GSTAT

State Bench Ghaziabad

Division Bench Court No. Court I

Filing No 2026109301000004

SHRI LAXMI JI EANT UDYOG **.....Appellant**

Versus

PRABHAKARNATH MISHRA, ASSISTANT COMMISSIONER, SIKANDRABAD & ORS. **.....Respondent**

Quorum

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

Counsel for Appellant
KRISHAN KUMAR SHARMA

Counsel for Respondent

ORDER

IN THE GOODS AND SERVICES TAX APPELLATE TRIBUNAL
GHAZIABAD BENCH

Second Appeal No. D25/2026
Financial Year: 2018–19

M/s Shri Laxmi Ji Eant Udyog
GSTIN: 09ACPG5112M1ZL
…Appellant

Versus

Commissioner, State Tax, Uttar Pradesh & Others
…Respondents

1. **Brief Facts of the Case**

2. The Appellant, M/s Shri Laxmi Ji Eant Udyog, is engaged in the manufacture of bricks at a brick kiln situated at Gata No. 1120, Sikandrabad Road, Dankaur, Gautam Buddha Nagar, Uttar Pradesh. It is registered with the State GST authorities under GSTIN No. 09ACGPG5112M1ZL. Proceedings for FY 2018–19 were initiated against the Appellant by the Assistant Commissioner of State Tax, Sikandrabad, Uttar Pradesh. A scrutiny notice in Form ASMT-10 under Section 61 of the CGST/SGST Act was issued to the Appellant on 10.11.2023. No response was received within the prescribed period. Thereafter, a show-cause notice (SCN) under Section 73(1), bearing Ref. No. ZD090124255260Q, was issued on 29.01.2024, raising four principal allegations against the Appellant.

3. The allegations in the SCN and the responses submitted during the adjudication proceedings are set out below:

Point No. 1: Discrepancy of Rs. 6,496.11 between the ITC claimed in GSTR-3B and Table 8A of GSTR-9. The Appellant admitted this difference and accepted the legal action in respect of the amount of Rs. 6,496/-.

Point No. 2: Ineligibility of ITC on various goods and services alleged to constitute blocked credit under Section 17(5). The Appellant claimed this ITC under Section 17 of the CGST Act. The adjudicating authority, however, called upon the Appellant to show cause why the claimed ITC should not be treated as blocked credit under Section 17(5). The Appellant filed a detailed, item-wise response to the query raised by the adjudicating authority.

Point No. 3: Differential turnover estimated on the basis of coal-consumption standards. On the basis of the coal purchased and used in the brick kiln, the Department challenged the turnover declared by the Appellant as inconsistent with the prescribed norms. The Appellant filed a detailed reply justifying the variation.

Point No. 4: Non-payment of GST under the reverse charge mechanism (RCM) on royalty paid for soil extraction. In response, it was submitted that the taxability of royalty under GST was pending consideration before the Hon’ble Supreme Court.

3. By an adjudication order under Section 73(9), dated 30.04.2024, the Assistant Commissioner of State Tax, Sikandrabad (Respondent No. 3), accepted the Appellant’s detailed explanation regarding its production and the quantitative reconciliation of coal consumption under Point No. 3 and dropped the proposed demand on that issue. Points No. 1, 2 and 4 were decided against the Appellant, and a total demand of tax, penalty and interest amounting to Rs. 24,41,889/- was confirmed.

4. Aggrieved by the adjudication order, the Appellant filed a first appeal after making a pre-deposit of 10% of the disputed tax, amounting to Rs. 1,16,004/-. The Additional Commissioner, Grade-2 (Appeal)-2, Bulandshahr (Respondent No. 2), dismissed the appeal under Section 107 of the Act by Order No. ZD0906240310000/24, dated 12.07.2024, and upheld the adjudicating authority's order.
5. Aggrieved by that order, the Appellant has preferred the present second appeal under Section 112 of the CGST/SGST Act before this Tribunal, seeking to set aside both the original adjudication order dated 30.04.2024 and the appellate order dated 12.07.2024.
6. **Grounds of Appeal**
7. In its appeal papers, the Appellant has raised the following grounds of appeal:
8. The adjudicating officer mechanically rejected the itemised ITC claims in a single, unreasoned paragraph, without evaluating the separate commodity-wise invoices or the evidence submitted by the Appellant.
9. Of the 31 pages of the first appellate order, pages 1 to 27 merely reproduce the SCN, the reply, the adjudication order, the memorandum of appeal and the statutory text of Section 17, in some instances verbatim and three times over. The Appellate Authority gave no independent findings or legal reasoning and dismissed the appeal in only the final few lines, which, according to the Appellant, clearly indicates non-application of mind.

