteering on applications filed by various homebuyers (hereinafter referred to as the "Applicants"), alleging that M/s Alton Buildtech Pvt. Ltd, the Respondent had failed to pass on the benefit of additional Input Tax Credit (ITC) by way of commensurate reduction in prices after implementation of GST w.e.f. 01.07.2017, in respect of the project "Aangan Phase-I", situated at Gurugram, Haryana.
2. Earlier, the DGAP had submitted an investigation report dated 14.06.2019 under Rule 129(6) of the CGST Rules. Based on the said report, the erstwhile National Anti-Profiteering Authority (NAA) vide Order No. 65/2020 dated 16.10.2020 determined the profiteered amount 6,24,48,008/- in respect of Project "Aangan Phase-I".
3. Subsequently, in Writ Petition No. 7743/2019 and connected matters, the Hon'ble High Court of Delhi, vide judgment dated 29.01.2024, held that the methodology adopted in real estate anti-profiteering matters required reconsideration. Vide Order dated 25.04.2024, the matter was remanded to the Competition Commission of India (CCI) for fresh adjudication and which in turn further remanded to the DGAP for re-investigation.
4. In compliance with the aforesaid directions, the DGAP conducted re-investigation and submitted the present Report dated 26.03.2025.
5. Upon examination of the data submitted by the Respondent, the DGAP determined that the ratio of ITC to purchase value during the pre- GST period was 13.80%, whereas during the post-GST period it was 14.72%, reflecting an incremental benefit of 0.92% in the post-GST period.
6. Based on the above differential, the DGAP computed the total profiteered amount for the period July 2017 to March 2019 at Rs. 44,18,355/-. After adding applicable GST of Rs. 3,53,468/-, the total profiteered amount was quantified at Rs. 47,71,823/- (Rupees Forty-Seven Lakh Seventy-One Thousand Eight Hundred Twenty-Three only).
7. Notice was issued to the Respondent to show cause as to why the DGAP Report should not be accepted. The Authorised Representative of the Respondent appeared and unequivocally accepted the findings of the DGAP and expressed willingness to pass on the profiteered amount along with applicable interest to the eligible homebuyers as per Annexure-13 of the DGAP Report.
8. During the course of hearing, it was also submitted that an amount of Rs. 2 Crore had earlier been deposited pursuant to orders of the Hon'ble High Court of Delhi dated 17.03.2021. This Tribunal has no objection if the amount is returned to concerned respondent by appearing before Hon'ble High Court of Delhi.
9. The Applicants present during final hearing dated 04.02.2026 stated that they had no objection to acceptance of the DGAP Report.
10. This Tribunal has carefully considered the DGAP Report dated 26.03.2025, the submissions made by the Respondent, the statements of the Applicants, and the material placed on record. It is evident that the Respondent derived additional ITC benefit of 0.92% during the post-GST period and failed to pass on the same to the homebuyers, thereby contravening the provisions of Section 171(1) of the CGST Act, 2017.
11. However, insofar as penalty under Section 171(3A) of the CGST Act is concerned, the said provision came into force w.e.f. 01.01.2020, whereas the period of contravention in the present case is from 01.07.2017 to 31.03.2019. Accordingly, the penalty provision cannot be applied retrospectively.

12. In view of the foregoing findings, the DGAP Report dated 26.03.2025 is hereby accepted.
13. The Respondent is directed to pass on the profiteered amount of Rs. 47,71,823/- along with applicable interest in terms of Rule 133(3)(b) of the CGST Rules, 2017, to the eligible homebuyers in accordance with the buyer- wise computation set out in Annexure-13 of the DGAP Report, within a period of thirty (30) days from the date of this Order.
14. The Respondent shall submit a compliance report before the DGAP and the jurisdictional GST Commissioner(s) within the aforesaid period, evidencing disbursement to all eligible recipients.
15. The proceedings stand disposed of accordingly.
16. A copy of this Order be supplied to the Respondent, the Applicants, the Director General of Anti-Profiteering, and the jurisdictional GST Commissioner(s) for necessary action.

Pronounced in open Court.

(2026) 1 GSTAT E- Journal 212 (Principal Bench)

(GOODS AND SERVICES TAX APPELLATE TRIBUNAL, PRINCIPAL BENCH)

DIRECTOR GENERAL OF ANTI PROFITEERING (DGAP)

V.

A.J. ENTERPRISES

NAPA/2/PB/2025, FEBRUARY 20, 2026

CORAM:

HON'BLE JUSTICE MAYANK KUMAR JAIN, MEMBER JUDICIAL

REPRESENTATION:

For the Appellant (DGAP): Shri Rahul Roa Gautam, Additional Assistant Director.
For the Respondent: Shri Nikhil Gupta, Advocate and Shri Rochit Abhishek, Advocate

HEADNOTE:

GST:- Anti-profiteering — Profiteering — Reduction in GST rate from 18% to 5% w.e.f. 15.11.2017 — Respondent increased base prices on the very date of rate reduction — Rebuttable presumption of profiteering arose — Respondent failed to produce cogent evidence to justify increase on account of incremental royalty, advertisement contribution, lease rent, and online aggregator commission (aggregating 12.69%) — Presumption remained unrebutted — Held, Respondent liable for profiteering under Section 171 of the CGST Act, 2017. HELD: Anti-profiteering — Limitation — Six-month period under Rule 133 of the CGST Rules, 2017 for passing final order — Whether mandatory or directory — Held, directory and not mandatory — No consequence of non-adherence prescribed — Beneficial legislation, liberal construction favouring consumer to be adopted — Proceedings not barred by limitation. Interest — Rule 133(3)(c) inserted w.e.f. 28.06.2019 — No interest leviable for period prior thereto. No penalty leviable retrospectively. Appeal disposed of accordingly. [Paras 41, 47-51, 54-58].

…**In Favour of the DGAP**

KEY ISSUE AND FINDINGS:

1. **Whether the proceedings are barred by limitation and, if so, from which date does the prescribed period of limitation commence?**

   "…*The provisions are aimed at protecting the interests of the consumers and ensuring that the commensurate benefit of rate reduction or input tax credit is ultimately passed to the consumer. The time limit of six months prescribed under Rule 133 of CGST Rules are directory in nature. Therefore, the present proceedings are not barred by limitation. [Para 41]*"

2. **Whether the Respondent's increase in base prices upon reduction of the GST rate amounted to profiteering under Section 171 of the CGST Act?**

"Admittedly, the Respondent increased the base price of 6" Aloo Patty and 6" Hara Bhara Kabab on 15.11.2017. Vide Notification No. 46/2017-Central Tax (Rate) dated 14.11.2017, applicable rate of GST on supply of restaurant service was reduced from 18% to 5% w.e.f. 15.11.2017..." [Para 43]

"...the Respondent has failed to substantiate the such price increases with cogent evidence. The Respondent also failed to justify the timing of increase in the base price with cogent evidence vis-a-vis increase in operation costs. In absence of such cogent evidence, the presumption goes against the Respondent and it indicate that prices were increased by them arbitrarily without passing on the benefit to the consumers by way of commensurate reduction in prices of the commodities." [Para 47]

3. **Whether the presumption under Section 171 of the CGST Act is overcome in the absence of cogent and unequivocal evidence justifying the increase in base price?**

"This Tribunal in DGAP v. Urban Essence (Subway Franchisee) [2025] 177 taxmann.com 376 (GSTAT - New Delhi) *relying upon the observation made by the Hon'ble High Court of Delhi in Reckitt Benckiser India Pvt. Ltd. (supra) held that cogent, clear and un-equivocal evidences or materials must be brought on record to rebut a presumption that every reduction in the rate of GST is required to be passed on to consumers by way of commensurate reduction in prices...*

> *"26....The inherent presumption that these must necessarily be a reduction in prices of the goods and services is a rebuttable presumption. It is clarified that if the supplier is to assert reasons for offsetting the reduction, it must establish the same on cogent basis and must not use it merely as a device to circumvent the statutory obligation of reducing the prices in a commensurate manner contemplated under Section 171 of the Act.*
>
> *27. ... In this case, the Respondent has not produced any documents or any evidence to rebut such a presumption, either before the investigating agency or before this Tribunal or the Erstwhile NAA. The Respondent did not produce any document to show that the price of the base price of the product had increased after 14.11.2017..."[Para 48].*

4. **Whether the Respondent's increase in base price on 15.11.2017, coinciding with the reduction in tax rate, amounted to profiteering under Section 171 of the CGST Act?**

"The Respondent's action of increasing the base price on the very same date on which the notification reducing rate of tax came into force indicates that Respondent has will fully increase the basic price of the aforesaid items to maintain the same MRP that existed till 14.11.2017. Resultantly, the benefit of reduced tax rate could not be passed on to consumer. Moreover, the Respondent has also failed to furnish any plausible explanation for modifying/increasing the base prices on 15.11.2017 itself when the notification came into effect. [Para 49]

In view of the foregoing, we are of the view that the Respondent increased the base price of 6" Hara Bhara Kabab and 6" Aloo Patty on 15.11.2017, on the date when the notification for reduction in rate of tax came into force. As a result, the Respondent had indulged in profiteering by not passing on the benefit of reduction of rate of tax to the consumers by way of commensurate reduction in prices in terms of Section 171 of the CGST Act. [Para 51]"

5. **Whether the provision for levy of interest on the profiteered amount under Section 171 can operate retrospectively prior to 28.06.2019**

"The interest clause is inserted vide Notification No. 31/2019-Central Tax, dated 28.06.2019 w.e.f. 28.06.2019. Accordingly, the imposition of interest on the Respondent, can only be made with effect from 28.06.2019, and not for any period prior thereto, as also held by this Tribunal in DGAP v. Proctor & Gamble Group (supra). The Tribunal observed as under:

"We agree to the argument advanced by the Learned Counsel for the Respondent that the provision of imposition of 18% interest on the profiteered amount shall come into force only to those cases which call after the notification on the amending (Fourth) Rule came into force, i.e. 28.06.2019 and not on 01.04.2020 'as argued by the Learned Counsel. However, in this case, profiteering took place much prior to date of coming into force of such provisions for levying interest in view of the Constitution Bench Judgment of the Supreme Court in the case Vatika Township Pvt. Ltd. (supra), we are of the opinion that this is not the fit case where Respondent should be directed to pay any interest on the profiteered amount. (C.I.T.(C-I) New Delhi v. Vatika Township Pvt. Ltd. (2015) SCC 1."

Since the provisions of Section 171(3A) of the CGST Act for imposition of penalty have come into force w.e.f. 01.01.2020 whereas the period of investigation 01.07.2017 to 30.09.2017, hence the penalty prescribed under the above Section cannot be imposed on Respondent retrospectively." [Para 54, 56]

EDITORIAL NOTES:

Principles Laid Down:

1. The six months period prescribed under Rule 133 for passing an anti-profiteering order is directory and not mandatory; proceedings do not abate merely on expiry of such period.
2. Increase in base price: Where GST rate on restaurant services was reduced from 18% to 5% w.e.f. 15.11.2017, increase in base prices on the very date of reduction, without cogent evidence establishing corresponding increase in legitimate costs, constituted failure to pass on the tax benefit.
3. Burden to rebut profiteering: A supplier increasing prices contemporaneously with tax-rate reduction must rebut the presumption of profiteering through clear, cogent and unequivocal evidence; mere assertions regarding increased operational costs, royalty, lease, commission, etc., without substantiation, are insufficient.
4. Finding of profiteering: Increase in prices precisely on the date of GST reduction, coupled with absence of a plausible and substantiated justification, established that the Respondent had neutralised the benefit of tax reduction and had thereby profiteered in contravention of Section 171.
5. Interest and penalty – Prospective operation: Interest under Rule 133(3)(c) was leviable only from 28.06.2019, when the provision authorising such levy came into force; penalty under Section 171(3A), effective from 01.01.2020, could not be imposed retrospectively for the earlier period.

Case Law Referred to:

Kumar Gandharv v. KRBL Ltd. [2018] 93 taxmann.com 149/67 GST 574/13 GSTL 412 (NAA)- Referred (para 27)

DGAP v. Proctor & Gamble Group [2025] 178 taxmann.com 564 (GSTAT - New Delhi) - Followed (para 28)

P.T. Rajan v. T.P.M. Sahir (2003) 8 SCC 498- Followed (para 30)

Nestle India Ltd. v. Union of India [2020] 114 taxmann.com 488/80 GST 369 (Delhi)- Followed (para 39)

Reckitt Benckiser India (P.) Ltd. v. *Union of India* [2024] 158 taxmann.com 675/102 GST 495/82 GSTL 344 (Delhi) – Followed (para 40)

DGAP v. *Urban Essence (Subway Franchisee)* [2025] 177 taxmann.com 376 (GSTAT - NEW DELHI)- Followed (para 48).

Notifications Referred to:
- Notification No. 46/2017-Central Tax (Rate) dated 14.11.2017.
- Notification No. 31/2019-Central Tax, dated 28.06.2019.
- Notification No. 18/2024-Central Tax dated 30.09.2024.

Relevant Provisions:
Section 171 of the CGST Act, 2017; Rule 129(6) of the CGST Rules, 2017; Rule 133 of the CGST Rules, 2017.

JUDGMENT

Order Per: JUSTICE MAYANK KUMAR JAIN, MEMBER (JUDICIAL)

1. The present proceedings arise out of an investigation report dated 14.10.2022, issued by the Director General of Anti-Profiteering (hereinafter referred to as 'the DGAP') against M/s A.J. Enterprises, Sun Orbit, Flat No. B-201, Suncity Road, Vadgaon, Maharashtra (hereinafter referred to as 'the Respondent') under Section 171 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'CGST Act') read with Rule 129(6) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'CGST Rules').
2. In the said report, the DGAP has determined that the Respondent has profiteered an amount of Rs. 13,32,322/- during the period 15.11.2017 to 30.09.2019 by not passing on the benefit commensurate to reduction of GST rate from 18% to 5% without input tax credit on supply of restaurant services with effect from 15.11.2017.
3. The Respondent is a registered supplier of restaurant services and has been operating a 'Subway' franchise outlet at Amanora Mall, Pune, Maharashtra, since the year 2016. The Respondent conducted its business under a standard franchise agreement entered into with M/s Subway Systems India Pvt. Ltd. (hereinafter referred to as "Subway India").
4. An application was filed before the Standing Committee on Anti-Profiteering alleging that the Respondent had indulged in profiteering in contravention of Section 171 of the CGST Act, despite reduction of the GST rate on restaurant services from 18% to 5% (without input tax credit) with effect from 15.11.2017.
5. The said application was examined by the Maharashtra State Level Screening Committee, which observed that the Respondent had not passed on the commensurate benefit of reduction in tax rate to the recipients. Consequently, the matter was forwarded to the Standing Committee on Anti-Profiteering for further action.
6. Upon being *prima facie* satisfied that the Respondent had not passed on the benefit of reduction in GST rate as mandated under Section 171 of the CGST Act, the Standing Committee referred the matter to the DGAP under Rule 129 (1) of the CGST Rules for detailed investigation.
7. The DGAP issued a notice to the Respondent calling upon it to show cause as to whether the benefit of reduction in GST rate from 18% to 5% w.e.f. 15.11.2017 on supply of restaurant services had been passed on to the recipients by way of commensurate reduction in prices, and further directed the Respondent to *suo moto* compute the quantum of such benefit, if any.
8. The Respondent submitted its detailed reply along with supporting documents and annexures, denying the allegations of profiteering.

9. Upon completion of investigation, the DGAP submitted his report dated 20.08.2020, wherein it was concluded that the Respondent had contravened the provisions of Section 171 of the CGST Act and had profiteered an amount of Rs. 15,66,821/-.

10. The said report was examined by the National Anti-Profiteering Authority (hereinafter referred to as 'NAPA'). *Vide* its interim order dated 13.04.2022, NAPA remanded the matter back to the DGAP under Rule 133(4) of the CGST Rules, *inter alia,* observing certain discrepancies such as per unit sales price of products take for computation of profiteered amount and inclusion of period beyond the scope of notice.

11. Pursuant to the aforesaid directions, the DGAP conducted further investigation and submitted a fresh report dated 14.10.2022, wherein the profiteered amount was recomputed as Rs. 13,32,322/- for the period 15.11.2017 to 30.09.2019.

12. The DGAP concluded that the Respondent had increased the base prices of its products and failed to pass on the benefit of reduction in GST rate from 18% to 5% w.e.f. 15.11.2017, as notified *vide* Notification No. 46/2017-Central Tax (Rate) dated 14.11.2017.

13. The Principal Bench of the GST Appellate Tribunal (GSTAT), constituted under sub-section (3) of section 109 of CGST Act, 2017, has been empowered to examine Anti-Profiteering cases w.e.f. 01.10.2024, *vide* Notification No. 18/2024-Central Tax dated 30.09.2024.

14. Notice was issued to the Respondent calling upon it to file its written submission in response to the investigation report dated 14.10.2022 submitted by the DGAP.

15. Pursuant thereto, the Respondent filed its written submissions *vide* letter dated 16.10.2025 before this Tribunal, contesting the findings recorded by the DGAP.

16. Shri Nikhil Gupta learned counsel, assisted by Shri Rochit Abhishek, appeared on behalf of the Respondent and advanced submissions.

17. It is submitted that, owing to operational and commercial challenges, the Respondent has since closed its outlet at Amanora Mall, Pune. It is further submitted that the Respondent operated the said outlet under the following commercial terms with Subway India and various online food aggregators:

(*a*) Royalty @ 8% of the base price of sales was payable to Subway India,

(*b*) Advertisement Contribution @ 4.5% of the base price was payable to Subway India,

(*c*) Lease Rent @ 9%-10% of the monthly revenue (on base price), subject to a minimum guarantee amount payable to Subway India,

(*d*) Common Area Maintenance (CAM) charges of Rs. 41,914/- per month,

(*e*) Combined commission averaging 22.7% per transaction payable to online aggregators (such as Swiggy, Zomato, Uber Eats and Food Panda), comprising platform fees, delivery charges and other allied charges.

18. It is submitted that the Respondent periodically revised its menu prices, in response to input cost inflation, market dynamics, and consistent with operational guidance from Subway India. The trend of price revision between July 2017 and September 2019 is tabulated hereunder:

Date	**6" Aloo Patty**			**6" Hara Bhara Kabab**			**SOTD**		
	CP	**Tax**	**BP**	**CP**	**Tax**	**BP**	**CP**	**Tax**	**BP**
01.07.2017	159.3	24.3	135.0	141.6	21.6	120.0	123.9	18.9	105.0

18.08.2017	159.3	24.3	135.0	141.6	21.6	120.0	130.0	19.8	110.00
15.11.2017	160	7.6	152.4	140.0	6.7	133.3	125.0	5.94	119.05
01.08.2018	160	7.6	152.4	140.0	6.7	133.3	130.0	6.18	123.80
01.03.2019	170	8.1	161.9	150.0	7.1	142.9	135.0	6.40	128.57

19. Learned counsel for the Respondent further submitted that there was a subsequent increase in variable cost, including royalty, rental charges and delivery commission. It is also submitted that, for billing convenience, menu prices were occasionally rounded off to the nearest Rs. 5/- or Rs. 10/-, and that such rounding off was purely operational in nature and not with any intent to profiteer.

20. While contesting that the present proceedings are barred by limitation, learned counsel asserted that there is no allegation of fraud or mis-representation against the Respondent. Even assuming such allegations existed, a period of more than five years has elapsed, which is the limitation prescribed under Section 74 of the CGST Act. Even if there is no limitation prescribed for any provision, it cannot be construed that there is no limitation period at all.

21. Learned counsel for the Respondent submitted that the DGAP has arbitrarily selected the period of investigation from 15.11.2017 to 30.09.2019 for computation of the alleged profiteering amount, without considering the legitimate price revisions due to rising operational costs during the said period.

22. Learned Counsel further contented that the DGAP itself calculated the loss of ITC at 8.21%. Based on this, the maximum gross profiteering, without factoring in other increased operational costs cannot exceed 4.38%. The amount of profiteering computed by the DGAP *i.e.* Rs. 13,32,322/- on total turnover of Rs. 1,80,17,094/- is about 7.40%, exceeding the threshold of 4.38% and hence, such calculations are incorrect.

23. It is submitted that the Respondent had increased the base price of its products by approximately 13% on average, whereas the loss of ITC alone ranged between 10% to 11%, on direct incremental costs such as royalty, commission, advertisement expenses, rentals, and periodical capital expenditure. There was a significant increase in other cost component effective from 15.11.2017 including the above-mentioned expenses.

24. Learned counsel further submitted that the minimum cost incurred by the Respondent had increased by approximately 12.69% as elucidated in the tabulated statement below:

Description	**Extra Cost**	**ITC Loss**	**Total**
ITC Loss as per DGAP (without prejudice)		8.21%	8.21%
Incremental Royalty	1.04%	0.12%	1.16%
Incremental Advertisement Contribution	0.59%	0.11%	0.69%
Incremental Lease Rent	1.17%	0.21%	1.38%
Incremental Commission for online Partners	1.05%	0.19%	1.24%
Total	3.85%	8.84%	12.69%

25. On the basis of the aforesaid table, it is submitted that against reduction in GST rate of 13%, the Respondent's cost structure correspondingly increased with effect from 15.11.2017. Therefore, the alleged profiteering computation is incorrect and arbitrary.
26. To buttress his arguments the learned counsel relied upon *Kumar Gandharv* v. *KRBL Ltd.* 2018 (13) G.S.T.L. 412 (NAA) wherein it is held that increase in price on account of increased cost is legitimate and does not amount to profiteering.
27. Reliance is also placed on *DGAP* v. *Proctor & Gamble Group* (2025) 35 Centax 77 (Tri. - GST - Delhi) to contend that interest cannot be levied for any period prior to the introduction of the statutory provision enabling imposition of interest under Rule 133(3)(*c*) of the CGST Rules. It is further argued that provision for imposition of penalty u/s 171(3A) of the CGST Act was introduced w.e.f. 01.01.2020, and therefore, no penalty can be imposed on the Respondent.
28. The DGAP submitted its clarification against the written submissions made by the Respondent.
29. Shri Rahul Roa Gautam, Additional Assistant Director and Authorised Representative appearing on behalf of the DGAP, submitted that the proceedings are not barred by limitation as the time limit prescribed for furnishing of report by the DGAP is directory and not mandatory in nature. He relied upon the decision of the Hon'ble Supreme Court in *P.T. Rajan* v. *T.P.M. Sahir* (2003) 8 SCC 498.
30. He also submitted that the methodology adopted by the DGAP is correct and strictly in accordance with provisions of Section 171 of the CGST Act, 2017. The average base price in the pre-rate-reduction period has been calculated separately for each product and for each channel of sale, based on the data supplied by the Respondent. The base price is exclusive of taxes. Normally, this average base price is calculated over a period of one month prior to ratereduction. The base price for a particular period in each channel is compared with the transaction wise taxable value after rate-reduction period for the same product sold through same channel. In post-rate-reduction period, the transaction wise value has to be considered for calculating profiteering for each transaction and for each customer.
31. With regard to the Respondent's contention that various expenses were directly linked to the base price and formed a significant part of the operating cost structure, it is submitted that the Respondent failed to furnish any documentary evidence in support of its claim of erroneous computation of ITC loss. The methodology adopted by the DGAP to arrive at loss of ITC @ 8.21% is correct. The computation of profiteered amount Rs. 13,32,322/- was carried out basis the sales data furnished by the Respondent for the period from 15.11.2017 to 30.09.2019.
32. Perused the record.
33. Section 171 of the CGST Act reads thus:
"*Section 171 Anti-profiteering measure. –*
(1). Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.
(2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.
Provided that the Government may by notification, on the recommendations of the Council, specify the date from which the said Authority shall not accept any request for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.
Explanation 1. —For the purposes of this sub-section, "request for examination" shall mean the written application filed by an applicant requesting for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually

resulted in a commensurate reduction in the price of the goods or services or both supplied by him.
Explanation 2. —For the purposes of this section, the expression
"Authority" shall include the "Appellate Tribunal
(3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.
(3A) Where the Authority referred to in sub-section (2), after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to ten per cent. of the amount so profiteered:
Provided that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority.
Explanation. -For the purposes of this section, the expression "profiteered" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both"

34. Foremost, the question of limitation is dealt herewith.

35. Shri Nikhil Gupta, Learned Counsel for the Respondent vehemently argued that the Authority was required to pass its final order within a period of six months from the date of receipt of DGAP's report and that the said timeline is mandatory in nature. It was contended that, in cases where fraud or misrepresentation is involved, the maximum limitation period is five years. In the present case, even though no fraud or mis-representation is alleged, the statutory period has already been passed. Therefore, the proceedings are barred by the limitation.

