GSTAT

State Bench Bengaluru

Court No. Court III

APL/84/BUR/2026

MALTOWN ELECTRICS PRIVATE LIMITED **.....Appellant**

Versus

COMMISSIONER OF CENTRAL TAX MYSORE, COMMISSIONER OF CENTRAL TAX, MYSORE COMMISSIONERATE & ORS. **.....Respondent**

Quorum

Hon'ble Prabhakaran PM, Member(Judicial)
Hon'ble Ravi Jesuraj S, Member (Technical)

Counsel for Appellant
RAVI
N ANAND ADVOCATE

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. : ZN290170926000224H **Date of order :** 30/09/2026

1.	GSTIN/Temporary ID/UIN - 29AAJCM3003H1ZM	
2.	Appeal Case Reference no. - APL/84/BUR/2026	Date - 13/05/2026
3.	Name of the appellant - MALTOWN ELECTRICS PRIVATE LIMITED , sadanandjoshi.2011@rediffmail.com , 9880596373	
4.	Name of the respondant - 1. Sandeep Banga , p.sandeep88@gov.in , 9667595988 2. COMMISSIONER OF CENTRAL TAX MYSORE 3. COMMISSIONER OF CENTRAL TAX MYSORE	
5.	Order appealed against -	
	(5.1) Order Type - Demand Order	

	(5.2) Ref Number - 028	Date - 17/05/2023
6.	Personal Hearing - 30/09/2026 11/09/2026	
7.	Status of Order under Appeal - Modified – Order under Appeal is modified	
8.	Order in brief - In the result, the appeal is partly allowed and the impugned order is modified as follows: (i) The demand of IGST credit of Rs 2,33,718/- is set aside. (ii) The Appellant shall pay interest under Section 50 of the CGST Act, read with Section 20 of the IGST Act, on the proportionate credit of Rs 2,33,106/- for the period stated above. (iii) The penalty imposed under Section 74 of the CGST Act is set aside. The appeal is disposed of in these terms.	
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	CONFIRMED THE DEMAND OF ITC AS PER OIO	Demand set aside
Levy of Penalty	CONFIRMED OIO IMPOSING PENALTY	

Place :BENGALURU

Signature

Date : 30.09.2026

BENGALURU Prabhakaran PM

Designation : Member

Jurisdiction :Bengaluru

GOODS AND SERVICES TAX APPELLATE TRIBUNAL

BENGALURU BENCH (Division Bench: Court No. III)

PRABHAKARAN P M, Member (Judicial), RAVI JESURAJ S, Member (Technical)

APPEAL NO: APL/84/BUR/2026

MALTOWN ELECTRICALS PRIVATE LTD .....APPELLANT

Versus

COMMISSIONER OF CENTRAL TAX, MYSURU .....RESPONDENT

……

FINAL ORDER: Dated 30th September 2026

……

Appearance by: Shri N Anand Advocate, for the Appellant

Shri Prabhat Kumar Assistant Commissioner and Authorised Representative for the Respondent

Per: Prabhakaran P M, Member (Judicial)

1.0 The present appeal is preferred under sub-section (1) of Section 112 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act')/ Karnataka Goods and Services Act, 2017 (hereinafter referred to as the 'KGST Act') read with Section 20 of the Integrated Goods and Services Tax Act, 2017 ('the IGST Act') against the Order in Appeal No: MYS-SPP-ADC/JC(A)-028-2023-24-GST dated 17.05.2023 in (DIN No: 20230557CV000081837E) passed by the Additional Commissioner of Central Taxes (Appeals) Mysuru.

Brief Facts of the case:

2.1 Maltown Electricals Private Limited, Hassan, Karnataka is engaged in the business of manufacture and supply of parts suitable for use with engines of heading 8407/8408;

manufacture of electrical apparatus for switching or protecting electrical circuits, etc and registered under GST with GSTIN No. 29AAJCM3003H1ZM.

Adjudication proceedings

3.1 During the GST audit of the Appellant's accounts for the period July 2017 to March 2020, the audit team observed as follows:

3.2 The Appellant had purchased the 3 Nos. of Capital Goods (Spot Welding Machine) from M/s. Kirpekar Engineering Pvt. Ltd. during March 2018 and availed the Input Tax Credit on the same. But due to some reasons the Appellant has not paid the partial amount of Rs. 15,32,152/- to the supplier and booked the same as 'other income' as a 'Liabilities No longer payable'. An Audit note was issued to pay/reverse the proportionate ITC of Rs. 2,33,718/- (IGST: Rs.2,33,718/-) in terms of section 16(2) of the CGST /KGST Act read with Section 20 of the IGST Act.

