GSTAT

State Bench Ghaziabad

Division Bench Court No. Court I

APL/6/GZB/2026

ANIL KUMAR MOHINDRU **.....Appellant**

Versus

SHRI PRAKASH YADAV, JOINT COMMISSIONER(IT) STATE TAX HEADQUARTERS LUCKNOW, UTTAR PRADESH & ORS. **.....Respondent**

Quorum

Hon'ble Sanjay Kumar Chandhariyavi, Member(Judicial)
Hon'ble Sungita Sharma, Member (Technical)

Counsel for Appellant
INPERSON
SANJAY AGGARWAL

Counsel for Respondent

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. : ZA070390926000171H **Date of order :** 29/09/2026

1.	GSTIN/Temporary ID/UIN - 09AAACT0334R1Z1	
2.	Appeal Case Reference no. - APL/6/GZB/2026	Date - 23/12/2025
3.	Name of the appellant - ANIL KUMAR MOHINDRU , pankaj@3acesglobal.com , 9818695740	
4.	Name of the respondant - 1. Shri Prakash Yadav Joint Commissioner(IT) State Tax Headquarters Lucknow , ctithqlu-up@nic.in , 7235002314 2. Shri Prakash Yadav	
5.	Order appealed against - AD0906230323357	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - ZD090525154854Z	Date - 07/05/2025

6.	Personal Hearing - 29/09/2026 22/09/2026 08/09/2026 21/08/2026 06/08/2026
7.	Status of Order under Appeal - Reject - Order under Appeal is annulled
8.	Order in brief -

Summary of Order

9.	If demand order then whether demand quantified: Yes

Section-I

Particulars	Central tax		State/UT tax		Integrated tax		Cess		Total	
	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount
1	2	3	4	5	6	7	8	9	10	11
(a) Tax	0		0		2094605		0		2094605	0
(b) Interest	0		0		0		0		0	0
(c) Penalty	0		0		209461		0		209461	0
(d) Fees	0		0		0		0		0	0
(e) Others										0
(f) Refund										0

Section-II

Place of Supply/Name of State/UT	Demand	Tax	Interest	Penalty	Other	Total
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Amount in dispute	2094605	0	209461	0	2304066
	Amount Determined	0	0	0	0	0

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

Place :GHAZIABAD

Signature

Date : 30.09.2026

GHAZIABAD Dr. Sanjay Kumar Chandhariyavi

Designation : Member

Jurisdiction :Ghaziabad

ORDER

BEFORE THE GOODS AND SERVICES TAX APPELLATE TRIBUNAL

STATE BENCH, GHAZIABAD

Appeal No. APL/6/GZB/2026

M/s Three Aces Global Logistics Pvt. Ltd.

GSTIN: 09AAACT0334R1Z1
…Appellant

Versus

Joint Commissioner (IT), State Tax Headquarters, Lucknow, Uttar Pradesh & Ors.

…Respondents

FINAL ORDER

1. **Brief Facts of the Case**:
2. The Appellant, M/s Three Aces Global Logistics Pvt. Ltd., is engaged in freight forwarding, logistics, customs house agency (CHA) operations, and transportation support services. It is registered under the Central Goods and Services Tax Act, 2017 (CGST Act) and the Uttar Pradesh Goods and Services Tax Act, 2017 (UPGST Act), bearing GSTIN 09AAACT0334R1Z1.
3. Upon scrutiny of the Appellant's returns for the financial year (FY) 2019–20, the Uttar Pradesh State GST Department issued a notice in Form GST ASMT-10 dated 08.08.2022. The notice alleged discrepancies between GSTR-3B and GSTR-2A returns, mismatches in outward tax, and variations between GSTR-9 and GSTR-9C. The Appellant filed a detailed reply with its books of account and reconciliation statements. As the response did not satisfy the proper officer, a show-cause notice (SCN) dated 20.02.2023 was issued under Section 73 (non-fraud proceedings). The SCN alleged: (i) a mismatch between ITC reported in GSTR-3B (Rs. 92,07,676) and GSTR-2A (Rs. 59,76,878), amounting to Rs. 32,30,798; (ii) an outward-tax mismatch between GSTR-1 and GSTR-3B of Rs. 53,00,589; (iii) a turnover variation of Rs. 2,00,097 between

GSTR-9 and GSTR-9C; and (iv) a difference between the turnover in the profit and loss account and the turnover in GSTR-9, relating to multiple State GSTINs.

4. The Appellant filed a detailed reply dated 22.02.2023, explaining that ITC of Rs. 34,21,676 pertained to FY 2018–19 and was fully reflected in that year's GSTR-2A. Of this amount, Rs. 13,27,071 was availed before 30.09.2019, while Rs. 20,94,605 was availed between October 2019 and March 2020 because the supplier invoices were received late. The Appellant submitted that all conditions under Section 16(2) had been met, that the suppliers had paid the tax to the Government and that the invoices matched those reflected in GSTR-2A. It was therefore contended that there was no loss of revenue.