36. Per contra, the learned Representative of the DGAP submitted that the time limit as provided for the Rule 133 of the CGST Rules is discretionary in nature.

37. The Hon'ble Apex Court in *P. T Rajan (supra)*, held that even if the statute specifies a timeline for publication of the electoral roll, it would be directory. The Hon'ble Court observed:

"48. Furthermore, even if the statue specifies a time for publication of the electoral roll, the same by itself could not have been held to be mandatory. Such a provision would be directory in nature. It is well settled principal of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefore, the same would-be directory and not mandatory"
(Emphasis added)

38. The Division Bench of Hon'ble High Court of Delhi in *Nestle India Ltd.* v. *Union of India* WP (C) 969/2020 = (2023) 5 Centax 327 (Del.), held that; -

"We also observe that *prima facie,* it appears to us that the limitation of six months provided in Rule 133 of CGST Rules, within which the authority should make its order from the date of receipt of the report of the Directorate General of Anti-Profiteering, appears to be directory in as much as no consequence of non-adherence of the said period of six months is prescribed either in the CGST Act or the Rules framed thereunder".

39. Relying upon the decision of the Hon'ble Apex Court in *P. T. Rajan (*supra) the Hon'ble High Court of Delhi in *Reckitt Benckiser India (P.) Ltd.* v. *Union of India* 2024 (82) G.S.T.L. 344 (Del.) = (2024) 14 Centax 374 (Del.) observed that the antiprofiteering provisions are in the nature of a beneficial legislation and it must receive liberal construction that favours the consumer. That the time limit provided under Rule 133 is directory and not mandatory in nature. Relevant extract of the judgement is as under:

"158. In some cases, the Petitioners have pointed out that the timelines as provided in the Rules, 2017 have not been followed. They further contended that as a result, the proceedings are vitiated. However, it is important to note that the rules, 2017 do not provide any consequence in case the time limits provided there under lapse. As held earlier, the antiprofiteering provisions in the Act 2017 and the Rules, 2017 are in the nature of a beneficial legislation as they promote consumer welfare. The Courts have consistently held that beneficial legislation must receive liberal construction that favours the consumer and

promotes the intend and objective of the Act. That being the scenario, it cannot be said that proceedings as a whole abate on lapse of the time limit of furnishing of report by DGAP."

40. Having considered the rival contentions and in view of the foregoing judicial pronouncements of the Hon'ble Courts, we are of the considered view that the anti-profiteering provisions are in the nature of beneficial legislation. The provisions are aimed at protecting the interests of the consumers and ensuring that the commensurate benefit of rate reduction or input tax credit is ultimately passed to the consumer. The time limit of six months prescribed under Rule 133 of CGST Rules are directory in nature. Therefore, the present proceedings are not barred by limitation.

41. The dispute in the present matter is whether the Respondent indulged in profiteering by increasing the base prices of its products despite reduction in the GST rate from 18% to 5% with effect from 15.11.2017, thereby failing to pass on the benefit of such rate reduction to the recipients by way of commensurate reduction in prices, as required under Section 171 of the CGST Act.

42. Admittedly, the Respondent increased the base price of 6'' Aloo Patty and 6'' Hara Bhara Kabab on 15.11.2017. *Vide* Notification No. 46/2017-Central Tax (Rate) dated 14.11.2017, applicable rate of GST on supply of restaurant service was reduced from 18% to 5% w.e.f. 15.11.2017. Suffice to say the increase in base prices of the aforesaid products coincided with the very date on which reduced rate of tax of 5% became effective.

43. Shri Nikhil Gupta, learned counsel for the Respondent contended that the minimum increase in cost was approximately 12.69%, including loss of input tax credit arising out of the reduction in the rate of tax. It was further argued that, since the DGAP itself computed the loss of ITC at 8.21%, the Respondent was entitled to correspondingly increase the base prices of 6'' Aloo Patty and 6'' Hara Bhara Kabab to the extent of 8.21%. He vehemently argued that on account of incremental royalty, increased advertisement contribution, enhanced lease rent, and higher commission payable to online aggregators, the Respondent was constrained to increase the base prices of 6'' Aloo Patty and 6'' Hara Bhara Kabab to the extent of 12.69%. In support of this contention, reliance was placed on the cost-wise tabular break-up forming part of the Respondent's written submissions, as extracted in paragraph 20 above.

44. Learned counsel for the Respondent submitted that, consequent upon the reduction in the rate of GST from 18% to 5% (without ITC), the effective difference was 13%. It was contended that, after accounting for the loss of ITC and incremental operational expenses, the Respondent increased the base prices of 6'' Aloo Patty and 6'' Hara Bhara Kabab by 12.69%. It was further submitted that, since the variance between the reduction in tax rate and the increase in base prices was marginal, the computation of the profiteered amount by the DGAP is incorrect.

45. Perusal of the tabulation furnished by the Respondent in its written submissions dated 16.10.2025 (extracted at paragraph 18 above), comparing the base prices of 6'' Hara Bhara Kabab and 6'' Aloo Patty during the period July 2017 to September 2019, reveals that the base price of 6'' Hara Bhara Kabab was Rs. 120/-as on 01.07.2017 and remained unchanged up to 14.11.2017. Similarly, the base price of 6'' Aloo Patty was Rs. 135/-, which also remained constant till 14.11.2017. However, with effect from 15.11.2017, *i.e.* the date on which the notification reducing the rate of GST came into force, the Respondent increased the base price of 6'' Hara Bhara Kabab from Rs. 120/- to Rs. 133.30, and that of 6'' Aloo Patty from Rs. 135/- to Rs. 152.40.

46. If the argument advanced by Learned Counsel for the Respondent is accepted that the increase in base prices of 6'' Hara Bhara Kabab and 6'' Aloo Patty was on account of incremental royalty, advertisement contribution, lease rent, and commission payable to online aggregators, the Respondent has failed to substantiate the such price increases with cogent evidence. The Respondent also failed to justify the timing of increase in the base price with cogent evidence vis-a-vis increase in operation costs. In absence of such cogent evidence, the presumption goes against the Respondent and it indicate that prices were increased by them arbitrarily without passing on the benefit to the consumers by way of commensurate reduction in prices of the commodities.

47. This Tribunal in *DGAP* v. *Urban Essence (Subway Franchisee)* (2025) 34 Centax 72 (Tri. - GST - Delhi), relying upon the observation made by the Hon'ble High Court of Delhi in *Reckitt Benckiser India Pvt. Ltd.* (*supra*) held that cogent, clear and un-equivocal evidences or materials must be brought on record to rebut a presumption that every reduction in the rate of GST is required to be passed on to consumers by way of commensurate reduction in prices. The Tribunal observed as under:

"26. In Paragraph 119, the High Court of Delhi express that in agreement with the submission of learned Amicus Curiae that if there is any variation on account of other factors, such as any costs necessitating the setting off of such reduction of price, the same needs to be justified by the supplier. The inherent presumption that these must necessarily be a reduction in prices of the goods and services is a rebuttable presumption. It is clarified that if the supplier is to assert reasons for offsetting the reduction, it must establish the same on cogent basis and must not use it merely as a device to circumvent the statutory obligation of reducing the prices in a commensurate manner contemplated under Section 171 of the Act.

27. Thus, it is clear as per the provision 171 if there is a reduction in the rate of tax as it is the case here it must be passed on end user or consumer by commensurate reduction in price. However, in cases where there has been any increase in the base price of the product or any other market forces have pushed up the price of the base product then that has to be considered. There is a presumption, though it is a rebuttable one, that once there is a reduction in rate of GST then it must pass on to the consumers but such presumption can be rebutted by cogent, clear and un-equivocal evidences or materials. In this case, the Respondent has not produced any documents or any evidence to rebut such a presumption, either before the investigating agency or before this Tribunal or the Erstwhile NAA. The Respondent did not produce any document to show that the price of the base price of the product had increased after 14.11.2017. So, there is no rebuttal of the presumption that arises in favour of the DGAP's Report."

(emphasis supplied)

48. The Respondent's action of increasing the base price on the very same date on which the notification reducing rate of tax came into force indicates that Respondent has will fully increase the basic price of the aforesaid items to maintain the same MRP that existed till 14.11.2017. Resultantly, the benefit of reduced tax rate could not be passed on to consumer. Moreover, the Respondent has also failed to furnish any plausible explanation for modifying/increasing the base prices on 15.11.2017 itself when the notification came into effect.

49. As regards the contention advanced by Shri Nikhil Gupta, learned counsel for the Respondent, relating to the alleged inconsistency in the investigation period from 15.11.2017 to 30.09.2020, adopted by the DGAP, it is observed that the DGAP initially submitted its report on 20.08.2020. The matter was examined by NAPA which *vide* its interim order dated 13.04.2022, directed the DGAP to re-investigate the matter on two specific issues identified therein. One of the issues, as noted hereinbefore, pertained to the period of investigation, and the DGAP was directed to compute the profiteered amount for the period from 15.11.2017 to 30.09.2019, after consideration of the written submissions filed by the Respondent. Therefore, at this stage the Respondent cannot raise this dispute again about the period of investigation.

50. In view of the foregoing, we are of the view that the Respondent increased the base price of 6'' Hara Bhara Kabab and 6" Aloo Patty on 15.11.2017, on the date when the notification for reduction in rate of tax came into force. As a result, the Respondent had indulged in profiteering by not passing on the benefit of reduction of rate of tax to the consumers by way of commensurate reduction in prices in terms of Section 171 of the CGST Act.

51. Learned Counsel for the Respondent agitated that interest cannot be levied for any period prior to the introduction of the statutory provision enabling imposition of interest under Rule 133(3)(*c*) of the CGST Rules. It was therefore submitted that the Respondent is not liable to pay interest on the profiteered amount computed by the DGAP.

52. Rule 133(3)(*c*) of the CGST Rules, 2017 is reproduced here: -
"(*c*) the deposit of an amount equivalent to 50 % of the amount determined under the above clause (along with the interest at the rate of 18 percent from the date of collection of the higher amount till the date of such amount) in the fund constituted u/s 57 of the Goods and Services Tax Act, 2017 of the concerned State, where the eligible person does not claim return of the amount or is not identifiable"

53. The interest clause is inserted *vide* Notification No. 31/2019-Central Tax, dated 28.06.2019 w.e.f. 28.06.2019. Accordingly, the imposition of interest on the Respondent, can only be made with effect from 28.06.2019, and not for any period prior thereto, as also held by this Tribunal in DGAP v. Proctor & Gamble Group (*supra*). The Tribunal observed as under:
"We agree to the argument advanced by the Learned Counsel for the Respondent that the provision of imposition of 18% interest on the profiteered amount shall come into force only to those cases which call after the notification on the amending (Fourth) Rule came into force, *i.e.* 28.06.2019 and not on 01.04.2020 'as argued by the Learned Counsel. However, in this case, profiteering took place much prior to date of coming into force of such provisions for levying interest in view of the Constitution Bench Judgment of the Supreme Court in the case Vatika Township Pvt. Ltd. (*supra*), we are of the opinion that this is not the fit case where Respondent should be directed to pay any interest on the profiteered amount. (C.I.T.(C-I) New Delhi v. Vatika Township Pvt. Ltd. (2015) SCC 1."

54. In the instant case, since the period of violation is 15.11.2017 to 30.09.2019, the Respondent shall be liable to pay interest under Rule 133(3)(*c*) of the CGST Rules from 28.06.2019 till the date the profiteered amount as calculated by the DGAP is deposited.

55. Since the provisions of Section 171(3A) of the CGST Act for imposition of penalty have come into force w.e.f. 01.01.2020 whereas the period of investigation 01.07.2017 to 30.09.2019, hence the penalty prescribed under the above Section cannot be imposed on Respondent retrospectively.

56. Accordingly, the report of the DGAP dated 14.10.2022 is accepted.

57. The Respondent is directed to deposit the profiteered amount along with the interest @18% from 28.06.2019 to 30.09.2019. 50% of the profiteered amount along with the interest shall be deposited in the Central Consumer Welfare fund and remaining 50% amount along with the interest shall be deposited in Maharashtra Consumer Welfare fund.

58. The copy of the Judgement be sent to the Jurisdictional Commissioner CGST/SGST for information and necessary action there to.

59. The Judgement is pronounced in open court today.

(2026) 1 GSTAT E- Journal 222 (Principal Bench)
(GOODS AND SERVICES TAX APPELLATE TRIBUNAL, PRINCIPAL BENCH)
DG ANTI-PROFITEERING, DIRECTOR GENERAL OF ANTI-PROFITEERING, DGAP
V.
SOBHA LIMITED
NAPA/98/PB/2025, APRIL 02, 2026

CORAM:

HON'BLE JUSTICE MAYANK KUMAR JAIN, MEMBER (JUDICIAL)

REPRESENTATION:

For the Appellant: Shri Rahul Rao Gautam, Additional Assistant Director/Authorized Representative assisted by Shri Anurag Gupta, Inspector and Shri G.N. Jha, Assistant Commissioner, Authorised Representative.

For the Respondent: Shri Tarun Jain, learned Advocate.

HEADNOTE:

GST — Anti-Profiteering — Section 171 of the CGST Act, 2017 — Construction services — Allegation that benefit of input tax credit was not passed on to home buyers in respect of a villa in the Respondent's project — DGAP investigation found that the ratio of credit availed to purchase value declined from 12.26% in the pre-GST period to 11.02% in the post-GST period, a difference of -1.24%, indicating that no incremental ITC benefit accrued to the Respondent — Whether profiteering was established — Whether a unit booked, constructed and paid for entirely during the post-GST period could be tested under the methodology in paragraph 128(d) of Reckitt Benckiser India Pvt. Ltd. v. Union of India — HELD: The booking, allotment, agreement, construction and payments all occurred in the post-GST period; the price had been fixed after factoring in the ITC available in the GST regime; the case was covered by paragraph 128(d) of Reckitt Benckiser — no ITC benefit was available for passing on in the circumstances — the DGAP's finding that there was no incremental benefit and hence no profiteering was upheld — DGAP report dated 21.08.2025 accepted — preliminary objections accepted and complaint objections rejected.

...In Favour of the DGAP

KEY ISSUES AND FINDINGS:

1. ***Whether the Complainants have locus standi to challenge the DGAP report where the entire activity was undertaken in the post-GST regime?***
   "In the present case, it is an admitted position that the booking of the unit, its allotment, execution of the agreement, the entire construction activities, as well as the receipt of payments made by the Complainants, all transpired in the post-GST era. As apparent from the material available on the record, these facts are not controverted by the Complainants that they had submitted an application dated 17.06.2019 for allotment of the Villa. Thereafter, the Complainants entered into the BBA with the Respondent on 08.07.2019, thereby establishing the contractual relationship between them. The entire construction activity has been undertaken by the Respondent only after the execution of agreement. The price of the unit was determined after factoring the benefit of ITC, which became available to the Respondent in the post-GST regime and was not admissible under the pre-GST regime, and on the basis of prevailing rates applicable during the GST regime. The Complainants, having accepted the price so fixed, proceeded to execute the BBA on 08.07.2019, without objection." [Para 27]
   "Based upon the aforesaid uncontroverted facts, we are of the view that the case of the Respondent is fully covered by the findings given by the Hon'ble High Court of Delhi in paragraph 128(d) of judgment passed in Reckitt Benckiser (Supra). Thus, the Complainants have no locus standi and legal rights to contest the DGAP report." [Para 28]

2. ***Whether the benefit of ITC is required to be passed on where both construction and supply take place entirely in the post-GST period?***
   "…It is observed that section 171 of the CGST Act, 2017 applies only in cases involving reduction in tax rate or increase in ITC, particularly in projects spanning pre-GST and post-GST periods. Since the impugned project commenced wholly in the post-GST regime there is no comparative ITC benefit arising for passing on. Reliance placed on Paragraph 128(d) of the Judgment dated 29.01.2024 of the Hon'ble Delhi High Court wherein it had been held that no benefit of ITC is required to be passed on where both construction and supply take place entirely post-GST period.'" [Para 29]

EDITORIAL NOTES:
Principles Laid Down:

1. Where booking, allotment, agreement, construction and payment for a property all occur in the post-GST period, the methodology contemplated by paragraph 128(d) of Reckitt Benckiser may apply even if the property was not fully constructed on the date of agreement. (Para 23–25)

2. For paragraph 128(d), the material consideration is that the entire spectrum of activities from inception to completion took place during the post-GST period; a construction-linked payment plan does not by itself exclude its application. (Para 24–25)
3. Where the price of a unit was fixed after factoring in the ITC available to the builder in the GST regime, and the entire transaction occurred in the post-GST period, no separate ITC benefit is required to be passed on under the circumstances considered by the Tribunal. (Para 27–30)
4. A decline in the ratio of credit availed to purchase value from the pre-GST period to the post-GST period indicates absence of incremental ITC benefit; consequently, the question of passing on such benefit does not arise. (Para 31)
5. The DGAP report was accepted where its computation demonstrated a negative difference of 1.24% and therefore no incremental benefit accrued to the Respondent. (Para 31)

Case Law Referred to:
Reckitt Benckiser India Pvt. Ltd. v. Union of India, (2024) 14 Centax 374 (Delhi) (Para 20–21, 23, 28, 30)

DGAP v. Pyramid Infratech Pvt. Ltd., (2026) 39 Centax 113 (Tri. GST-Delhi) (Para 20, 29)

Circulars And Notifications Referred To:
- Notification No. 18/2024-Central Tax dated 30.09.2024 (Para 9)

Relevant Provisions:
Section 171 of the CGST Act, 2017; Rule 129(1) and Rule 129(6) of the CGST Rules, 2017; Section 109(3) of the CGST Act, 2017; Section 151 of the Code of Civil Procedure, 1908. The proceedings also refer to the statutory framework governing Anti-Profiteering proceedings. (Para 3–9, 10, 31)

JUDGMENT

Per: Justice Mayank Kumar Jain, (Retd.) Judicial Member-

1. Heard Shri Rahul Rao Gautam, Additional Assistant Director/Authorized Representative assisted by Shri Anurag Gupta, Inspector, on behalf of the DGAP, Col. Shri Ajesh Kumar, Complainants in Person and Shri Onkar Roy, Advocate on his behalf and Shri Tarun Jain, learned Advocate, on behalf of the Respondent.

2. Perused the record.

Background of the matter

3. The present proceedings arise out of an application filed by Shri Ajesh Kumar S/o Prahlad Bhagat and Mrs. Savita Ahluwalia W/o Shri Ajesh Kumar, C-601, Fakhruddin Memorial CGHS, Plot-18 Sector-10, Dwarka, New Delhi (for short '**the Complainants'**) alleging that M/s Sobha Limited, 5th Floor, Rider House, Plot No. 136-P, Sector-44, Gurugram-122**003** (for short 'the **Respondent')** has indulged in profiteering in contravention of Section 171 of the Central Goods and Services Tax Act, **2017** (hereinafter referred to as '**CGST Act'**) in respect of construction services supplied by the Respondent.

4. This application was examined by the Standing Committee on Anti -Profiteering. Upon being prima facie satisfied that the Respondent had not passed on the benefit of reduction in GST rate as mandated under Section **171** of the CGST Act, 2017 the Standing Committee referred the matter to the Director General of Anti -Profiteering (for short '**the**

DGAP') under Rule 129(1) of the Central Goods and Services Tax Rules, 2017 (for short 'CGST Rules') for detailed investigation.

5. The Complainants have alleged that the Respondent did not pass on the benefit of input tax credit (for short **'ITC'**) on introduction of GST with effect from 01.07.2017, by way of commensurate reduction in the prices of flat purchased by them in their project **'International City'** situated at Sector 106, 108 & 109, Gurugram, Haryana.

6. The investigation was set into motion by the DGAP by issuance of a notice to the Respondent calling upon it to show cause as to whether the benefit of ITC has not been passed on to their home buyers by way of commensurate reduction in prices, and further d irected the Respondent to suo-moto compute the quantum of such benefit, if any.

7. The Respondent submitted its detailed reply along with supported documents and annexures, denying the allegation of profiteering.

8. Upon completion of the investigation, the DGAP submitted its report dated 21.08.2025. In the said report, it was observed that the ratio of credit availed to purchase value stood at 12.26% during the pre -GST regime, which declined to 11.02% subsequent to the introduction of GST. The resultant difference i.e. -1.24% indicates that no incremental benefit accrued to the Respondent. Consequently, the question of passing on any benefit to the recipient did not arise. It was, therefore, concluded that the Respondent had not contravened the provision of Section 171 of CGST Act read with Rule 129(6) of the CGST Rules,2017. The methodology adopted by the DGAP to compute the aforesaid ratio is tabulated hereinbelow: -

S. No.	Particulars	Pre-GST Period (Rs.)	Post-GST Period (Rs.)
1	Purchase Value of Goods and Services (Excluding Taxes and Duties)	2,87,06,06,587	2,12,39,88,859
2	Credit of Service Tax availed	31,63,23,366	—
3	Credit of VAT Availed	3,55,32,196	—
4	Total Credit Availed in Pre-GST Period	35,18,55,562	—
5	ITC of GST Availed	—	23,40,21,576
6	Ratio of Credit Availed to Purchase Value (%)	**12.26%**	**11.02%**
	Difference		**(-1.24%)**

Proceedings before GSTAT

9. The Principal Bench of the GST Appellate Tribunal (**GSTAT**), constituted under sub-section (3) of section 109 of CGST Act, has been empowered to examine Anti-Profiteering cases w.e.f. 01.10.2024, vide Notification No. 18/2024-Central Tax dated 30.09.2024.

10. A notice was issued to the Complainants calling upon their objections, if any, against the DGAP report dated 21.08.2025. The Complainants, however, instead of filing objections to the said report, moved an application under Section 151 of the Code of Civil Procedure, 1908 (for short '**CPC'**), seeking a direction to the DGAP to furnish complete records supplied by the Respondent during the course of investigation.

11. Notice was issued to the Respondent to participate in the proceedings.

12. The Respondent filed preliminary objections challenging the maintainability of the present proceedings which are summarized hereunder:-

(i) That the Complainants, through an application dated 17.06.2019, sought allotment from the Respondent for purchase of Duplex Villa No. E-61A. Upon due consideration and deliberation, the parties entered into a Builder and Buyer Agreement (for short '**BBA'**) on 08.07.2019. Accordingly, the contractual relationship between the parties stood established by virtue of the aforesaid agreement.

(ii) That the prices were determined after factoring in the availability of ITC to the Respondent in the post-GST regime, which benefit was not available under the pre-GST regime. The Complainants had, at the relevant time, consented to and accepted the prices so fixed by the Respondent.

(iii) That no construction was going on at the time of execution of the BBA. The construction activity could commence only after entering upon of the aforesaid agreement.

(iv) That the entire payment was made by the Complainants after the introduction of GST. The Occupation Certificate was also issued to the Respondent on 26.02.2024. Therefore, the Complainants has no legal right to object against the report of the DGAP.

(v) The case of the Respondent is fully covered by the findings given by Hon'ble High Court of Delhi in paragraph 128(d) of Judgment of ***Reckitt Benckiser India Pvt. Ltd.v UOI (2024) 14 Centax 374 (Delhi)***.

13. Per contra, the Complainants submitted the following reply against the preliminary objections: -

(i) The preliminary objections filed by the Respondent are misconceived, based on wrong interpretation of law and legal precedence. Therefore, they cannot be permitted to be sustained.

(ii) That the property in question was an under -construction unit at the time it was booked by the Complainants. It was scheduled to be constructed, and the payment obligations were linked to the various stages of construction. Accordingly, the property in question cannot be construed as a "constructed property."

(iii) The DGAP never objected to the plea of the Complainants with respect to the nature of the construction of the property. The Judgment of the Hon'ble High Court of Delhi is mis-interpreted and mis-understood by the Respondent.

