GSTAT

Division Bench Court No. Court II

APL/54/LCK/2026

SAKHSHAM KNOWLEDGE SERVICES PRIVATE LIMITED .....**Appellant**

Versus

NITIN BANSAL, COMMISSIONER STATE TAX LUCKNOW, COMMERCIAL TAX (HQ) GOMTI NAGAR LUCKNOW & ORS. .....**Respondent**

Counsel for Appellant	**Counsel for Respondent**
SHRI SHAFEEQUE RAJ, ADVOCATE	SHRI RAJESH KUMAR SINGH, DEPUTY COMMISSIONER, SGST

Hon'ble Narendra Kumar, Member (Judicial)

Hon'ble Alok Chopra, Member (Technical)

ORDER

(A) Preface

1. M/s Sakhsham Knowledge Services Private Limited, [hereinafter referred to as 'the appellant"] (GSTIN: 09ABACS8716M1ZS), address 2/94 B, Vijay Khand, Gomti Nagar, Lucknow are engaged in providing Information Technology Services and have preferred this appeal against Order-in-Appeal No. ZD091125175391D dated 06.11.2025 passed by Additional Commissioner Grade-II, (Appeals)-5, State Tax, Lucknow, Uttar Pradesh who had dismissed appellant's appeal while upholding the order of the adjudicating authority.

1.1 The primary issues that merit our consideration are encapsulated as follows:

(i) whether Form DRC 01, being a summary of the SCN, can substitute the statutory requirement of a SCN under the CGST / SGST Act?

www.taxcode.in

(ii) Whether the demand of ITC based only on mis-match of GSTR-2A and GSTR-3B returns is sustainable?

1.2 Since these issues entail questions of law, the subject appeal was heard by the Division Bench.

1.3 Ld Sh. Shafeeque Raj ('Ld. Counsel') represented the appellant and Ld Sh. Rajesh Kumar Singh, Deputy Commissioner, SGST represented the Respondent as the Departmental Representative ('Ld. DR').

(B) Facts, including submissions of Appellant and Respondent, in brief:

2.0 The appellant were issued a notice under Section 61 of UPGST Act, 2017 on 08.11.2023, bearing Reference No. ZD091123106657G, pointing out the discrepancies between GSTR 1 and GSTR 3B regarding a difference of Rs. 1,12,500/- in the value of taxable supply and a corresponding excess IGST of Rs. 20,250.54 for the financial year 2018-19. The appellant filed their reply in Form ASMT-11 (Reference No. ZD091123223837C dated 20.11.2023) explaining that a transaction having taxable value of Rs. 1,12,000/- was left to be reported in GSTR-1 but the mistake was noticed while filing GSTR-3B and the correct tax liability was discharged. The appellant claim they were not issued an ASMT-12 and instead the proper officer issued a SCN (Show Cause Notice) dated 16.12.2023 demanding reversal of ITC of Rs. 46,442.78 (23,221.39 CGST + 23,221.39 SGST) due to difference of ITC reflected in GSTR-2A and availed in GSTR-3B. The appellant stated that the said SCN was addressed to M/s SAI KRIPA MEDICAL STORE with GSTIN 09DBFPP9429F1Z7. However, the summary of the SCN, uploaded on the portal, in the form of DRC 01 (Reference No. ZD091223289031K) on 18.12.2023 demanded reversal of IGST of Rs. 20,250.00, CGST of Rs. 24,465.00 and SGST of Rs. 24,465.00.

2.1 The appellant aver that they did not file a reply since no SCN was issued to them. Instead, the adjudicating authority issued an order-in-original on 19.04.2024 along with Summary of Order in Form GST DRC-07 (Reference No.

www.taxcode.in

ZD0904242448544) demanding Tax of Rs. 67,180/- (IGST Rs. 20,250/- + CGST Rs. 23,465/- + SGST Rs. 23,465/-), interest of Rs. 60,463/- (IGST Rs. 18,225/- CGST Rs. 21,119/- + SGST Rs. 21,119/-) and penalty of Rs. 30,000/- (IGST Rs. 10,000/- CGST Rs. 10,000/- + SGST Rs. 10,000/-) up to the date of passing the order.