3.3 The Audit observation culminated in to a notice dated 16.03.2022 issued under Section 74 of the Act proposing to demand ITC amount of IGST of Rs. 2,33,718/- along with applicable interest and penalty under Section 74 of the CGST Act, 2017.

3.4 The Appellant submitted their reply to the notice that they have availed the Input Tax Credit of tax paid as per tax invoice pertaining to the above Capital goods procured during March 2018. Further it was stated that since there were some problems with the machines, which did not conform to standards/requirements prescribed by them a reduction in price was sought for which the supplier agreed. Accordingly, they had shown in the profit and loss account for the financial year 2019-20 under the head 'other income' Rs. 15,32,152/- as a 'liability no longer payable'. A Credit Note no. 01 dated 09-11-2021 for Rs. 15,32,152/- without GST also was received from the supplier. Since the document was a commercial credit note,

relying on the CBIC Circular No. 92/11/2019-GST dated 07-03-2019, there was no impact on the ITC availed based on the original invoice and no portion of ITC therefore was reversed.

3.5 The Adjudicating authority by Order dated 16.06.2022 confirmed the demand by rejecting the submissions made by the Appellant mainly on the ground that the reply did not appear to be in consistent with law and was not tenable in terms of Second proviso to Section 16(2) of the Act, as the Appellant has not paid the amount of Rs. 15,32,152/- to the supplier. It was also held in the order that the benefit of the Circular, No. 92/11/2019-GST dated 07th March, 2019 was not available to the Appellant since that Circular discussed the issue from the perspective of the supplier and not from the point of receiver.

Appellate proceedings before the First Appellate Authority

4.1 Aggrieved by the above order the Appellant preferred an appeal before the First Appellate Authority. The First Appellate Authority after due process passed the impugned order dated 17.05.2023 rejecting the appeal filed by the Appellant and upholding the order of the Adjudicating Authority on the following grounds:

(i) The Board Circular 92/11/2019-GST dated 07.03.2019 while clarifying the issue relating to Secondary discounts had held that since the same was against the provisions of Sec 15 the same could not be allowed and tax needs to be paid on the discount also.

(ii) The said Board's circular also clarified that it would not have an impact on the suppliers ITC. However, the said Circular does not reflect on the ITC availed by the recipient.

(iii) There was no dispute that the ITC availed had not been reversed and that the full value of goods procured not been paid to the supplier. Further the said Proviso 2 to Sec 16(2) talks only about the payment against the Invoice and does

not reflect on Credit note / debit note related transactions. Therefore, provision and conditions of Sec 16(2) will clearly apply in the instant case.

(iv) Section 74 is invokable in the present case since the said transaction was not reflected in the returns filed nor was it disclosed to the department.

4.2 Aggrieved by the above decision of the First Appellate Authority the Appellant has filed the present appeal before this Tribunal.

Submissions by the Appellant:

5.1 The Learned Counsel for the Appellant Adv Anand N appeared and submitted as follows:

(i) The Appellant purchased/procured 3 Nos. of Spot Welding Machine from the supplier, viz., M/s. Kirpekar Engineering Private Limited, Pune (GSTIN: 27AAACK8683L1ZW) vide Invoice Nos.331 & 332 dtd.05.03.2018 & No.353 dtd.31.03.2018 totally valued at Rs.1,19,18,000/- with total IGST of Rs.21,45,240/. Copies of tax invoices issued by the supplier is enclosed. Copies of the tax invoices have been produced.

(ii) The Appellant availed the ITC of Rs.21,45,240/- in the month of March 2018 and disclosed the same in the monthly return in Form GSTR-3B filed for said month.

(iii) As per the agreed terms between the Appellant and the supplier, the Appellant had made advance payment(s) against the supply of 3 Nos of machines. Appellant therefore submits that they have complied with the provisions of 2nd proviso to section 16(2) of the Act.