(iv) The Complainants came before this Tribunal only in respect to ITC which had not been passed to him by the Respondent as per law. The ITC has been mis -appropriated by the Respondent and the DGAP has not acted against them as per law.

(v) The entire reliance of the Respondent on legal precedence is of no use as the facts and circumstances of those cases are totally different from the present case.

(vi) That merely because agreement was executed in post -GST period, Section 171 of the CGST Act, 2017 does not become inapplicable since the Respondent has failed to pass on

ITC benefit to the Complainants. The burden lies upon the Respondent to demonstrate compliance.

(vii) That the question whether benefit was passed on is a matter of evidence. The preliminary objections are filed to avoid adjudication on merits and to delay proceedings.

(viii) The Respondent was asked to file their reply but they filed preliminary objections which are not maintainable.

14. Shri Tarun Jain, Learned Counsel, appearing on behalf of the Respondent, vehemently argued that the Complainants have no cause of action and locus standi to agitate against the DGAP report. In support of his submission, he relied upon paragraph 128(d) of the decision rendered by Hon'ble High Court of Delhi in **Reckitt Benckiser India Pvt. Ltd. (Supra).**

15. Learned counsel for the Respondent has further emphasized upon the payment schedule (Annexure -IV) mutually agreed between the Respondent and the Complainants prior to execution of BBA on 08.07.2019. It was agreed that the transactions would be subject to GST at applicable rate of 12%, amounting to Rs. 41,72,668/ - (Rs. 20,86,334/- CGST + Rs. 20,86,334/- SGST). The Complainants was, at all times, fully aware of the applicable rate of GST and total tax liability, as the same was agreed at the time of submission of the application itself.

16. Learned counsel for the Respondent further contended that the CGST Act came into force on 01.07.2017. The Complainants applied for allotment of Duplex Villa No. E -61A on 17.06.2019. Upon due deliberation and consideration of the said application, the parties entered into BBA on 08.07.2019. The entire payment was made by the Complainants to the Respondent in accordance with the agreed payment scheduled during the GST regime. Further, "the pricing and payment schedule" was agreed upon by the Complainants prior to the agreement. The construction of the villa was undertaken by the Respondent during the GST regime. These relevant facts are not controverted by the Complainants. It is, therefore, manifest that the entire activity was undertaken during the GST regime.

17. It is further submitted that aforesaid facts clearly establish that all the transactions in question were affected during GST regime. The price was mutually agreed between the parties on the basis of taxes prevailing at the time of the transaction. None of these factual and legal prepositions have been controverted by the Complainants.

18. It is additionally submitted that no benefit of ITC would be available to the Complainants as the price of the Duplex Villa was fixed after factoring in the ITC available to the Respondent in the GST regime, which benefit was not available in the pre-GST regime.

19. With regard to the objections raised by the Complainants that on the date of the agreement, the property was not constructed, it is submitted that the finding given by the Hon'ble High Court of Delhi in **Reckitt Benckiser (Supra)** are very clear. There is no such requirement that on the date of agreement or making the payment, the building should be fully constructed. At the time of agreement, the Complainants opted for construction linked plan.

20. To buttress his argument, the learned Counsel for the Respondent placed reliance upon the following Judgments: -

(i) Reckitt Benckiser India Pvt. Ltd. v. Union of India (2024) 14 Centax 374 (Delhi).
(ii) DGAP v. Shrivision Towers Pvt. Ltd. (Shriram Greenfield) NAPA/136/PB/2025.
(iii) K.B. Sreedevi v. Siva Rama Constructions (2023) 11 Centax 129 (N.A.P .A.)
(iv) Ritesh Kumar Khandelwal v. Forever Buildtech Pvt. Ltd. (2023) 4 Centax 239 (N.A.P.A.)
(v) Priyanshu Pathak v. Forever Buildtech Pvt. Ltd. (2023) 4 Centax 238 (N.A.P.A.)
(vi) DGAP v. Pyramid Infratech Pvt. Ltd. (2026) 39 Centax 113 (Tri -GST-Delhi)

21. Shri Tarun Jain, learned counsel for the Respondent placed heavy reliance on the paragraph 128(d) of the decision of Hon'ble High Court of Delhi in ***Reckitt Benckiser (Supra),*** which is reproduced here:-

"*128. There is not dispute with regard to the methodology to be adopted in the following four scenarios:-*

(a) If the flat was completely constructed in the Pre - Goods and Services Tax period i.e. before 01st July, 2017 and if it was purchased by making upfront payment of the whole price in the pre -Goods and Services Tax period no benefit of Input Tax Credit would be required to be passed on as the price will include the cost of taxes on which Input Tax Credit was not available in the pre-Goods and Services Tax period viz. Central Excise Duty, Entry Tax etc.

(b) If the construction of the flat had started in the pre -Goods and Services Tax period and continued/completed in the post -Goods and Services Tax period and a buyer purchased the flat by making full upfront payment in the post - Goods and Services Tax period he is entitled to the benefit of Input Tax Credit on the material which has been purchased in respect of this flat during the post -Goods and Services Tax period and on which benefit of Input Tax Credit has been availed by the builder. The builder has t o reduce the price commensurately and pass on the benefit.

(c) If the construction of the flat is started in the pre-Goods and Services Tax period and its construction was continued in the post-Goods and Services Tax period and it was purchased by the consumer by paying the full amount of price upfront in the pre -Goods and Services Tax period, the buyer is entitled to claim the benefit of Input Tax Credit on the taxes paid on the construction material purchased by the builder in the post-Goods and Services Tax period during which he has been given benefit of Input Tax Credit on the taxes on which Input Tax Credit was not available in the pre -Goods and Services Tax and cost of such taxes has been built in the price of the flat by the builder.

(d) If the flat is constructed in the post-Goods and Services Tax period and it is purchased after construction being complete by making upfront payment of the full price, no benefit of Input Tax Credit would be available as the price of the flat would have been fixed after taking into account the Input Tax Credit which has become available to the builder in the post -Goods and Services Tax period and which was not available to him in the pre-Goods and Service Tax."

(Emphasis supplied)

22. Contrary to it, the learned counsel for the Complainants submitted that the property-in-question was not constructed when it was booked by the Complainants. It was scheduled to be constructed. The payment was to be made by the Complainants on the basis of different stages of construction under the construction linked plan. Therefore, in no way the property-in-question can be construed as "Constructed Property" as referred by Hon'ble High Court of Delhi in paragraph 128(d) of its Judgement. Therefore, the said Judgement has been mis- interpreted and mis-understood by the Respondent. It is also argued that merely because entire activity is undertaken in GST regime, Section 171 of the CGST Act, 2017 does not become inapplicable.

23. The foundation of the arguments on behalf of the Respondent is based upon the Judgement of the Hon'ble High Court of Delhi in ***Reckitt Benckiser (Supra).*** In Paragraph 128 of that decision, the Hon'ble Court has explicitly expressed that there is no dispute with regard to the methodology to be adopted for computation of profiteering in construction services. Clause (d) of said paragraph addresses the situation when flat is constructed in the post-GST period and purchased after construction being completed by making upfront payment of the full price. Thus, the methodology for computation of profiteering in accordance with clause (d) of this paragraph may be adopted when the following two conditions are satisfied:

(i) That the flat is constructed in post-GST period, **and**

(ii) That the flat is purchased after construction being completed after making upfront payment of the full price.

24. In our opinion, the expression *"the flat is constructed in the post - Goods and Service Tax period"* by no means implies that the flat was already constructed or it was yet to be constructed. Similarly, the term "*after making upfront payment of the full price*" cannot be interpreted to mean that the entire payment should have been made in one go (in a single lumpsum). Ordinarily, when a new project is launched by a builder, the proposed buyer opts for "construction –linked plan" to facilitate ease of payment and to maintain their financial equilibrium. In ordinary course financing facilities are availed from the different banks or other financial institutions providing housing loan to the buyers. As the construction of the flat progresses, in accordance with the plan and BBA, the builder raises demands for subsequent installment. Such installments are paid by the buyer from the loan amount sanctioned by the said financial institution. The buyer continues to repay the housing loan amount by way of monthly installments.

25. Suffice to say that the expressions used in clause (d) of paragraph 128 of the Judgement do not mean that it would be applicable only if the construction of the flat has been completed at the time of agreement. The fact that the "construction of flat was yet to be raised" or the property was not "fully constructed" is of no consequences to attract the conditions as laid down in paragraph 128(d) of the said Judgement. What is crucial is that the entire spectrum of activities from inception to completion must have taken place during the post-GST period.

26. In the present case, it is an admitted position that the booking of the unit, its allotment, execution of the agreement, the entire construction activities, as well as the receipt of payments made by the Complainants, all transpired in the post-GST era.

27. As apparent from the material available on the record, these facts are not controverted by the Complainants that they had submitted an application dated 17.06.2019 for allotment of the Villa. Thereafter, the Complainants entered into the BBA with the Respo ndent on 08.07.2019, thereby establishing the contractual relationship between them. The entire construction activity has been undertaken by the Respondent only after the execution of agreement. The price of the unit was determined after factoring the benefit of ITC, which became available to the Respondent in the post-GST regime and was not admissible under the pre -GST regime, and on the basis of prevailing rates applicable during the GST regime. The Complainants, having accepted the price so fixed, proceeded to execute the BBA on 08.07.2019, without objection.

28. Based upon the aforesaid uncontroverted facts, we are of the view that the case of the Respondent is fully covered by the findings given by the Hon'ble High Court of Delhi in paragraph 128(d) of judgment passed in **Reckitt Benckiser (Supra**). Thus, the Complainants have no locus standi and legal rights to contest the DGAP report.

29. The coordinate Bench of this Tribunal in ***DGAP v Pyramid Infratech Pvt. Ltd (2026) 39 Centax 113 (Tri. GST-Delhi)*** observed that:-

> "*10. It is observed that section 171 of the CGST Act, 2017 applies only in cases involving reduction in tax rate or increase in ITC, particularly in projects spanning pre -GST and post -GST periods. Since the impugned project commenced wholly in the post -GST regime there is no comparative ITC benefit arising for passing on.*
>
> *11. Reliance placed on Paragraph 128(d) of the Judgment dated 29.01.2024 of the Hon'ble Delhi High Court wherein it had been held that no benefit of ITC is required to be passed on where both construction and supply take place entirely post-GST period.*"

30. Having considered the DGAP report, preliminary objections, reply submitted by the Complainants and rival contentions of the parties, we arrive at the conclusion that the preliminary objections raised by learned counsel for the Respondent deserve to be accepted. Since the entire activity had undertaken from in post -GST period, therefore, the case of the Respondent is fully covered with the preposition as laid down in paragraph **128(**d) of the decision. Resultantly, no benefit of ITC would be available to the Complainants as the price of the flat had been fixed after taking into account the incremental ITC that would have become available to the Respondent subsequent to introduction of GST, if any.

31. The DGAP has rightly concluded that the ratio of credit availed to purchase value was 12.26% in the pre -GST era which declined to 11.02% in post GST period. The reduction of 1.24% implies that no benefit accrued to the Respondent and hence question of passing on any benefit to the recipient would not arise. The Respondent has, therefore, not contravened the provision of Section 171 of CGST Act read with Rule 129(6) of the CGST Rules. The DGAP report dated 21.08.2025 deserves to be accepted.

Order

32. The preliminary objections made by the Respondent are accepted.
33. The objection raised against the preliminary objections by the Complainants are, hereby, rejected.
34. Accordingly. the report of the DGAP dated 21.08.2025 is accepted.
35. All the miscellaneous applications pending shall stands disposed of.
36. The copy of the Judgment and the order be sent to concerned CGST/SGST Jurisdictional Commissioner for necessary action, if any, at their end.
37. Judgment pronounced in open court today.

(2026) 1 GSTAT E- Journal 230 (Principal Bench)

(GOODS AND SERVICES TAX APPELLATE TRIBUNAL, PRINCIPAL BENCH)

DG ANTI-PROFITEERING, DIRECTOR GENERAL OF ANTI-PROFITEERING, DGAP

V.

VASAVI AND GP INFRA LLP

NAPA/28/PB/2025, MAY 07, 2026

CORAM:

JUSTICE (RETD.) DR. SANJAYA KUMAR MISHRA, PRESIDENT
AND
HON'BLE SHRI A. VENU PRASAD (MEMBER TECHNICAL)

REPRESENTATION:

For the Appellant: Shri Ajay Kumar Tehlan, AAD and Shri Shri Ravi Passi, Inspector.
For the Respondent: Shri J. Shankar Raman, Learned Advocate.

HEADNOTE:

GST- Anti Profiteering- Section 171 of the CGST Act, 2017- Construction services — Residential project — Non-passing of ITC benefit to home buyers — DGAP investigation — Original profiteering determined at Rs. 6,02,89,656/-, out of which Rs. 3,48,69,781/- was found to have been passed on — Matter remanded for reconsideration of computation and related issues — Determination of additional ITC benefit — Comparison of ITC to construction cost in the pre-GST and post-GST periods — ITC on input services — Benefit allegedly denied by 13 customers — Post-GST pricing — **HELD:** The Respondent had derived additional ITC benefit under the GST regime, which was required to be passed on to home buyers under Section 171 — ITC on input services could not be excluded — Benefit of Rs. 46,40,136/- claimed to have been passed on to 13 customers was rightly recognised on the basis of books of accounts, customer ledgers and credit notes, despite email denials by such customers — Contemporaneous records established that the Respondent had also factored the ITC benefit into post-GST sale prices — Revised DGAP computation accepted — Profiteering determined at Rs. 1,51,87,625/-, with Rs. 71,37,747/- remaining to be passed on — Excess benefit passed on to one buyer could not be adjusted against shortfall relating to another buyer — GST @ 12% amounting to Rs. 8,56,530/- payable on the profiteered amount — Total amount to be passed on Rs. 79,94,277/- — Interest @ 18% p.a. payable from the date of collection of the higher amount till actual refund — Penalty under Section 171(3A) attracted — Order confirmed.

...In Favour of the DGAP

KEY ISSUES AND FINDINGS:

1. **Whether the Respondent had derived additional ITC benefit under GST and whether the same had been duly passed on to the homebuyers by way of commensurate reduction in prices in terms of Section 171 of the CGST Act, 2017?**

   "With regard to Issue Nos. (i) and (ii), this tribunal finds that upon the introduction of GST, the Respondent became entitled to avail Input Tax Credit on both goods and input services, unlike the pre-GST regime where credit was restricted. The comparison of ITC in the pre-GST and post-GST periods shows that an additional benefit accrued to the Respondent. In terms of Section 171 of the CGST Act 2017, such benefit is required to be passed on to the homebuyers by way of commensurate reduction in prices." (Para 17)

   "It is further held that, pursuant to the directions of the Hon ble GSTAT, the DGAP re-examined the matter in its report dated 13.03.2026 and adopted the methodology based on comparison of ITC to construction cost in the pre-GST and post-GST periods. This methodology is in line with the judgment of the Hon ble Delhi High Court in Reckitt Benckiser India Pvt. Ltd. v. Union of India, WP (C) 7743/2019 and is found to be appropriate." (Para 18)

   "The Respondent s contention that ITC on input services should be excluded is devoid of merit and is rejected. The benefit under GST includes ITC on both goods and services, and cannot be restricted only to material inputs. Accordingly, no exclusion of service-related ITC is warranted." (Para 19)

2. **Whether the Respondent was liable to pass on the balance profiteered amount along with applicable GST and interest, and whether penalty under Section 171(3A) was attracted?**

"On quantification, it is observed that the original DGAP Report dated 09.10.2024 determined the profiteered amount at Rs. 6,02,89,656/-, out of which Rs. 3,48,69,781/- was found to have already been passed on, leaving a balance amount of Rs. 2,54,20,175/-. However, upon reconsideration and verification of additional documents furnished by the Respondent, the DGAP revised the profiteered amount to Rs. 1,51,87,625/-, with a balance amount of Rs. 71,37,747/- remaining to be passed on to the eligible recipients. It has also been correctly clarified that excess benefit passed on to certain buyers cannot be adjusted against the shortfall pertaining to other buyers, since each recipient is independently entitled to commensurate benefit under Section 171 of the CGST Act, 2017." (Para 24)

"With regard to levy of GST on the profiteered amount, this Tribunal finds that the balance profiteered amount of Rs. 71,37,747/- determined by the DGAP is exclusive of GST, whereas the consideration collected by the Respondent from the homebuyers is inclusive of GST. Consequently, the excess amount realised by the Respondent on account of non-passing of ITC benefit inherently includes the corresponding GST component collected from the buyers. Therefore, the profiteered amount cannot be segregated from the tax component and is required to be returned along with applicable GST @ 12%, which works out to Rs. 8,56,530/-, which comes to the total of Rs. 79,94,277/-. The contention of the Respondent that GST has already been deposited with the Government is not tenable, as the issue pertains to restitution of the entire excess realisation, including the GST component, collected from the recipients." (Para 27)

EDITORIAL NOTES:

Principles laid down:

1. Additional ITC benefit, including ITC on input services, must be passed on to recipients by commensurate reduction in prices under Section 171.
2. Passing on may be established through contemporaneous financial records and through adjustment/factoring of the benefit in the price; customer emails denying receipt cannot, by themselves, override such records.
3. Profiteered amounts are recipient-specific and are required to be returned with applicable GST and 18% interest; penalty under Section 171(3A) is attracted where the statutory conditions are satisfied.

Case laws referred to:

Reckitt Benckiser India Pvt. Ltd. v. Union of India, W.P. (C) No. 7743/2019

Relevant Provisions:

Section 171 of CGST Act, 2017; Section 171(3A) of CGST Act, 2017; Rule 133 of CGST Rules, 2017; Rule 133(3)(b) of CGST Rules, 2017.

JUDGMENT

1. The present proceedings arise from a complaint filed by Mr. Syed Ali Hussaini, resident of Plot No. 4, SCHB Colony, Akbar Road, Secunderabad, Telangana – 500009 (hereinafter referred to as the "first complainant"), under Rule 128 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "the CGST Rules"), alleging profiteering in respect of construction services supplied by M/s Vasavi and GP Infra LLP (hereinafter referred to as "the Respondent") in its project "Vasavi GP Trends", situated at Anilath Maja Housing Society, 8-2- 120/86/9/A/1, 12, 2 and 13, North End, Opp. Park Hyatt, Road No. 2, Banjara Hills, Telangana.

2. The first complainant alleged that the Respondent had failed to pass on the benefit of Input Tax Credit (ITC) by way of commensurate reduction in price in respect of the purchase of a residential unit in the said project upon the introduction of GST w.e.f. 01.07.2017, in contravention of Section 171 of the CGST Act, 2017.
3. The complaint was examined by the Standing Committee on Anti-Profiteering, which, upon being satisfied, forwarded the matter to the Directorate General of Anti-Profiteering (hereinafter referred to as "the DGAP") on 30.05.2022 for detailed investigation under Rule 129(1) of the CGST Rules, 2017.
4. In the meantime, another application was filed by Sh. Vepachedu Bhargav, Flat No. 404, Vasavi GP Trends, Nanakramguda, Hyderabad (hereinafter referred to as the "second complainant"), which was examined by the Standing Committee on Anti-Profiteering in its meeting held on 12.01.2023 and thereafter forwarded to the DGAP for investigation. The said application was accordingly tagged with the ongoing investigation pertaining to the project "Vasavi GP Trends" of the Respondent.
5. The DGAP submitted its report dated 24.02.2023 after conducting a detailed investigation under Rule 129(6) of the Central Goods and Services Tax Rules, 2017. Thereafter, vide Interim Order dated 01.12.2023, the Competition Commission of India directed the DGAP to re-examine the sale deeds/sale agreements and to submit a report after conducting a thorough investigation.
6. Further, in the view of the judgment of the Hon'ble Delhi High Court, in ***Reckitt Benckiser India Pvt. Ltd. v. Union of India, WP (C) 7743/2019 dated 29.01.2024***, the CCI, vide communication dated 07.05.2024, directed the DGAP for re-investigation under Rule 129 of the CGST Rules, 2017.
7. Pursuant thereto, the DGAP conducted investigation and submitted its report dated 09.10.2024, wherein it was concluded that the Respondent had derived additional benefit of Input Tax Credit in the post-GST regime and had failed to pass on the same to the recipients by way of commensurate reduction in prices, thereby determining the profiteered amount at Rs. 6,02,89,656/- (exclusive of GST). However, the DGAP further observed that the Respondent had already passed on ITC benefit amounting to Rs. 3,48,69,481/- to the homebuyers, though the same was found to be deficient vis-à-vis the benefit required to be passed on. Accordingly, the balance profiteered amount was determined at Rs. 2,54,20,175/- along with applicable GST @ 12%. The details of the said computation were furnished in Annexure-9 of the DGAP's Report.
8. The above report was considered by this Tribunal and the Registry was directed to issue notice to the Respondent under intimation to the Applicants.
9. In response thereto, the Respondent filed written submissions dated 10.12.2025 and raised various objections, inter alia, with regard to the methodology adopted, treatment of Input Tax Credit and computation of the profiteered amount.
10. Hearings in the matter were held on 15.12.2025, 13.01.2026, 03.02.2026 and 13.02.2026. Upon consideration of the submissions advanced by the parties, the Hon'ble GSTAT (Principal Bench), vide Order dated 13.02.2026, observed that certain issues raised by the Respondent warranted further examination and verification by the DGAP, particularly in relation to factual aspects and the methodology adopted for computation of profiteering. Accordingly, the DGAP was directed to reconsider the matter on the following issues:
    A. Whether the Respondent is liable to pay the alleged profiteered amount of Rs.2,54,20,175/- along with GST @12% (total Rs.2,84,70,596/-), as against Rs.6,02,89,656/- determined in the original DGAP report?
    B. Whether the notional service tax credit computed by the DGAP at 1.7978% of the cost of construction in the post-GST period is to be adopted, or whether the actual Input Tax Credit on services is to be considered while computing the profiteered amount?
    C. Whether the benefit of Rs.46,40,136/- claimed to have been passed on to 13 customers was rightly excluded by the DGAP on the basis of denial by such customers through email?

D. Whether, in cases where comparable pre-GST sale prices are not available for similar units sold in the post-GST period, an inference of profiteering can be drawn?
E. Whether the Respondent had already cony factored the benefit of Input Tax Credit in the sale price fixed for the post-GST period customers, and if so, whether any profiteering can be said to have arisen to that extent?
F. Whether the Respondent is liable to pay GST @12% on the alleged profiteered amount, when such tax has already been deposited with the Government. The Hon'ble GSTAT further clarified that the remand was limited in scope to the aforesaid issues and did not entail a de novo investigation of the entire matter.

11. Accordingly, the DGAP was directed to re-examine the matter in respect of the above issues and submit a report within the stipulated time.
12. Upon completion of the investigation, the DGAP submitted its Report dated 13.03.2026 to the Hon'ble GSTAT, which has been summarized as follows:

12.1. The DGAP stated that the present Report has been furnished in compliance with the directions of the Hon'ble GSTAT vide Order dated 13.02.2026, whereby the matter was remanded for reconsideration only with respect to Question Nos. 1 to 5, and not by way of an open remand for re-examination of the entire case.

12.2. It was submitted that, pursuant to the said directions, the Respondent furnished written submissions along with supporting documents, including books of accounts, customer ledgers and credit notes, which were examined and verified in light of the provisions of Section 171 of the CGST Act, 2017, the relevant Rules, and the methodology adopted in the original investigation.

12.3. With regard to the methodology for determination of profiteering, the DGAP reiterated that the same is rooted in Section 171(1) of the CGST Act, 2017, which mandates that any reduction in the rate of tax or benefit of input tax credit must be passed on to the recipients by way of commensurate reduction in prices. It was observed that the proportion of ITC to the value of inputs and input services bears a direct correlation with the cost of construction, and therefore, comparison of such ratios in the pre-GST and post-GST periods provides a reasonable basis to determine whether any additional benefit has accrued.

12.4. The DGAP further observed that the earlier methodology based solely on turnover was flawed and that the correct approach is to compare the ratio of CENVAT/ITC to the amount spent on inputs and input services during the pre-GST and post-GST periods, so as to ascertain the incremental benefit arising from the implementation of GST. Any positive difference in such ratios represents additional benefit, which is required to be passed on to the recipients proportionately.