III. The inputs and input services claimed by the Appellant do not fall within the negative list of blocked credits under Section 17(5) of the CGST Act and are admissible under Section 16(1).

1. The Appellant conducted no mining operations and merely procured surface soil removed by local farmers for field levelling. Therefore, no mineral concession or governmental mining service was used so as to attract an RCM levy.
2. The taxability of royalty under GST is sub judice before the Hon'ble Supreme Court in SLP (Civil) No. 37326/2017, Udaipur Chambers of Commerce and Industry & Ors. v. Union of India & Ors.
3. Interest under Section 50 cannot be levied before the date of adjudication where an ITC claim is denied in a bona fide dispute, because liability, according to the Appellant, arises only upon formal adjudication.
4. **Hearings in the Matter**
5. The matter was listed before us on 6 August 2026, when the defects were pointed out. They were cured by the next listing on 21 August 2026. Shri Krishan Kumar Sharma, Authorised Representative, appeared on behalf of the Appellant and reiterated the grounds of appeal. S/Shri Sanjay Kumar Arya, Shanti Shekhar Singh and Jitendra Pratap Agrahari, and Smt. Vibha Singh, all departmental officers of State GST,

appeared on behalf of the Department. Arguments were heard from both sides on 8 September 2026. The matter was then listed for final hearing on 22 September 2026, after the filing of detailed written submissions.

6. **Submissions of the Authorised Representative of the Uttar Pradesh State Department**

7. The Authorised Representative of the Uttar Pradesh State Department submitted that the unreconciled ITC difference of Rs. 6,496.11 between GSTR-3B and Table 8A of GSTR-9 remained unexplained and was recoverable under Section 73, with interest and penalty. It was further argued that scrutiny of the data on the portal revealed that ITC had been claimed on tyres and tubes (Rs. 5,96,125/-), auto repairs (Rs. 1,74,890/-), travel expenses (Rs. 12,37,395/), sarees/clothing, electronic items, LPG stoves, event expenses in Noida, foreign travel and an agricultural tractor. According to the Department, these expenses related to personal consumption or non-business activities and were barred under Sections 17(1) and 17(5). It was also argued that, under Entry 17 of Notification No. 11/2017-CT(R), read with Notification No. 13/2017-CT(R) and State Tax Circular No. 375 dated 16.08.2023, the assignment of rights to use soil/minerals attracted GST at 18% under the reverse charge mechanism. The Appellant had failed to produce proof of payment of RCM tax on the royalty deposited with the Mining Department, thereby justifying the demand of Rs. 42,232/-.

8. **The Appellant's Submissions and Rebuttal**

9.1 The Appellant was given an opportunity to file a rebuttal, if any. In its point-wise reply, the Appellant submitted that a brick kiln falls within the legal definition of a "factory" or "plant and machinery"; and that earthmovers, tractors, mud-mixers, electrical items, electronic cameras (for site security/monitoring) and tyres were directly used to operate and maintain its plant. It contended that, under the express exclusions in Section 17(5)(c) and (d), ITC on plant and machinery was fully admissible. It further submitted that building materials were used for repairs to the kiln, site office and workers' quarters within the plant perimeter.

9.2 The Appellant relied on the decision of the Hon'ble Supreme Court in Chief Commissioner of Central Goods and Services Tax v. M/s Safari Retreats Pvt. Ltd. (Civil Appeal No. 2948 of 2023, decided on 03.10.2024), in which, according to the Appellant, the Apex Court held that ITC on goods and services used for the construction or maintenance of a plant or factory was permissible. As regards uniforms, clothes, workers' meals and food provided to prospective builders/buyers, the Appellant submitted that the expenses were incurred strictly in the course or furtherance of business and therefore did not fall within Section 17(5)(b).

