GSTAT

Court No. Court I

APL/49/AGR/2026

M/S JUPITER BUILDTECH PVT. LTD. **.....Appellant**

Versus

COMMISSIONER OF STATE TAX - UP, COMMISSIONER, OFFICE OF THE COMMISSIONER COMMERCIAL TAX UP, COMMERCIAL TAX HEAD OFFICE, VIBHUTI KHAND, GOMTI NAGAR, LUCKNOW, UTTAR PRADESH - 226010 & ORS. **.....Respondent**

Counsel for Appellant
BRIJESH VERMA ADVOCATE ALONGWITH PRERNA JAIN

Counsel for Respondent
MUKESH KUMAR, D.C./ SR

Hon'ble Ajeet Singh, Member(Judicial)
Hon'ble Vivek Kumar, Member (Technical)

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the GST Appellate Tribunal

whether remand order : No

Order reference no. : ZA090400926000195H **Date of order :** 24/09/2026

1.	GSTIN/Temporary ID/UIN - 09AACCJ4330M1ZF	
2.	Appeal Case Reference no. - APL/49/AGR/2026	Date - 31/03/2026
3.	Name of the appellant - M/S JUPITER BUILDTECH PVT. LTD. , rattan.kumar389@gmail.com , 8126681548	
4.	Name of the respondant - 1. Shri Prakash Yadav Joint Commissioner(IT) State Tax Headquarters Lucknow , ctithqlu-up@nic.in , 7235002314 2. Commissioner of State Tax - UP 3. Deputy Commissioner of State Tax - UP	
5.	Order appealed against - AD091124132393B	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - ZD090625163559S	Date - 18/06/2025

6.	Personal Hearing - 24/09/2026 09/09/2026 01/09/2026 23/07/2026 20/05/2026
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed
8.	Order in brief - The impugned order passed by the First Appellate Authority is found in full compliance with the legal provisions. Accordingly, the first appellate order is upheld and the taxpayers appeal is dismissed.
Summary of Order	
9.	If demand order then whether demand quantified: No

10.	For Other orders and Demand orders which are not quantified:	
Issues as raised by proper officer	Issues as determined by Appellate/Revisional authority	Order by GST Appellate Tribunal
Short or non-payment of tax	As determined by Appellate/Revisional authority: The Appellate Authority confirmed the OIO verbatim entire ITC was rejected by the Ld. ADC and the demand to this effect was upheld alongwith applicable interest and penalty. The Appellate Authority acted without jurisdiction by introducing the provisions of Section 142(5) of the CGST Act at the appellate stage. Neither the original Show Cause Notice (SCN) nor the Order-in-Original (OIO) ever invoked Section 142(5) to deny the claim. By making out a fresh case against the Appellant that was not part of the SCN, the Ld. ADC has violated the settled principles of jurisprudence and natural justice and confirmed a total demand of Tax(Rs.3,82,350), Penalty (Rs.38,235) and applicable Interest.	

Place :AGRA

Signature

Date : 24.09.2026

AGRA Sandeep Yadav

Designation : Stenographer/Law researcher

Jurisdiction :Agra

ORDER

Per- Vivek Kumar (Technical Member)

Jupiter Buildtech Pvt. Ltd.- Apl/49/AGR/2026

ORDER

(Passed on 24th day of September 2026)

1. Present appeal has been preferred by M/S JUPITER BUILDTECH PRIVATE LIMITED, 118/8, 3RD FLOOR, MARUTI PLAZA SANJAY PLACE, AGRA (GSTIN-09AACCJ4330M1ZF), against order dated 18-06-2025 passed by Additional Commissioner Gr. II (Appeal), III State Tax, Agra, in appeal no. ARN: 2425AAGR001085/AD091124132393B/2024 M/s JUPITER BUILDTECH PRIVATE LIMITED Vs State, whereby tax of Rs. 382350/- penalty of Rs. 38235/- and Interest of Rs. 339401total sum of Rs. 759986/- imposed by Adjudicating officer u/s 73 of CGST/UPGST, Act has been affirmed. For shake of convenience here-in-after in the order, appellant and respondent will be addressed as taxpayer and department, respectively.