12.5. The contention of the Respondent that ITC on input services ought to be excluded from the computation was examined and rejected. The DGAP held that the reliance placed on the ***Reckitt Benckiser India Pvt.*** Ltd. v. Union of India, WP (C) 7743/2019 was misplaced, as the said judgment does not prescribe exclusion of service-related ITC. It was observed that the incremental benefit arising from GST is not confined to goods alone and includes ITC on both goods and services, and therefore no component of ITC can be excluded from the profiteering computation.

12.6. With respect to Question No. 3, the DGAP examined whether denial of receipt of ITC benefit of Rs. 46,40,136/- by 13 customers through email responses could be treated as conclusive evidence. It was observed that such responses, by themselves, cannot override documentary financial records. The determination under Section 171 must be based on objective evidence such as books of accounts, customer ledgers and credit notes. Upon examination of such records, it was found that the Respondent had adjusted the ITC benefit against the amounts payable by the customers, thereby reducing the effective consideration and passing on the benefit through price adjustment.

12.7. It was further observed that passing on of benefit does not necessarily require a separate cash refund, and that where the demand raised on customers stands reduced and the payments received reflect such reduction, the benefit stands effectively passed on. The DGAP emphasised that email responses from customers denying receipt of benefit must be viewed with caution and cannot override contemporaneous financial records maintained in the ordinary course of business.

12.8. Furthermore, it was observed that the substantive test under Section 171 is whether the effective price charged from the customer was reduced commensurately, and the records produced by the Respondent demonstrate that such reduction was indeed provided. Accordingly, the benefit amount against the demands of the said customers ought to be recognised as benefit already passed on, and the same should not be disregarded solely on the basis of email responses denying the receipt of benefit.

12.9. In respect of post-GST transactions (Question Nos. 4 & 5), the DGAP observed that the Respondent had, at the time of introduction of GST, consciously factored the expected ITC benefit into the pricing of flats. Reliance was placed on contemporaneous documents, including Minutes of Meeting dated 10.07.2017 and internal circulars issued to the sales team, which clearly recorded that ITC benefit was to be passed on to customers while determining the sale price.

12.10. The DGAP noted that such contemporaneous evidence demonstrates that the Respondent had adopted a deliberate pricing policy post implementation of GST, whereby the benefit of ITC was embedded in the base price itself. Consequently, the buyers received the benefit through a lower effective price at the time of purchase.

12.11. In view of the above, the DGAP concluded that, insofar as post-GST sales are concerned, the Respondent cannot be said to have profiteered to the extent of ITC benefit, as the same stood passed on through price determination itself and not by way of ex-post reduction.

12.12. The DGAP observed that, as per the original investigation report dated 09.10.2024, the total profiteering amount was determined at Rs. 6,02,89,656/-, out of which an amount of Rs. 3,48,69,781/- was found to have already been passed on to the recipients. Accordingly, the balance profiteering amount was computed at Rs. 2,54,20,175/-.

12.13. Upon re-working, the DGAP recorded that, as per the original determination, the total profiteering amount stood at Rs. 6,02,89,656/-, out of which Rs. 3,48,69,781/- had already been passed on to the recipients, leaving a balance profiteering of Rs. 2,54,20,175/-. However, upon detailed examination of additional documents and recalculations furnished by the Respondent, the profiteering was reworked. In this regard, the DGAP, as reflected in Table-A of the Report, determined the revised profiteering amount at Rs. 1,51,87,625/-, out of which the balance profiteering to be passed on was computed at Rs. 71,37,747/-.

S. No.	**Name of the buyer**	**Flat No. Of the buyer**	**Area of the flat of the buyer in Sq. Ft**	**Date of booking of the flat**	**Benefit of ITC passed on to the buyer of the flat during the post GST period, if any (in Rs.)**	**Amount profiteered (excluding GST)**	**Additional benefit required to be passed on (excluding GST)**

1 .	C V Channamma	106	1380	06-08-2016	512490	406882.46	-105607.54
2 .	M V S Guptha	303	1765	05-08-2016	197715	520396.77	322681.77
3	Haritha Kompally	409	1565	10-05-2016	277736	461428.30	183692.30
4	Tata Uma Sri Bala	504	2005	02-04-2017	273433	591158.93	317725.93
5	Harshandra Gati	603	1765	10-05-2017	386076	520396.77	134320.77
6	Ch Sudharahn Raju	609	1565	25-03-2017	220015	461428.30	241413.30
7	Sailesh Gadlay	702	1760	05-06-2017	178145	518922.58	340777.58
8	Satish Gadlay	703	1765	05-06-2017	375462	520396.77	144934.77
9	Mukesh Gadlay	801	1890	05-05-2017	269030	557252.06	288222.06
10	G.Kishna Gadlay	802	1760	05-06-2017	384940	518922.56	133982.56
11	Sai Kamesh Venkata Chirala	804	1860	05-08-2016	176097	548406.79	372309.79
12	K Parthasarat hi Rao	1002	1760	12-07-2016	199384	518922.56	335308.56
13	Y Karteeka	1101	1904	25-03-2016	193852	561379.86	367522.86
14	Dr Khurshid Ahmed	1601	1904	25-12-2016	286227	561379.86	275152.86

15	Bharat Ladda	1604	1878	25-01-2017	126906	553713.95	426807.63
16	S V K Divakar Perrella	1606	1380	08-05-2017	132227	406882.46	274655.46
17	Simran N Sachanandani	1702	1765	08-05-2017	216840	518922.56	274655.46
18	Divya Sachanandani	1703	1765	08-05-2017	330080	520396.77	274655.46
19	Reema M Sachanandani	1706	1380	01-12-2016	385263	406882.46	21619.46
20	B Aruna	2006	1380	01-06-2017	213844	406882.46	193038.46
21	Noomula Swapna	2304	3810	13-08-2016	450114	673535.40	223434.40
22	R V K Narasimha Rao	2306	2810	25-10-2016	347689	522096.11	180148.11
23	Ramachandra Reddy Gajjala	2307	3590	22-11-2016	380605	1058484.08	677878.83
24	Antha Reddy Satush Reddy	2313	3340	29-05-2017	1830029	984773.49	-845255.51
25	Sridhar	2314	3630	12-08-2016	654642	1070277.77	415635.63
	Total					**1,51,87,625**	**71,37,747**

On the basis of the foregoing analysis, the DGAP concluded that the Respondent gained an additional Input Tax Credit (ITC) benefit of ₹294.84 per sq.ft. The total ITC benefit came to ₹1,51,87,625. However, the Respondent did not fully pass on this benefit to homebuyers, as required under Section 171 of the CGST Act, which mandates that any reduction in tax rate or availability of ITC must be proportionately passed on to consumers. Upon revised computation, the DGAP determined that the builder profiteered a total of ₹71,37,747 (excluding GST). This amount represents the excess collected from homebuyers, and it must be passed on to the eligible recipients listed in “Table A” of the report.

13. Hearings in the matter were held on 18.03.2026 and 16.04.2026. Shri J. Shankar Raman, Learned Advocate, Shri Md. Meraj Alam, Finance Manager of the Company, Shri M. Sarvanan and Shri Gurubatham, Chartered Accountants, appeared on behalf of the Respondent. Shri Ajay Kumar Tehlan, AAD, along with Shri Ravi Passi, Inspector, appeared on behalf of the DGAP. None appeared on behalf of the Complainant.
14. The Respondent accepted the DGAP’s report dated 13.03.2026 with the contention that ITC on input services should be excluded and the remaining amount to be passed on be Rs. 51,73,776/- (exclusive of GST).
    14.1. The Respondent further submitted that it has already discharged GST on the amounts collected from the buyers and has not retained any portion thereof. Accordingly, it was contended that levy of GST @ 12% on the alleged profiteered amount would be unjustified and amount to double recovery.
15. The DGAP, vide clarification dated 13.04.2026, stated as follows: -
    1. The DGAP submitted that the issues relating to computation of profiteering and the methodology adopted are matters of fact, and therefore no further comments are required beyond what has already been stated in the Report dated 13.03.2026.
    2. It was further submitted that the methodology for the determination of profiteering is clearly enshrined in Section 171(1) of the CGST Act, 2017, which mandates that any reduction in rate of tax or benefit of input tax credit shall be passed on to the recipients by way of commensurate reduction in prices.
    3. With regard to the contention that GST should not be levied on the profiteered amount, the DGAP relied upon the judgment of the Hon’ble Delhi High Court dated 29.01.2024, wherein it has been held that GST collected on the additional realisation forms part of the profiteered amount.
    4. The DGAP reiterated that the findings recorded in the Report dated 12.03.2026 are correct and in accordance with law. It was submitted that the Respondent has profiteered an amount of Rs.1,51,87,625/- and, after taking into account the benefit already passed on, a balance amount of Rs.71,37,747/- along with applicable GST @ 12% remains to be passed on to the eligible recipients.

<u>Issues for determination</u>

16. In view of the DGAP Reports dated 09.10.2024 and 13.03.2026 and the submissions made by the parties, the following issues arise for determination:
    (i) Whether the Respondent had derived any additional benefit of Input Tax Credit consequent to the introduction of GST?
    (ii) If yes, whether such benefit has been passed on to the homebuyers by way of commensurate reduction in prices in terms of Section 171 of the CGST Act, 2017?
    (iii) Whether the Respondent is liable to return the profiteered amount along with applicable interest, and if so, what is the quantum of such refund?
    (iv) Whether penalty under Section 171(3A) of the CGST Act, 2017 is attracted in the facts and circumstances of the present case, and if so, the quantum of penalty?

<u>Determination of Profiteering and Passing of ITC Benefit</u>

17. With regard to Issue Nos. (i) and (ii), this tribunal finds that upon the introduction of GST, the Respondent became entitled to avail Input Tax Credit on both goods and input services, unlike the pre-GST regime where credit was restricted. The comparison of ITC in the pre-GST and post-GST periods shows that an additional benefit accrued to the Respondent. In terms of Section 171 of the CGST Act 2017, such benefit is required to be passed on to the homebuyers by way of commensurate reduction in prices.

18. It is further held that, pursuant to the directions of the Hon'ble GSTAT, the DGAP re-examined the matter in its report dated 13.03.2026 and adopted the methodology based on comparison of ITC to construction cost in the pre-GST and post-GST periods. This methodology is in line with the judgment of the Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. v. Union of India, WP (C) 7743/2019*** and is found to be appropriate.
19. The Respondent's contention that ITC on input services should be excluded is devoid of merit and is rejected. The benefit under GST includes ITC on both goods and services, and cannot be restricted only to material inputs. Accordingly, no exclusion of service-related ITC is warranted.
20. The statutory position is further clarified by the following clarification issued by the Central Board of Excise and Customs (CBEC) dated 15.06.2017, titled:"Reduced Liability of Tax on complex, building, flat etc. under GST", is reproduced hereinbelow verbatim:

    The CBEC and States have received several complaints that in view of the works contract service tax rate under GST at 12% in respect of under construction flats, complex etc, the people who have booked flats and made part payment are being asked to make entire payment before 1st July 2017 or to face higher tax incidence for payment made after 1st July 2017. This is against the GST law. The issue is clarified as below: -

    1. *Construction of flats, complex, buildings will have a lower incidence of GST as compared to a plethora of central and state indirect taxes suffered by them under the existing regime.*
    2. *Central Excise duty is payable on most construction material @12.5%. It is higher in case of cement. In addition, VAT is also payable on construction material @12.5% to 14.5% in most of the States. In addition, construction material also presently suffer Entry Tax levied by the States. Input Tax Credit of the above taxes is not currently allowed for payment of Service Tax. Credit of these taxes is also not available for payment of VAT on construction of flats etc. under composition scheme. Thus, there is cascading of input taxes on constructed flats, etc.*
    3. *As a result, incidence of Central Excise duty, VAT, Entry Tax, etc. on construction material is also currently borne by the builders, which they pass on to the customers as part of the price charged from them. This is not visible to the customer as it forms a part of the cost of the flat.*
    4. *The current headline rate of service tax on construction of flats, residences, offices etc. is 4.5%. Over and above this, VAT @1% under composition scheme is also charged. The buyer only looks at the headline rate of 5.5%. In other cities/states, where VAT is levied under the composition scheme @2% or above, the headline rate visible to the customer is above 6.5%. What the customer does not see is the embedded taxes on account of cascading and sticking of input taxes in the cost of the flat, etc.*
    5. *This will change under GST. Under GST, full input credit would be available for offsetting the headline rate of 12%. As a result, the input taxes embedded in the flat will not (& should not) form a part of the cost of the flat. The input credits should take care of the headline rate of 12% and it is for this reason that refund of overflow of input tax credits to the builder has been disallowed.*
    6. *The builders are expected to pass on the benefits of lower tax burden under the GST regime to the buyers of property by way of reduced prices/ installments. It is, therefore, advised to all builders / construction companies that in the flats under construction, they should not ask customers to pay higher tax rate on instalments to be received after imposition of GST.*
    7. *Despite this clarity on law position, if any builder resorts to such practice, the same can be deemed to be profiteering under section 171 of GST law.*

21. From the above clarification, this Tribunal finds that under the GST regime, the benefit of Input Tax Credit is intended to reduce the overall tax burden on construction services and consequently reduce the effective cost to the buyers. The aforesaid circular clearly mandates that such benefit is required to be passed on to the recipients by way of commensurate reduction in prices, failing which the same may amount to profiteering under Section 171 of the CGST Act, 2017.
22. With regard to the issue of certain buyers denying receipt of benefit, it is observed that such denial through email responses cannot override documentary evidence maintained in the regular course of business. The DGAP has examined the books of accounts, customer ledgers and credit notes furnished by the Respondent and found that the ITC benefit had been adjusted against the amounts payable by the concerned buyers. Passing on of benefit through price adjustment is a valid mode of compliance under Section 171 of the CGST Act, 2017 and does not necessarily require a separate cash refund. Accordingly, this Tribunal is of the considered view that the commensurate benefit of ₹46,40,136/- stood passed on to the said 13 customers.
23. It is further observed that the Respondent had, at the time of implementation of GST, factored the anticipated ITC benefit into the pricing of flats, as evidenced from contemporaneous records including internal circulars and meeting minutes placed on record. Therefore, to that extent, the benefit stood passed on through the pricing mechanism itself.
24. On quantification, it is observed that the original DGAP Report dated 09.10.2024 determined the profiteered amount at ₹6,02,89,656/-, out of which ₹3,48,69,781/- was found to have already been passed on, leaving a balance amount of ₹2,54,20,175/-. However, upon reconsideration and verification of additional documents furnished by the Respondent, the DGAP revised the profiteered amount to ₹1,51,87,625/-, with a balance amount of ₹71,37,747/- remaining to be passed on to the eligible recipients. It has also been correctly clarified that excess benefit passed on to certain buyers cannot be adjusted against the shortfall pertaining to other buyers, since each recipient is independently entitled to commensurate benefit under Section 171 of the CGST Act, 2017.
25. In view of the foregoing discussion, this Tribunal holds that the Respondent had derived additional ITC benefit amounting to ₹1,51,87,625/- and the same had not been fully passed on to the homebuyers. The revised computation carried out by the DGAP is found to be reasonable, evidence-based and in consonance with the provisions of Section 171 of the CGST Act, 2017. Accordingly, the balance profiteered amount of ₹71,37,747/- (exclusive of GST) is liable to be passed on to the eligible recipients.
26. It is also relevant to note that, as per the DGAP Report dated 13.03.2026, the average sale price charged by the Respondent for the residential units ranged approximately between ₹3,980/- to ₹4,000/- per sq. ft. On the basis of the revised computation carried out by the DGAP, the profiteering works out to approximately ₹138/- per sq. ft., computed on the basis of the total profiteered amount vis-à-vis the total saleable area considered for the purpose of computation.

Levy of GST on the Profiteered Amount

27. With regard to levy of GST on the profiteered amount, this Tribunal finds that the balance profiteered amount of ₹71,37,747/- determined by the DGAP is exclusive of GST, whereas the consideration collected by the Respondent from the homebuyers is inclusive of GST. Consequently, the excess amount realised by the Respondent on account of non-passing of ITC benefit inherently includes the corresponding GST component collected from the buyers. Therefore, the profiteered amount cannot be segregated from the tax component and is required to be returned along with applicable GST @ 12%, which works out to ₹8,56,530/-, which comes to the total of ₹79,94,277/-. The contention of the Respondent that GST has already been deposited

with the Government is not tenable, as the issue pertains to restitution of the entire excess realisation, including the GST component, collected from the recipients.

28. In view of the above, it is held that the GST component has been rightly included to the profiteered amount. Reference in this regard may be made to the judgment of the Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. v. Union of India, WP (C) 7743/2019***, wherein the Hon'ble Court has dealt with this issue in paragraph 157 of the judgment. The relevant extract is reproduced below for the sake of brevity:

    157. Both the Central as well as the State Government had no intent of collecting additional Goods and Services Tax on the higher price as they had sacrificed their revenue in favour of the buyer. By compelling the buyers to pay the additional Goods and Services Tax on a higher price, the supplier has not only defeated the intent of the Governments but has also acted against the interest of the consumer and therefore, the Goods and Services Tax collected by him on the additional realization has rightly been included in the profiteered amount.

<u>Interest:</u>

29. The next issue for determination is whether interest is payable on the profiteered amount and, if so, the period for which such interest is to be computed. Section 171 of the CGST Act, 2017 casts a statutory obligation on the Respondent to pass on the benefit of reduction in tax rate or availability of additional Input Tax Credit to the recipients by way of commensurate reduction in prices at the time of supply. Further, Rule 133(3)(b) of the Central Goods and Services Tax Rules, 2017 provides that the amount not so passed on shall be returned to the recipients along with interest at the rate of 18% per annum, calculated from the date of collection of the higher amount till the date of its actual return. The said provision is mandatory in nature and leaves no discretion in its application.

30. With regard to the issue of interest, reference may be made to the judgment of the Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. v. Union of India, WP (C) 7743/2019***, wherein the Hon'ble Court has dealt with this issue in paragraph 153 of the judgment. The relevant extract is reproduced below:

    153. This court is of the view that Section 171 of the Act, 2017 is broad enough to empower the Central Government to prescribe penalty and interest to ensure that the suppliers are deterred from pocketing the benefits meant for the consumers when taxes amounts so pocketed by the supplier/registered person would not have a sufficient deterrent effect on deviant behavior unless interest and penalty are levied to prevent such actions from taking place in the first place. The width and amplitude of Section 171 by which the authority is empowered to ensure that a reduction in tax rate or the Input Tax Credit availed results in a commensurate reduction in the price of goods or services clearly encompasses within it the power to ensure that such conduct which leads to profiteering does not take."

31. The Provisions with respect to interest are as follows: -

    Rule 133(3)(b) – *return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with the interest at the rate of eighteen percent from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be.*

32. Interest in such cases is compensatory in nature and is intended to ensure restitution of the time value of money that rightfully belongs to the recipients. Accordingly, the Respondent is liable to pay interest at the rate of 18% per annum from the respective dates of collection of the excess amount until the date of refund.

<u>Penalty:</u>

33. Further, insofar as penalty under Section 171(3A) of the CGST Act, 2017 is concerned, the said provision came into force w.e.f. 01.01.2020, and since the period of contravention in the present case extends from 01.07.2017 to 30.09.2024, including

the period subsequent to its coming into force of the said provision, penalty under Section 171(3A) of the CGST Act, 2017 is attracted. The relevant provision reads as under:

Where the Authority referred to in sub-section (2) after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to ten per cent of the amount so profiteered:

PROVIDED that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority"

Conclusion:

34. The Respondent is hereby directed to pass on the profiteered amount of ₹71,37,747/- (exclusive of GST), along with GST @ 12% amounting to ₹8,56,530/-, aggregating to ₹79,94,277/-, to the eligible homebuyers, as identified in the DGAP Report dated 13.03.2026. The said amount shall be passed on along with interest at the rate of 18% per annum, in terms of Rule 133(3)(b) of the Central Goods and Services Tax Rules, 2017, from the date of collection of the higher amount from the buyers till the date of its actual refund. Compliance of this Order shall be reported to the jurisdictional Commissioner within a period of three months from the date of this Order, with a copy to the DGAP.
35. A copy of this Order be forwarded to the Respondent, the Applicants, the Directorate General of Anti-Profiteering, and the jurisdictional CGST/SGST Commissioner(s) for necessary action.
36. The matter stands disposed of accordingly.
37. Order pronounced in the open court.

(2026) 1 GSTAT E- Journal 242 (Principal Bench)

(GOODS AND SERVICES TAX APPELLATE TRIBUNAL, PRINCIPAL BENCH)

DIRECTOR GENERAL OF ANTI PROFITEERING (DGAP)

V.

EMAAR

NAPA 153/PB/2025, JULY 06, 2026

CORAM:

HON'BLE JUSTICE MAYANK KUMAR JAIN, MEMBER JUDICIAL
AND
HON'BLE SHRI A. VENU PRASAD, MEMBER TECHNICAL

REPRESENTATION:

For the Appellant: Ms. Geetika Chib Additional Assistant Director.
For the Respondent: Shri Manish Gaur, Advocate and Shri Shivam Batra, Advocate.

HEADNOTE:

GST: Anti-profiteering —Additional ITC benefit 2.44% (9.41% pre-GST to 11.85% post-GST) — Total profiteered Rs. 3,49,74,221/- — Passed on Rs. 3,21,54,840/- — Balance Rs. 67,32,464/- to 232 homebuyers. **HELD**: Methodology — No fixed formula; Rule 126 flexible; project-wise savings allocated over saleable area — Consistent with Reckitt Benckiser (Delhi HC). Jurisdiction — Enquiry covers all recipients, not just complainant. Limitation — Rules 129/133 directory, not mandatory. Natural Justice — Adequate opportunity; no prejudice. Interest — 18% p.a. under Rule 133(3)(b) from collection till return. Penalty — Section 171(3A) prospective w.e.f. 01.01.2020; no penalty. Set-off — Excess to some not adjustable against shortfall to others; recipient-specific. GST — Includable in profiteered amount. Continuous Supply — Project-wise allocation valid. ITC on Services — Included. Higher GST Incidence — No merit; ITC benefit exists. CBEC Clarification 15.06.2017 — Builders must pass on benefit. Consumer Welfare Fund — Not applicable; recipients identifiable. Compliance — Deposit Rs. 67,32,464/- with 18% interest within 3 months; Commissioner to monitor. [Paras 21-60].

