IN THE GOODS AND SERVICES TAX APPELLATE TRIBUNAL
KOLKATA BENCH

COURT NO.1

Appeal No. APL/7/KLK/2026

Atanu Mondal
For the Commissioner
CGST & CX, Kolkata North Commissionerate
GST Bhawan, 180, Shantipally,
Rajdanga Main Road, Kolkata-700107

…… Appellant

VERSUS

Proprietor
S.S.Udyog
Shikhar Kunj, Flat 101, Tower-23
Canal East Road, Daspara, Kolkata
West Bengal-700067

…… Respondent

In appearance :

For the appellant : Mr. Tapas Kumar Mondal, Superintendent, CGST
For the respondent : Mr. Subham Khaitan, Chartered Accountant

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CORAM :

Hon'ble Shri S.G. Chattopadhyay : Judicial Member
Hon'ble Shri Bijoy Kumar Kar : Technical Member

Final Order

Date of Hearing : 28.07.2026
Date of Order : 09.09.2026

Per S.G. Chattopadhyay (JM):

[1]. The Commissioner, CGST & CX, Kolkata North Commissionerate (hereinafter called the Revenue) has preferred this appeal under sub-section (1) of Section 112 of the Central Goods and Services Tax Act, 2017

(hereinafter called as 'the CGST Act, 2017') against the Proprietor of S.S.Udyog, Kolkata (hereinafter called as the 'taxpayer').

[2]. Brief facts of the case are as under :

The taxpayer is engaged in trading of computer stationery products and machineries, parts and accessories of printing press in Kolkata. He is having GSTIN 19AEEPT0110Q1Z9 and carrying out his business from 11, Biplabi Trailakya Maharaj Sarani, Kolkata, West Bengal, 700001.

The revenue served show cause-cum-demand notice No.13/GST/AC/SSU/BBD BAG-1/2022-23 Dated 20.02.2023 on the taxpayer calling upon him to reply as to why :-

> *"(i) Rs.10,22,468/- (Rupees ten lakh twenty two thousand four hundred sixty eight only) (IGST Rs.19,845/-, CGST of Rs.4,95,811/- and SGST of Rs.4,95,811/- and CESS Rs. 11,000/-) which was collected by them but not paid (as detailed in the Annexure-A) in violation of the provisions of Section 39, Section 49 of provisions of the CGST Act read with corresponding Section of the WB SGST Act 2017 and Section 20 of the IGST Act 2017 should not be recovered from them under Section 73 of the CGST Act, as amended. read with Corresponding Section of the WB SGST Act 2017 and Section 20 of the IGST Act 2017, as amended:*
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> *(ii) Rs.6,867/- (Rupees six thousand eight hundred sixty seven only) (IGST of Rs.445/CGST of Rs.3,211/- and SGST of Rs.3.211/-) for Tax period July 2017 to March 2019 involved in Exempted and Nil rated supply not reversed by them in violation of the provision of Section 17 of the CGST Act read with corresponding Section of the WB SGST Act 2017 and Section 20 of the IGST Act 2017, as amended, read with Rule 42 and Rule 43 of the CGST Rules 2017 (as detailed in the Annexure-B), should not be recovered from them under Section 73 of the CGST Act, as amended, read with corresponding Section of the WB SGST Act 2017 and Section 20 of the IGST Act 2017, as amended;*
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> *(iii) Rs.47,32,749/- (Rupees forty seven lakh thirty two thousand seven hundred forty nine only) (IGST of Rs.11,51.485/-, CGST*

of Rs.17,90.632/- and SGST of Rs. 17,90.632/-) irregular excess ITC availed by them in violation of Section 16 of the CGST Act should not be recovered from them under Section 73 of the CGST Act, as amended, read with corresponding Section of the WB SGST Act 2017 and Section 20 of the IGST Act 2017. as amended:

(iv) Rs.5,90,689/- (Rupees five lakh ninety thousand six hundred eighty nine only) (IGST of Rs.5,71,727/-, CGST of Rs.9581/- and SGST of Rs.9581/-) in Financial Year 2018-19 involved in irregular excess ITC availed by them in violation of Section 16 of the CGST Act should not be recovered from them under Section 73 of the CGST Act. as amended read with Corresponding Section of the WB SGST Act 2017, as amended:

(v) Interest at the applicable rate of the demand made at (i), (ii)& (iii) & (iv) above should not be charged upon them under the provisions of Section 50(1) of the CGST Act, as amended, read with corresponding Section of the WB SGST Act 2017 and Section 20 of the IGST Act 2017, as amended;