(iv) Since the Appellant noticed that the said machines were not in conformity with the specifications agreed upon between the Appellant and the supplier, after

negotiations, the supplier agreed for reduction in value of the goods by way of waiver of balance amount payable of Rs.15,28,140/-.

(v) Since the supplier agreed to give reduction or waiver of balance amount payable which is nothing but discount, the Appellant accounted the discount amount of Rs.15,28,140/- as "Other Income" in their books of accounts as at the end of the financial year viz., 31.03.2020.

(vi) Accordingly, the Appellant requested the supplier to issue a commercial/financial credit note and, the said supplier issued a commercial credit for the discount amount of Rs.15,28,140/- vide Note No.01 dtd.09.11.2021.

(vii) The Appellant submits that they have not contravened the provisions of 2nd Proviso to section 16(2) of the CGST Act, 2017 inasmuch as they have made full and final payment of the discounted value well within the period of 180 days from the date of invoice(s). However, the commercial Credit Note was issued only on 09.11.2021 since the GST Department was insisting on the document in support of the "Other Income" which was booked during the year 2019-20. This was not an afterthought or otherwise but only a supporting document issued subsequent to the discount amount agreed between the parties.

(viii) It is further submitted that the entire case made out by the Department in the SCN as also the impugned order(s) passed by both the lower authorities is only limited to the extent of "reduced value"/"waiver of balance amount payable"/"discount" which was agreed between the parties through a commercial/financial credit note and the department has presumed that to the extent of commercial credit note amount, the Appellant has contravened 2nd proviso to section 16(2) inasmuch as said reduced value was not paid by the

Appellant within 180 days and hence the Appellant should pay/reverse proportionate ITC.

(ix) It is the submission of the Appellant that the above contention of the Revenue is untenable inasmuch as even as per GST Flyer on 'Input Tax Credit Mechanism' and also CBIC Circular no. 92/11/2019-GST dtd.07.03.2019 and Circular no. 251/08/2025-GST dtd 12.09.2025 - value of supplies shall be deemed to have been paid and ITC shall not be reversed in cases where - Value representing discounted payments for which financial credit notes have been issued by the supplier. Hence, the impugned orders of lower authorities are contrary to law and binding Board Circulars.

(x) On the invocation of Section 74 it is submitted that mere omission to give correct information was not suppression of fact unless it was deliberate to stop the payment of tax, and relied on the decision of the Honourable Supreme Court in the case of Continental Foundation Jt Venture Vs Commr. of C. Ex. Chandigarh I 2007 (216) ELT 177 (SC) and Jaiprakash Industries Ltd Vs Commr. of C. Ex. Chandigarh 2002 (146) ELT 481 (SC).

5.2 Written submission also was submitted by the Appellant on 17.09.2026.

Contentions by the Respondent:

6.1 The Ld Authorised Representative for the Respondent Shri Prabhat Kumar Assistant Commissioner, submitted that,

(i) the Appellant failed to pay the supplier of goods, the full amount towards the value of supply along with tax payable thereon within one hundred and eighty days from the date of issue of the invoice by the supplier. Therefore, an amount equivalent

to the input tax credit availed by the Appellant shall be paid or reversed from the ITC along with interest.

(ii) It is also submitted that the benefit of the Circular, No. 92/11/2019-GST dated 07th March, 2019 was not available to the Appellant since that Circular discussed the issue from the perspective of the supplier and not from the point of receiver.

(iii) this matter has arisen out of audit conducted on the records of the Appellant, by the audit Officers of the GST Audit Mysuru Audit Commissionerate. Had it not been conducted the issue would not have been unearthed. Section 74 of the Act therefore was invoked rightly.

Findings and decision:

7.1 We have heard both the parties and gone through the notice, adjudication proceedings, impugned order, appeal papers, written submission along with annexures and applied our mind.

7.2 The impugned order upheld the order of the Adjudicating Authority mainly on three grounds:

(i) The Appellant violated the provisions of Second proviso to sub-section (2) of Section 16 in as much as the amount attributable to the value of the supply not paid within 180 days,

(ii) Further the said Proviso 2 to Sec 16(2) talks only about the payment against the Invoice and does not reflect on Credit note / debit note related transactions, and

(iii) The benefit of the Circular, No. 92/11/2019-GST dated 07th March, 2019 was not available to the Appellant since that Circular discussed the issue from the perspective of the supplier and not from the point of receiver.