…**In Favour of the DGAP**

KEY ISSUE AND FINDINGS:

1. **Whether the Standing Committee failed to examine prima facie case before reference?**
   "The Respondent has further challenged the validity of the proceedings on the ground that the Standing Committee failed to examine the existence of a prima facie case before making a reference under Rules 128 and 129 of the CGST Rules, 2017. We do not find any substance in the said contention. The record shows that the complaint was examined by the Standing Committee and, upon being satisfied that sufficient material existed warranting detailed investigation, the matter was referred to the DGAP in accordance with the statutory scheme. The subsequent investigation was conducted after issuance of notice and consideration of the information furnished by the Respondent. Accordingly, the initiation of proceedings cannot be faulted." [Para 26]

2. **Whether principles of natural justice were violated?**
   "……The record demonstrates that the Respondent was issued notice during the course of investigation and was afforded adequate opportunity to participate in the proceedings. The Respondent furnished detailed replies, produced documentary evidence in support of its contentions and was granted access to the non-confidential record. No specific prejudice has been demonstrated to have been caused to the Respondent on account of the alleged procedural irregularities. It is well settled that a plea of violation of natural justice cannot be sustained in the absence of prejudice. Accordingly, the proceedings cannot be said to be vitiated on this ground." [Para 27]

   "We further do not find any violation of the principles of natural justice. The record reveals that the Respondent was issued notice by the DGAP, furnished multiple written submissions, supplied voluminous documents and was granted access to the non-confidential record. The Respondent has participated extensively throughout the investigation as well as the adjudicatory proceedings before this Tribunal. In such circumstances, the contention that no reasonable opportunity of hearing was afforded is wholly devoid of merit." [Para 30]

3. **Whether investigation can travel beyond single complainant?**
   "Equally untenable is the contention that the proceedings have travelled beyond the scope of the original complaint filed by a single homebuyer. Section 171 of the CGST Act, 2017 casts an obligation upon every registered person to pass on the benefit of tax reduction or additional ITC to the recipients of the supply. The statutory enquiry is therefore directed towards examining whether such benefit has been passed on in respect of the relevant supply and is not confined solely to the individual complainant. Consequently, once an investigation is validly initiated, the DGAP is empowered to examine the position of all similarly situated recipients in the project. The investigation therefore cannot be said to have exceeded its lawful scope." [Para 28]

4. **Whether excess benefit to some can offset shortfall to others?**
   "As regards the Respondent's contention that it had already passed on the benefit to the homebuyers, we note that the DGAP has duly examined the books of accounts, customer ledgers, credit notes and other documentary evidence furnished by the Respondent. The DGAP has given due credit wherever the passing on of benefit was substantiated by documentary evidence. However, the investigation has revealed that the benefit required to be passed on under Section 171 exceeded the benefit actually passed on to the eligible recipients. We concur with the finding of the DGAP that excess benefit passed on to certain homebuyers cannot be adjusted against the shortfall in benefit payable to other

homebuyers, since each recipient is independently entitled to receive commensurate benefit." [Para 40]
"It is further observed from the DGAP's findings that, in respect of 226 homebuyers, the benefit actually passed on by the Respondent was lower than the commensurate benefit required to be passed on, resulting in a shortfall of Rs. 55,85,980/-. Conversely, in respect of 204 homebuyers, the Respondent had passed on benefit in excess of the commensurate amount by Rs. 69,38,986/-. However, such excess benefit passed on to certain recipients cannot be adjusted or set off against the shortfall in benefit payable to other recipients. The obligation under Section 171(1) of the CGST Act, 2017 is recipient-specific and each homebuyer is independently entitled to receive the commensurate benefit accruing on account of additional ITC. Any excess amount passed on to a particular recipient can be adjusted only with that recipient and cannot extinguish or reduce the Respondent's liability towards other recipients who have not received the benefit due to them. Accordingly, the contention of the Respondent seeking consideration of excess benefit passed on to certain homebuyers against the shortfall in respect of others is not sustainable." [Para 43]
"In view of the above, this Tribunal holds that the Respondent had derived additional benefit of Input Tax Credit amounting to Rs. 3,49,74,221/- (inclusive of GST) consequent upon the implementation of GST in respect of the project "Gurgaon Greens". The Tribunal further finds that although the Respondent had passed on benefit amounting to Rs. 3,21,54,840/- to certain homebuyers, the same was not sufficient to discharge its statutory obligation under Section 171(1) of the CGST Act, 2017. The computation undertaken by the DGAP is found to be correct, reasonable and based on the records furnished by the Respondent. Accordingly, the balance profiteered amount of Rs. 67,32,464/- (inclusive of GST) remains liable to be passed on to the 232 eligible homebuyers who have not received the commensurate benefit in full, in terms of Section 171 of the CGST Act, 2017." [Para 44]

5. **Whether GST could be added to the profiteered amount?**
"We are unable to accept the aforesaid contentions. Rule 133(3)(b) of the CGST Rules, 2017, as applicable during the relevant period, specifically empowered the Authority to direct return of the amount not passed on by way of commensurate reduction in prices together with interest." [Para 46]
"Reference may also be made to the judgment of the Hon'ble Delhi High Court in Reckitt Benckiser India Pvt. Ltd. (supra), wherein the Hon'ble Court, while considering the scope and ambit of Section 171 of the CGST Act, observed that the provision is broad enough to empower the Authority not only to determine the profiteered amount but also to ensure that the recipients receive the full benefit intended under the statute." [Para 47]
"In the present case, this Tribunal has already held that the Respondent failed to pass on the entire benefit of additional Input Tax Credit accrued on account of implementation of GST to the eligible recipients by way of commensurate reduction in prices and thereby contravened the provisions of Section 171(1) of the CGST Act, 2017. Consequently, the profiteered amount determined herein is liable to be returned to the eligible recipients together with interest in terms of Rule 133(3)(b) of the CGST Rules, 2017." [Para 48]

6. **Whether penalty is imposable upon the Respondent under Section 171(3A) of the CGST Act, 2017?**
"The Tribunal finds merit in the aforesaid contention. It is observed that the investigation in the present matter covers the period from 01.07.2017 to 16.07.2019. Section 171(3A) of the CGST Act, 2017, which provides for imposition of penalty in cases where a registered person is found to have profiteered, was inserted by the Finance (No. 2) Act, 2019 and came into force with effect from 01.01.2020.
Since the entire period involved in the present proceedings precedes the coming into force of Section 171(3A), the penal provision cannot be applied retrospectively to the Respondent. It is a settled principle of law that a provision imposing penalty creates a

substantive liability and, in the absence of express legislative intent, cannot be given retrospective operation.
Accordingly, while the Respondent is liable to pass on the profiteered amount together with applicable interest in terms of Section 171 of the CGST Act, 2017 read with Rule 133 of the CGST Rules, 2017, no penalty under Section 171(3A) of the CGST Act, 2017 is imposable in the facts and circumstances of the present case" [Para 52, 53, 54]

EDITORIAL NOTES:
Principles Laid Down:
1. This order is significant as it implements the Delhi High Court's directions in Reckitt Benckiser, moving away from the flawed turnover-based methodology to a project-wise savings ÷ total area methodology. This ensures uniform benefit to all homebuyers with equal area.
2. The Tribunal correctly held that excess benefit passed on to some recipients cannot offset shortfall to others. This reinforces the recipient-specific nature of the obligation under Section 171.
3. The order clarifies that timelines under the anti-profiteering framework are directory, not mandatory. This provides much-needed certainty to the proceedings.
4. The order correctly holds that Section 171(3A) cannot be applied retrospectively to periods prior to 01.01.2020.
5. The order reinforces that anti-profiteering provisions are beneficial legislation and must receive liberal construction favouring consumers.

Case Law Referred to:
Reckitt Benckiser India Pvt. Ltd. v. Union of India- WP(C) 7743/2019 (Delhi High Court-Followed (Paras 7, 8, 21, 22, 23, 25, 29, 47)

Dhanjibhai Ramjibhai v. State of Gujarat- (1985) 2 SCC 5; [1985] (22) E.L.T. 640-Referred(Para 21)

Chairman & MD, BPL Ltd. v. S.P. Gururaja-(2003) 8 SCC 567- Referred (Para 21)

P.T. Rajan v. T.P.M. Sahir- (2003) 8 SCC 498-Followed (Para 29)

DGAP v. Gopal Teknocon (P.) Ltd.- [2025] 180 taxman.com 250 (GSTAT-New Delhi-Referred (Para 14.2)

B.G. Shirke Oil & Gas India Pvt. Ltd. v. Commissioner of Central Tax, Visakhapatnam - GST 2024 TMI 431 (CESTAT, Hyderabad Referred (Para 14.5)

Circulars & Notification Referred to:
- Notification No. 11/2017-Central Tax (Rate), Dated -28.06.2017
- Notification No. 18/2024-Central Tax, Dated- 30.09.2024
- CBIC Circular No. 188/20/2022-GST, Dated- 27.12.2022

JUDGMENT

Order Per: Hon'ble Shri A. Venu Prasad, Member Technical
1. In the real estate sector, construction services generally involve the construction and sale of residential or commercial units to buyers, where consideration is received before getting the completion certificate or first occupation or thereafter. These services require the use of various goods and services, such as construction materials, labour, technical expertise, and other ancillary inputs, which are procured during the course of execution of the project.

2. Under the GST regime, a developer providing construction services is entitled to avail Input Tax Credit (ITC) on eligible inputs and input services used in the project. The introduction of GST brought about significant changes in the availability of ITC as compared to the erstwhile indirect tax regime. The legislative intent underlying Section 171 of the CGST Act, 2017 is to ensure that any benefit arising from a reduction in the rate of tax or from the availability of additional ITC is passed on to the recipients of the supply. In the context of construction services, this provision seeks to ensure that homebuyers receive the benefit of such tax reductions/ rationalisation through a commensurate reduction in the price payable by them. Accordingly, the issue for determination in the present proceedings is whether the benefit of additional ITC accrued to the Respondent has been passed on to the recipients by way of commensurate reduction in prices.
3. The present proceedings arise from a complainant filed by Mr. Raman Kumar Kalia, 08191, ATS Advantage Advantage Phase I, Ahinsa Khand- Indirapuram, Ghaziabad- 201014 (hereinafter referred to as "the Complainant"), under the Rule 128 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "the CGST Rules"), alleging profiteering in respect of construction services supplied by M/s Emaar India Ltd., Emaar Business Park, Mehrauli Gurugram Road, Sikanderpur Chowk, Sector- 28, Haryana- 122002 (hereinafter referred to as "the Respondent") in his project "Gurgaon Greens".
4. The complaint alleged that the Respondent has not passed on the benefit of Input Tax Credit (hereinafter referred to as the "ITC") to him by way of commensurate reduction in the price on purchase of a Flat No. GGN-04-0602 in the Respondent's project "Gurgaon Greens" after the introduction of GST w.e.f. 01.07.2017, in terms of Section 171 of the Central Goods and Services Tax Act, 2017.
5. The complaint was examined by the Standing Committee on Anti-Profiteering, which, upon being satisfied with the necessary evidences collected, forwarded the matter to the Directorate General of Anti- Profiteering (hereinafter referred to as "DGAP") for a detailed investigation under Rule 129(1) of the CGST Rules, 2017.
6. Accordingly, the investigation in the matter was conducted and the Investigation Report dated 29.10.2020 was prepared and submitted to the erstwhile National Anti-Profiteering Authority (NAA) under 129(6) of the Rules.
7. The aforesaid report was pending for orders before the erstwhile NAA (and then before the Competition Commission of India). Meanwhile, in the case of **Reckitt Benckiser India Pvt.Ltd. v. Union of India [WP(C) 7743/2019].,** the Hon'ble High Court of Delhi vide its judgment dated 29.01.2024 gave its findings on the methodology to be adopted for determination of profiteering.
8. Subsequently, taking cognisance of the aforesaid judgment of the Hon'ble High Court of Delhi, the Competition Commission of India (CCI) vide letter F. No. M/AP/28/Meeting/2023-24Sectt./263- 305 dated 20.03.2024 remanded back the case to DGAP to re-investigation.
9. Accordingly, a Notice dated 08.04.2024 was issued by the DGAP to the Respondent for initiation of re-investigation under Rule 129 of the CGST Rules, 2017, calling upon it to furnish the requisite information and the documents and to enable determination of profiteering in terms of the directions of the Hon'ble High Court of Delhi vide judgement dated 29.01.2024.
10. In response to the aforesaid Notice, the Respondent submitted its replies vide letters/ emails dated 17.05.2024, 03.06.2024, 22.08.2024 and 10.09.2024, and furnished the requisite information and documents as called for by the DGAP.
11. Pursuant thereto, the DGAP conducted investigation and submitted its report dated 03.12.2024 to the Principal Bench, Goods and Services Appellate Tribunal (hereinafter referred to as the "GSTAT"). The same has been summarised as follows:
    11.1 The investigation was carried out for the period from 01.07.2017 to 16.07.2019, i.e., from the date of implementation of GST till the date of receipt of

Occupancy Certificate (OC) for the project "Gurgaon Greens". The DGAP noted that the Respondent had obtained the OC on 16.07.2019.

11.2 The project comprises of 642 residential units. Out of these, 435 units were sold to pre-GST customers and 142 units were sold to post-GST customers prior to receipt of OC. Since 65 homebuyers booked their units after receipt of OC, only 577 homebuyers were considered for the purpose of profiteering calculation.

11.3 Prior to implementation of GST, the Respondent was eligible to avail CENVAT Credit of Service Tax paid on input services and credit of VAT paid on inputs used in the construction of the project. Accordingly, during the pre-GST period, i.e., April 2012 to June 2017, the Respondent had availed CENVAT Credit of Service Tax amounting to Rs. 8,68,28,567/- and Input Tax Credit of VAT amounting to Rs. 4,00,93,533/-, aggregating to Rs. 12,69,22,100/-. Upon implementation of GST w.e.f. 01.07.2017, the Respondent became eligible to avail ITC of GST paid on all input goods and input services used in the construction of the project. During the period from July 2017 to July 2019, the Respondent availed Input Tax Credit amounting to Rs. 24,86,30,369/-. This has been tabulated as under:

S. No.	Period	CENVAT + VAT Availed	ITC availed	ITC Reversed under Rule 42	ITC reversed as per DRC	Net CENVAT/ ITC available
1 .	2012-13	53,48,776				53,48,776
2 .	2013-14	90,10,132				90,10,132
3 .	2014-15	2,03,00,993				2,03,00,993
4 .	2015-16	81,48,614				81,48,614
5 .	2016-17	4,78,86,5563				4,78,86,563
6 .	April, 2017 to June, 2017	3,62,27,023				3,62,27,023
		Total CENVAT + VAT availed				12,69,22,101
	July, 2017 to March, 2018		11,90,02,530	0	0	11,90,02,530
	2018-19		12,95,92,093	0	0	12,95,92,093
	2019-20		2,72,61,561	2,72,25,815	0	35,746
				NET ITC availed		24,86,30,369

11.4 In view of the judgment dated 29.01.2024 passed by the Hon'ble High Court of Delhi in Reckitt Benckiser India Pvt. Ltd. (supra), the methodology for determination of profiteering in real estate projects was required to be based upon comparison of credit availed as a percentage of purchase value in the pre-GST and post-GST periods. Accordingly, the ratio of CENVAT Credit/VAT Credit and GST Input Tax Credit to purchase value was computed as under:

S. No.	**Particulars**	**Total (Pre-GST Period upto30.06.2017)**	**Total (Post-GST period from 01.07.2017 to 16.07.2019)**
1 .	CENVAT of Service Tax Paid on Input Services (A)	8,68,28,567	
2 .	Input Tax Credit of VAT Paid on	4,00,93,533	

	purchase of Inputs (B)		
3 .	Total Tax Credit of GST availed as per GSTR-3B returns (C)		24,86,30,369
4 .	Total CENVAT/ ITC of VAT/ ITC of GST (D= A+B+C)	12,69,22,100	24,86,30,369
5 .	Total purchase value of goods and services for the project (E)	1,34,84,28,494	2,09,79,11,924
6 .	**Percentage/ Ratio of Input tax credit to the purchase value (F= D*100/E)**	**9.41%**	**11.85%**

From the above Table-A, the DGAP observed that the ratio of credit availed to purchase value increased from 9.41% in the pre-GST period to 11.85% in the post-GST period. Thus, the Respondent had derived an additional benefit of Input Tax Credit amounting to 2.44% of the purchase value on account of introduction of GST.

11.5 The DGAP further noted that the Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate was 12% in view of 1/3rd abatement for land value) on construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 . Therefore, the additional ITC benefit accruing to the Respondent was required to be passed on to the homebuyers by way of commensurate reduction in prices in terms of Section 171 of the CGST Act, 2017.

11.6 Based on the additional ITC benefit of 2.44%, the DGAP computed the amount required to be passed on to the homebuyers by applying the said percentage to the purchase value incurred during the post-GST period and thereafter allocating the benefit on the basis of the saleable area of the project. The computation was worked out as under:

Particulars		**Post- GST**
Period	A	July 2017 to July 2019
Ratio of Credit availed to Purchase Value as per Table-A above (%)	B	9.41% / 11.85%
Increase in input tax credit availed Post- GST (%)	C	2.44%
Purchase Value of Goods and Services (Excluding Taxes and Duties) during Post- GST Period	D	2,09,79,11,924/-
Total savings on account of additional ITC benefit	E= D*C/100	5,11,62,436.37/-
Total saleable area (in Sq. Ft.) as per the list of buyers	F	11,91,366
Total saving per Sq. Ft.	G= E/F	42.94
Total Sold Area (in Sq. Ft)	H	7,27,150

Base Profiteered Amount	I= G*H	3,12,26,983

Based on the above computation, the DGAP concluded that the Respondent was required to pass on benefit of Rs. 3,12,26,983/- to the eligible homebuyers. After adding GST @ 12%, amounting to Rs. 37,47,238/-, the total profiteered amount was determined at Rs. 3,49,74,221/-.

11.7 The DGAP also examined the claim of the Respondent regarding benefit already passed on to the homebuyers through credit notes and other adjustments. Upon verification of the documents furnished by the Respondent, the DGAP observed that out of the total profiteered amount of Rs. 3,49,74,221/-, the benefit required to be passed on to the eligible recipients remained quantified at the aforesaid amount. The DGAP further observed that 436 recipients were identifiable on the basis of the records furnished by the Respondent and that the amount required to be passed on to such recipients aggregated to Rs. 67,32,464/-(including GST).

12. With effect from 01.10.2024, the Central Government, on the recommendations of the GST Council, has empowered the Principal Bench, GSTAT, constituted under sub-section (3) of Section 109 of the CGST Act, 2017, to adjudicate anti-profiteering cases in terms of Notification No. 18/2024–Central Tax dated 30.09.2024.

13. The above Report was received in the Principal Bench, GSTAT on 03.12.2024 for adjudication under Section 171 of the CGST Act, 2017. A notice dated 01.10.2025 was issued to the Respondent directing it to file written submissions on the DGAP Report.

14. The Respondent, vide submissions dated 24.11.2025, contended as follows:

14.1 The Respondent submitted that the object of Section 171 of the CGST Act, 2017 is to ensure that any benefit arising from reduction in the rate of tax or availability of additional ITC is passed on to recipients by way of commensurate reduction in prices. It was contended that no benefit had accrued on account of reduction in the rate of tax since the effective tax incidence on construction services had increased under the GST regime. However, the Respondent acknowledged that certain benefit had accrued on account of enhanced availability of ITC and submitted that the same had already been voluntarily quantified and passed on to the homebuyers. According to the Respondent, an amount of Rs. 3,21,54,840/- had already been passed on to customers in the project even prior to commencement of the investigation and, therefore, the statutory obligation under Section 171(1) stood fully discharged.

14.2 The Respondent further submitted that it had engaged an independent consultant to examine the impact of GST on the project by analysing contracts, procurement patterns, project costs, vendor negotiations, tax incidence and availability of ITC in the pre-GST and post-GST periods. Based on such analysis, the benefit arising from additional ITC was quantified and distributed amongst customers through adjustments in the balance consideration payable. It was contended that the methodology adopted by the Respondent appropriately aligned the benefit with the tax burden actually borne by each customer and avoided over-allocation of benefit to customers who had substantially completed their payments prior to implementation of GST. Reliance was placed on the decision in ***DGAP v. Gopal Teknocon (P.) Ltd. [2025] 180 taxmann.com 250 (GSTAT-New Delhi).***

14.3 The Respondent challenged the methodology adopted by the DGAP and submitted that the same was contrary to Section 171 of the CGST Act, 2017 and the principles laid down by the Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. (supra).*** It was contended that the DGAP had erroneously treated the increase in the ratio of ITC to purchase value in the post-GST period as the benefit required to be passed on without examining whether there was any actual reduction in the cost of supply. According to the Respondent, the increase in ITC availability was largely attributable to higher GST rates applicable on inward supplies and input services under the GST regime and, therefore, a higher quantum of ITC did not necessarily translate into a corresponding benefit under Section 171.

It was further argued that the methodology ignored factors such as increased tax incidence on procurements, project-specific cost structures, timing of receipt of inputs and services and actual savings, if any, arising from implementation of GST.

14.4 Without prejudice to the aforesaid submissions, the Respondent furnished an alternative computation and contended that, for a like-to-like comparison, the post-GST credit position ought to be benchmarked against the maximum tax incidence prevailing in the pre-GST regime. On such basis, the ratio of credit to purchase value in the post-GST period worked out to 9.87% as against 9.41% in the pre-GST period, resulting in an additional benefit of only 0.46% as opposed to 2.44% computed by the DGAP. It was further submitted that allocation of benefit on the basis of total area sold was fundamentally flawed and that any benefit ought to be determined with reference to actual post-GST receipts and taxable supplies made during the GST period. According to the Respondent, the profiteered amount, if any, would work out to Rs. 58,90,116/- only and stood fully offset by the benefit already passed on to the homebuyers.

14.5 It was argued that Real Estate, being a "continuous supply of services" under Section 2(33) of the CGST Act, 2017 and the benefit must be linked to actual post-GST receipts, not total area. Even assuming if DGAP's methodology, the per-customer profiteering is Rs. 71,741/-, whereas the Respondent has already passed on Rs. 92,711/- to the complainant. The benefit passed on is a statutory adjustment, not a supply, and does not attract GST. Reliance was placed on the ***B.G Shirke Oil & Gas India Pvt. Ltd. Vs. Commissioner of Central Tax, Visakhapatnam- GST 2024TMI 431 (CESTAT, Hyderabad).***

14.6 The Respondent further contended that the benefit required to be passed on under Section 171 could not be subjected to GST. It was submitted that GST collected from customers had already been deposited with the Government and that passing on anti-profiteering benefit did not constitute an independent taxable supply. Reliance was placed upon Section 34 of the CGST Act, CBIC Circular No. 188/20/2022-GST dated 27.12.2022 to contend that the profiteered amount, if any, ought not to be enhanced by adding GST thereon.

14.7 The Respondent further submitted that, where recipients were not identifiable or traceable, the amount, if any, could only be deposited in the Consumer Welfare Fund in terms of Rule 133(3)(c) of the CGST Rules, 2017. It was argued that in long-term real estate projects several allottees may have transferred their units or ceased to be traceable and, therefore, direct restitution to all recipients may not be feasible.

14.8 The Respondent challenged the very initiation of the proceedings and submitted that the requirements prescribed under Rules 128 and 129 of the CGST Rules, 2017 had not been complied with. It was contended that the Standing Committee was required to examine whether the material placed before it disclosed a prima facie case of non-passing of benefit under Section 171 before referring the matter for detailed investigation. According to the Respondent, neither the application nor the accompanying material disclosed any such prima facie evidence and, therefore, the reference made to the DGAP was without jurisdiction and liable to be set aside.

14.9 The Respondent further contended that the proceedings, as well as the impugned DGAP Report dated 03.12.2024, were barred by limitation. It was submitted that the timelines prescribed under Rules 129 and 133 of the CGST Rules, 2017 were mandatory in nature and that the remand proceedings could not revive or extend the statutory period. It was further argued that the delay in completion of the fresh investigation had caused substantial prejudice to the Respondent and that the Authority became *functus officio* upon expiry of the prescribed period. Reliance was placed on various decisions of the Hon'ble Supreme Court and High Courts in support of the aforesaid contentions.

14.10 The Respondent further submitted that the proceedings were vitiated on account of violation of the principles of natural justice. It was contended that neither the original application filed by the Applicant nor the reference made by the Standing Committee had been furnished to the Respondent and that no opportunity had been provided to present its case before the matter was referred for investigation. It was further argued that no proper show cause notice specifying the allegations of profiteering, the basis thereof, the issues proposed to be examined or the action proposed to be taken had been issued prior to commencement of the proceedings. According to the Respondent, the DGAP's Report could not be treated as a substitute for a statutory show cause notice and, therefore, the proceedings were liable to be set aside.

14.11 The Respondent additionally contended that neither the CGST Act nor the CGST Rules prescribe any statutory methodology or formula for determination and quantification of profiteering. According to the Respondent, in the absence of a prescribed mechanism, determination of profiteering on a case-to-case basis was arbitrary, lacked transparency and rendered the methodology adopted by the DGAP unsustainable in law. The Respondent also submitted that the investigation had travelled beyond the scope of the original application filed by a single homebuyer and ought to have been confined to the grievance raised by the said Applicant. It was argued that neither the DGAP nor the Authority could enlarge the scope of investigation to cover other homebuyers or the entire project in the absence of a specific statutory direction.

14.12 Lastly, the Respondent contended that no interest or penalty was imposable in the facts of the present case. It was submitted that the benefit available under Section 171 had already been passed on to the homebuyers and, therefore, the foundational requirement for levy of interest was absent. Without prejudice thereto, it was argued that any delay in conclusion of the proceedings was attributable to the authorities and no interest liability could be fastened upon the Respondent for such period. It was further submitted that, during the relevant period, there existed no statutory provision authorising imposition of penalty for violation of Section 171 and, therefore, no penalty proceedings could be sustained against the Respondent.