9.3 The Appellant also pointed out that neither the SCN nor the impugned orders specified the particular sub-clause of Section 17(5) applicable to each item. It relied on the decision of the Hon'ble Madras High Court in M/s Dhanalakshmi Steel v. Department (W.P. No. 38730 of 2024, dated 02.11.2025), which, according to the Appellant, held that notices and orders invoking Section 17(5) without specifying the applicable sub-clause were vague and liable to be quashed. The Appellant further submitted that the Department had disallowed these same categories of ITC for FY 2018–19 while expressly allowing them as eligible credit for the same dealer in subsequent assessment years 2019–20 and 2021–22, demonstrating arbitrary and contradictory treatment.

9.4 Regarding royalty, it was submitted that the Constitution Bench of the Hon'ble Supreme Court in Mineral Area Development Authority (MADA) v. Steel Authority of India & Ors. (Civil Appeal Nos. 4056–4064 of 1999, judgment dated 14.08.2024) had specifically exempted all royalty/mineral-tax demands for periods before 25 July 2024 from interest and penalty. Accordingly, the Appellant submitted that interest and penalty on soil royalty were liable to be set aside.

10. **The principal questions requiring determination are**:

(i) Whether the burden of proving the applicability or non-applicability of Section 17(5) of the GST Act lies upon the Appellant;

(ii) whether a general invocation of Section 17(5), without identifying the applicable clause for each inward supply, can sustain the disputed demand;

(iii) whether the individual classes of expenditure in the present case are covered by any specific restriction in Section 17(5);

(iv) whether the amount of cess lawfully levied or recovered in connection with the taxable supply is liable to be included in the value of the supply for the purpose of levy of GST under Section 15 of the Central Goods and Services Tax Act, 2017, and the corresponding

provisions of the Uttar Pradesh Goods and Services Tax Act, 2017; and

(v) whether consequential liabilities towards interest and penalty survive.

11. **Statutory Framework**:

11.1 Before considering the rival submissions of the Appellant and the Revenue, we consider it appropriate to examine the statutory scheme under Sections 16 and 17 of the CGST Act. Section 16(1) is the starting point. Subject to the conditions and restrictions prescribed by law, a registered person is entitled to credit of input tax charged on goods or services used or intended to be used "*in the course or furtherance of his business.*" The statutory expression is therefore not "*necessary for manufacture*." The test adopted in parts of the impugned order—whether a particular item is necessary for operating a brick kiln—is too narrow. An expenditure may be incurred in the course or furtherance of business even though it does not physically enter the manufacturing process.

11.2 That, however, does not conclude the matter in favour of the Appellant. Section 17(5) begins with a non-obstante clause overriding Sections 16(1) and 18(1). Therefore, an inward supply may have a complete business nexus and yet remain inadmissible if Parliament has specifically included it within Section 17(5). The Supreme Court has reiterated that ITC is a statutory benefit available subject to statutory conditions; business purpose, by itself, cannot override an express exclusion: Jayam & Co. v. Assistant Commissioner, (2016) 15 SCC 125.

11.3 The correct legal approach is therefore, first, to determine whether Section 16 is satisfied and, second, to determine whether any specific clause of Section 17(5) nevertheless blocks the credit. Section 17(5) cannot be invoked as a generic residuary provision to disallow anything that, in the subjective opinion of the assessing officer, appears unnecessary for the taxpayer's business. We are of the considered view that the particular clause of Section 17(5) must be identified. Section 17(5) contains separate and materially different statutory exclusions. Motor vehicles, food and catering, works contracts, construction on one's own account, personal consumption and gifts are governed by different clauses and different statutory tests.

11.4 Applicable Version of Section 17(5): There is an additional statutory difficulty in the impugned order. The disputed year is 2018–19, but clauses (a) and (b) of Section 17(5) underwent substantial substitution during that financial year. The Central Goods and Services Tax (Amendment) Act, 2018 substituted clauses (a) and (b) and introduced clauses (aa) and (ab). The amendment came into force on 01.02.2019. Consequently, invoices relating to the period from 01.04.2018 to 31.01.2019 must be tested against the law then in force, whereas invoices dated on or after 01.02.2019 must be tested against the substituted provision. Reproducing the later provision for the entire financial year, without correlating

invoice dates and categories, cannot substitute for the statutory exercise required.