2.2 The appellant filed an appeal with the First Appellate Authority i.e., Additional Commissioner (Grade 2) Appeal 5, State Taxes, Lucknow who upheld the order-in-original noting that the claim of the appellant that one of its suppliers viz., M/s Incuspaze Solutions Private Limited (GSTIN: 09AAECI2591P2ZW) had inadvertently reported his supply of Tax Invoice No. 283 dated 01.01.2019 in his GSTR-1 of January, 2019 against GSTIN09ARMPK6916C1ZN of another person, whereas the actual supply was indeed made to the appellant, did not stand upto scrutiny. First Appellate Authority observed that the appellant had affirmed the value of the said supply was Rs. 2,43,000/- entailing CGST of Rs. 30,870.00 and SGST of Rs. 30,870.00 and had also submitted a certificate issued by supplier in terms of Circular No. 183/15/2022-GST dated 27.12.2022. Noting that the B2C column of appellant's GSTR1, filed for January 2019, was instead displaying Taxable value Rs. 1,30,418.00, Central Tax Rs. 11,737.62, and State Tax Rs. 11,737.62 and that "अपीलकर्ता द्वारा प्रस्तुत कर जमा प्रमाण पत्र सत्यापित नहीं है", the First Appellate Authority upheld the original adjudication order.

2.3 Aggrieved with the order of First Appellate Authority, the appellant has filed this subject appeal before the GSTAT, or the second appellate authority, raising the following grounds in their appeal:

1) Only DRC 01, but no show cause notice, was issued to the appellant and therefore the appellant pleads that the impugned order-in-original and the order-in-appeal are not sustainable.

2) Demand of IGST of Rs. 20,250.00 is not sustainable and liable to be dropped:

3) Demand of ITC of CGST Rs. 23,465.00 and SGST Rs. 23,465.00 based only on mis-match of GSTR-2A and GSTR-3B are not sustainable.

www.taxcode.in

2.4 The Bench commenced hearings on 15th July 2026. In the subject case, hearings were held on10.08.2026, 09.09.2026 & 14.09.2026. Time and again the respondent was advised to get their id mapping process completed on the portal and also upload, among other required documents, the authorisation issued by competent authority to appear before GSTAT. Registry was advised to communicate the same to the respondent and a letter vide C. No. IV/01/02/Court Proceedings/2026 dated 10.08.2026 was issued to The Commissioner, State Tax (SGST), Lucknow, Uttar Pradesh. However, till the date of pronouncing the judgement i.e. 14.09.2026, there appears status quo and the respondent says that they are unable to access the portal and upload credentials. The Registry confirm that they have not received a response from the Respondent.

2.5 The matter cannot be allowed to linger indefinitely for want of a proactive and responsive approach of the Respondent and a decision needs to be taken based on the merits of the case.

(C) Findings of the Tribunal

3.0 We have perused the documents filed on the portal and also kept in purview the oral submissions tendered by the Ld Counsel as well as by the Ld. DR. We notice that consequent to the arguments rendered during the course of the hearings, the appellant uploaded additional submission that countered the reasoning followed by First Appellate Authority to arrive at his decision of rejecting the certificate tendered by appellant in respect of the tax invoice of M/s Incuspaze Solutions Private Limited(para 2.2 refers). As a part of additional submission, the appellant attached GSTR 1 and GSTR 3B to support their claim that the supply was a B2B supply and not a B2C supply as recorded by First Appellate Authority. We note that the Ld DR have not negated the claim of the appellant and therefore the assertion of the appellant stands to reason.

www.taxcode.in

4.0 We now come to examining the issues raised by the appellant and our views against each of the issues (including the primary issues flagged by us in the preface) are delineated as hereunder:

4.1 Only DRC 01 and no show cause notice was issued to the appellant and therefore the appellant pleads that the impugned order-in-original and the order-in-appeal are not sustainable.

This issue that only DRC 01 was issued and no Show Cause Notice was issued under Section 73 of the UPGST Act was also raised by the appellant before the First Appellate Authority. Rather, the said DRC 01 had attached along with a SCN, which was addressed to a different taxpayer namely, M/s Sai Kripa Medical Store (GSTIN 09DBFPP9429F1Z7). In its favour, the appellant cited the case of M/s NKAS Services Pvt. Ltd. Vs State of Jharkhand [2022 (63) G.S.T.L.18 (Jhar.] wherein the Hon'ble High Court of Jharkhand categorically held that show cause notice and its summary are two separate things and the summary i.e. DRC-01 cannot take place of a proper show cause notice.

4.2 The issue before us is whether Form DRC 01, being a summary of the SCN, can substitute the statutory requirement of a SCN under the CGST / SGST Act?

4.2.1 We observe that the UPGST Act, prescribes that a SCN issued under 73(1) must be accompanied by Form DRC 01, which essentially is a summary of the SCN.