2. Factual matrix of the present case is delineated below:

2.1- The taxpayer is a Pvt. Ltd. Company, registered under SGST/CGST act and has constructed and sold residential buildings after booking them under an agreement with perspective buyers.

2.2-The taxpayer received an advance of Rs. 1,28,80,050 for booking of 10 residential flats in the years 2013-14, 2014-15 and 2015-16 and collected and deposited service tax of Rs. 3,82,350 on the same.

2.3- Subsequently, in the years 2018-19 and 2019-20 (GST Regime), the bookings were cancelled by the buyers and the advance money received from them was refunded by the taxpayer along with the service tax collected.

2.4- Thus, the amount of service tax refunded to the buyers, which had already been deposited by the taxpayer in the Central Exchequer as service tax, was claimed by the taxpayer as input tax credit in the GST return and the GST liability was adjusted against it.

2.5- The proper officer held that this amount was not admissible as input tax credit and determined a liability of Rs. 3,82,350 and imposed penalty of Rs. 38,235 and created a liability of interest of Rs. 3,39,401 under section 73 of the act.

2.6- Aggrieved by this order, the taxpayer filed an appeal before the first appellate authority, Additional Commissioner Grade-II Appeal IIIrd, State Tax, Agra.

2.7- The Additional Commissioner Appeal, by his impugned order dated 18-06-2025, dismissed the appeal of the taxpayer and held that even though the amount deposited as service tax may be refundable, it could not be claimed as input tax credit and the taxpayer was required to proceed as per the provisions of section 142(5).

2.8- Aggrieved by the impugned order dated 18-06-2025 of the First Appellate Authority, this Second Appeal has been filed by the taxpayer before the Tribunal.

3. Learned counsel Shri Brajesh Verma along with his associate Ms. Prerna Jain appearing for the taxpayer, reiterated facts of the case and advanced the following submissions.

3.1- The impugned order is against natural justice and contrary to law and equity.

3.2- Since the booking of the flats was cancelled during the GST period, the service tax paid on it is refundable and this substantive vested right cannot be defeated by mere procedural technicalities.

3.3- Retention of tax on cancelled services is violative of the article 265 of the constitution and to get the refund availing input tax credit is merely a mechanism to adjust the refundable amount against the GST liability.

3.4- Transaction is revenue neutral and denial of ITC results in unjust enrichment of the state.

3.5- Section 142(2)(b) of CGST Act read with rule 6(3) of service tax rules validates this adjustment.

3.6- Appellant cannot be penalized for systematic/legislative lacunae (Lex Non Cogit Ad Impossibilia).

3.7- Imposition of interest and penalty is wholly unjustified and illegal.

3.8- Learned Appellate authority has exceeded jurisdiction by travelling beyond show cause notice and failed to appreciate the vested right of adjustment saved U/S 174(2)(c).

3.9- Section 142(5) is an enabling provision and does not bar self-adjustment.

3.10- While reselling these flats Rs 36,30,000 is paid to the government exchequer as CGST and SGST and hence there is no loss to the revenue.

3.11- In the case Commissioner of Central Excise Vs. Motorola India Pvt. Ltd. It has been decided that once a contract is cancelled and the consideration is refunded the taxable event ceases to exist and hence service tax paid on such transaction is refundable.

3.12- To buttress his contentions learned counsel for appellant has cited several case laws titled- **M/s Kanika Species reality pvt. Ltd.** Final order no. 85349-85351/2024 and **M/s Credence property developers pvt. Ltd**. Order no. A/85004/2023 delivered by the CESTAT.

4. Mukesh Kumar D.C. appearing as departmental representative reiterated the facts determined in the first appellate order and advanced the following submissions.

4.1-The first appellate order has been passed after due interpretation of the facts in the light of the legal provisions and there is no legal or factual error in it.

4.2- Input tax is clearly defined in the CGST / SGST Act, credit of which can be claimed under the provisions of the Act.