12. **Burden of Proof Regarding the Applicability or Otherwise of Section 17(5) of the GST Act.**

12.1 Section 155 of the CGST/UPGST Act directly applies. It provides that, where a person claims eligibility for ITC, the burden of proving that claim lies upon that person. The legal sequence is therefore: claim; documentary proof; statutory eligibility; exception, if claimed; and, finally, ITC. Rule 36 prescribes the basic documents on which ITC may be availed, such as a tax invoice, debit note or bill of entry. The taxpayer must prove the factual ingredients of the particular exception by contemporaneous documentary material appropriate to that exception.

12.2 In State of Karnataka v. Ecom Gill Coffee Trading Pvt. Ltd., the Hon'ble Supreme Court held that mere production of invoices or proof of payment is not necessarily sufficient to discharge the burden relating to ITC. The claimant must establish the actual transaction through cogent supporting evidence, such as vehicle details, freight records, delivery acknowledgements and other contemporaneous material. A second principle is stated in Commissioner of Central Excise v. Hari Chand Shri Gopal, (2011) 1 SCC 236, where the Constitution Bench held that a person claiming an exemption, concession or exception must establish entitlement to it and satisfy its substantive conditions. The Constitution Bench in Commissioner of Customs v. Dilip Kumar & Co., (2018) 9 SCC 1, similarly held that the burden of bringing oneself within an exemption clause lies upon the claimant.

12.3 In light of the statutory provisions and the decisions of the Hon'ble Apex Court discussed above, we find that, once a supply prima facie falls within a blocked category, the person invoking a statutory exception must prove the factual conditions that take the case outside the block. We therefore find that the burden lies upon the Appellant to establish that the supplies fall within an exception to the blocked-credit categories.

13. **13. We now consider Questions (ii) and (iii) together**: whether a general invocation of Section 17(5), without identifying the applicable clause for each inward supply, can sustain the disputed demand; and whether the individual classes of expenditure in the present case are covered by any specific restriction in Section 17(5).

13.1 The question is whether the taxpayer discharged its burden of proof. We must bear in mind that Section 16(1) permits ITC on inward supplies used or intended to be used in the course or furtherance of business, but that entitlement is expressly subject to the conditions and restrictions prescribed by the Act. Section 17(5), which begins with a non-obstante clause, overrides Section 16(1) in respect of the categories specifically enumerated therein. Thus, an expenditure may have some connection with business and nevertheless constitute

blocked credit under Section 17(5).

13.2 More importantly, Section 155 expressly places the burden of proving eligibility for ITC upon the person claiming it. The provision leaves no ambiguity as to the allocation of the evidentiary burden. Rule 36 identifies the foundational documents upon which ITC may be availed. However, where a taxpayer seeks to establish that a supply otherwise subject to restriction falls within an exception in Section 17(5), it is for that taxpayer to produce contemporaneous material establishing the necessary factual ingredients of the exception.

13.3 In State of Karnataka v. Ecom Gill Coffee Trading Pvt. Ltd., the Supreme Court emphasised that the burden relating to ITC cannot be discharged merely through an assertion, an invoice or a payment entry. The claimant must establish the transaction and the relevant factual ingredients through cogent material. This principle is fortified by the Constitution Bench decision in Hari Chand Shri Gopal, in which the Supreme Court held that a person invoking an exemption, concession or exception must establish that the statutory conditions are satisfied. Dilip Kumar & Co. reiterates that the burden of establishing the applicability of an exemption clause rests on the assessee.

13.4 It is a settled proposition of law that a written submission or an argument is not proof of the underlying fact. Legal arguments acquire relevance only after the foundational facts on which they depend have been established through evidence. An assertion that “the expenditure was incurred for business” cannot, by repetition in a reply, appeal or written notes, become evidence of business use. The Appellant’s own appeal acknowledges that the disputed credit was questioned specifically as blocked credit under Section 17(5). The Appellant’s principal case before us is that the items were not covered by Section 17(5).