(vi) Penalty should not be imposed upon them; against the demand made at (i), (ii) & (iii) & (iv) above, under Section 122(2)(a) of the CGST Act. as amended, read with corresponding Section of the WB SGST Act 2017 and Section 20 of the IGST Act, 2017. as amended, as mentioned in foregoing paras; and

(vii) Penalty should not be imposed upon them under Section 122(3)(e) of the CGST Act, as amended, read with corresponding Section of the WB SGST Act 2017 and Section 20 of the IGST Act 2017, as amended, for violation of the provisions as mentioned in foregoing paras."

[italics submitted by us]

The gist of the demand made out in the show cause notice is that, (i) the GST actually paid by the taxpayer as per GSTR 3B fell short of the tax liability declared by him in GSTR1 and difference stood at Rs.10,22,468/-; (ii) his annual turnover during the period from April, 2016 to March, 2019 on account of exempted/non-GST/nil dated supply was Rs.84,460/- as per the GSTR9. The taxpayer availed ITC to the tune of

Rs.6,867/- for which he was not eligible on account of exempted/non-GST and nil dated supply. But he did not reverse the ineligible ITC availed by him.; (iii) the taxpayer availed excess ITC to the tune of Rs.47,32,749/- which was revealed from the absence of reference to invoices in GSTR2A; (iv) the mismatch appearing between GSTR3B and GSTR9 also indicated that the taxpayer had taken excess credit of ITC to the tune of Rs.5,90,689/- from April 2018 to March, 2019; (v) the taxpayer submitted reply dated 24.04.2023 to the show cause notice in which he stated as under :-

"4 Reply to the Show Cause Notice submitted on 24.04.2023:

The reply of the noticee is reproduced below in verbatim:

"With reference to the above captioned subject, I have submitted letter on 28.03.23 in continuation reply here with the same would like to inform you that in respect of our books have been audited by internal in that scenario we reversed ITC for the FY 2017-18 for of Rs.47,47,306/-and attached DRCO3 Copy, in that same I have reversed for the FY 2018-19 for Rs.35,20,080/-and attached DRC03 copy in respect of respectively.

Sl.No.	*ARN No.*	*Date*
1	*AD1904230099212*	*17.04.2023*
2	*AD1904230099240*	*18.04.2023*
3	*AD1903230156076*	*25.03.2023*
4	*AD1903230155763*	*25.03.2023*
5	*A01903230155728*	*25.03.2023*

The above difference was due to ignorance about the Act and Rules which was then introduced and further I was misguided by my consultants who failed to report the actual data. Subsequently the auditor raised the issues and rectification and correct reporting was done in GSTR 9. The excess ITC was duly reversed through DRC 03 dated 25th March 2023.

All the above demands have already been reversed before receiving the Notice and hereby we attach DRC 03 for your kind reference. I

am a law abiding assesee, and the above differences were noted due to my ignorance which has been subsequently rectified and set right.

As per Section 111 of Finance act we have reversed through input ledger.

I pray for closure of this notice with an opportunity to carry out unhindered business activity."

[3]. The matter was then taken up by the adjudicating authority who passed the Order in Original (in short 'OIO') dated 10.11.2023. From paragraph 5 of the OIO it would appear that the taxpayer was heard in person on 01.08.2023 and during the course of such hearing the taxpayer reiterated his reply dated 24.04.2023. The adjudicating authority after considering the submissions of the parties and the documents available on record passed the following order :

7 Therefore, on the basis of the above discussion and findings, the following order is passed.

Order

(A)

(1) I confirm Rs. 9,31,188/- (Rupees nine lakh thirty one thousand one hundred eighty eight only) (IGST of Rs. 7,960/- CGST of Rs. 4,56,114/ SGST of Rs. 4,56,114/ Cess of Rs.11,000/-) as non-payment of tax and confirm the demand of the same which shall be recovered from the noticee under Section 73(9) of the CGST Act read with Section 20 of the IGST Act and section 11 of the Goods and Services Tax (Compensation to States) Act 2017. As the noticee have already paid an amount of Rs. 9,12,228/- (CGST of Rs 4,56,114/ SGST of Rs. 4,56,114/-) through DRC-03, as discussed in Para 6 above, I appropriate the said amount of Rs. 9,12,228/- and order for payment of Rs. 18,960/- (IGST of Rs.7,960/- + Cess of Rs. 11,000/-) from them in terms of Section 73(9) of the CGST Act;