5. The Adjudicating Authority passed an Order-in-Original dated 12.04.2023, which was rectified on 19.05.2023 under Section 161, in respect of certain interest calculations. Having found the supplies to be genuine, the Authority allowed ITC of Rs. 13,27,071 claimed in GSTR-3B up to 30.09.2019. It disallowed ITC of Rs. 20,94,605 claimed in GSTR-3B between 01.10.2019 and 31.03.2020, on the ground that the claim was time-barred under Section16(4). The Adjudicating Authority confirmed a total demand of Rs. 32,46,638, comprising IGST of Rs. 20,94,605, interest of Rs. 9,42,572 and penalty of Rs. 2,09,461.

6. Aggrieved by that order, the Appellant appealed under Section 107 of the Act, to the Additional Commissioner of State Tax, the First Appellate Authority. By an order dated 06.05.2025, the First Appellate Authority upheld the entire demand. It was additionally found that the insertion of Section 16(5) did not alter the requirement to disclose the carry-forward in Tables 8C and 13 of GSTR-9 and Table 12C of GSTR-9C; that the Appellant had not furnished supplier or CA certificates under Circular No. 183/15/2022-GST; and that ITC had been availed without actual receipt of supplies under Section 16(2)(b) and without payment of tax under Section 16(2)(c). The Appellant has filed the present appeal against the Order-in-Appeal dated 06.05.2025.

7. **Grounds of Appeal:**

8. The Appellant challenges the Order-in-Appeal dated 06.05.2025 on the following grounds:

9. a) Section 16(5) is a retrospective beneficial provision overriding the earlier restriction in Section 16(4):

1. With effect from the retrospective insertion of Section 16(5), Parliament specifically enabled taxpayers to take unavailed ITC for FY 2017–18 and FY 2018–19 in subsequent financial years, subject to the statutory conditions. The Appellant submits that the amendment is beneficial and clarificatory and was intended to remedy hardship caused by a mechanical application of Section 16(4). Circular No. 237/31/2024-GST

dated 15.10.2024 addresses the implementation of this amendment.

2. The disputed ITC of Rs. 20,94,605 pertains to FY 2018–19 and, according to the Appellant, satisfies the conditions in Section 16(2). The only alleged breach concerns the time at which the credit was availed, which the Appellant submits is addressed by Section 16(5).

3. The Appellant submits that the First Appellate Authority erred in holding that Section 16(5) did not alter the position and in upholding the disallowance under Section 16(4), thereby defeating the purpose of the amendment.

949. b) The Appellant submits that the appellate order travels beyond the SCN, in violation of natural justice. The SCN was issued under Section 73 and did not allege: (i) non-receipt of goods or services; (ii) non-payment of tax by suppliers; (iii) absence of supplier confirmations; (iv) excess ITC of Rs. 27,81,949 based on GSTR-9; or (v) breach of Section 16(2)(b) or Section 16(2)(c). The appellate order nevertheless introduced these grounds, including alleged non-receipt of supplies, non-payment of tax by suppliers, failure to submit a supplier certificate under Circular No. 183, and a fresh calculation of excess ITC of Rs. 27,81,949. The Appellant contends that these grounds were absent from both the SCN and the order under Section 73(9). It submits that this contravenes Section 75(7), the rule that an order cannot travel beyond the SCN, the principle of audi alteram partem, and the principles of natural justice.

950. c) The Appellant further submits that the order is internally contradictory and non-speaking. Although the appellate order refers to excess ITC of Rs. 27,81,949, it confirms a demand of Rs. 20,94,605 without explaining the difference. According to the Appellant, this inconsistency shows that the matter was not properly considered and that the order was passed mechanically. It submits that a contradictory, non-speaking order is unsustainable in law.

951. d) The Appellant submits that all ITC of Rs. 34,21,676 is reflected in GSTR-2A for FY 2018–19, showing that the suppliers uploaded the invoices. It contends that the supplies were genuine, the suppliers paid the tax, and no revenue was lost. It argues that denying ITC merely because it was availed in GSTR-3B for FY 2019–20 rather than FY 2018–19 treats a procedural lapse as a substantive violation. The Appellant further submits that the courts distinguish substantive entitlement from procedural requirements and that ITC should not be denied for a technical reason when the substantive conditions are met.

952. e) The Appellant submits that it fulfilled all four conditions in Section 16(2): possession of a tax invoice, receipt of the goods or services, payment of tax to the Government, and furnishing of the return. It argues that the time restriction in Section 16(4) cannot override the substantive entitlement under Section 16(2), and that the First Appellate Authority failed to recognise this distinction.

