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Commercial Credit Note does not warrant ITC Reversal by Recipient for non-payment beyond 180 Days

The GSTAT, Bengaluru Bench in *Maltown Electricals Private Limited v. Commissioner of Central Tax, Mysuru* [Appeal No. APL/84/BUR/2026 dated September 30, 2026] partly allowed the appeal and set aside the demand of Input Tax Credit (“ITC”) and the penalty imposed under Section 74 of the Central Goods and Services Tax Act, 2017 (“the CGST Act”), and held that where the supplier waives the unpaid balance of consideration through a financial/commercial credit note without reducing the tax charged, the recipient is entitled to retain the full ITC and is not required to reverse the credit under the second proviso to Section 16(2) of the CGST Act.

However, the recipient remains liable to pay interest under Section 50 of the CGST Act on the proportionate ITC for the period during which the consideration remained unpaid beyond 180 days.

Facts:

Maltown Electricals Private Limited (“the Appellant”), a manufacturer of engine parts and electrical apparatus, purchased three spot welding machines from M/s. Kirpekar Engineering Private Limited, Pune (“the Supplier”) under three invoices issued in March 2018 having a taxable value of Rs. 1,19,18,000/- and IGST of Rs. 21,45,240/-. The Appellant availed the entire ITC of Rs. 21,45,240/- in Form GSTR-3B for March 2018.

Against the total invoice value of Rs. 1,40,63,240/-, the Appellant paid only Rs. 1,25,35,100/-. The balance of Rs. 15,28,140/- was withheld on account of alleged deficiencies in the machines and continued to be shown as outstanding in the Supplier’s ledger. The said balance was written back as “liability no longer payable” under “other income” in the accounts for the

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Financial Year 2019-20, and the Supplier subsequently issued a commercial credit note (without GST) dated November 9, 2021 for the said amount.

During the GST audit for the period July 2017 to March 2020, the Revenue (“the Respondent”) alleged that the Appellant had failed to pay the full consideration within 180 days and issued a Show Cause Notice dated March 16, 2022 under Section 74 of the CGST Act proposing recovery of proportionate ITC of Rs. 2,33,718/- along with interest and penalty. The Adjudicating Authority confirmed the demand *vide* Order dated June 16, 2022, and the First Appellate Authority upheld the same *vide* Order dated May 17, 2023 (“**the Impugned Order**”), holding that Circular No. 92/11/2019-GST dated March 7, 2019 addresses only the supplier’s position and that Section 74 was rightly invoked as the transaction was not disclosed in the returns.

The Appellant contended that the discount was agreed and the discounted value was paid within 180 days, that a commercial credit note does not affect the ITC availed on the original invoice in terms of Circular No. 92/11/2019-GST dated March 7, 2019, Circular No. 251/08/2025-GST dated September 12, 2025 and the CBIC Flyer on “Input Tax Credit Mechanism”, and that mere omission does not amount to suppression. The Respondent contended that the second proviso to Section 16(2) of the CGST Act was squarely attracted, that the 2019 Circular did not deal with the recipient, and that the issue would not have surfaced but for the audit.

Aggrieved by the Impugned Order, the Appellant filed an appeal before the GSTAT under Section 112 of the CGST Act.

Issues:

- Whether the Appellant contravened the second proviso to Section 16(2) of the CGST Act by not paying the balance consideration to the Supplier within 180 days from the date of invoice?

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- Whether ITC is liable to be reversed by the recipient when the unpaid balance is subsequently waived by the supplier through a financial/commercial credit note?
- Whether the extended period and penalty under Section 74 of the CGST Act were rightly invoked, and whether interest liability survives for the intervening period?

Held:

The GSTAT, Bengaluru Bench in ***Appeal No. APL/84/BUR/2026*** held as under:

- Observed that, the Supplier's ledger showed the balance of Rs. 15,28,140/- as outstanding well beyond 180 days and no letter or agreement recording the discount within the said period was produced. Therefore, the Appellant had contravened the second proviso to Section 16(2) of the CGST Act and ought to have added the proportionate ITC to its output tax liability after the 180th day.
- Noted that, a financial/commercial credit note does not reduce the transaction value of the supply or the tax charged on the invoice, is not reported in the supplier's Form GSTR-1 and does not alter the ITC of the recipient. Circular No. 251/08/2025-GST dated September 12, 2025, being clarificatory and beneficial, applies retrospectively and binds the Department under Section 168 of the CGST Act.
- Held that, the object of the second proviso to Section 16(2) of the CGST Act is that credit should not be enjoyed on a supply that is not paid for. This object is met where the supplier accepts the reduced amount in full settlement and itself bears the tax on the undiscounted value. On such waiver, the Appellant became entitled to hold the credit under the third proviso to Section 16(2) of the CGST Act, and Rule 37(4) of the Central Goods and Services Tax Rules, 2017 ("**the CGST Rules**") makes the time limit under Section 16(4) inapplicable to such re-availment. Accordingly, the demand of ITC was set aside.