4.2.2 It would be appropriate to refer to the relevant Section 73 (1) of the UPGST Act, 2017 and Rule 142 (1) (a) of Uttar Pradesh Goods and Services Tax, Rules **2017** governing the issuance of SCN and of DRC 01 that are reproduced hereunder:

"Section 73. 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 for any reason other than fraud or any willful-misstatement or suppression of facts. -

www.taxcode.in

(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 for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, 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 leviable under the provisions of this Act or the rules made thereunder."

4.2.3 "Rule 142. Notice and order for demand of amounts payable under the Act. -

(1) The proper officer shall serve, along with the

(a) Notice issued under section 52 or section 73 or section 74 10[or section74A] or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 a summary thereof electronically in Form GST DRC-01"

4.2.4 It is evident that a SCN has to be issued under the statutory requirement mandated by Section 73(1) requiring that the proper officer '.....shall serve notice on the person chargeable with the tax which has not been paid.....requiring him to show cause.....". The intention of the legislature is evident from the use of the word 'shall', which is a modal verb that indicates a promise or an obligation. This requirement may not be diluted by the tax administration. On the other hand, the Form DRC 01 issued under the Rule 142(1)(a) is in the nature of a summary and cannot stand on a sole, independent footing dispensing with the statutory requirement that legislature has mandated vide Section 73(1) *ibid.*

4.2.4. Under the GST law, a Show Cause Notice (SCN) is the bedrock of adjudication proceedings for determining tax, interest and penalty and serves an important safeguard of natural justice. In terms of Section 73(1) and also Section 74(1) of the CGST Act, where the proper officer believes that tax has not been paid or has been

www.taxcode.in

short-paid, refund has been erroneously granted, or ITC has been wrongly availed or utilised, whether without fraudulent intent or, with fraudulent intent, the officer shall serve a notice requiring the taxpayer to show cause why the proposed liability should not be recovered. Thus, a SCN serves three principal purposes:

(a) It informs the taxpayer of the allegations.

(b) It specifies the proposed tax, interest and penalty.

(c) It gives the taxpayer an opportunity to defend himself before an adverse order is passed.

While examining the validity of a SCN, the following points would be relevant, -

i) Who is the person proceeded against?

ii) What tax / ITC / refund is alleged to be wrong?

iii) For which period?

iv) Under which statutory provision?

v) On what factual and evidentiary basis?

vi) Was the taxpayer given a real opportunity to answer that particular allegation?

4.2.5 In this connection not only the citation furnished by the appellant but the decision of Hon'ble High Court of Gauhati in the case of Construction Catalysers (P.) Ltd vs State of Assam [WP (C) No. 3912 of 2024 dated 26.09.2024] is also relevant. The Hon'ble High Court held that Form DRC 01 cannot replace the statutory requirement of a SCN issued under section 73(1) of the Act ibid. It is also noticed that neither the adjudicating authority nor the First Appellate Authority tendered their observations or views on the issue of attaching a wrong SCN or, that a SCN that relates to M/s Sai Kripa Medical Store (GSTIN 09DBFPP9429F1Z7) was attached with the DRC 01 issued to the appellant (GSTIN: 09ABACS8716M1ZS) and no SCN was issued to the appellant.

www.taxcode.in

4.2.6 Evidently, the SCN attached with DRC 01 was not addressed to the appellant. In the absence of a SCN the appellant were in the dark as regards the cause against which they had to address their replies to. This was basic denial of an opportunity, which should have been afforded to them to argue their case. Issuance of a SCN is the foundation of the process of adjudication and statutory requirements regarding its issuance cannot be casually ignored. Scrutiny of the DRC 01, which was issued with the wrong SCN, reveals that there was a tabulation of figures under 'tax and other dues'. In the said DRC 01, being a summary of the SCN, there was not even a trace of some reasoning or, a cause cited that brought out the specific violation or infringement of the statutory provisions supported by factual and evidentiary basis and the like as have been listed in para 4.2.4 above. Had the said DRC 01 cited arguments also showing cause to the taxpayer instead of merely tabulating data as regards 'tax and dues' we would have been inclined to deem the said DRC 01 as a SCN and proceeded to examine the issue on merits.

4.2.7 Absent show cause notice, the entire proceedings thereafter are rendered invalid and void *ab initio*.

5.0 While the entire case falls in the absence of a proper SCN issued under section 73(1) of the Act *ibid*, it would be in the fitness of things to still examine the other grounds on merits.