953. f) The Appellant submits that GSTR-9 and GSTR-9C do not determine eligibility for ITC. It states that the difference of Rs. 2,00,097 between GSTR-9 and GSTR-9C was minor and was explained with supporting evidence, which the Adjudicating Authority accepted. It argues that the First Appellate Authority erred by treating the tables in GSTR-9 as overriding the statutory entitlement under Section 16. GSTR-9 is a summary return, and any defect in it cannot extinguish ITC that is otherwise eligible under Section 16(2), read with Section 16(5).

954. g) The Appellant submits that there is no evidence of fraud, wilful misstatement or suppression. The SCN was issued under Section 73, which concerns non-fraud proceedings, and contains no allegation of fraud, suppression, intent to evade tax or misstatement. It argues that the penalty under Section 73(9) is not automatic and requires independent reasons, which are absent here. It further submits that the penalty cannot survive if the tax demand itself is set aside.

955. h) The Appellant submits that denying ITC despite valid invoices and payment of tax, solely because of the timing of disclosure, is arbitrary and violates Articles 14 and 300A of the Constitution. It also asserts that ITC, once the substantive entitlement is established, is property protected by Article 300A.

956. **Hearings in the matter:**

957. The matter was listed on 6 August 2026, with a defect noted in the Vakalatnama. The Appellant was given an opportunity to cure the defect by the next listing on 21 August 2026. At the next hearing, both sides appeared and advanced their final arguments. Shri Sanjay Aggarwal, Authorised Representative, appeared for the Appellant. S/Shri Sanjay Kumar Arya, Shanti Shekhar Singh and Jitendra Pratap Agrahari, and Smt. Vibha Singh, departmental officers of the State GST Department, appeared for the Department. After hearing the parties, the matter was fixed for filing detailed written submissions on 22 September 2026.

958. The Departmental Representative, Deputy Commissioner of State Tax, filed the Department's response by a statement dated 11.09.2026., as below:

959. a) The Department submitted that insertion of sub-section (5) in Section 16 of the GST Act, 2017 did not alter the requirement to disclose ITC carried forward in GSTR-9 and GSTR-9C. It stated that the Appellant had not explained why the ITC did not appear in GSTR-2A and had not obtained or submitted certificates from the selling dealers under Circular No. 183 dated 27.12.2022. The Department further alleged that the Appellant

claimed ITC under Section 16(2)(b) without receiving the supplies and without payment of tax, which it contended was impermissible.

960. b) The Revenue submitted that Section 16(5) of the CGST/UPGST Act was inserted retrospectively by Section 118 of the Finance (No. 2) Act, 2024 and brought into force by Notification No. 17/2024. Section 16(5) provides:

"Notwithstanding anything contained in sub-section (4), a registered person shall be entitled to take input tax credit in any return under section 39 filed up to the thirtieth day of November, 2021, in respect of an invoice or debit note for the supply of goods or services or both pertaining to the financial years 2017-18, 2018-19, 2019-20, and 2020-21."

The Revenue contended that this provision removes only the restriction under Section 16(4); the other requirements of Section 16, including sub-sections (2) and (3), remain in force. It therefore submitted that the conditions in Section 16(2)(b) and (c)—actual receipt of goods or services and payment of tax by the supplier—must still be met, and that Section 16(5) does not apply if they are not.

1. c) The Revenue further submitted that, under Rule 80 of the CGST Rules, GSTR-9 and GSTR-9C are statutory documents and that reconciliation of accounts is mandatory under Section 35(5). It stated that the taxpayer had admitted that, due to clerical or human error, less ITC was declared as carried forward in Column 13 of GSTR-9 and Column 12(C) of GSTR-9C. The Revenue therefore contended that the taxpayer had failed to disclose the ITC pertaining to FY 2018–19, which was availed in FY 2019–20, as a carry-forward amount in Columns 8(C)/13 of GSTR-9 and Column 12(C) of GSTR-9C. In its submission, this was a failure of statutory disclosure, not merely a typographical error. It argued that Section 16(5) permits ITC to be taken in GSTR-3B but does not validate an incorrect declaration in GSTR-9 or GSTR-9C. The Revenue accordingly submitted that the benefit of Section 16(5) is not automatic and remains subject to the conditions in Section 16(2).

2. d) As to the submission that no certificate was required because the ITC appeared in GSTR-2A, the Revenue contended that this reflection does not prove payment of tax. In this regard Revenue relied on Circular Nos. 183/15/2022-GST dated 27.12.2022 and 193/05/2023-GST dated 17.07.2023. It submitted that, for FY 2017–18 and FY 2018–19, a certificate is required to verify compliance with Section 16(2)(c): where the discrepancy is up to Rs. 5 lakh, a supplier's certificate is required; where it exceeds Rs. 5 lakh, a certificate from a CA/CMA confirming that the supplier deposited the tax is required. As the disputed amount of Rs. 20,94,605 exceeds the Rs. 5 lakh threshold, the Revenue contended that a CA certificate was mandatory, but that the dealer had not submitted one at the assessment stage.
3. e) The Revenue also submitted that the mere reflection of ITC in GSTR-2A does not establish actual receipt of the goods or services. It stated that the dealer had not produced evidence of actual receipt, such as transport receipts (bilti), weighment slips, warehouse registers or, for services, work-completion certificates. In its submission, invoices and proof of payment alone do not establish a genuine supply. The Revenue relied on the Supreme Court's decision in M/s ECCOM Gill Coffee Trading (2023), which held that the burden of proving eligibility for ITC rests on the buyer.