13.5 Section 16(1) permits ITC on inward supplies used or intended to be used in the course or furtherance of business, but that entitlement is expressly subject to the conditions and restrictions prescribed by the Act. Section 17(5), which begins with a non-obstante clause, overrides Section 16(1) in respect of the categories specifically enumerated therein. Thus, an expenditure may have some connection with business and nevertheless constitute blocked credit under Section 17(5). Section 155 expressly places the burden of proving eligibility for ITC upon the person claiming it. Rule 36 identifies the foundational documents on which ITC may be availed. However, where a taxpayer seeks to establish that a supply otherwise subject to restriction falls within an exception in Section 17(5), the taxpayer must produce contemporaneous material establishing the necessary factual ingredients of the exception.

13.6 In Ecom Gill Coffee, the Supreme Court emphasised that the burden relating to ITC cannot be discharged merely through an assertion, an invoice or a payment entry. The

claimant must establish the transaction and the relevant factual ingredients through cogent material. This principle is fortified by Hari Chand Shri Gopal, in which the Supreme Court held that a person invoking an exemption, concession or exception must establish that the statutory conditions are satisfied. Dilip Kumar & Co. reiterates that the burden of establishing the applicability of an exemption clause rests on the assessee.

14. **Item-wise Consideration of the Appellant's Case and the Corresponding Legal Provisions**

15. Tractor, tyres and tubes

The Appellant contends that tyres and tubes were used on tractors, trolleys, JCBs and other equipment for moving bricks and materials. Its reply contains an assertion to that effect. However, an assertion as to use cannot substitute for documentary proof of that use.

On a perusal of the case record, we find that the tractor was not registered in the name of the company. Moreover, the Central Motor Vehicles Rules define an "agricultural tractor" as a mechanically propelled four-wheel vehicle designed for field operations and/or for hauling trailers used to transport agricultural materials, and expressly classify an agricultural tractor as a non-transport vehicle. A tractor under the Motor Vehicles Act is itself a motor vehicle not constructed to carry a load. According to the record, as clarified before us, the Appellant has not produced registration documents establishing that the tractors were used to transport bricks or commercial goods.

1. Earthmover/JCB and tyres/tubes

As regards the Hyva, the registration document on record shows that it is owned by the Appellant. However, we find that the mere existence of an earthmover registration does not prove that the disputed tyres and tubes were fitted to, or consumed by, the earthmover. There is no vehicle-wise tyre register, issue/consumption register or workshop/service document linking the tyres to the particular vehicle. Before 01.02.2019, Section 17(5)(a) blocked credit on motor vehicles and other conveyances, except, among other things, where they were used for the transportation of goods. Thus, transportation of goods was itself an exception that the Appellant was required to establish. The statutory amendment substituting clause (a) took effect from 01.02.2019. No evidence has been placed before us establishing the factual condition necessary to invoke that exception. The benefit claimed in respect of tyres and tubes cannot be granted on the basis of an unproved factual assertion. For transactions occurring after 01.02.2019, although the language of Section 17(5)(a) changed, the Appellant was still required to prove the foundational business use and the nexus of each invoice with an eligible business asset under Section 16 read with Section 155. That burden has likewise not been discharged. Production of the earthmover's registration certificate establishes, at

most, the existence and registration of that machine. It does not establish that every disputed tyre, tube, spare part or service invoice relates to that equipment. The Appellant was required to establish an invoice-to-asset nexus. No tyre number, service/job card, machinery register, asset-wise maintenance ledger or corresponding invoice identification has been produced to connect the disputed credit satisfactorily with the earthmover. Accordingly, even the earthmover's registration, standing alone, cannot prove the eligibility of the disputed ITC.

III. Building materials

The Appellant's own reply states that cement, iron, pipes and other building materials were used for office renovation and chimney repairs. Office renovation squarely raises the issue under Section 17(5)(d), which blocks ITC on goods or services received for the construction of immovable property on one's own account, even where that property is used in the course or furtherance of business. The Explanation expressly includes renovation, additions, alterations and repairs, to the extent of capitalisation. If the Appellant sought to contend that these were merely revenue repairs and had not been capitalised, the best evidence was within its exclusive possession: the fixed asset register, capitalisation schedule, balance sheet and depreciation schedule. However, on a perusal of the entire record, we find that no such documents form part of the record. We therefore find that the Appellant has failed to make out a case under the words "to the extent of capitalisation."