(iv) The demand of penalty was imposable under Sec 74 since the said transactions was not reflected in the returns filed nor was it disclosed to the department.

7.3 On the basis of the impugned order and the above submissions, issues to be decided in this matter are as follows:

(i) Whether the Appellant has contravened Second proviso to section 16(2) of the CGST Act, 2017?

(ii) Whether ITC is deniable when value discount is given by supplier through commercial/financial credit note?

(iii) Whether impugned order is contrary to the binding Board Circulars & GST Flyers?

(iv) Whether Section 74 of the CGST Act was rightly invoked, and what liability, if any, survives?

7.4 Records show that the Appellant purchased 3 Nos. of Spot Welding Machine from the supplier, viz., M/s. Kirpekar Engineering Private Limited, Pune vide Invoice Nos.331 & 332 dtd.05.03.2018 & No.353 dtd.31.03.2018 with total taxable value of Rs.1,19,18,000/- and total IGST of Rs.21,45,240/-. The Appellant availed the ITC of IGST of Rs 7,27,200, Rs 7,27,200 and Rs 6,90,840 pertaining to the 3 invoices totalling Rs.21,45,240/- in the month of March 2018 and disclosed the same in the monthly return in Form GSTR-3B filed for said month.

7.5 True copy of the Ledger in the books of the Appellant produced for the period 1st July 2017 to 31st March 2020 in respect of M/s Kirpekar Engineering Pvt Ltd shows that the Appellant had paid only Rs 1,25,35,100/- towards the purchase of above Capital Goods as on 1st April 2018 as against the invoiced amount of Rs 1,40,63,240/- (value plus IGST), and the balance of Rs 15,28,140/- remained outstanding as on 26th July 2018, 1st April 2019 and even as on 31st March 2020.

7.6 Section 16 of the Act deals with the eligibility and conditions for taking input tax credit. Second proviso to sub-section (2) to section 16 of the Act is relevant here. As they stood before and after 01.10.2023, read as follows:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be [added to his output tax liability along with interest there on – up to 30.09.2023] [paid by him along with interest payable under section 50- w.e.f 01.10.2023], in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him [to the supplier – w.e.f 01.10.2023] of the amount towards the value of supply of goods or services or both along with tax payable thereon.

7.7 Rule 37 of the CGST Rules also relevant here. The Rule as available for the relevant period reads as follows:

37. Reversal of input tax credit in the case of non-payment of consideration.-

(1)A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section(2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16:

Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

(2) The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.

(3) The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid. (Omitted w.e.f 01.10.,2022 vide notification 19/2022-CT dated 28.09.2022)

(4) The time limit specified in sub-section (4) of section 16 shall not apply to a claim for reavailing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.

7.8 Therefore prior to 01.10.2023 in case a recipient of goods or service or both failed to pay the amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier, the recipient was liable to pay such an amount equal to the input tax credit availed by the recipient by way of adding to his output tax liability along with applicable interest.

7.9 As seen from the records submitted by the Appellant they were liable to pay an amount of Rs 1,19,18,000/- towards the value of the purchase of Capital goods and Rs 21,45,240/- towards GST to the supplier. Since they have availed the ITC totalling of 21,45,240/- in the month of March 2018, under second proviso to Section 16(2) of the Act they should have paid Rs 1,19,18,000/- towards the value of the purchase and Rs 21,45,240/- towards GST to the supplier within 180 days of date of invoices ie, from 05.03.2018 in respect of the first two invoices and & from 31.03.2018 in respect of the third invoice. It is however noticed that the Appellant has paid only Rs 1,25,35,100/- and not paid the balance within 180 days on the ground of deficiency in quality of the Capital Goods supplied. Therefore, Appellant should have added that part of the ITC which is attributable to the value of the purchase not paid to the supplier to the output tax liability immediately after the 180th day, which they failed to do.

Therefore, we are of the view that the Appellant has contravened second proviso to Section 16(2) of the CGST Act, 2017 to the extent of the value not paid to the supplier.

7.10 It was submitted by the learned Advocate that the discount was agreed and the discounted value was paid within 180 days. The ledger does not support this. It shows the balance of Rs 15,28,140/- as payable to the supplier on 26.07.2018, 01.04.2019 and 31.03.not paid 2020. The balance was written back as a 'liability no longer payable' only in the accounts for 2019-20, and the credit note is dated 09.11.2021. No letter or agreement recording the discount within 180 days has been produced. The submission is therefore not accepted.