On this basis, the Revenue submitted that the orders passed by the Assessing Officer and the First Appellate Authority are lawful, factually based and supported by evidence.

9. The Appellant responded to the Revenue's submissions as follows:
10. a) The Appellant submitted that the credit is allowable under Section 16(5), and that reporting in GSTR-9 or GSTR-9C does not determine entitlement. Section 16(5) of the CGST/UPGST Act, inserted by Section 118 of the Finance (No. 2) Act, 2024 with retrospective effect from 01.07.2017 and brought into force by Notification No. 17/2024-Central Tax dated 27.09.2024, provides that, notwithstanding anything in sub-section (4), a registered person is entitled to take ITC in any return under Section 39 filed up to 30.11.2021 in respect of invoices or debit notes pertaining to FY 2017–18, 2018–19, 2019–20 and 2020–21. The Appellant submitted that the disputed credit relates to invoices for FY 2018–19 and was taken in its GSTR-3B returns for October 2019 to March 2020, all filed before 30.11.2021. It therefore contended that the credit falls within Section 16(5) and that the retrospective non-obstante provision removes the sole ground of disallowance under Section 16(4).
11. b) The Appellant submitted that the finding that Section 16(5) does not alter the position regarding ITC carried forward in GSTR-9 and GSTR-9C misreads the provision. Section 16(5) concerns the entitlement to take credit in a return under Section 39, namely, GSTR-3B. GSTR-9, the annual return, and GSTR-9C, the reconciliation statement, are not returns under Section 39. The Appellant therefore

argued that disclosure in Columns 8C or 13 of GSTR-9, or Column 12C of GSTR-9C, is not the test of entitlement. In its submission, treating that disclosure as decisive reintroduces indirectly the restriction removed by Section 16(5).

12. c) The Appellant further submitted that the retrospective non-obstante provision expresses Parliament's intent to relieve taxpayers from the Section 16(4) time limit for the initial years of GST. It argued that denying this relief because of the form of disclosure in the annual return would frustrate the purpose of the amendment.

13. d) The Appellant also submitted that an inadvertent or clerical error in the carry-forward columns of GSTR-9 or GSTR-9C is a procedural lapse and cannot override the substantive entitlement expressly conferred by statute. It relied on the principle that a substantive benefit should not be denied for a procedural or technical infraction.

14. e) The Appellant relied on CBIC Circular No. 237/31/2024-GST dated 15.10.2024, which, according to it, directs authorities to give effect to Sections 16(5) and 16(6) in pending proceedings and appeals under Section 107 where a demand was confirmed for contravention of Section 16(4), but the credit is now available under Section 16(5) or (6). As this appeal was pending, the Appellant submitted that the appellate authority was required to apply Section 16(5) and allow the credit. It further submitted that Section 150 of the Finance (No. 2) Act, 2024 bars a refund of tax already paid or credit already reversed, but does not affect the demand under challenge in this appeal.

15. f) The Appellant submitted that the findings under Section 16(2)(b) and (c), and the reliance on Circular No. 183, are contrary to the record. The impugned order records that the disputed credit appears in the auto-populated GSTR-2A for FY 2018–19. According to the Appellant, Circular No. 183/15/2022-GST dated 27.12.2022 addresses the converse situation, where credit is availed in GSTR-3B but does not appear in GSTR-2A. It prescribes a supplier's certificate for a difference up to Rs. 5 lakh per supplier, or a Chartered Accountant's/Cost Accountant's certificate for a difference exceeding Rs. 5 lakh per supplier, only in that situation. As the credit here appears in GSTR-2A, the Appellant contended that the premise for requiring a certificate under Circular No. 183 does not arise.

16. g) The Appellant submitted that reflection of the credit in GSTR-2A, which is auto-populated from suppliers' GSTR-1 returns, shows that the suppliers disclosed the outward supplies. It contended that this supports the genuineness of the transactions and the verification contemplated by Section 16(2)(c), as recognised in Circular No. 193/05/2023-GST dated 17.07.2023.

17. h) The Appellant submitted that the finding that credit was availed without receipt of supplies under Section 16(2)(b), or without payment of tax under Section 16(2)(c), is unsupported by any enquiry or material. It stated that it holds the tax invoices, received the services in the course of its freight and logistics business, and paid its suppliers.

According to the Appellant, no enquiry was conducted against the suppliers and no collusion was found. The Appellant further submitted that the Adjudicating Authority examined the documents and found the supplies genuine. On that basis, the Authority allowed ITC availed up to 30.09.2019 and disallowed the balance availed between 01.10.2019 and 31.03.2020 under Section 16(4). The Appellant also pointed out that all the ITC in question related to the same two parties.