(ii) I order for payment of appropriate interest as per Section 50(1) of the CGST Act on the confirmed amount mentioned in Sl. No. (i) above by the noticee under Section 73(9) of the CGST Act;

(iii) I impose a penalty amounting to Rs. 93,118/- (Rupees ninety three thousand one hundred eighteen only) (IGST of Rs. 796/- CGST of Rs. 45,611/ SGST of Rs. 45,611/ Cess of Rs. 1,100/-) upon the noticee in terms of Section 122(2)(a) of the CGST Act for contravention of the provisions of this Act and Rules made there under as discussed above; and

(iv) I also impose a penalty amounting to Rs. 50,000/- (Rupees fifty thousand only) [CGST of Rs. 25,000/- + SGST of Rs. 25,000/-) upon the noticee in terms of Section 122(3)(e) of the CGST Act for contravention of the provisions of this Act and Rules made there under as discussed above.

(B)

(i) I confirm Rs. 6,867/- (Rupees six thousand eight hundred sixty seven only) (IGST of Rs. 445/- CGST of Rs. 3,211/- + SGST of Rs. 3,211/-) as inadmissible ITC and confirm the demand of the same which shall be recovered from the noticee under Section 73(9) of the CGST Act. As the noticee have already paid an amount of Rs. 6,422/- (CGST of Rs. 3,211/-SGST of Rs. 3,211/-) through DRC-03, as discussed in para 6 above, I appropriate the said amount of Rs. 6,422/- and order for payment of IGST of Rs. 445/- from them in terms of Section 73(9) of the CGST Act read with Section 20 of the IGST Act;

(ii) I order for payment of appropriate interest as per Section 50(3) of the CGST Act on the confirmed amount mentioned in Sl. No. (i) above by the noticee under Section 73(9) of the CGST Act; and

(iii) I impose a penalty amounting to Rs. 20,000/- (Rupees twenty thousand only) (CGST Rs. 10,000/- SGST Rs. 10,000/-) upon the noticee in terms of Section 122(2)(a) of the CGST Act for contravention of the provisions as discussed above.

(C)

(i) I confirm Rs. 47,08,310/- (Rupees forty seven lakh eight thousand three hundred ten only) (IGST of Rs. 11,51,485/- CGST of Rs. 17,78,412/ SGST of Rs. 17,78,412/-) as inadmissible ITC and confirm the demand of the same which shall be recovered from the noticee under Section 73(9) of the CGST Act. As the noticee have already paid an amount of Rs. 34,97,174/- (CGST of Rs. 17,48,587/- SGST of Rs. 17,48,587/-) through DRC-03, as discussed in para 6 above, I appropriate the said amount of Rs. 34,97,174/- and order for payment of IGST of Rs. 11,51,485/, CGST of Rs. 29,826/- and

SGST of Rs. 29,826/- from them in terms of Section 73(9) of the CGST Act read with Section 20 of the IGST Act;

(ii) I order for payment of appropriate interest as per Section 50(3) of the CGST Act on the confirmed amount mentioned in Sl. No. (i) above by the noticee under Section 73(9) of the CGST Act; and

(iii) I impose a penalty amounting to Rs. 4,70,831/- (Rupees four lakh seventy thousand eight hundred thirty one only) (IGST Rs.1,15,149/- CGST of Rs. 1,77,841/ SGST of Rs. 1,77,841/-) upon the noticee in terms of Section 122(2)(a) of the CGST Act for contravention of the provisions as discussed above.

(D)

(i) I confirm Rs. 5,90,689/- (Rupees five lakh ninety thousand six hundred eighty nine only) (IGST of Rs. 5,71,527/- CGST of Rs. 9,581/- SGST of Rs. 9,581/-) as inadmissible ITC and confirm the demand of the same which shall be recovered from the noticee under Section 73(9) of the CGST Act. As the noticee have already paid an amount of Rs. 19,162/- (CGST of Rs. 9,581/- SGST of Rs. 9,581/-) through DRC-03, as discussed in Para 6 above, I appropriate the said amount of Rs. 19,162/- and order for payment of IGST of Rs. 5,71,527/- from them in terms of Section 73(9) of the CGST Act:

(ii)I order for payment of appropriate interest as per Section 50(3) of the CGST Act on the confirmed amount mentioned in Sl. No. (i) above by the noticee under Section 73(9) of the CGST Act; and

(iii) I impose a penalty amounting to Rs. 59,068/- (Rupees fifty nine thousand and sixty eight only) (GST of Rs. 57,172/- CGST of Rs. 958/ SGST of Rs. 958/-) upon the noticee in terms of Section 122(2)(a) of the CGST Act for contravention of the provisions as discussed above.