1. Chimney

Similarly, if the Appellant claims that the chimney or any portion of it constitutes qualifying plant and machinery, it was necessary to produce technical drawings, asset records, an engineer's certificate, capitalisation details or other evidence showing that the particular goods constituted machinery, apparatus, a foundation or structural support falling within the statutory definition. A bare assertion that "the brick kiln is a plant" cannot fulfil that evidentiary requirement. Moreover, Section 124 of the Finance Act, 2025 retrospectively substituted "plant and machinery" for "plant or machinery" in Section 17(5)(d), with effect from 01.07.2017. Accordingly, the Appellant cannot secure the credit merely by invoking the functionality argument without first establishing, through documents, that the particular asset satisfies the statutory definition. The Appellant relies heavily on Chief Commissioner of CGST v. Safari Retreats Pvt. Ltd., 2024 INSC 756. In that decision, the Supreme Court, construing the then wording "plant or machinery" in Section 17(5)(d), held that the word "plant" could, in an appropriate factual case, be tested on the basis of functionality. The Court also upheld the constitutional validity of clauses (c) and (d). However, there has since been an important statutory development that must be applied by the Tribunal as the law stands today. Section 124 of the Finance Act, 2025 substituted "plant and machinery" for "plant or machinery" in Section 17(5)(d), with deemed retrospective effect from 01.07.2017.

The amendment was brought into force on 01.10.2025 by Notification No. 16/2025-Central Tax dated 17.09.2025. Consequently, the Appellant cannot now rely on Safari Retreats to contend broadly that the entire brick-kiln premises, office, quarters or every civil structure becomes "plant" merely by applying the functionality test. For FY 2018–19 as well, the retrospective amendment requires the statutory expression "plant and machinery" and its definition to be applied. This does not mean that machinery fixed to earth, or its qualifying foundation/structural support, is ineligible. It means only that the asset must satisfy the statutory definition of plant and machinery; land, buildings and other civil structures remain expressly excluded.

1. Sarees and clothes

This issue admits of little controversy. The Appellant itself stated in its reply that sarees and clothes were distributed as Holi clothes and Diwali dresses to workers and others, and described them as gifts. Section 17(5)(h) specifically blocks ITC on goods disposed of by way of gift or free samples. The expenditure may have been motivated by employee welfare or goodwill, but a business motive does not nullify the express statutory prohibition. ITC on sarees and clothes is therefore clearly inadmissible under Section 17(5)(h).

1. Food, beverages and banquet expenditure

The Appellant states that a banquet (bhoj) was organised for customers/builders and employees and characterises it as business promotion. Section 17(5)(b) specifically restricts ITC on food and beverages and outdoor catering, subject to the statutory exceptions. The Appellant is engaged in the manufacture and sale of bricks. It does not make an outward taxable supply of food or catering of the same category, and no statutory obligation requiring it to provide the promotional banquet has been shown. Accordingly, merely describing the banquet as "business promotion" does not bring the claim within any statutory exception. ITC relating to food, beverages and banquet/catering is therefore inadmissible.

VII. Tour, travel and hotel expenditure

Travel requires a separate analytical distinction. Ordinary, genuine business travel is not automatically blocked by Section 17(5)(b)(iii), which specifically addresses travel benefits extended to employees on vacation. However, that does not mean that every travel invoice is eligible. The Appellant must first discharge its burden under Sections 16 and 155 by proving that the expenditure was genuinely incurred in the course or furtherance of business. In the present case, apart from the assertions in the reply and written submissions, no supporting material has been produced to establish the pleaded business journey. There is no business itinerary, correspondence with prospective machinery suppliers, quotation obtained during the visit, purchase order arising from the visit, meeting record, customer correspondence or

other contemporaneous document connecting the journey with the brick-kiln business. An argument that the proprietor travelled "for prospective setup of an automatic plant" is not evidence that such a journey was actually undertaken for that purpose. The Appellant has therefore failed to establish the foundational business nexus under Section 16(1) and has failed to discharge the burden under Section 155. Accordingly, we hold that the expenditure was personal. Section 17(5)(g) additionally excludes goods or services used for personal consumption. Tour, travel and hotel expenditure therefore falls within Section 17(5), and the claim fails.