18. i) The Appellant further submitted that the reasoning under Section 16(2)(b) and (c) was an afterthought. It stated that the demand was founded and pressed solely on the time limit in Section 16(4), and that the disputed credit admittedly appears in GSTR-2A. The Appellant argued that a new basis cannot be introduced at the appellate stage to sustain a demand after Section 16(5) has removed the Section 16(4) time bar.

19. Having considered the submissions of the Appellant and the Revenue, we find that the appeal raises a short but important question about the effect of the retrospective insertion of Section 16(5) of the Central Goods and Services Tax Act, 2017, on a demand based solely on the ground that ITC pertaining to FY 2018–19 was taken after the time limit originally prescribed by Section 16(4). The dispute also requires us to distinguish between three separate events under the GST scheme: (a) availment, or taking, of ITC; (b) utilisation of ITC already availed; and (c) annual disclosure and reconciliation of ITC in GSTR-9 and GSTR-9C. This distinction matters because the First Appellate Authority appears to have treated an alleged discrepancy in the annual return or reconciliation statement as affecting the substantive entitlement to credit already taken through monthly GSTR-3B returns.

20. **Questions for Determination**

21. The following questions arise for determination:

(i) Whether grounds under Section 16(2)(b) or 16(2)(c), not forming the original foundation of demand, can subsequently be introduced to sustain it?

(ii) Whether GSTR-3B constitutes a return under Section 39 for purposes of Section 16(5)?

(iii) Is there any legal distinction between availment of ITC and utilisation of ITC?

(iv) Whether non-carry-forward or an incorrect disclosure in GSTR-9/GSTR-9C can defeat ITC already taken through a Section 39 return?

(v) Whether the alleged non-applicability of Notification No. 22/2024-Central Tax defeats the substantive entitlement created by Section 16(5)?

(vi) Whether ITC of Rs.20,94,605 pertaining to FY 2018-19 and taken through GSTR-3B during October 2019 to March 2020 is protected by retrospective Section 16(5)?

(vii) Whether the tax demand and consequential interest and penalty can survive?

12. To put into perspective the legislative change in the statutory framework brought about with the insertion of Section 16 5) in the CGST Act with retrospectiove effect, we would like to refer to **CBIC Circular No. 237/31/2024-GST dated 15th October, 2024, issued vide F. No. CBIC-20001/6/2024-GST,** the relevant portions of which we reproduce here to bring clarity on the intent as well as the procedure for implementing the changes provisions:

" ……

1.2 *Sub-section (4), sub-section (5) and sub-section (6) of section 16 of the CGST Act are reproduced below for ready reference:*

"(4)*A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.*

Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under subsection (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.

(5) *Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, the registered personshall be entitled to take input tax credit in any return under section 39 which is filed upto the thirtieth day of November, 2021.*

(6) *Where registration of a registered person is cancelled under section 29 and subsequently the cancellation of registration is revoked by any order, either under section 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and where availment of input tax credit in respect of an invoice or debit note was not restricted under sub-section (4) on the date of order of cancellation of registration, the said person shall be entitled to take the input tax credit in respect of such invoice or debit note for supply of goods or services or both, in a return under section 39,—*

(i) filed upto thirtieth day of November following the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or

*(ii) for the period from the date of cancellation of registration or the effective date of cancellation of registration, as the case may be, till the date of order of revocation of cancellation of registration, where such return is filed within thirty days from the date of order of revocation of cancellation of registration, whichever is later.***"**

3. *The following action may be taken by the tax authorities and/ or the taxpayers in various scenarios for availment of benefit on account of retrospectively inserted provisions of sub-section (5) or sub-section (6) of section 16 of the CGST Act:*

……

……..

3.1 Where no demand notice/statement has been issued under section 73 or section 74 of the CGST Act:

In cases, where any investigation/proceedings in respect of wrong availment of input tax credit alleging contravention of provisions of sub-section (4) of section 16 of the CGST Act has been initiated, but no demand notice/statement under section 73 or section 74 of the said Act has been issued, and taxpayers are now entitled to avail the said input tax credit under the provisions of sub-section (5) or sub-section (6) of section 16 of the CGST Act, the proper office shall take cognizance of the sub-section (5) or sub-section (6) of section 16 of CGST Act, inserted retrospectively with effect from 01.07.2017 and take further appropriate action. This also includes the cases where an intimation in FORM DRC-01A has been issued under rule 142(1A) of the CGST Rules for denial of input tax credit on account of contravention of sub-section (4) of section 16 of the said Act, but no demand notice/statement under section 73 or section 74 of the said Act has been issued.