15. Per contra, the DGAP vide reply dated 18.12.2025 contended as following:

15.1 In response to the Respondent's contention that the benefit of ITC had already been passed on to the homebuyers, the DGAP submitted that its investigation had determined a total profiteered amount of Rs. 3,49,74,221/- (including GST), out of which benefit amounting to Rs. 3,21,54,840/- had already been passed on. According to the DGAP, a balance amount of Rs. 67,32,464/- still remained to be passed on to 232 eligible homebuyers. The DGAP further submitted that any excess benefit passed on to certain homebuyers could not be adjusted against the shortfall in benefit payable to other recipients, as each homebuyer was independently entitled to commensurate benefit under Section 171 of the CGST Act, 2017.

15.2 With regard to the challenge to the methodology adopted for computation of profiteering, the DGAP submitted that the methodology applied in the impugned Report was consistent with Section 171 of the CGST Act, 2017 and the directions contained in the judgment of the Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. (supra).*** It was contended that, in the real estate sector, profiteering is required to be determined by comparing the ratio of eligible pre-GST credits with the ratio of ITC available in the post-GST period vis-à-vis the value of construction inputs and input services. According to the DGAP, the methodology captures the actual economic benefit arising from GST implementation and ensures that the additional ITC benefit is attributed to the total area constructed and passed on to the homebuyers in proportion to the area of the flats. Reliance was also placed upon orders passed by the GSTAT in other real estate matters wherein a similar methodology had been approved.

15.3 In reply to the contention that GST could not be levied on the amount required to be passed on under Section 171, the DGAP submitted that the anti-profiteering provisions require the supplier to reduce the base price to the extent of the benefit accrued and that any excess amount collected from the recipients, including the tax charged thereon, is liable to be returned to the eligible recipients or deposited in the Consumer Welfare Funds, as the case may be. It was further submitted that the Respondent had itself issued credit notes and made adjustments in respect of tax liability and, therefore, the contention that GST could not be included while computing the amount to be passed on was misconceived.

15.4 In response to the contention that any amount determined ought to be deposited in the Consumer Welfare Funds, the DGAP submitted that the recipients in the present case were identifiable homebuyers and, therefore, the benefit was required to be passed on directly to such recipients in accordance with Section 171 of the CGST Act, 2017 and Rule 133 of the CGST Rules, 2017. Accordingly, the DGAP contended that the amount determined was not liable to be transferred to the Consumer Welfare Funds.

15.5 As regards the challenge to the validity of the proceedings under Rules 128 and 129 of the CGST Rules, 2017, the DGAP submitted that the Standing Committee had examined the application and found prima facie evidence of non-passing of benefit before referring the matter for detailed investigation. It was contended that the investigation had thereafter been conducted in accordance with Rule 129 and, therefore, the proceedings were validly initiated.

15.6 In reply to the objections regarding limitation, the DGAP submitted that the fresh investigation had been undertaken pursuant to the directions issued following the judgment of the Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. (supra)*** and that the impugned Report dated 03.12.2024 had been furnished within the period prescribed under Rule 129(6) of the CGST Rules, 2017 reckoned from the date of such directions. Accordingly, it was contended that neither the investigation nor the Report was barred by limitation.

15.7 With regard to the allegation of violation of principles of natural justice, the DGAP submitted that the Respondent had been afforded adequate opportunity to participate in the investigation. It was pointed out that the Respondent had furnished detailed replies and documents during the course of investigation and had also been given access to the non-confidential record, which was duly inspected by it. Accordingly, the DGAP denied that any prejudice had been caused to the Respondent.

15.8 In response to the contention that there exists no prescribed methodology for determination of profiteering, the DGAP submitted that the methodology applied in the impugned Report was in conformity with Section 171 of the CGST Act, 2017 and the principles laid down by the Hon'ble Delhi High Court in ***Reckitt Benckiser (supra).*** It was contended that the methodology adopted in the Report appropriately measures the economic benefit arising from the additional availability of ITC and ensures that such benefit is passed on to the recipients by way of commensurate reduction in prices.

15.9 In reply to the contention that the investigation could not travel beyond the application filed by the Applicant, the DGAP submitted that Section 171 of the CGST Act, 2017 contemplates examination of whether the benefit of tax reduction or additional ITC has been passed on in respect of the supply made by a registered person and is not confined to a single recipient. It was therefore contended that the investigation was rightly conducted in respect of all similarly situated recipients in the project and was not restricted to the Applicant alone.

15.10 As regards the contentions relating to levy of interest and penalty, the DGAP submitted that the same pertained to the Authority and did not call for any specific response in the investigation report. The DGAP accordingly reiterated the findings recorded in its Report dated 03.12.2024 and prayed that appropriate orders be passed in accordance with law.

16. Hearing in the matter was held on 05.02.2026, 17.03.2026 and 10.06.2026. Shri Manish Gaur, Advocate, Shivam Mehta, Advocate, Shubham Vijay and Ms. Aanchal Gupta, Advocate appeared for the Respondent. Miss Geetika Chib, Additional Assistant Director appeared for the Directorate General of Anti- Profiteering. None appeared on behalf of the complaint.
17. In the hearings dated 10.06.2026, the Respondent, through his oral submissions, contended that the contentions advanced in his written submissions may be treated as part of his oral arguments and reiterated the same.

Issues for Determination

18. After carefully considering the DGAP Report dated 03.12.2024, the submissions made by the Respondent, the rejoinder filed by the DGAP and the material available on record, the following issues arise for determination in the present matter:
    (i) Whether the DGAP Report and the methodology adopted therein for determination of the benefit of additional Input Tax Credit and computation of the profiteered amount are legally sustainable and correctly applied to the facts and circumstances of the present case?
    (ii) Whether the Respondent had derived any additional benefit of Input Tax Credit consequent upon the implementation of GST with effect from 01.07.2017 in respect of the project “Gurgaon Greens”?
    (iii) If the answer to Issue No. (i) is in the affirmative, whether the Respondent passed on such benefit to the eligible recipients by way of commensurate reduction in prices in terms of Section 171(1) of the CGST Act, 2017?
    (iv) Whether, consequent upon the contravention of Section 171(1) of the CGST Act, 2017, the Respondent is liable for payment of interest and levy of penalty under the applicable provisions of the CGST Act, 2017?

Issue under point (i):

19. The Respondent has assailed the DGAP Report dated 03.12.2024 on multiple grounds. It has been contended that the methodology adopted by the DGAP is contrary to Section 171 of the CGST Act, 2017 and the principles laid down by the Hon’ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. (supra).*** The Respondent has argued that the increase in the ratio of Input Tax Credit to purchase value does not automatically establish any commensurate reduction in the cost of supply and that the DGAP has failed to consider project-specific factors such as increased tax incidence on procurements, timing of receipt of inputs and services, actual savings arising on account of GST and the peculiar nature of real estate projects.
20. The Respondent has further submitted that real estate projects constitute a continuous supply of services and, therefore, any determination of benefit ought to be linked with actual consideration received during the GST period rather than total area sold. It has also been argued that the DGAP’s methodology of allocating benefit on the basis of total saleable area is fundamentally flawed and that, on a like-to-like comparison, the additional benefit available to the Respondent works out only to 0.46% and not 2.44% as determined by the DGAP. Reliance has been placed upon the decision of the GSTAT in ***DGAP v. Gopal Teknocon (P.) Ltd. (supra)*** in support of the contention that no further profiteering survives where the entire benefit has already been passed on.
21. We do not find merit in the aforesaid submissions. The Hon’ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd (supra)*** has categorically held that no fixed or uniform methodology can be prescribed for determination of profiteering and that the methodology has to be evolved having regard to the peculiar facts and circumstances of each case. The relevant observations contained in paragraphs 124 to 129 of the judgment has been reproduced for the sake of brevity:

> *124. This Court is of the view that no fixed/uniform method or mathematical formula can be laid down for determining profiteering as the facts of each case and each industry may be different. The determination of*

the profiteered amount has to be computed by taking into account the relevant and peculiar facts of each case. There is 'no one size that fits all 'formula or method that can be prescribed in the present batch of matters. Consequently, NAA has to determine the appropriate methodology on a case to case basis keeping in view the peculiar facts and circumstances of each case.

125. It is also well-established that where a power exists to prescribe a procedure and such power has not been exercised, the implementing authorities are at liberty to determine and adopt such procedure as they may deem fit subject to the same being fair and reasonable. In Dhanjibhai Ramjibhai v. State of Gujarat (1985) 2 SCC 5/[1985] (22) E.L.T. 640, the Supreme Court has held, "…Merely because procedural rules have not been framed does not imply a negation of the power. In the absence of such rules, it is sufficient that the power is exercised fairly and reasonably, having regard to the context in which the power has been granted". In Chairman & MD, BPL Ltd. v. S.P. Gururaja, (2003) 8 SCC 567, the Supreme Court has held, "....Under the Act or the Regulations framed thereunder, no procedure for holding such consultations had been laid down. In that situation it was open to the competent authorities to evolve their own procedure. Such a procedure of taking a decision upon deliberations does not fall foul of Article 14 of the Constitution of India."

126. Consequently, Rule 126 of the Rules, 2017 to the extent it grants flexibility to NAA to determine the methodology and procedure to decide whether reduction in rate of tax or benefit of Input Tax Credit has been passed on or not to the recipient is reasonable and legal. Moreover, as per Rule 126 NAA 'may determine 'the methodology and not 'prescribe 'it. The substantive provision i.e. Section 171 of the Act, 2017 itself provides sufficient guidance to NAA to determine the methodology on a case by case basis depending upon peculiar facts of each case and the nature of the industry and its peculiarities. Consequently, so long as the methodology determined by NAA is fair and reasonable, the petitioners cannot raise the objection that the specifics of the methodology adopted are not prescribed.

127. Since considerable emphasis was laid by learned counsel for the Petitioners on the methodology adopted by NAA to determine commensurate reduction qua real estate industry, this Court deems it appropriate to deal with the same at some length. With the introduction of the Goods and Services Tax scheme/regime, the availability of Input Tax Credit against various goods and services used in construction has increased or Input Tax Credit was available against more goods and services then before this resulted in a decrease in the cost of the builders as they now had more Input Tax Credit available to be set off against Goods and Services Tax paid by them in the Goods and Services Tax regime as compared to before and the same was not required to be collected from the consumers.

128. There is no dispute with regard to the methodology to be adopted in the following four scenarios:-

(a) If the flat was completely constructed in the pre-Goods and Services Tax period i.e. before 01st July, 2017 and if it was purchased by making upfront payment of the whole price in the pre-Goods and Services Tax period no benefit of Input Tax Credit would be required to be passed on as the price will include the cost of taxes on which Input Tax Credit was not available in the pre-Goods and Services Tax period viz. Central Excise Duty, Entry Tax etc.

(b) If the construction of the flat had started in the pre-Goods and Services Tax period and continued/completed in the post-Goods and Services Tax period and a buyer purchased the flat by making full upfront payment in the post-Goods and Services Tax period he is entitled to the benefit of Input Tax Credit on the material which has been purchased in respect of this flat during the post-Goods and Services Tax period and on which benefit of

Input Tax Credit has been availed by the builder. The builder has to reduce the price commensurately and pass on the benefit.

(c) If the construction of the flat is started in the pre-Goods and Services Tax period and its construction was continued in the post-Goods and Services Tax period and it was purchased by the consumer by paying the full amount of price upfront in the pre- Goods and Services Tax period, the buyer is entitled to claim benefit of Input Tax Credit on the taxes paid on the construction material purchased by the builder in the post-Goods and Services Tax period during which he has been given benefit of Input Tax Credit on the taxes on which Input Tax Credit was not available in the pre-Goods and Services Tax and cost of such taxes has been built in the price of the flat by the builder.

(d) If the flat is constructed in the post-Goods and Services Tax period and it is purchased after construction being complete by making upfront payment of the full price, no benefit of Input Tax Credit would be available as the price of the flat would have been fixed after taking into account the Input Tax Credit which has become available to the builder in the post-Goods and Services Tax period and which was not available to him in the pre-Goods and Services Tax.

> *129. However, this Court finds that the methodology adopted by NAA and DGAP to arrive at the profiteering amount of the real estate industry was generally based on the difference between the ratio of Input Tax Credit to turnover under the pre-Goods and Services and Tax and post- Goods and Services and Tax period. This Court is in agreement with the contention of the learned counsel for the petitioners representing the real estate companies that the methodology adopted by NAA is flawed as in the real estate sector, there is no direct correlation between the turnover and the Input Tax Credit availed for a particular period. The expenses in a real estate project are not uniform throughout the life cycle of the project and the eligibility of credit depends on the nature of the construction activity undertaken during the particular period. As it is an admitted position that neither the advances received nor the construction activity is uniform throughout the life cycle of the project, the accrual of Input Tax Credit is not related to the amount collected from the buyers. This Court is in agreement with learned counsel of the petitioners that one needs to calculate the total savings on account of introduction of Goods and Services and Tax for each project and then divide the same by total area to arrive at the per square feet benefit to be passed on to each flat buyer. This would ensure that flat-buyers with equal square feet area received equal benefit. The Court, while hearing the present batch of matters on merits, shall take the aforesaid direction/ interpretation into account.*

22. A plain reading of the aforesaid judgment shows that while the Hon'ble High Court recognised the flexibility available under Rule 126 of the CGST Rules, 2017 for determining an appropriate methodology, it simultaneously held that in the real estate sector the methodology based solely upon comparison of Input Tax Credit to turnover was flawed. The Hon'ble High Court directed that the total savings arising on account of GST should be determined project-wise and thereafter apportioned over the total area to arrive at the per square foot benefit required to be passed on to individual homebuyers.
23. It is pertinent to note that the present re-investigation was undertaken pursuant to the remand directions issued following the judgment of the Hon'ble Delhi High Court. The DGAP has accordingly departed from the earlier turnover-based methodology and adopted a methodology based upon comparison of the ratio of eligible/ available credits to construction cost/purchase value in the pre-GST and post-GST periods, determination of the total savings arising on account of GST and subsequent allocation of such savings over the total saleable area of the project. The revised methodology therefore directly addresses the concerns identified by the Hon'ble High Court and is in consonance with the principles laid down therein.

24. We are also unable to accept the Respondent's contention that the benefit should be linked solely to actual receipts during the GST period. The anti-profiteering provisions seek to ensure that the benefit arising on account of additional ITC accrues uniformly to all eligible recipients. The methodology approved by the Hon'ble High Court itself proceeds on the basis of determination of project-wise savings and allocation thereof over the total area of the project so as to ensure that similarly situated homebuyers receive proportionate benefit.
25. We also find no merit in the submission that the absence of a statutorily prescribed formula renders the proceedings unsustainable. Paragraphs 124 to 126 of the judgment in Reckitt Benckiser (supra) clearly recognise that no uniform formula can be prescribed for all industries and that Rule 126 confers sufficient flexibility upon the Authority to determine an appropriate methodology on a case-to-case basis. So long as the methodology adopted is fair, reasonable, transparent and consistent with Section 171 of the CGST Act, 2017, the same cannot be invalidated merely because no fixed formula has been prescribed.
26. The Respondent has further challenged the validity of the proceedings on the ground that the Standing Committee failed to examine the existence of a prima facie case before making a reference under Rules 128 and 129 of the CGST Rules, 2017. We do not find any substance in the said contention. The record shows that the complaint was examined by the Standing Committee and, upon being satisfied that sufficient material existed warranting detailed investigation, the matter was referred to the DGAP in accordance with the statutory scheme. The subsequent investigation was conducted after issuance of notice and consideration of the information furnished by the Respondent. Accordingly, the initiation of proceedings cannot be faulted.
27. The Respondent has further contended that the proceedings stand vitiated on account of violation of the principles of natural justice, alleging that neither the original application nor the reference made by the Standing Committee was furnished to it and that no proper show cause notice was issued prior to commencement of the investigation. We do not find merit in the said contention. The record demonstrates that the Respondent was issued notice during the course of investigation and was afforded adequate opportunity to participate in the proceedings. The Respondent furnished detailed replies, produced documentary evidence in support of its contentions and was granted access to the non-confidential record. No specific prejudice has been demonstrated to have been caused to the Respondent on account of the alleged procedural irregularities. It is well settled that a plea of violation of natural justice cannot be sustained in the absence of prejudice. Accordingly, the proceedings cannot be said to be vitiated on this ground.
28. Equally untenable is the contention that the proceedings have travelled beyond the scope of the original complaint filed by a single homebuyer. Section 171 of the CGST Act, 2017 casts an obligation upon every registered person to pass on the benefit of tax reduction or additional ITC to the recipients of the supply. The statutory enquiry is therefore directed towards examining whether such benefit has been passed on in respect of the relevant supply and is not confined solely to the individual complainant. Consequently, once an investigation is validly initiated, the DGAP is empowered to examine the position of all similarly situated recipients in the project. The investigation therefore cannot be said to have exceeded its lawful scope.
29. The Respondent has also contended that the proceedings and the impugned Report are barred by limitation. We find no merit in the said objection. The fresh investigation was undertaken pursuant to the directions issued following the judgment of the Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. (supra)*** and culminated in submission of the Report dated 03.12.2024. The issue relating to timelines prescribed under the anti-profiteering framework has been specifically considered by the Hon'ble Delhi High Court in the aforesaid judgment, wherein it has been held that the timelines prescribed under the Rules are directory in nature and lapse thereof does not automatically render the proceedings invalid. Accordingly, the

proceedings cannot be held to be barred by limitation. In this regard, reference may be made to paragraph 158 of the judgment, which reads as under:

> *158. In some cases, the Petitioners have pointed out that the timelines as provided in the Rules, 2017 have not been followed. They further contended that as a result, the proceedings are vitiated. However, it is important to note that the Rules, 2017 do not provide any consequences in case the time limits provided thereunder lapse. As held earlier, the anti-profiteering provisions in the Act, 2017 and the Rules, 2017 are in the nature of a beneficial legislation as they promote consumer welfare. The Courts have consistently held that beneficial legislation must receive liberal construction that favorsthe consumer and promotes the intent and objective of the Act. That being the scenario, it cannot be said that the proceedings as a whole abate on lapse of time limit of furnishing of report by DGAP. The Supreme Court in P.T. Rajan v. T.P.M. Sahir (2003) 8 SCC 498 has held that "It is well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefore, the same would be directory and not mandatory. "and that" a provision in a statute which is procedural in nature although employs the word "shall" may not be held to be mandatory if thereby no prejudice is caused." Consequently, the time limit provided for furnishing of report by DGAP is directory in nature and not mandatory.*

30. We further do not find any violation of the principles of natural justice. The record reveals that the Respondent was issued notice by the DGAP, furnished multiple written submissions, supplied voluminous documents and was granted access to the non-confidential record. The Respondent has participated extensively throughout the investigation as well as the adjudicatory proceedings before this Tribunal. In such circumstances, the contention that no reasonable opportunity of hearing was afforded is wholly devoid of merit.
31. In view of the foregoing discussion, this Tribunal finds that the methodology adopted by the DGAP in the Report dated 03.12.2024 is consistent with the directions of the Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. (supra)*** is fair, reasonable and based upon objective material available on record. The objections raised by the Respondent concerning methodology, jurisdiction, limitation, natural justice and scope of investigation are accordingly rejected. Issue No. (i) is answered in favour of the Revenue and against the Respondent

Determination of Profiteering and passing on of the ITC benefit

32. With regard to Issue Nos. (ii) and (iii), this Tribunal finds that upon the implementation of GST with effect from 01.07.2017, the Respondent became entitled to avail Input Tax Credit on both goods and input services used in the construction of the project "Gurgaon Greens", unlike the pre-GST regime where the availability of credit was comparatively restricted. The DGAP, in its Report dated 03.12.2024, examined the extent of credit available to the Respondent during the pre-GST and post-GST periods and concluded that an additional benefit of Input Tax Credit had accrued to the Respondent consequent upon the implementation of GST. In terms of Section 171(1) of the CGST Act, 2017, such benefit was required to be passed on to the homebuyers by way of commensurate reduction in prices.
33. The DGAP has reported that during the pre-GST period, i.e., from April, 2012 to June, 2017, the Respondent availed CENVAT credit and VAT credit aggregating to Rs. 12,69,22,100/- on a total purchase value of Rs. 1,34,84,28,494/-, resulting in a credit ratio of 9.41%. During the post-GST period, i.e., from 01.07.2017 to 16.07.2019, the Respondent availed ITC amounting to Rs. 24,86,30,369/- on a total purchase value of Rs. 2,09,79,11,924/-, resulting in a credit ratio of 11.85%. Thus, the ratio of input tax credit to purchase value increased by 2.44% in the post-GST regime. Based upon the said increase, the DGAP concluded that the Respondent had derived additional Input Tax Credit benefit and was required to pass on the same to the eligible homebuyers.
34. The Respondent has contested the aforesaid conclusion and submitted that no real benefit accrued merely because the ratio of ITC increased in the GST regime. It has

been argued that the increase in ITC was attributable to the higher incidence of GST on inward supplies and input services and, therefore, did not represent any actual economic benefit. The Respondent has further submitted that it had, on its own, identified the benefit arising on account of GST and had passed on the same to the homebuyers through credit notes and price adjustments much before initiation of the investigation. It has also been contended that the benefit already passed on, exceeded the amount legally required to be passed on and that no further determination of profiteering was warranted.

35. We have carefully considered the aforesaid submissions. We find that Section 171(1) of the CGST Act, 2017 mandates that any benefit of ITC shall be passed on to the recipients by way of commensurate reduction in prices. The object of the provision is to ensure that the benefit arising from implementation of GST reaches the ultimate consumers and is not retained by the supplier. Therefore, once additional Input Tax Credit becomes available to a registered person in the GST regime, the corresponding benefit is required to be passed on to the recipients.

36. The statutory position is further clarified by the clarification issued by the Central Board of Excise and Customs (CBEC) dated 15.06.2017 titled "Reduced Liability of Tax on Complex, Building, Flat etc. under GST", which is reproduced below:

> The CBEC and States have received several complaints that in view of the works contract service tax rate under GST at 12% in respect of under construction flats, complex etc, the people who have booked flats and made part payment are being asked to make entire payment before 1st July 2017 or to face higher tax incidence for payment made after 1st July 2017. This is against the GST law. The issue is clarified as below:-

1. Construction of flats, complex, buildings will have a lower incidence of GST as compared to a plethora of central and state indirect taxes suffered by them under the existing regime.
2. Central Excise duty is payable on most construction material @12.5%. It is higher in case of cement. In addition, VAT is also payable on construction material @12.5% to 14.5% in most of the States. In addition, construction material also presently suffer Entry Tax levied by the States. Input Tax Credit of the above taxes is not currently allowed for payment of Service Tax. Credit of these taxes is also not available for payment of VAT on construction of flats etc. under composition scheme. Thus, there is cascading of input taxes on constructed flats, etc.
3. As a result, incidence of Central Excise duty, VAT, Entry Tax, etc. on construction material is also currently borne by the builders, which they pass on to the customers as part of the price charged from them. This is not visible to the customer as it forms a part of the cost of the flat.
4. The current headline rate of service tax on construction of flats, residences, offices etc. is 4.5%. Over and above this, VAT @1% under composition scheme is also charged. The buyer only looks at the headline rate of 5.5%. In other cities/states, where VAT is levied under the composition scheme @2% or above, the headline rate visible to the customer is above 6.5%. What the customer does not see is the embedded taxes on account of cascading and sticking of input taxes in the cost of the flat, etc.
5. This will change under GST. Under GST, full input credit would be available for offsetting the headline rate of 12%. As a result, the input taxes embedded in the flat will not (and should not) form a part of the cost of the flat. The input credits should take care of the headline rate of 12% and it is for this reason that refund of overflow of input tax credits to the builder has been disallowed.
6. The builders are expected to pass on the benefits of lower tax burden under the GST regime to the buyers of property by way of reduced prices/installments. It is, therefore, advised to all builders/construction companies that in the flats under construction, they should not ask customers to pay higher tax rate on installments to be received after imposition of GST.