VIII. Camera, photo-store and electronic items: capital or revenue?

A camera or photography service is not, by itself, included in Section 17(5). Nevertheless, eligibility does not arise automatically merely because an invoice is in the business's name. The claimant must prove actual business use. No event record, advertisement, promotional material, customer brochure, photograph, campaign material or other contemporaneous evidence has been produced to link the camera, photo-store or electronic expenditure to an outward taxable business activity. Section 155 places this burden on the Appellant. The Tribunal cannot presume business use merely on the basis of counsel's submission. Consequently, ITC is not allowable on the present record.

14. **Summary**

14.1 The disputed claims broadly fall into three classes:

1. Expressly blocked credit: food/catering under Section 17(5)(b), gifts under Section 17(5)(h), and applicable construction/renovation expenditure under Section 17(5)(d);
2. Claimed statutory exceptions that have not been proved, particularly the claimed use of tractor-related expenditure for the transportation of goods during the period governed by the pre-amended Section 17(5)(a); and
3. Items for which the basic business nexus itself has not been proved, including travel/hotel, photography/electronics, vehicle-related services and residual expenses, attracting Sections 16 and 155 and, where applicable, Section 17(5)(g).

14.2 The Appellant's written reply did contain an item-wise explanation, but an explanation unsupported by the necessary books, registrations, asset-use records or other contemporaneous documents cannot discharge the statutory burden. The fact that detailed assertions were made before the authorities does not convert those assertions into evidence. The appeal itself records that the dispute concerned blocked ITC under Section 17(5). The position may therefore be stated succinctly: argument follows evidence; argument cannot replace evidence. The taxpayer must first establish the foundational facts through admissible or reliable documentary material. Only then can legal argument be addressed as to whether

the proven facts attract an exception under Section 17(5). The Supreme Court's reasoning in Ecom Gill Coffee is directly instructive: invoices and payment particulars do not invariably conclude the inquiry; the claimant must establish the factual transaction and nexus through supporting material. We accordingly hold that the Appellant has failed to discharge the burden imposed upon it by Section 155.

15. **Question of Cess**

15.1 The question arising for consideration in the present appeal is whether the amount of cess lawfully levied or recovered in connection with a taxable supply is liable to be included in the value of the supply for the purpose of levy of GST under Section 15 of the Central Goods and Services Tax Act, 2017, and the corresponding provisions of the Uttar Pradesh Goods and Services Tax Act, 2017.

15.2 A connected question is whether the levy of GST on a taxable value that includes such cess amounts to an impermissible "tax on tax/cess," as contended by the Appellant.

15.3 We first examine the relevant statutory scheme. Section 9 of the CGST Act is the charging provision and provides for levy of central tax on intra-State supplies of goods or services, or both, on the value determined under Section 15 and at the notified rate. Section 15(1) lays down the general rule that the value of a supply is its transaction value, namely, the price actually paid or payable where the supplier and recipient are unrelated and price is the sole consideration.

15.4 Of direct relevance is Section 15(2)(a), which provides that the value of a supply shall include "any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier." The corresponding provision in Section 15(2)(a) of the UPGST Act embodies the same principle. The language used by the legislature is significant. Parliament has not confined the provision to a "tax." It has deliberately and comprehensively used the expressions "taxes, duties, cesses, fees and charges." The legislative mandate is therefore that a statutory cess falling within Section 15(2)(a), though imposed under another enactment, forms part of the assessable value of the taxable supply.

15.5 Section 15 determines the value of the underlying taxable supply. Once a particular amount is statutorily required to be included in that value, the charging provision operates on the value so determined. The legal sequence is therefore: taxable supply; determination of value under Section 15; inclusion of a cess falling within Section 15(2)(a); and application of the appropriate GST rate to the resulting taxable value. Consequently, describing the levy as "GST on cess" is convenient shorthand but is not technically precise. In law, GST is imposed

on the underlying taxable supply, the value of which, by statutory command, includes the relevant cess.