3.2 Where demand notice/ statement under section 73 or section 74 of CGST Act has been issued but no order under section 73 or section 74 of CGST Act has been issued by the Adjudicating Authority:

In such cases, the Adjudicating Authority shall take cognizance of sub-section (5) or sub-section (6) of section 16 of the CGST Act, inserted retrospectively with effect from 01.07.2017, and pass appropriate order under section 73 or section 74 of the CGST Act.

3.3 Where order under section 73 or section 74 of the CGST Act has been issued and appeal has been filed under section 107 of the CGST Act with the Appellate Authority but no order under section 107 of the CGST Act has been issued by the Appellate Authority:

In such cases, the Appellate Authority shall take cognizance of sub-section (5) or sub-section (6) of section 16 of the CGST Act, inserted retrospectively with effect from 01.07.2017, and pass appropriate order under section 107 of the CGST Act.

13. Now we take up each issue and hold as below:

Issue no. (i): Whether grounds under Section 16(2)(b) or 16(2)(c), not forming the original foundation of demand, can subsequently be introduced to sustain it?

The Appellant submits that the appellate order travels beyond the SCN. From perusal of case record it transpires that the SCN was issued under Section 73 and did not allege: (i) non-receipt of goods or services; (ii) non-payment of tax by suppliers; (iii) absence of supplier confirmations; (iv) excess ITC of Rs. 27,81,949 based on GSTR-9; or (v) breach of Section 16(2)(b) or Section 16(2)(c). The appellate order nevertheless introduced these grounds, including alleged non-receipt of supplies, non-payment of tax by suppliers, failure to submit a supplier certificate under Circular No. 183, and a fresh calculation of excess ITC of Rs.

27,81,949. From perusal of case record we find that the original disallowance was based on the time limit in Section 16(4). The written submissions point out that the Order-in-Original contains no independent finding of non-receipt under Section 16(2)(b) or non-payment of tax under Section 16(2)(c). Section 75(7) provides that no demand shall be confirmed on grounds other than those specified in the notice. **In SACI Allied Products Ltd. v. Commissioner of Central Excise, Meerut, (2005) 7 SCC 159, the Supreme Court held that an appellate Tribunal cannot sustain a demand on a new and different basis that was not part of the show-cause notice .** Accordingly, once Section 16(5) removes the foundation under Section 16(4), the demand cannot be sustained by constructing a new case under Section 16(2)(b) or (c). The Revenue is correct that ITC is a statutory entitlement, not an unrestricted inherent right. In Jayam & Co. v. Assistant Commissioner, (2016) 15 SCC 125, the Supreme Court held that ITC is a benefit created by statute and is subject to the conditions imposed by the legislature. However, we find that this principle does not assist Revenue here. Revenue cannot rely on the statutory character of ITC to enforce a time limit that Parliament has retrospectively displaced for FY 2018–19. The Appellant does not seek an equitable relaxation of Section 16(4) rather it relies on the express statutory provision in Section 16(5). We are aware that it does not mean that Section 16(5) cures substantive ineligibility. Allegations of fake invoices, non-receipt of supplies, blocked credit or any other substantive statutory defect may be raised, noticed, proved and adjudicated in accordance with law. Hence we find that grounds under Section 16(2)(b) or 16(2)(c), not forming the original foundation of demand, cannot subsequently be introduced to sustain that demand .

Issue no. (ii): GSTR-3B is a Return under Section 39

Revenue contends that the credit was not taken in a return under Section 39, as it was claimed through GSTR-3B. Whereas, in Union of India v. Bharti Airtel Ltd., (2022) 4 SCC 328, Hon'ble the Supreme Court held that GSTR-3B, although initially introduced as a stop-gap arrangement, was treated as a return within the meaning of Section 39, and is preferable to Section 39 read with Rule 61. Hence we find that since ITC was taken by the Appellant in GSTR-3B between October 2019 and March 2020, it therefore satisfies the expression "any return under Section 39" in Section 16(5). Accordingly, we find that submission of Ld AR is not legally sustainable on this point.

Issue no. (iii): Is there any legal distinction between availment of ITC and utilisation of ITC?

For proper appreciation of the case, it is necessary that we should keep in mind the distinction between taking or availing credit and utilising it, which is central to the present dispute. Section 16 is concerned with entitlement to take ITC. Once eligible credit is claimed through the prescribed return, it is credited to the registered person's Electronic Credit

Ledger under Section 49. This is the availment or taking of ITC. Utilisation occurs later, when credit in the Electronic Credit Ledger is debited towards payment of output tax. Reconciliation is the subsequent reporting or comparison of ITC in the annual return, books of account and reconciliation statement. These are distinct events and are not interchangeable. Section 16(4) regulates the time for taking credit, while Section 16(5) retrospectively extends that period for specified financial years. Neither provision requires credit validly taken within the permitted period to be fully utilised within that same period. **In Bharti Airtel, Hon'ble Supreme Court** explained the statutory scheme governing self-assessment, GSTR-3B, ITC and the Electronic Credit Ledger. It recognised that credit in that ledger may be utilised later in accordance with the statutory scheme. Earlier credit jurisprudence also recognised the distinction between earning credit and using it. **In Collector of Central Excise v. Dai Ichi Karkaria Ltd., (1999) 7 SCC 448, the Supreme Court** considered the nature of validly earned MODVAT credit and its subsequent utilisation. Although that case arose under the earlier regime, the distinction remains conceptually instructive. We therefore hold that, once the disputed credit was taken within the period retrospectively permitted by Section 16(5), its subsequent utilisation cannot be treated as delayed availment. The statutory condition is that the ITC must have been taken through a return under Section 39 filed by 30.11.2021 and we find that ITC was availed within this period.