5.1 Demand of IGST of Rs. 20,250.00 is not sustainable and liable to be dropped:

5.1.1 The appellant has argued that the "adjudication order in Point No. 2 has demanded reversal of ITC of IGST whereas in the corresponding ASMT-10 dated 08.11.2023 [Ref: Point No. 3 & 7] it was intimated as difference in tax paid in GSTR-3B and tax payable as reported in GSTR-1. The appellant has paid excess IGST amounting to Rs. 20,250.54 [Point No. 3 of ASMT-10] as reported in GSTR-1."

5.1.2 In the absence of a SCN, absent any line of reasoning in the order-in-original justifying the amount of Rs. 20,250.54 as excess ITC and bland upholding of the order-in-original by the first appellate authority, we are at a loss of words and unable

to appreciate how even a remand would have been able to resolve such a matter. We also feel that examining the applicability of case laws cited by the appellant in his favour, may be superfluous in the instant case.

5.2 Demand of ITC of CGST Rs. 23,465.00 and SGST Rs. 23,465.00 based only on mis-match of GSTR-2A and GSTR-3B is not sustainable:

5.2.1 The appellant have cited a catena of judgments in their favour that a mismatch between GSTR 2A and GSTR 3B cannot be a ground for denial of ITC claim. Our attention has been drawn to Circular No. 183/15/2022-GST issued from F. No. CBIC-20001/2/2022 – GST dated 27 December 2022 wherein vide Para 2 it has been clarified that GSTR-2A restriction was provided only w.e.f. 09.10.2019. The said para 2 is reproduced hereunder:

"It is mentioned that FORM GSTR-2A could not be made available to the taxpayers on the common portal during the initial stages of implementation of GST. Further, restrictions regarding availment of ITC by the registered persons upto certain specified limit beyond the ITC available as per FORM GSTR-2A were provided under rule 36(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") only with effect from 9th October 2019."

5.2.2The appellant also stated that GSTR 2A may not be reflecting figures owing to various plausible reasons like,-

a) Supplier has paid the tax but inadvertently reports in B to C supplies in GSTR-1.

b) Place of supply reported incorrectly.

c) GSTR-1 not filed by the supplier but paid the tax through GSTR-3B.

d) Tax has been paid by the supplier through DRC-03.

5.2.3 Circular No. 183/15/2022-GST was perused and it was noticed that para 4 of the said circular directs that "the proper officer shall first seek the details from the

www.taxcode.in

registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A." It proceeds to prescribe certain conditions of Section 16 of CGST Act the fulfilment of which shall be ascertained by the proper officer in respect of the input tax credit availed on such invoices by the said registered person. We notice that in the order-in-original the adjudicating authority has quoted the requirement as envisaged under the Act and Rules for availing ITC. But the order does not speak of examining the absence of tax invoices or non-receipt of goods at the hands of the appellant. There does not appear any verification of the conditions laid down in the Circular *ibid*. Similarly, the first appellate authority appears to have reproduced the appeal of appellant and the non-speaking order of the adjudicating authority. There is no discussion either at the adjudicating level or at the first appellate level that can be deemed to be an examination or verification of the issue. Para 4.1 of the said Circular prescribes a procedure, which appears not to have been complied with by the Respondent. In fact the Respondent should have taken note of the procedure prescribed in the said Circular. We could have remanded the case for verification of these facts but for the fact that absent a SCN subsequent proceedings are unambiguously invalid ab-initio.

5.2.4 Be that as it may, we also proceed to examine the relevance of the few case laws cited by the appellant.

(i) State of Karnataka V/s M/s Ecom Gill Coffee Trading Private Ltd. Civil Appeal No. 230 of 2023 [2023(72) G.S.T.L.134(SC)] – Supreme Court

This case law does not appear relevant to the subject matter.

(ii) We note that the case of Suncraft Energy Private Limited vs Assistant Commissioner, State Tax decided by Hon'ble High Court of Calcutta was taken note of on in the matter of Divya Agencies where Hon'ble High Court of Kerala held that merely on the ground that tax is not reflected in Form GSTR 2A, should not be a

www.taxcode.in

sufficient ground to deny the assessee the claim of ITC. The ratio of these cases does have a favourable bearing on the subject issue.

(D) Order

6. In view of the above findings, we hereby order as follows:

(i) The appeal is hereby allowed.

(ii) Since no show cause notice was issued, the entire proceedings thereafter are rendered invalid and therefore set aside.

(Order announced in open court on 14th September 2026)



(Alok Chopra) 14/09/2026

(Narendra Kumar) 14.09.26

Date:14.09.2026

www.taxcode.in