4.3-Service tax paid before the implementation of GST, if refundable, can be refunded as per legal provisions. It cannot be claimed as input tax credit.

4.4- The refund claim for previously paid service tax is clearly provided for in sub-section 5 of Section 142 of the CGST Act. The refund to the dealer is fully covered by the provisions of Section 142(5).

4.5- Appellant cannot create its own refund mechanism but any refund can be made only in accordance with the procedure established by law.

4.6- The first appellate order has been passed after due analysis of the facts and in accordance with the legal provisions and is maintainable.

Analysis and Conclusion

5. We have heard the learned counsel and authorised representative appearing for the parties and perused the material on record.

5.1- In this case, the taxpayer had deposited service tax on advance money received against booking of flats before the commencement of the CGST Act, as per the provisions of Chapter V of the Finance Act, 1994. That law (Act32 of 1994) was amended by section 173 of CGST Act 2017 and Chapter V of the Finance Act 1994 was omitted w.e.f. 01-07-2017.

5.2- As booking of some flats was cancelled after 01-07-2017 i.e. after appointed date under CGST, Act. the booking amount received from them along with the service tax collected was returned to the allottees.

5.3- Now the moot question is whether such refundable service tax amount can be claimed by the taxpayer as input tax credit or is there any other provision for such cases in the CGST Act 2017.

5.4- Input tax credit is defined in sections 2(62) and 2(63) as follows:

2(62) “Input tax” in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—

1. The integrated goods and services tax charged on import of goods;
2. The tax payable under the provisions of sub-sections (3) and (4) of section 9;
3. The tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;

4. The tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
5. The tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,

but does not include the tax paid under the composition levy;

2(63) “Input tax credit” means the credit of input tax;

Its admissibility and claim procedure have been provided in Chapter V of the Act from Section 16 to Section 21.

5.5- So far, Principle laid down in case laws cited by learned counsel for appellant is concerned. Though, in cases M/s Kanika Species (Supra), M/s Credence property developers (Supra) facts of case in hand seem to be similar with the case cited but question for determination is at all distinguishable to the present case therefore, principle laid down therein would not be applicable here.

5.6- In our view, the service tax deposited by the taxpayer under the existing Act i.e. Finance Act, 1994 is not input tax and hence its credit is not allowed as input tax credit.

5.7- As far as other provisions are concerned, detailed transitional provisions regarding the existing acts which have been repealed or amended by the CGST Act have been made in Chapter XX of the CGST Act 2017.

5.8-Section 142(5) provides for refund of tax paid on services which were not ultimately provided, as follows:

142(5) Every claim filed by a person after the appointed day for refund of tax paid under the existing law in respect of services not provided shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid 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).

5.9- Since the services promised through bookings were not ultimately provided by the taxpayer in this case, the refund of service tax deposited has to be dealt with under the existing Act (Finance Act 1994). The taxpayer cannot avail input tax credit as a mode of refund under the Finance Act 1994 and the amount of service tax previously deposited cannot be claimed as input tax credit in GST returns. Taxpayer can not adopt his own mechanism which is not supported by Law. Under the GST regime, a taxpayer cannot unilaterally pass an entry in its electronic credit ledger to absorb or adjust a service tax refund claim without explicit statutory sanction.

5.10-In light of the foregoing discussion, we are of the considered opinion that the impugned order passed by the First Appellate Authority is in full compliance with the legal provisions. Accordingly, the first appellate order is upheld and the taxpayer's appeal is dismissed as under GST regime appellant is not entitled to claim refundable amount of service tax paid under erstwhile finance Act 1994 as input tax credit under SGST/CGST, Act, 2017.

5.11- Under facts and circumstances of the case no order has to cost.

5.12- There is no pending interim application in the appeal.

5.13- Order is pronounced in open court on this day of 24th September 2026.

5.14- Copy of order be communicated to all concerned, as per rules.

(Ajeet Singh)

(Vivek Kumar)

Dated: 24.09.2026