Issue no. (iv): Whether non-carry-forward or an incorrect disclosure in GSTR-9/GSTR-9C can defeat ITC already taken through a Section 39 return?

From perusal of order of First Appellate Authority, it appears that he attached too much significance to the manner in which ITC was carried forward or disclosed in GSTR-9 and GSTR-9C. In our considered view, that reasoning cannot prevail over the plain language of Section 16(5). GSTR-9 is an annual return, and GSTR-9C is a reconciliation statement. Neither is the return under Section 39 through which the disputed credit was taken. Section 16(5) does not make entitlement conditional upon correct disclosure in a particular column of GSTR-9; or correct carry-forward in GSTR-9C; or absence of an annual reconciliation discrepancy. The statutory condition is that the ITC must have been taken through a return under Section 39 filed by 30.11.2021. Once that condition is satisfied, a subsequent error in annual reconciliation cannot retrospectively convert credit already availed into credit not availed. An annual return or reconciliation statement may disclose a discrepancy and prompt verification, but it does not, by itself, create, extinguish or recharacterise ITC already taken through GSTR-3B. A contrary interpretation would indirectly restore the restriction that Parliament expressly removed through the retrospective insertion of Section 16(5). Hence we are not in agreement with this argument advanced by Revenue.

Issue no. (v): Whether the alleged non-applicability of Notification No. 22/2024-Central Tax defeats the substantive entitlement created by Section 16(5)?

The Revenue has argued that the notification relied upon by the Appellant does not apply. That submission proceeds on a misconception about the source of the Appellant's entitlement. Notification No. 22/2024-Central Tax dated 08.10.2024 was issued under Section 148 and provides a special procedure for rectifying orders under Sections 73, 74, 107 and 108 where ITC was denied under Section 16(4) but later became available under Section 16(5) or Section 16(6). That procedure applies where no appeal against the order has been filed. If the Revenue's submission is that the Appellant cannot use the special rectification procedure under Notification No. 22/2024 because it has already filed an appeal, that submission may be correct as to that procedural mechanism. It does not, however, make Section 16(5) inapplicable. Notification No. 22/2024 does not create entitlement to ITC, rather entitlement flows directly from Section 16(5) which was introduced retrospectively by the Parliament. The Notification provides an additional procedural remedy for a specified category of orders where no appeal has been filed. The Revenue's submission therefore conflates the procedural remedy with the substantive statutory entitlement. To make legal position clear, we should take note of Circular No. 237/31/2024-GST, which directs authorities to give effect to Sections 16(5) and 16(6) in pending proceedings and appeals. The non-applicability of the special rectification procedure therefore cannot override or neutralise the right of a Trader which accrued under Section 16(5). Hence we are not able to accept this argument of the Revenue.

(vi) Whether ITC of Rs.20,94,605/- pertaining to FY 2018-19 and taken through GSTR-3B during October 2019 to March 2020 is protected by retrospective Section 16(5)?

The disputed credit was taken through GSTR-3B returns between October 2019 and March 2020. Those returns were filed well before 30.11.2021. The case therefore falls within the language of Section 16(5). In Doulathray S. Marnoor v. Deputy Commissioner of Commercial Taxes, decided on 16.04.2026, the Karnataka High Court held that, where the return claiming ITC had been filed before 30.11.2021, denial under Section 16(4) could not survive after the insertion of Section 16(5). Similarly, in M/s Global Closures v. State Tax Officer-2, decided on 12.03.2025, the Madras High Court quashed demands to the extent that the ITC, though previously barred by Section 16(4), fell within the period retrospectively prescribed by Section 16(5). Moreover, the demand under Section 73 was based on the premise that ITC of Rs. 20,94,605 had been wrongly availed because it was taken after the time limit in Section 16(4), whereas Section 16(5) provides that ITC pertaining to FY 2018–19 could be taken through a return under Section 39 filed by 30.11.2021. The Appellant took the disputed credit before that deadline. Hence, we find that the foundation for the demand under Section 73 disappears. Legal position would be more clear once we go through Circular No. 238/32/2024-GST, which provides that after the retrospective

insertion of Sections 16(5) and (6), the corresponding amount denied solely under Section 16(4) is no longer payable.