15.4 Reliance may also be placed on Uttar Pradesh Power Transmission Corporation Ltd. & Anr. v. CG Power and Industrial Solutions Ltd. & Anr., (2021) 6 SCC 15. The Hon'ble Supreme Court held that a contractor entering into a pure supply contract was not liable to the cess merely because the contract formed part of a larger project. That judgment does not hold that a cess that is otherwise lawfully leviable must be excluded from the value of supply under Section 15(2)(a) of the GST enactment. The two questions operate at different stages. The first is whether the cess itself is legally leviable under the parent enactment. The second is whether, once such cess is lawfully leviable and is charged or recovered in connection with a taxable supply, it forms part of the value under Section 15. U.P. Power Transmission Corporation principally concerns the first question; Section 15(2)(a) answers the second. Accordingly, Section 15 cannot be employed to validate a cess that was never legally leviable in the first place. However, once the cess is lawfully leviable and the requirements of Section 15(2)(a) are satisfied, its inclusion in the value of the taxable supply follows from the express statutory command.

15.5 As regards the submission of learned counsel for the Appellant that the Hon'ble Supreme Court in Mineral Area Development Authority (MADA) v. Steel Authority of India & Ors. (Civil Appeal Nos. 4056–4064 of 1999, judgment dated 14.08.2024) specifically exempted all royalty/mineral-tax demands before 25 July 2024 from interest and penalty, and that interest and penalty on soil royalty are therefore liable to be set aside, we note the submission. However, the Appellant's learned counsel also relied on Udaipur Chambers of Commerce and Industry & Ors. v. Union of India & Ors. We find that the SLP in that matter was dismissed, which shows that the High Court's finding regarding cess is in accordance with law. We therefore find that the findings of the OIO and OIA on this point do not suffer from any illegality and uphold them.

16. **Interest**

The Appellant's further submission that interest can arise only from the date of the adjudication order cannot be accepted in that absolute form. Under the presently applicable Section 50(3), interest is attracted where ITC has been wrongly availed and utilised. Rule 88B(3) prescribes the manner of identifying utilisation and calculating interest from the date of utilisation until reversal or payment. CBIC Circular No. 192/04/2023-GST also clarifies that mere wrongful availment, without utilisation, does not attract interest under Section 50(3). Therefore, on credit ultimately found inadmissible, interest shall arise only to the extent and for the period for which the credit was wrongly availed and utilised, as determined under Section 50(3) read with Rule 88B(3).

17. **Penalty**

As regards penalty, a penalty under the GST enactments is not an inevitable consequence of every tax demand or procedural infraction. Where the statute predicates an enhanced penalty on fraud, wilful misstatement, suppression or an intention to evade tax, those ingredients must be established on the basis of cogent material and cannot be presumed merely from the eventual disallowance of a claim. At the same time, where the legislature has created a fixed statutory civil penalty upon proof of specified objective conditions, criminal mens rea cannot be imported contrary to the statutory text. The adjudicating authority must therefore distinguish a substantive or fraudulent contravention from a technical, venial or bona fide breach, bearing in mind the discipline of Section 126 and the prohibition against double penalty contained in Section 75(13) . In the present matter, in view of our findings above, the Appellant has failed to establish its entitlement to ITC despite the restrictions imposed by Section 17(5) of the GST Act. We therefore find that the penalty at the rate prescribed for a violation under Section 73 of the GST Act is applicable to the Appellant.

ORDER

18. The determination disallowing the disputed ITC of IGST Rs. 3,50,983, CGST Rs. 3,80,155 and SGST Rs.3,80,155 is affirmed. Corresponding interest, however, shall be determined strictly in accordance with Section 50(3) and the applicable rules. The penalty under Section 73 shall follow the tax amount legally sustained and shall be recomputed, where necessary. To this extent, the appeal on the question of ITC is dismissed, and the findings of the authorities below are affirmed, though for the more detailed reasons recorded herein.

The Registrar is directed to supply a copy of this order to the Appellant.

The order is pronounced in open Tribunal proceedings.

(Sanjay Kumar Chandhariyavi)

(Sungita Sharma)

Dated: 29.09.2026