7. Despite this clarity on law position, if any builder resorts to such practice, the same can be deemed to be profiteering under Section 171 of GST law.
37. From the above clarification, this Tribunal finds that under the GST regime, the benefit of ITC is intended to reduce the overall tax burden on construction services and consequently lower the effective cost to the buyers. The clarification clearly mandates that such benefit is required to be passed on to the recipients by way of commensurate reduction in prices, failing which the same may amount to profiteering under Section 171 of the CGST Act, 2017.
38. We further find that the Respondent's contention that the increase in ITC merely reflects higher GST incidence on inward supplies and therefore cannot be regarded as a benefit is devoid of merit. The material available on record clearly establishes that the Respondent became entitled to avail and utilise a higher quantum of credit in the GST regime than what was available in the pre-GST regime. Such credit was available for discharge of the Respondent's output tax liability and therefore constituted a benefit within the meaning of Section 171 of the CGST Act, 2017.
39. We also do not find merit in the contention that the benefit should be confined only to material inputs or that credit relatable to input services ought to be excluded from consideration. The benefit under GST includes ITC on both goods and input services and cannot be restricted only to material inputs. Accordingly, no exclusion of service-related ITC is warranted.
40. As regards the Respondent's contention that it had already passed on the benefit to the homebuyers, we note that the DGAP has duly examined the books of accounts, customer ledgers, credit notes and other documentary evidence furnished by the Respondent. The DGAP has given due credit wherever the passing on of benefit was substantiated by documentary evidence. However, the investigation has revealed that the benefit required to be passed on under Section 171 exceeded the benefit actually passed on to the eligible recipients. We concur with the finding of the DGAP that excess benefit passed on to certain homebuyers cannot be adjusted against the shortfall in benefit payable to other homebuyers, since each recipient is independently entitled to receive commensurate benefit.
41. We also note that the project comprised 642 residential units, out of which 577 homebuyers were found eligible for determination of benefit. The computation undertaken by the DGAP is based upon project-specific records, statutory returns, electronic credit ledgers and other contemporaneous documents furnished by the Respondent itself. The findings recorded in the DGAP Report are therefore,founded upon objective and verifiable material available on record.
42. In view of the foregoing discussion, this Tribunal finds that the Respondent had derived additional Input Tax Credit benefit consequent upon the implementation of GST in respect of the project "Gurgaon Greens". We further find that such benefit was required to be passed on to the eligible homebuyers by way of commensurate reduction in prices in terms of Section 171(1) of the CGST Act, 2017. Accordingly, Issue Nos. (i) and (ii) are answered in the affirmative.
43. It is further observed from the DGAP's findings that, in respect of 226 homebuyers, the benefit actually passed on by the Respondent was lower than the commensurate benefit required to be passed on, resulting in a shortfall of Rs. 55,85,980/-. Conversely, in respect of 204 homebuyers, the Respondent had passed on benefit in excess of the commensurate amount by Rs. 69,38,986/-. However, such excess benefit passed on to certain recipients cannot be adjusted or set off against the shortfall in benefit payable to other recipients. The obligation under Section 171(1) of the CGST Act, 2017 is recipient-specific and each homebuyer is independently entitled to receive the commensurate benefit accruing on account of additional ITC. Any excess amount passed on to a particular recipient can be adjusted only with that recipient and cannot extinguish or reduce the Respondent's liability towards other recipients who have not received the benefit due to them. Accordingly, the contention of the Respondent seeking

consideration of excess benefit passed on to certain homebuyers against the shortfall in respect of others is not sustainable.

44. In view of the above, this Tribunal holds that the Respondent had derived additional benefit of Input Tax Credit amounting to Rs. 3,49,74,221/- (inclusive of GST) consequent upon the implementation of GST in respect of the project "Gurgaon Greens". The Tribunal further finds that although the Respondent had passed on benefit amounting to Rs. 3,21,54,840/- to certain homebuyers, the same was not sufficient to discharge its statutory obligation under Section 171(1) of the CGST Act, 2017. The computation undertaken by the DGAP is found to be correct, reasonable and based on the records furnished by the Respondent. Accordingly, the balance profiteered amount of Rs. 67,32,464/- (inclusive of GST) remains liable to be passed on to the 232 eligible homebuyers who have not received the commensurate benefit in full, in terms of Section 171 of the CGST Act, 2017.

<u>Determination of Interest</u>

45. The next issue for determination is whether interest is payable on the profiteered amount determined in the present proceedings and, if so, the period and manner in which such interest is liable to be computed. The Respondent has contended that no interest is leviable on the grounds that substantial benefit had already been passed on to the homebuyers, that the delay in conclusion of the proceedings was attributable to the authorities, and that the statutory provisions do not contemplate levy of interest in the manner proposed. It has further been submitted that interest, being compensatory in nature, cannot be imposed in the absence of any wrongful retention of benefit.

46. We are unable to accept the aforesaid contentions. Rule 133(3)(b) of the CGST Rules, 2017, as applicable during the relevant period, specifically empowered the Authority to direct return of the amount not passed on by way of commensurate reduction in prices together with interest. For ease of reference, the relevant portion of Rule 133(3)(b) is reproduced below:

> *Rule 133(3)(b) – return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with the interest at the rate of eighteen percent from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be.*

47. Reference may also be made to the judgment of the Hon'ble Delhi High Court in Reckitt Benckiser India Pvt. Ltd. (supra), wherein the Hon'ble Court, while considering the scope and ambit of Section 171 of the CGST Act, observed that the provision is broad enough to empower the Authority not only to determine the profiteered amount but also to ensure that the recipients receive the full benefit intended under the statute. The power to direct return of the amount not passed on together with interest is therefore an integral component of the statutory mechanism devised to secure compliance with Section 171. The relevant extract is reproduced below for the sake of brevity:

> *153. This court is of the view that Section 171 of the Act, 2017 is broad enough to empower the Central Government to prescribe penalty and interest to ensure that the suppliers are deterred from pocketing the benefits meant for the consumers when taxes amounts so pocketed by the supplier /registered person would not have a sufficient deterrent effect on deviant behavior unless interest and penalty are levied to prevent such actions from taking place in the first place. The width and amplitude of Section 171 by which the authority is empowered to ensure that a reduction in tax rate or the Input Tax Credit availed results in a commensurate reduction in the price of goods or services clearly encompasses within it the power to ensure that such conduct which leads to profiteering does not take."*

48. In the present case, this Tribunal has already held that the Respondent failed to pass on the entire benefit of additional Input Tax Credit accrued on account of implementation of GST to the eligible recipients by way of commensurate reduction in

prices and thereby contravened the provisions of Section 171(1) of the CGST Act, 2017. Consequently, the profiteered amount determined herein is liable to be returned to the eligible recipients together with interest in terms of Rule 133(3)(b) of the CGST Rules, 2017.

49. The contention of the Respondent that delay in conclusion of the proceedings was attributable to the authorities and, therefore, no interest should be levied, is also without merit. The liability to pay interest under Rule 133(3)(b) arises on account of retention of the benefit which ought to have been passed on to the recipients at the relevant time. Such liability is statutory in nature and is not extinguished merely because the proceedings culminated at a later date.

50. Interest in anti-profiteering proceedings is compensatory in nature and is intended to restore to the recipients the time value of money representing the benefit withheld from them. Accordingly, this Tribunal holds that the Respondent is liable to pay interest at the rate of 18% per annum on the profiteered amount from the respective dates of collection of the excess amount from the recipients till the date on which the benefit is actually passed on or refunded, in accordance with Rule 133(3)(b) of the CGST Rules, 2017.

Penalty

51. The next question is whether penalty is imposable upon the Respondent under the provisions of the CGST Act, 2017. The Respondent has contended that penalty cannot be imposed as the alleged contravention pertains to a period prior to the insertion of Section 171(3A) of the CGST Act, 2017 and that the said provision cannot be applied retrospectively.

52. The Tribunal finds merit in the aforesaid contention. It is observed that the investigation in the present matter covers the period from 01.07.2017 to 16.07.2019. Section 171(3A) of the CGST Act, 2017, which provides for imposition of penalty in cases where a registered person is found to have profiteered, was inserted by the Finance (No. 2) Act, 2019 and came into force with effect from 01.01.2020.

53. Since the entire period involved in the present proceedings precedes the coming into force of Section 171(3A), the penal provision cannot be applied retrospectively to the Respondent. It is a settled principle of law that a provision imposing penalty creates a substantive liability and, in the absence of express legislative intent, cannot be given retrospective operation.

54. Accordingly, while the Respondent is liable to pass on the profiteered amount together with applicable interest in terms of Section 171 of the CGST Act, 2017 read with Rule 133 of the CGST Rules, 2017, no penalty under Section 171(3A) of the CGST Act, 2017 is imposable in the facts and circumstances of the present case.

Conclusion

55. That, the Respondent has contravened the provisions of Section 171(1) of the CGST Act, 2017 by not passing on the entire benefit of additional ITC accrued upon implementation of GST to the eligible homebuyers of the project "Gurgaon Greens". The profiteered amount determined in the present case is Rs. 3,49,74,221/- (inclusive of GST). It is further noted that the Respondent has already passed on an amount of Rs. 3,21,54,840/- to the homebuyers. Accordingly, the balance profiteered amount of Rs. 67,32,464/-, as identified in the DGAP Report dated 03.12.2024, remains liable to be passed on to the 232 eligible homebuyers.

56. Accordingly, in terms of Section 171 of the CGST Act, 2017 read with Rule 133(3)(b) of the CGST Rules, 2017, the Respondent is directed to pass on the aforesaid amount of Rs. 67,32,464/- to the eligible recipients, along with interest at the rate of 18% per annum, calculated from the date of collection of the higher amount from the respective recipients till the date of actual passing on of such benefit. The Respondent shall furnish evidence of compliance before the jurisdictional CGST/SGST Commissioner within a period of three months from the date of this Order.

57. The jurisdictional CGST/SGST Commissioner shall monitor compliance of this Order and submit a compliance report to this Tribunal upon completion of the aforesaid exercise.
58. A copy of this Order be supplied to the Applicant, the Respondent, the Director General of Anti-Profiteering and the jurisdictional CGST/SGST Commissioner(s) for information and necessary action.
59. The matter stands disposed of accordingly.
60. Order pronounced in the open court.

(2026) 1 GSTAT E-Journal 262 (Principal Bench)
DG ANTI-PROFITEERING, DIRECTOR GENERAL OF ANTI-PROFITEERING
V.
MERIT MAGNUM CONSTRUCTION (FORMERLY M/S VIMAL BUILDERS)
APPEAL NO. NAPA/146/PB/2025, JULY 17, 2026

CORAM:

HON'BLE SHRI ANIL KUMAR GUPTA, MEMBER (TECHNICAL)

HEADNOTE:

GST — Anti-Profiteering under Section 171 — Input Tax Credit — Real Estate Sector — Date of Project Completion — Interest — Penalty under Section 171(3A) — Whether the benefit of additional Input Tax Credit availed during the post-GST period was passed on to homebuyers — Whether project completion is to be reckoned from the date of actual issuance of the Occupancy Certificate or the date of filing of the application — Whether the DGAP correctly restricted the investigation period to the date of issuance of the Occupancy Certificate — Whether the case falls under Rule 133(3)(b) or Rule 133(3)(c) of the CGST Rules, 2017 — Whether penalty under Section 171(3A) is attracted — Respondent a real estate developer — Project "Everest Countryside – Marigold" — Applicant alleged failure to pass on commensurate benefit of additional ITC — DGAP found ITC ratio increased from 3.90% pre-GST to 22.16% post-GST — Profiteered amount computed at Rs. 2,38,495/- plus GST @12% of Rs. 28,619/-, totalling Rs. 2,67,114/- — Tribunal held that project completion is reckoned from actual issuance of Occupancy Certificate (13.10.2017), not mere filing of application (25.04.2017) — Investigation period correctly restricted to 01.07.2017 to 13.10.2017 — Methodology in conformity with Delhi High Court's decision in Reckitt Benckiser — Case falls under Scenario (C) of Para 128 — Homebuyers are identifiable from records maintained by the Respondent — Rule 133(3)(b) applies, not Rule 133(3)(c) — Interest @18% per annum payable from date of collection till actual refund — Penalty under Section 171(3A) not attracted as the period of investigation is prior to 01.01.2020 — **HELD:** Supplementary investigation report dated 30.06.2026 accepted — Respondent directed to refund Rs. 2,67,114/- along with interest @18% per annum to eligible homebuyers — No penalty — Compliance report to be filed within three months — Order pronounced in open court.

...In Favour of the DGAP

KEY ISSUES AND FINDINGS:

1. **Whether, for the purposes of Section 171 of the CGST Act, 2017, project completion is to be reckoned from the date of actual issuance of the Occupancy Certificate or the date of filing of the application seeking such certificate?**
   "It is well settled that a project is deemed to be completed only upon the actual grant of the Occupancy Certificate from the Competent Authority, and not upon the mere filing of an application therefor." [Para 20.1]

2. **Whether, for the purposes of Section 171 of the CGST Act, 2017, the DGAP, in its revised Investigation Report dated 30.06.2026, has correctly restricted the period of investigation to the period from 01.07.2017, being the date of**

introduction of GST, till 13.10.2017, being the date of issuance of the Occupancy Certificate for the project in question?
"Since the anti-profiteering provisions contained in Section 171 of the CGST Act operate only where a benefit of input tax credit accrues to the supplier and is required to be passed on to the recipients, no question of profiteering can arise in respect of units sold after the issuance of the Occupancy Certificate, as no admissible input tax credit benefit survives in relation to such units." [Para 21.4]

3. **Whether the methodology adopted by the DGAP for computation of the profiteered amount is legally sustainable as per Section 171 of the Act and relevant rules framed thereunder and is in conformity with the principles laid down by the Hon'ble Delhi High Court in the matter of Reckitt Benckiser (supra)?**
"The DGAP, in the revised investigation report, has computed the additional ITC benefit by comparing the ratio of ITC to purchase value in the pre-GST and post-GST periods and has confined the investigation period up to 13.10.2017, i.e., the date of issuance of the Occupancy Certificate. The computation is founded on the actual ITC availed and the actual purchase values certified by the Respondent and, therefore, represents a reasonable and fact-based determination of the benefit accrued on account of the implementation of GST." [Para 22.4]
"Accordingly, this Tribunal holds that the methodology adopted by the DGAP is in conformity with Section 171 of the CGST Act, 2017 and the Rules framed thereunder and is also consistent with the principles enunciated by the Hon'ble Delhi High Court in Reckitt Benckiser India Pvt. Ltd. (supra). The revised methodology appropriately identifies and quantifies the additional ITC benefit that accrued to the Respondent in the post-GST period and determines the amount required to be passed on to the recipients by way of commensurate reduction in price. Consequently, no infirmity can be found in the methodology adopted by the DGAP or in the quantification of the profiteered amount arrived at thereunder…" [Para 22.5]

4. **Whether the Respondent's contention that the recipients/flat purchasers in respect of whom the alleged profiteering has occurred are unidentifiable is tenable and, consequently, whether the present case falls within the ambit of Rule 133(3)(c) or Rule 133(3)(b) of the CGST Rules, 2017?**
"Rule 133(3)(c), on the other hand, is a residuary provision and is attracted only in those cases where the eligible recipients are genuinely unidentified. The very genesis of Rule 133(3)(c) demonstrates that it was intended to operate as a remedial and residuary provision so that a registered person who has contravened Section 171 does not unjustly retain the profiteered amount merely because the actual consumers cannot be identified. The provision, therefore, creates a legal fiction whereby, in the absence of identifiable recipients, the profiteered amount is directed to be deposited in the Consumer Welfare Funds maintained by the Central and State Governments." [Para 23.3]
"In the instant case, the homebuyers are clearly identifiable and ascertainable from the records maintained by the Respondent itself. Consequently, the factual matrix of the present case falls squarely within the ambit and scope of clause (b) of sub-rule (3) of Rule 133 of the CGST Rules, 2017." [Para 23.10]

5. **Whether the Respondent is liable to pay penalty leviable under Section 171(3A) of the CGST Act, 2017?**
"It is a well-settled principle of law that penal provisions cannot be applied retrospectively unless expressly stated. Section 171(3A) was inserted with effect from 01.01.2020 and does not contain any provision for retrospective application. Therefore, for the period prior to 01.01.2020, the Respondent cannot be held liable for penalty under the said provision." [Para 24.2]

EDITORIAL NOTES:

Principles Laid Down:

1. A project is deemed complete only upon actual grant of Occupancy Certificate, not mere filing of application; investigation under Section 171 is confined to period up to issuance of Occupancy Certificate, as no ITC benefit survives for units sold thereafter.
2. Where flat construction started pre-GST and continued post-GST, and buyer paid upfront pre-GST, buyer is entitled to ITC benefit on post-GST construction material (Scenario C, Reckitt Benckiser); DGAP methodology based on ITC-to-purchase-value ratio is in conformity with Section 171 and Reckitt Benckiser.
3. "Recipient not identifiable" under Rule 133(3)(c) cannot mean recipient has not complained, is unavailable, or computation not initially made; it is a residuary provision to be strictly and narrowly interpreted. Real estate developers maintain exhaustive homebuyer records, which demolish contention of unidentifiability. Where homebuyers are identifiable, Rule 133(3)(b) applies, mandating refund with interest @18% p.a. from date of collection till actual restitution; Respondent cannot retain excess consideration.
4. Penal provisions cannot apply retrospectively unless expressly stated; Section 171(3A) inserted w.e.f. 01.01.2020 has no retrospective application.

Case Law Referred to:

Reckitt Benckiser India Pvt. Ltd. v. Union of India, (2024) 14 Centax 374 (Delhi) — Followed (Paras 8, 9, 22, 23)

DGAP v. Dange Enterprise, NAPA/16/PB/2025 — Referred (Para 11.3)

Relevant Provisions:

Section 171 of the CGST Act, 2017; Section 171(3A) of the CGST Act, 2017; Rule 129 of the CGST Rules, 2017; Rule 133(3)(b) of the CGST Rules, 2017; Rule 133(3)(c) of the CGST Rules, 2017; Rule 133(4) of the CGST Rules, 2017; Section 17(2) of the CGST Act, 2017; Section 17(3) of the CGST Act, 2017; Paragraph 5 of Schedule II to the CGST Act, 2017; Paragraph 5 of Schedule III to the CGST Act, 2017; Section 109(3) of the CGST Act, 2017.

JUDGMENT

1. The present proceedings arise from an application filed by Shri Sachin Kapure, acting on behalf of Shri Dilip Atmaram Kapure and Smt. Kavita Dilip Kapure (hereinafter referred to as "the Applicant"), residents of B3/104, Lok Nisarg, Near Vaishali Nagar Depot, Ghati Pada, Mulund (West), Mumbai- 400080, before the Maharashtra State Screening Committee on Anti-Profiteering under Section 171 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "**the Act**").

2. The Applicant has alleged that M/s. Merit Magnum Construction (formerly known as Vimal Builders), having its address at Godrej Colliseum, 1301 A Wing, Somaiya Hospital Road, GTB Nagar, Everard Nagar, Sion (East), Mumbai – 400022, and its registered office at Samridhi House, Office Floor, Plot No. 157, 18th Road, Near Ambedkar Garden, Chembur East, Mumbai – 400071 (hereinafter referred to as "**the Respondent**"), has failed to pass on the commensurate benefit of Input Tax Credit(hereinafter referred to as "**ITC**") to the Applicant in respect of Flat No. 506 situated in the project titled "Everest Countryside."

3. Pursuant thereto, the Maharashtra State Screening Committee examined the said application and observed that the Respondent had not passed on the benefit of additional ITC to the Applicant by way of commensurate reduction in price and, accordingly, with its recommendation, forwarded the matter to the Standing Committee on Anti-Profiteering for further action.

4. Further, the said application was examined by the Standing Committee on Anti-Profiteering. Upon being prima facie satisfied that the Respondent had not passed on the benefit of reduction in GST rate as mandated under Section 171 of the Act, the Standing

Committee referred the matter to the Director General of Anti-Profiteering (hereinafter referred to as "**the DGAP**").

5. The DGAP submitted an Investigation Report dated 31.08.2021 under Rule 129 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "**the Rules**"), before the erstwhile National Anti-Profiteering Authority (hereinafter referred to as "**the NAA**").

6. The tenure of the NAA ended on 30.11.2022. Thereafter, the Competition Commission of India (hereinafter referred to as "**the CCI**") was empowered to examine matters related to anti-profiteering with effect from 01.12.2022 vide Notification No. 23/2022-Central Tax dated 23.11.2022.

7. Further, the CCI, vide letter dated 20.03.2024, remanded the matter back to the DGAP under Rule 133(4) of the CGST Rules, 2017 for re-investigation, as the methodology adopted by the DGAP in the real estate sector was held to be flawed by the Hon'ble High Court of Delhi in the matter of Reckitt Benckiser India Pvt. Ltd. v. Union of India, (2024) 14 Centax 374 (Delhi).

8. In the said judgment, the Delhi High Court upheld the constitutional validity of Section 171 of the CGST Act; however, it did not approve the methodology adopted by the DGAP for computation of the profiteered amount. The Court observed that no fixed or uniform formula can be prescribed for determination of profiteering in all cases. Nevertheless, in respect of the real estate sector, the Court in para 129 of the aforesaid judgment stated that:

"…that one needs to calculate the total savings on account of introduction of Goods and Services and Tax for each project and then divide the same by total area to arrive at the per square feet benefit to be passed on to each flat buyer. This would ensure that flat-buyers with equal square feet area received equal benefit."

9. The Principal Bench of the GST Appellate Tribunal (hereinafter referred to as "**this Tribunal")**, constituted under sub-section (3) of Section 109 of the CGST Act, has been empowered to examine anti-profiteering cases with effect from 01.10.2024, vide Notification No. 18/2024-Central Tax dated 30.09.2024.

10. In compliance with the CCI's letter dated 20.03.2024, the DGAP re-investigated the matter and submitted a fresh report dated 11.12.2024 before this Tribunal. The said report contained, inter alia, the following observations and conclusions:

10.1 That the input tax credit as a percentage of the purchase value available to the Respondent during the pre-GST period, i.e., April 2012 to June 2017, was **3.9%**, and during the post-GST period, i.e., July 2017 to March 2019, was **17.5%** in the project "EVEREST COUNTRYSIDE".

10.2 This clearly confirms that the Respondent benefited from additional input tax credit during the post-GST period. The methodology adopted by the DGAP is tabulated hereinunder: -

Table- 'A'

(Amount in Rs)

S. No.	**Particulars**	**Pre-GST Period**	**Post-GST Period**
1.	Purchase Value of Goods and Services (Excluding Taxes and Duties)	13,13,59,307	74,18,207
2.	Credit of Service Tax availed	52,13,341	-
3.	Credit of VAT availed	-	-
4.	Total Credit Availed in Pre-GST Period	52,13,341	-
5.	ITC of GST Availed	-	13,03,929
6.	Ratio of Credit Availed to Purchase Value (in %)	3.9	17.5

10.3 It was further stated in the said report that the Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate was 12% in view of 1/3rd abatement for land value) on construction service, vide Notification No. 11/2017-Central Tax dated 28.06.2017. The effective GST rate was 12% for flats. Accordingly, based on the figures contained in table-'A' above, the comparative figures of the ratio of input tax credit availed/available to the purchase value in the pre-GST and post-GST periods as well as the purchase value, the recalibrated base price and the excess realization during the post-GST period, are tabulated in Table-B below: -

Table- 'B'

(Amount in Rs.)

S. No.	**Particulars**		**Post-GST**
1.	Period	A	July, 2017 to March, 2019
2.	Ratio of Credit availed to Purchase Value as per Table - A above (%)	B	3.9/17.5
3.	Increase in input tax credit availed post-GST (%)	C	13.6
4.	Purchase Value of Goods and Services (Excluding Taxes and Duties) during Post-GST Period	D	74,18,207
5.	Total Savings on account of additional ITC benefit	E = D*C/100	10,08,876
6.	Total Saleable Area/ Carpet Area (in Sq. Ft.)	F	89,434
7.	Total Saving Per Sq. Ft.	G = E/F	11.28
8.	Total Sold Area (in Sq. Ft.) till the date of Completion Certificate	H	88,660
9.	Profiteered Amount	I = G * H	10,00,084

10.4 Consequently, DGAP concluded that provisions of Section 171 of the Central Goods and Services Tax Act, 2017 have been contravened by the Respondent, in as much as by failing to pass on the benefit of such additional input tax credit to homebuyers, resulting in profiteering amount of Rs. 10,00,084/- plus GST @12% of Rs. 10,00,084/- i.e., Rs. 1,20,010/-, totalling to Rs. 11,20,094/-.