(vii) Whether the tax demand and consequential interest and penalty can survive?

Now we first consider the impact upon interest. Tax, interest and penalty are distinct fiscal concepts, but whether interest survives depends on the statutory basis for its demand. Section 50(3), in its applicable amended form, provides for interest where ITC has been wrongly availed and utilised. Rule 88B (3) prescribes how such utilisation is to be determined and how interest would be calculated. The statutory premise is that credit was wrongly availed. In the present matter, due to retrospective application of Section 16(5), the credit cannot be treated as wrongly availed. Once that basis disappears, interest under Section 50(3) cannot survive. **In Pratibha Processors v. Union of India, (1996) 11 SCC 101, the Supreme Court explained the distinction between tax, penalty and interest and held that interest is compensatory in nature, linked to an amount legally due and the period for which its payment was withheld**. Where the principal tax or ITC demand is not legally payable, consequential compensatory interest based exclusively on that demand has no independent basis. The APL-04 summary in this case records the determined interest as nil. Nevertheless, to the extent any interest on the disputed ITC of Rs. 20,94,605 remains or is sought to be recovered we declare it is unsustainable.

Regarding the impact on penalty, from perusal of case record it transpires that penalty of Rs. 2,09,461 has also been imposed. For the proceedings in question, Section 73(9) requires the proper officer to determine tax, interest and penalty where tax is payable or ITC has been wrongly availed or utilised. A penalty cannot survive when its sole statutory and factual foundation has disappeared. **In Hindustan Steel Ltd. v. State of Orissa, (1969) 2 SCC 627, the Supreme Court held that penalty is penal in character and that the existence and nature of the underlying contravention are fundamental.** We therefore hold that the penalty of Rs. 2,09,461, imposed solely as a consequence of the alleged time-barred availment, cannot survive. We make it clear that this does not mean that every independent GST penalty automatically falls whenever a tax demand is set aside. A penalty for a separate offence, fraud, false invoicing, suppression, obstruction or another independently established contravention must be considered under the applicable statutory provision but no such independent penalty is in issue here.

To sum up: Tax, Interest and Penalty are distinct statutory concepts. In these proceedings, however, the interest and penalty arise entirely from the allegation that ITC of Rs. 20,94,605 was wrongly availed after expiry of the period in Section 16(4). Parliament retrospectively removed that disqualification through Section 16(5). Once the principal ITC demand becomes legally unsustainable, no wrongful availment remains on which interest under

Section 50 can be based, and no underlying contravention remains on which the consequential penalty under Section 73(9) can rest.

14. For the reasons recorded above, we hold that the disputed ITC of Rs. 20,94,605 pertains to FY 2018–19 and was taken through GSTR-3B returns filed between October 2019 and March 2020. GSTR-3B is a return under Section 39. Section 16(5) applies retrospectively and overrides the time restriction in Section 16(4) for FY 2018–19. As the disputed credit was taken before 30.11.2021, its denial solely on the former limitation under Section 16(4) is unsustainable. Availment and utilisation are legally distinct: Section 16(5) governs the former and imposes no separate expiry date for subsequent utilisation of credit validly availed. GSTR-9 and GSTR-9C are annual reporting and reconciliation instruments; by themselves, they cannot extinguish credit already taken through a return under Section 39. Notification No. 22/2024 provides a special rectification procedure, and its inapplicability after an appeal has been filed does not negate the substantive right under Section 16(5). Grounds under Section 16(2)(b) or (c), which did not form the basis of the original notice or adjudication, cannot subsequently be introduced to sustain a demand whose original foundation has disappeared. The principal IGST demand of Rs. 20,94,605 is unsustainable. Consequential interest based solely on that demand cannot survive. The penalty of Rs. 2,09,461, being consequential to the same alleged contravention of Section 16(4), is also unsustainable.

ORDER

The appeal is allowed in the following terms:

1. The finding that denies ITC of Rs. 20,94,605 (IGST) pertaining to FY 2018–19 on the ground of limitation under Section 16(4) is set aside. It is held that the aforesaid ITC, taken through GSTR-3B returns during October 2019 to March 2020, falls within the retrospective protection of Section 16(5) of the CGST/UPGST Act.

2 As the demand for IGST of Rs. 20,94,605, arising solely from the alleged violation of Section 16(4), is quashed hence any consequential interest under Section 50 attributable exclusively to that demand is also set aside

3. The consequential penalty of Rs. 2,09,461 under Section 73(9) is also set aside, as the contravention on which it was based does not survive due to retrospective operation of Section 16(5).

4. The Appellant shall be entitled to all consequential reliefs in accordance with law, including appropriate treatment or refund of the statutory pre-deposit, subject to the statutory provisions governing such refund.

The Registrar shall provide a copy of this order to the Revenue.

Pronounced in open Tribunal proceedings.

(Sanjay Kumar Chandhariyavi)

(Sungita Sharma)

Dated: 29.09.2026