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- Held that, the subsequent waiver does not wipe out the interest that accrued while the amount remained unpaid. The Appellant is liable to pay interest on the proportionate ITC from the date of availment till the date of receipt and accounting of the financial credit note.
- Held that, detection during audit does not by itself establish suppression. The unpaid balance and its write back were openly recorded in the audited accounts, and the Appellant held a *bona fide* view which the Board has since accepted. Hence, Section 74 of the CGST Act was not invocable. Applying Section 75(2) of the CGST Act, the notice was treated as one issued under Section 73 and was found to be within time.
- Directed that, the demand of IGST credit of Rs. 2,33,718/- and the penalty under Section 74 of the CGST Act be set aside, and the Appellant shall pay interest under Section 50 of the CGST Act read with Section 20 of the Integrated Goods and Services Tax Act, 2017 on the proportionate credit of Rs. 2,33,106/-. Hence, the appeal was partly allowed.

Our Comments:

Statutory framework: The second proviso to Section 16(2) of the CGST Act provides that where a recipient fails to pay the supplier the value of supply along with tax within 180 days from the date of invoice, an amount equal to the ITC availed shall be paid by him along with interest under Section 50 (prior to October 1, 2023, the amount was to be added to the output tax liability along with interest). The third proviso entitles the recipient to re-avail the credit on payment made to the supplier. Rule 37 of the CGST Rules, as substituted with effect from October 1, 2022 *vide* Notification No. 19/2022-Central Tax dated September 28, 2022, lays down the manner of such reversal through Form GSTR-3B and of re-availment, and Rule 37(4) frees such re-availment from the time limit prescribed under Section 16(4) of the CGST Act.

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The gap filled by this ruling: The provisos to Rule 37(1) of the CGST Rules deem only two categories as “paid”, namely, supplies without consideration under Schedule I and amounts added to value under Section 15(2)(b) of the CGST Act. A discount granted through a financial credit note finds mention only in the CBIC Flyer and in Circular No. 251/08/2025-GST dated September 12, 2025, and not in the statute or the rules. The lower authorities relied on this gap to deny credit. The GSTAT has bridged it through a purposive reading, treating the supplier’s waiver in full settlement as satisfying the third proviso, since nothing remains “payable” once the liability is extinguished and the Government has received tax on the full undiscounted value.

Pari materia rulings: On the binding nature of Board Circulars on the Department, the Hon’ble Supreme Court in *Commissioner of Central Excise, Bolpur v. Ratan Melting & Wire Industries* [2008 (231) E.L.T. 22 (S.C.)] and *Paper Products Ltd. v. Commissioner of Central Excise* [1999 (112) E.L.T. 765 (S.C.)] held that the Revenue cannot argue against its own circulars, and in *Suchitra Components Ltd. v. Commissioner of Central Excise, Guntur* [2007 (208) E.L.T. 321 (S.C.)] held that a beneficial circular applies retrospectively. On the recipient’s credit remaining intact despite a post supply commercial discount, the Tamil Nadu Appellate Authority for Advance Ruling in the matter of *M/s. MRF Limited* (2019) had taken a similar view in the context of discounts availed on early payment through a vendor financing platform, holding that the recipient could avail full ITC of the tax charged on the invoice.

On the invocation of the extended period, the ruling follows the settled line of the Hon’ble Supreme Court in *Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay* [1995 (78) E.L.T. 401 (S.C.)], *Cosmic Dye Chemical v. Collector of Central Excise, Bombay* [1995 (75) E.L.T. 721 (S.C.)], *Continental Foundation Joint Venture v. Commissioner of Central Excise, Chandigarh-I* [2007 (216) E.L.T. 177 (S.C.)] and *Uniworth Textiles Ltd. v. Commissioner of Central Excise, Raipur* [2013 (288) E.L.T. 161 (S.C.)], wherein it was held that suppression requires a deliberate act with intent to evade and that mere non payment or a *bona fide* interpretation does not justify the extended period. The application of Section 75(2) of the

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CGST Act is also in line with Circular No. 185/17/2022-GST dated December 27, 2022, which clarifies that where the charge of fraud or suppression fails, the demand is to be re-determined as if the notice were issued under Section 73 of the CGST Act.

Points that merit attention: *Firstly*, the interest finding leaves certain questions open. Section 50(3) of the CGST Act, as retrospectively substituted with effect from July 1, 2017, read with Rule 88B of the CGST Rules, levies interest only where ITC is wrongly availed and utilised. The Order does not examine whether the proportionate credit was actually utilised during the intervening period, and taxpayers maintaining sufficient credit balance in the electronic credit ledger may explore this argument, though the Revenue would contend that the second proviso to Section 16(2) independently mandates interest.

Secondly, the Order directs interest “till the date of receipt and accounting of the financial credit note”, whereas the liability was written back in the books for the Financial Year 2019-20 and the credit note is dated November 9, 2021. The terminal date for computing interest may therefore itself become a point of dispute at the implementation stage.

Thirdly, the Order sets aside the demand of Rs. 2,33,718/- but computes interest on Rs. 2,33,106/-, which corresponds to the balance of Rs. 15,28,140/- recorded in the ledger.

Practical takeaways: Where a price reduction is negotiated after supply, the settlement should be documented through contemporaneous correspondence and the financial credit note should be obtained within 180 days from the date of invoice, so that neither reversal nor interest is triggered.

Where the balance is in dispute beyond 180 days, the safer course is to reverse the proportionate ITC in Form GSTR-3B in terms of Rule 37(1) of the CGST Rules and re-avail it under Rule 37(2) once the amount is paid or the settlement is concluded.

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Open disclosure of withheld or written back balances in the books and audited financial statements remains the strongest defence against the invocation of Section 74 of the CGST Act.

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