8 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.

[4]. Aggrieved by the order of the adjudicating authority, the taxpayer filed appeal under sub-section (1) of Section 107 of the CGST Act, 2017. The first appellate authority heard the appeal and allowed it by delivering an order (in short 'impugned order') on 24.07.2025 which reads as under:

5.9. The demand was raised under Section 73 of the CGST/SGST Act, 2017. The charging section is applicable where no intention to evade GST is established. The provision under Section 122(3)(e) of the CGST/SGST Act, 2017 pertains to failure to issue any invoice or failure to account for any invoice, which could not be established by the respondent and did not put forth any proof of such failure of the appellant. Therefore, I am not in the opinion to impose penalty again under Section 122(3)(e) of the CGST/ SGST Act, 2017.

In view of my discussions hereinbefore I proceed to pass the following order in terms of Section 107 of the CGST Act 2017.

O R D E R

I allow the Appeal and modify the impugned Order-in-Original No. 18/AC/CGST & CX/BBD Bag-I/GST/2023-24 dated 10.11.2023 (Order ZD191223011767E, dated-06.12.2023) passed by the Assistant Commissioner, CGST & CX, BBD Bag-I Division, Kolkata North Commissionerate as under:

I. I hereby order the appellant to pay Rs.872,691/ [IGST] and Rs. 11,000/-[Cess) under Section 73 of the CGST/ SGST Act, 2017 read with relevant provision of IGST Act, 2017. The paid amount may be appropriated by the proper officer;

II. I order for payment of interest under Section 50 of CGST/SGST Act, 2017 on the confirmed amount of GST/ Cess as per Table under Para 5.7. above;

III. I also order for payment of penalty as per table at Para 5.8. above;

IV. I order the proper officer to allow the appellant to re-credit the excess paid amount of tax in their respective credit leger.

So, the instant case is herewith disposed of with consequential benefits, if any.

[italics supplied by us]

[5]. The revenue has challenged the impugned order mainly on the following grounds :

i) The impugned order allowing the recredit to the taxpayer is not supported by law.

ii) The findings of the first appellate authority regarding reversal of ITC by the taxpayer is not based on any proof.

[6]. The taxpayer, on the other hand, in his cross objections, has taken resort mainly to the following grounds :

i) The claim of recredit is permissible under the CGST Act and Rules, 2017.

ii) Rule 86(4A) of the CGST Rules, 2017 clearly provides that amount of tax wrongly paid or paid in excess, if admissible, shall be recredited to the electronic credit ledger of the taxpayer by the proper officer.

iii) Circular No.135/05/2020-GST dated 31.03.2020 issued by CBIC in paragraph 4.3.1 has clarified this issue and the taxpayer is entitled to recredit in terms of such clarification issued by the CBIC.

iv) The impugned order is based on reconciliation of the inputs provided in various returns and the audited accounts of the taxpayer and as such the order of the appellate authority is well founded.

v) In absence of any error appearing in the impugned order, the said order passed by the first appellate authority has to be sustained.

vi) The appellate authority has acted within its jurisdiction and passed a reasoned order on the basis of the evidence available on record and as such there is no reason to interfere with the order of the first appellate authority.

[7]. In view of the rival contentions of the parties, two questions are arising for our determination :

i) Whether the order of the first appellate authority allowing recredit to the taxpayer is legally correct.

ii) Whether the re-computation of taxpayer's liability done by the first appellate authority is acceptable.

[8] It would appear from the reply of the taxpayer to the demand notice that the taxpayer, nowhere in his reply, claimed refund. At no point of time he came out with a refund claim. The refund of any tax and interest is governed under Chapter XI of the CGST Act, 2017. Under Section 54 of this Chapter, any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. It would be appropriate to quote the provision which reads as under :

CHAPTER XI

REFUNDS

54. Refund of tax*- (1)Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:*

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of subsection (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.

