GSTAT

Court No. Court II

APL/36/LCK/2026

M/S LUCKNOW TEST HOUSE ....**Appellant**

Versus

SHASHI BHUSHAN SINGH, ADDITIONAL COMMISSIONER GRADE-II , STATE TAX LUCKNOW & ORS. ....**Respondent**

Counsel for Appellant
SHRI ARPIT GUPTA ,C.A.

Counsel for Respondent
SHRI RAJESH KUMAR SINGH,
DEPUTY COMMISSIONER , SGST

Hon'ble Narendra Kumar, Member(Judicial)
Hon'ble Alok Chopra, Member (Technical)

ORDER

BRIEF FACTS

1. 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, wilful 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.

(Narendra Kumar)

(Alok Chopra)

Dated: 27.08.2026