11. Pursuant to the notice dated 28.10.2025 issued by this Tribunal, the Respondent filed its written submissions vide email dated 17.02.2026 and raised the following contentions:

11.1 That the construction of the building in question, namely "Marigold", had been completed on 25.04.2017, i.e., prior to the implementation of GST on 01.07.2017, and therefore, no question of profiteering arises. The same is evident from the Commencement Certificate dated 09.09.2002 and the application seeking the Occupancy Certificate from the Competent Authority on 25.04.2017.

11.2 That the buyer-wise computation made by the DGAP is incorrect and unsupported by facts, as the complaint was filed by a non-owner, no evidence from the actual owners exists, yet all 136 buyers have been wrongly treated as affected.

11.3 That no interest is chargeable, as the provisions relating to interest are not applicable in the facts of the present case. The Respondent further relied upon the judgment of this Tribunal in the matter of DGAP v. Dange Enterprise, NAPA/16/PB/2025.

11.4 That no penalty is leviable, as the penalty provision under Section 171(3A) came into effect only on 01.01.2020, which is after the period of the alleged profiteering.

11.5 That the methodology adopted by the DGAP for computing profiteering is erroneous.

12. The Respondent further submitted that certain inadvertent errors had occurred in paragraph 14 of its written submissions dated 12.03.2026 and, accordingly, amended paragraphs 14 and 15 were filed on 04.05.2026 pursuant to the liberty granted by this Tribunal. It was contended that the post-GST receipts pertaining to the Marigold Building amounted to Rs. 41,64,808/- and that, on a revised computation, the profiteered amount, if any, worked out to Rs. 5,61,511/- instead of Rs. 10,00,084/- as computed by the DGAP. Without prejudice, the Respondent expressed its willingness to deposit Rs.5,61,511/- under protest, without interest or penalty.

13. Per contra, the DGAP submitted its clarification dated 27.03.2026 before this Tribunal and submitted as follows:

13.1 That the Respondent applied for the Occupancy Certificate on 25.04.2017; however, the same was not granted at that time. The Respondent had continued to avail input tax credit to the extent of Rs. 13,03,929/- till March 2019.

13.2 That the methodology adopted in the report was in conformity with the principles laid down by the Hon'ble High Court of Delhi in the matter of Reckitt Benckiser (supra).

13.3 That the DGAP conducted the investigation under Section 171 of the Act read with Rule 129 of the CGST Rules.

14. During the course of hearing, the learned counsel for the Respondent submitted that, as stated in its written submissions dated 17.02.2026, 24 home buyers had made full payment prior to the introduction of GST.

Consequently, in view of paragraph 128(a) of the judgment of the Hon'ble Delhi High Court in Reckitt Benckiser, such buyers would fall outside the purview of profiteering. It was further submitted that only nominal payments had been received from six home buyers after the introduction of GST and, therefore, the profiteered amount computed by the DGAP was excessive.

In response thereto, the representative of the DGAP submitted before this Tribunal that a clarification, along with a revised computation report, would be placed on record.

15. Pursuant thereto, the DGAP filed an additional clarification dated 18.05.2026, contending as follows:

15.1 That the mere filing of an application for the Occupancy Certificate on 25.04.2017 does not establish completion of the project prior to GST. The project can be treated as completed only upon actual receipt of the Occupancy Certificate, which admittedly was received during the post-GST period.

15.2 That the project falls under paragraph 128(c) of the judgment of the Hon'ble Delhi High Court in Reckitt Benckiser and not under paragraph 128(a), as claimed by the Respondent.

15.3 That the Respondent's contention that the 24 home buyers who had made payment prior to GST and the six home buyers who had made only nominal payments post-GST are outside the ambit of profiteering is denied. Since the project continued into the post-GST period, all such buyers are entitled to the benefit of ITC in terms of paragraph 128(c) of the said judgment.

15.4 That the DGAP accordingly stood by its Investigation Report dated 11.12.2024 and prayed that appropriate orders may be passed by this Tribunal.

16. Subsequently, as per the direction of this Tribunal, the Respondent also filed a brief synopsis vide email dated 20.05.2026. On perusal of the clarification submitted by the DGAP and the synopsis submitted by the Respondent, it is found that the Occupancy Certificate was granted on 13.10.2017, whereas the period of investigation taken in the report was from 01.07.2017 to 31.03.2019.

16.1 Consequently, this Tribunal, vide its order dated 21.05.2026, directed the Respondent to submit the information/data of the total purchases made during the period from 01.07.2017 to 13.10.2017 and the amount of ITC availed during this period, duly certified by a Chartered Accountant, within two weeks. The Tribunal further directed the DGAP to, upon receipt of the aforesaid data, re-determine the quantum of profiteering and submit its supplementary report/clarification before this Tribunal.

17. Pursuant thereto, the DGAP undertook a fresh computation of the profiteered amount for the period from 01.07.2017 to 13.10.2017, i.e., up to the date of issuance of the Occupancy Certificate, pertaining to the project "Everest Countryside Marigold", based on the Chartered Accountant-certified data furnished by the Respondent. The computations contained in the Investigation Report dated 11.12.2024 were revised, which are reproduced below:

Table-A

S. No.	Particulars	Total Pre-GST (Amount in Rs)	Total post-GST (Amount in Rs)
	Period (01.07.2017-13.10.2017)		
1.	Purchase Value of Goods and services (Excluding taxes and duties)	13,13,59,307	13,17,351
2.	Credit of Service Tax availed	52,13,341	—
3.	Credit of VAT availed	—	—
4.	Total Credit availed	52,13,341	—
5.	Net ITC of GST availed	—	2,91,894
6.	Ratio of Credit Availed to Purchase Value (%)	3.90	22.16
	Difference		18.26

Table-B

Particulars		Amount in Rs (Post - GST)
Period	A	01.07.2017 to 13.10.2017
Ratio of Credit availed to Purchase Value as per Table -A above (%)	B	3.9 / 22.16
Increase in ITC availed Post GST (%)	C	18.26
Purchase Value of Goods and services (Excluding Taxes and Duties) during Post – GST period	D	13,17,351
Total Savings on account of additional ITC benefit	E=D×C/100	2,40,548
Total Area (Sq.Ft.) of the project as CA certificate	F	89,434
Total Savings Per Sq.Ft.	G=E/F	2.69
Total Sold Area as on 30.04.2024 (Sq.Ft.) As per CA Certificate	H	88,660
Profiteered Amount (Rs)	**I=G×H**	**2,38,495**

From the above revised computation, the ratio of ITC to purchase value increased from 3.90% during the pre-GST period to 22.16% during the post-GST period, resulting in an additional ITC benefit of 18.26%. The DGAP has accordingly concluded that the Respondent has profiteered to the extent of Rs. 2,38,495/-. Additionally, applying the applicable GST rate of 12% on the said amount, the DGAP has computed the total profiteered amount, inclusive of GST, at Rs. 2,67,114/- (comprising Rs. 2,38,495/- as principal profiteered amount and Rs. 28,619/- as GST thereon).

18. In response to the updated DGAP report, the respondent's counsel has filed a synopsis dated 09.07.2026, mainly reiterating the earlier submissions. However, the contention that the recipients/flat purchasers, from whom the alleged profiteering has been recovered, are not identifiable has been reiterated specifically, that certain homebuyers have not filed any complaints, are not currently traceable, or have already resold their flats, and therefore the amount cannot be returned to the recipient with interest under Rule 133(3)(b) of CGST Rule, 2017 hence, the provisions of Rule 133(3)(c) would be attracted. Without prejudice to the above legal objections, the Respondent offers to deposit the disputed amount in the Consumer Welfare Fund (Centre and State) under protest.

19. I have carefully examined the DGAP report dated 11.12.2024, revised report dated 30.06.2026 as well as the written and oral submissions advanced by both the Respondent and the Applicant and find that the following issues arise for consideration in the present matter.

20. ***Whether, for the purposes of Section 171 of the CGST Act, 2017, project completion is to be reckoned from the date of actual issuance of the Occupancy Certificate or date of filing of the application seeking such certificate?***

20.1 The submission of the Respondent that the construction of the project 'Marigold' stood completed on 25.04.2017, merely on the ground that an application for Occupancy Certificate was filed on that date, is devoid of merit and cannot be sustained. It is well settled that a project is deemed to be completed only upon the actual grant of the Occupancy Certificate from the Competent Authority, and not upon the mere filing of an application therefor.

20.2 In the present case, the Occupancy Certificate was granted on 13.10.2017, i.e., during the post-GST period. Furthermore, the Respondent continued to avail Input Tax Credit to the tune of Rs. 2,91,894/- during the period from 01.07.2017 to 13.10.2017, which clearly establishes that the project was ongoing in the post-GST period. Accordingly, the contention of the Respondent is rejected.

21. ***Whether, for the purposes of Section 171 of the CGST Act, 2017, the DGAP, in its revised Investigation Report dated 30.06.2026, has correctly restricted the period of investigation to the period from 01.07.2017, being the date of introduction of GST, till 13.10.2017, being the date of issuance of the Occupancy Certificate for the project in question?***

21.1 During the course of hearing, the learned counsel for the Respondent contended that the Occupancy Certificate in respect of the project was granted on 13.10.2017, whereas the investigation report dated 11.12.2024 has adopted the period from 01.07.2017 to 31.03.2019 as the relevant period of investigation. Accordingly, the question that arises for consideration is as to what ought to be the appropriate period of investigation in the facts and circumstances of the present case.

21.2 In this regard, it is pertinent to examine the scheme of the Central Goods and Services Tax Act, 2017. Paragraph 5 of Schedule III to the Act provides that the sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building shall be treated neither as a supply of goods nor as a supply of services. Clause (b) of paragraph 5 of Schedule II stipulates that construction of a complex, building, civil structure or a part thereof intended for sale to a buyer constitutes a supply of service, except where the entire consideration has been received after issuance of the completion certificate by the competent authority or after its first occupation, whichever is earlier.

21.3 A conjoint reading of the aforesaid provisions with Sections 17(2) and 17(3) of the CGST Act makes it evident that the sale of units after the issuance of the Occupancy/Completion Certificate is treated as an exempt supply and falls outside the purview of taxable supply. Consequently, input tax credit attributable to such supplies is not available and is liable to be reversed in accordance with Section 17(2)

& Section 17(3) of the Central Goods and Services Tax Act, 2017, which read as under:

> *Section 17 (2) "Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies".*
>
> *Section 17 (3) "The value of exempt supply under sub-section (2) shall be such as may be prescribed and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building".*

21.4 Since the anti-profiteering provisions contained in Section 171 of the CGST Act operate only where a benefit of input tax credit accrues to the supplier and is required to be passed on to the recipients, no question of profiteering can arise in respect of units sold after the issuance of the Occupancy Certificate, as no admissible input tax credit benefit survives in relation to such units. Consequently, the investigation, for the purposes of determining profiteering under Section 171 of the Act, is liable to be confined to the period up to the date of issuance of the Occupancy Certificate, i.e., 13.10.2017.

21.5 The DGAP, in its revised report dated 30.06.2026, has correctly restricted the period of investigation to 01.07.2017 to 13.10.2017, being the date of issuance of the Occupancy Certificate. This period represents the duration during which the project was ongoing, and the Respondent was availing input tax credit under the GST regime.

21.6 The revised computation undertaken by the DGAP is based on the Chartered Accountant-certified data furnished by the Respondent and is in strict conformity with the methodology laid down by the Hon'ble High Court of Delhi in Reckitt Benckiser (supra). The ratio of ITC to purchase value increased from 3.90% during the pre-GST period to 22.16% during the post-GST period, resulting in an additional ITC benefit of 18.26%. The profiteered amount of Rs. 2,38,495/- has been correctly computed as the product of the per square feet saving of Rs. 2.69 and the total sold area of 88,660 square feet.

22. **Whether the methodology adopted by the DGAP for computation of the profiteered amount is legally sustainable as per Section 171 of the Act and relevant rules framed thereunder and is in conformity with the principles laid down by the Hon'ble Delhi High Court in the matter of Reckitt Benckiser (supra).**

22.1 Dealing with the respondent's contention that a substantial amount of the total consideration was received from home buyers before the introduction of GST. The case falls squarely within Para 128(a) of the Reckitt Benckiser (supra) judgment, which exempts fully pre-GST projects from anti-profiteering obligations.

22.2 As per the mentioned judgment, the following principles are laid down for the determination of profiteering in the real estate sector. Paragraph 128 of the said judgment is relevant and is reproduced hereinbelow:

> *"128. There is no dispute with regard to the methodology to be adopted in the following four scenarios: -*
>
> *(a) If the flat was completely constructed in the pre-Goods and Services Tax period i.e., before 01st July, 2017 and if it was purchased by making upfront payment of the whole price in the pre-Goods and Services Tax period no benefit of Input Tax Credit would be required to be passed on as the price will include the cost of taxes on which Input Tax Credit was not available in the pre-Goods and Services Tax period viz. Central Excise Duty, Entry Tax etc.*
>
> *(b) If the construction of the flat had started in the pre-Goods and Services Tax period and continued/completed in the post-Goods and Services Tax period and a buyer purchased the flat by making full upfront payment in the*

post-Goods and Services Tax period he is entitled to the benefit of Input Tax Credit on the material which has been purchased in respect of this flat during the post-Goods and Services Tax period and on which benefit of Input Tax Credit has been availed by the builder. The builder has to reduce the price commensurately and pass on the benefit.

(c) If the construction of the flat is started in the pre-Goods and Services Tax period and its construction was continued in the post-Goods and Services Tax period and it was purchased by the consumer by paying the full amount of price upfront in the pre- Goods and Services Tax period, the buyer is entitled to claim benefit of Input Tax Credit on the taxes paid on the construction material purchased by the builder in the post-Goods and Services Tax period during which he has been given benefit of Input Tax Credit on the taxes on which Input Tax Credit was not available in the pre-Goods and Services Tax and cost of such taxes has been built in the price of the flat by the builder.

(d) If the flat is constructed in the post-Goods and Services Tax period and it is purchased after construction being complete by making upfront payment of the full price, no benefit of Input Tax Credit would be available as the price of the flat would have been fixed after taking into account the Input Tax Credit which has become available to the builder in the post-Goods and Services Tax period and which was not available to him in the pre-Goods and Services Tax."

22.3 In light of the principles laid down by the Hon'ble Delhi High Court in *Reckitt Benckiser India Pvt. Ltd. (supra),* particularly paragraph 128 thereof, the present case squarely falls within Scenario (C). The project had commenced and substantially progressed in the pre-GST period, while certain procurements and availment of Input Tax Credit occurred during the post-GST period prior to the issuance of the Occupancy Certificate. The purchasers had booked the units and made payments during the pre-GST period and, therefore, became entitled to the benefit of additional Input Tax Credit accruing to the Respondent in the post-GST period. Such benefit could not be retained by the Respondent and was required to be passed on by way of a commensurate reduction in price.

22.4 The DGAP, in the revised investigation report, has computed the additional ITC benefit by comparing the ratio of ITC to purchase value in the pre-GST and post-GST periods and has confined the investigation period up to 13.10.2017, i.e., the date of issuance of the Occupancy Certificate. The computation is founded on the actual ITC availed and the actual purchase values certified by the Respondent and, therefore, represents a reasonable and fact-based determination of the benefit accrued on account of the implementation of GST.

22.5 Accordingly, this Tribunal holds that the methodology adopted by the DGAP is in conformity with Section 171 of the CGST Act, 2017 and the Rules framed thereunder and is also consistent with the principles enunciated by the Hon'ble Delhi High Court in Reckitt Benckiser India Pvt. Ltd. (supra). The revised methodology appropriately identifies and quantifies the additional ITC benefit that accrued to the Respondent in the post-GST period and determines the amount required to be passed on to the recipients by way of commensurate reduction in price. Consequently, no infirmity can be found in the methodology adopted by the DGAP or in the quantification of the profiteered amount arrived at thereunder.

23. **Whether the Respondent's contention that the recipients/flat purchasers in respect of whom the alleged profiteering has occurred are unidentifiable is tenable and, consequently, whether the present case falls within the ambit of Rule 133(3)(c) or Rule 133(3)(b) of the CGST Rules, 2017?**

23.1 The Respondent has contended that the recipients/flat purchasers from whom the alleged profiteering has been realised are not identifiable and, therefore, the case is covered by Rule 133(3)(c) of the CGST Rules, 2017. It has been argued that certain homebuyers have neither filed complaints nor are presently traceable, some of them have resold their flats and the amount cannot be returned to the recipients and, consequently, the provisions of Rule 133(3)(c) alone would be attracted.

23.2 The aforesaid contention is devoid of merit and cannot be accepted. Rule 133(3)(b) mandates that where profiteering is established, the registered person shall return to the recipient an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen per cent from the date of collection of the higher amount till the date of return of such amount.

23.3 Rule 133(3)(c), on the other hand, is a residuary provision and is attracted only in those cases where the eligible recipients are genuinely unidentified. The very genesis of Rule 133(3)(c) demonstrates that it was intended to operate as a remedial and residuary provision so that a registered person who has contravened Section 171 does not unjustly retain the profiteered amount merely because the actual consumers cannot be identified. The provision, therefore, creates a legal fiction whereby, in the absence of identifiable recipients, the profiteered amount is directed to be deposited in the Consumer Welfare Funds maintained by the Central and State Governments.

23.4 The expression "recipient is not identifiable" occurring in Rule 133(3)(c) cannot be interpreted to mean that the recipient has not filed a complaint, is not presently available, or that the computation has not initially been made buyer-wise. The test under Rule 133(3)(c) is one of objective impossibility of identification. Where the supplier's books of account, allotment letters, agreements for sale, demand notices, payment schedules and statutory records disclose the identity of the purchasers, the recipients remain identifiable notwithstanding that they may not have participated in the proceedings or may presently be untraceable or may have resold their flats.

23.5 In the present case, the Respondent is a real estate developer engaged in the sale of residential flats. The very nature of a real estate transaction necessitates maintenance of exhaustive records of each homebuyer, including the name and address of the purchaser, unit number, area of the flat, agreement value, amounts received and corresponding tax liabilities. Indeed, the Respondent itself has relied upon buyer-specific data and has categorised purchasers according to the stage and timing of payments received. Such a stand itself demolishes the contention that the recipients are unidentifiable.

23.6 The anti-profiteering provisions embodied in Section 171 of the CGST Act are fundamentally benevolent in nature. Their primary object is to ensure that the benefit arising from reduction in tax incidence or additional input tax credit reaches the ultimate consumers. The statutory intent is not merely to recover the profiteered amount from the supplier but to restore the economic benefit to the persons from whom such amount was collected. Therefore, Rule 133(3)(c), being an exception to the general rule of restitution, must receive a strict and narrow interpretation and can be invoked only in cases where identification of the recipients is genuinely impossible.

23.7 The Hon'ble Delhi High Court in Reckitt Benckiser India Pvt. Ltd. v. Union of India, (2024) 14 Centax 374 (Delhi), while upholding the constitutional validity of Section 171, recognised that the anti-profiteering framework is intended to ensure that the pecuniary benefit arising from GST reforms is passed on to consumers and that the statutory mechanism is essentially compensatory and deterrent.

> *100.“Accordingly, Section 171 of the Act, 2017 has been enacted, in public interest, with the consumer welfare objective of ensuring that suppliers pass on the benefit of Input Tax Credits and reduction of rate of Goods and Services Tax to the consumers. The Section does this by firstly creating a substantive obligation under sub-section (1) requiring manufacturers / suppliers to pass on*

benefits of Input Tax Credits and/or reduction in rate of tax by way of commensurate reduction in prices to the recipients."

"102 To summarise, Section 171 of the Act, 2017 mandates that whatever is saved in tax must be reduced in price. Section 171 of the Act, 2017 incorporates the principle of unjust enrichment. Accordingly, it has a flavor of consumer welfare regulatory measure, as it seeks to achieve the primary objective behind the Goods and Services Tax regime i.e. to overcome the cascading effect of indirect taxes and to reduce the tax burden on the final consumer."

23.8 This Tribunal is of the view that the Respondent's reliance on Rule 133(3)(c) is clearly an attempt to avoid paying interest on the profiteered amount. The said provision, which requires payment of interest on deposits made into theConsumer Welfare Funds, was inserted on 28.06.2019 by Notification No. 31/2019-Central Tax. However, the present investigation relates to the period from 01.07.2017 to 13.10.2017, which is prior to the insertion of this provision. Accepting the Respondent's interpretation would allow a supplier to gain from its own default and defeat the very purpose of Section 171 of the Act, which is to protect consumer interest. Such an interpretation, which encourages non-compliance and undermines the object of the anti-profiteering provisions, cannot be accepted in law.

23.9 This Tribunal observes that the Respondent has made no genuine or demonstrable attempt to trace the affected homebuyers, notwithstanding the fact that a builder, in the ordinary course of business, maintains comprehensive and systematic records of all its homebuyers, including their contact details, Email Ids and transaction histories. The Respondent, therefore, cannot claim any inability or practical difficulty in identifying and locating the recipients of the impugned supplies.

23.10 In the instant case, the homebuyers are clearly identifiable and ascertainable from the records maintained by the Respondent itself. Consequently, the factual matrix of the present case falls squarely within the ambit and scope of clause (b) of sub-rule (3) of Rule 133 of the CGST Rules, 2017, which mandates the return of the profiteered amount to the affected recipients where they are identifiable. The Respondent, having collected excess consideration from the homebuyers in contravention of Section 171 of the CGST Act, 2017, cannot be permitted to retain the same.

23.11 Accordingly, the Respondent is directed to refund the profiteered amount to the respective homebuyers, individually and forthwith. Further, in terms of the provisions of Rule 133(3)(b) read with Section 171 of the Act, the Respondent shall also be liable to pay interest on the profiteered amount at the rate of 18% per annum, calculated from the date of collection of the excess amount from each homebuyer until the date of actual restitution of the same.

24. **Whether the Respondent is liable to pay penalty leviable under section 171(3A) of the CGST Act, 2017.**

24.1 The Respondent has contended that no penalty is leviable as the penalty provision came into effect only on 01.01.2020, which is after the period of the alleged profiteering. Since the period of investigation in the present case has been restricted to 01.07.2017 to 13.10.2017, which is prior to the coming into force of Section 171(3A) on 01.01.2020, the penalty provision is not attracted for the period of investigation.

24.2 It is a well-settled principle of law that penal provisions cannot be applied retrospectively unless expressly stated. Section 171(3A) was inserted with effect from 01.01.2020 and does not contain any provision for retrospective application. Therefore, for the period prior to 01.01.2020, the Respondent cannot be held liable for penalty under the said provision.

ORDER

25. In light of the foregoing discussions, the supplementary investigation report of the DGAP dated 30.06.2026 is hereby accepted. The Respondent, M/s Merit Magnum Construction, is found to have contravened the provisions of Section 171 of the CGST Act, 2017 by not passing on the benefit of additional ITC to the eligible homebuyers.

25.1 The Respondent is directed to refund the total profiteered amount of **Rs. 2,67,114/- (Rupees Two Lakhs Sixty-Seven Thousand One Hundred and Fourteen Only),** comprising a base profiteered amount of Rs. 2,38,495/- and GST @12% amounting to Rs. 28,619/-, to the eligible homebuyers as detailed in the DGAP's supplementary report dated 30.06.2026.

25.2 The said amount shall be refunded along with interest at the rate of 18% per annum, in terms of Rule 133(3)(b) of the CGST Rules, 2017. The interest shall be calculated from the date of collection of the higher amount from the respective homebuyers till the date of actual refund.

25.3 The Respondent is not liable to pay penalty under Section 171(3A) of the CGST Act, 2017, as the period of investigation pertains to a period prior to the coming into force of the said provision on 01.01.2020.

26. The Respondent shall file a compliance report evidencing the refund of the profiteered amount along with the aforesaid interest to each of the eligible homebuyers. Such compliance report shall be submitted to the jurisdictional CGST/SGST Commissioner and a copy endorsed to the DGAP within a period of three months from the date of this Order.

27. A copy of this Order be forwarded to the Respondent, the Applicant, the DGAP, and the jurisdictional CGST/SGST Commissioner(s) for necessary action and compliance.

28. The matter is disposed of accordingly.

29. Order is pronounced in the open court