[9]. Apparently, the taxpayer never came forward with such claim of refund within the period prescribed under the law. His case is that he reversed the entire amount of excess ITC prior to issuance of the demand notice. He had no claim of refund either before the adjudicating authority or before the first appellate authority. Only after the present appeal was filed by the revenue, the taxpayer begun pursuing the claim of refund. The revenue has categorically stated in the grounds of appeal that the taxpayer is not entitled to refund because the impugned order allowing a re-credit to the taxpayer does not have any legal sanction.

[10]. As we have already discussed, the taxpayer has relied on Circular No. 135/05/2020-GST dated 31.03.2020 issued by CBIC to justify his claim. We have gone through the said circular. It is clear that the circular was issued with a view to make some clarification on refund related issues and in paragraphs 4.3.1 to 4.4, the said circular dealt with Rule 86(4A) and Rule 92(1A) and clarified as under :

> *4.3.1 As this could lead to allowing unintended encashment of credit balances, this issue has been engaging attention of the Government. Accordingly, vide notification No.16/2020-Central Tax dated 23.03.2020, sub-rule (4A) has been inserted in rule 86 of the CGST Rules, 2017 which reads as under:*
>
> > *"(4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03."*
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> *4.3.2 Further, vide the same notification, sub-rule (1A) has also been inserted in rule 92 of the CGST Rules, 2017. The same is reproduced hereunder:*

> *"(1A)Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under sub-section (5) of section 54 of the Act is due and payable to the applicant, he shall make an order in FORM RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue FORM GST PMT-03 re-crediting the said amount as Input Tax Credit in electronic credit ledger."*

4.4 The combined effect the abovementioned changes is that any such refund of tax paid on supplies other than zero rated supplies will now be admissible proportionately in the respective original mode of payment i.e. in cases of refund, where the tax to be refunded has been paid by debiting both electronic cash and credit ledgers (other than the refund of tax paid on zero-rated supplies or deemed export), the refund to be paid in cash and credit shall be calculated in the same proportion in which the cash and credit ledger has been debited for discharging the total tax liability for the relevant period for which application for refund has been filed. Such amount, shall be accordingly paid by issuance of order in FORM GST RFD-06 for amount refundable in cash and FORM GST PMT-03 to re-credit the amount attributable to credit as ITC in the electronic credit ledger

[11]. It is, therefore, crystal clear that the refund is not unknown to law and the claim of refund, if made in accordance with law cannot be brushed aside.

[12]. But in the case in hand, the first appellate authority did not record any reason at all as to why he allowed the taxpayer to recredit the excess amount of tax to his respective credit ledger. It would appear from the impugned order that the first appellate authority jumped to this decision out of context. This apart, the first appellate authority computed the tax

liability of the taxpayer at Rs.8,72,691/- under IGST along with Cess of Rs.11,000/- and interest under Section 50 of the CGST/SGST Act and it was also ordered by the first appellate authority that the amount already paid by the taxpayer might be appropriated by the proper officer. The demand which was confirmed by the adjudicating authority was much higher than the amount determined by the first appellate authority. As to how the first appellate authority came to such determination is not explained in the impugned order. Since the first appellate authority has not recorded any valid reason to allow recredit to the taxpayer as well as he did not record any reason as to how he reduced the demand to Rs.8,72,691/-. We find it very difficult to agree with the view harboured by the first appellate authority. Resultantly, the impugned order is set aside and the appeal is remanded back to the first appellate authority with the following directions :

i) In so far as the recredit is concerned, the first appellate authority will re-examine the entitlement of the taxpayer in terms of law laid down in this regard and Circular No.135/05/2020-GST dated 31.03.2020 as well as subsequent Circular No.173/05/2022-GST dated 06.07.2022 issued by CBIC and pass a speaking order on this issue.

ii) In so far as the computation of the tax liability of the taxpayer is concerned, the first appellate authority shall work out a

fresh computation on the basis of the inputs available in the self-assessed and autogenerated returns.

iv) The first appellate authority will also consider the audit reports already on record and make reference to the returns as well as to the reports and pass a reasoned order afresh.

v) The whole exercise shall be completed by the first appellate authority within a period of 06 months form the date of receipt of the certified copy of this order after providing opportunity of hearing to the taxpayer as well as the revenue.

With this order, we part with the case. Supply certified copy of this order to the parties. Order is pronounced in open Court in presence of the authorised representatives of the parties. The Registry is directed to upload the Final Order on GSTAT Portal immediately.

S.G.Chattopadhyay
Judicial Member

Bijoy Kumar Kar
Technical Member