7.11 Accordingly, issue (i) is answered in affirmative.

8.1 It was further submitted by the Appellant that they had taken up the issue regarding the deficiency in quality of the Capital goods with the supplier. They have paid only Rs 1,25,35,100/- keeping the balance of Rs 15,28,140/- as unpaid. As submitted, the supplier was put to notice and sought a discount of the balance amount. Subsequently the Appellant received value discount from the supplier through a Credit note No. 01 dated 9th November 2021 for Rs 15,28,140/-.

8.2 At this juncture we would like to refer to CBIC Circular no. 92/11/2019-GST dtd.07.03.2019 and Circular no. 251/08/2025-GST dtd 12.09.2025. Relevant paragraphs of the circular dated 07.03.2019 are extracted below:

> *D. Secondary discounts -*
>
> *(i).....*
>
> *(ii).....*
>
> *(iii) Representations have been received from the trade and industry that whether credit notes(s) under sub-section (1) of section 34 of the said Act can be issued in such cases even if the conditions laid down in clause (b) of subsection (3) of section 15 of*

the said Act are not satisfied. ***It is hereby clarified that financial/commercial credit note(s) can be issued by the supplier even if the conditions mentioned in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied. In other words, credit note(s) can be issued as a commercial transaction between the two contracting parties.***

(iv) It is further clarified that such secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in clause (b) of sub-section (3) of section 15 of the said Act are not satisfied.

v) In other words, value of supply shall not include any discount by way of issuance of credit note(s) as explained above in para 2(D)(iii) or by any other means, except in cases where the provisions contained in clause (b) of subsection (3) of section 15 of the said Act are satisfied.

(vi) There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

[Emphasis in bold].

8.3 Relevant part of the Circular 251/08/2025-GST dated 12.09.2025 is extracted below:

Sl No	*Issue:*	*Clarification:*
1	*Whether the full input tax credit is available to the recipient of supply when the recipients make discounted payments to the supplier of goods on account of financial/ commercial credit notes issued by the said supplier?*	*1. Section 16(1) of the CGST Act, 2017 provides that every registered person shall be entitled to take credit of input tax charged on any supply of goods or services or both, which are used or intended to be used in the course or furtherance of his business.* *2. It has been clarified vide Circular No. 92/11/2019-GST, dated 7th March 2019 that the supplier of goods can issue financial/ commercial credit notes and in such cases, he will not be eligible to reduce his original tax liability. As the transaction value is not*

		allowed to be reduced on account of issuance of financial/commercial credit note, accordingly the tax charged from the recipient would also not get reduced. 3. ***Thus, it is clarified that the recipient will not be required to reverse the Input Tax Credit attributed to the discount provided on the basis of financial/commercial Credit notes issued by the supplier, as there is no reduction in the original transaction value of the supply and accordingly the corresponding tax liability would also not get reduced.***

[Emphasis in bold]

8.4 Reference may also be made to the Flyer published by CBIC on "Input Tax Credit Mechanism". Para B in page 2 discussed the above issue and reads as under:-

B. The pre-requisite for availing credit by Registered person are:

……..

***However, the value of supplies in respect of following shall be deemed to have been paid and ITC shall not be reversed in such cases**:*

- *Value of supplies made without consideration as specified in Schedule-I*
- *Value of supplies on account of any amount added in accordance with the provisions of section 15(2) (b), i.e. any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both (Notification No. 26/2018- Central Tax, dated 13.06.2018)*
- ***Value representing discount for which financial credit notes have been issued by the supplier.***

[Emphasis in bold]

8.5 The Circulars no. 92/11/2019-GST dtd.07.03.2019 and Circular no. 251/08/2025-GST dtd 12.09.2025 that further clarified the earlier circular and Flyer on "Input Tax Credit Mechanism" makes it clear that the recipient of goods or service or both will not be required to reverse the Input Tax Credit attributed to the discount provided on the basis of financial/commercial Credit notes issued by the supplier.

8.6 Section 168 makes the Department bind the clarifications issued by the Board. Section 168(1) of the CGST Act reads:

> *"The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions."*

8.7 It was held by the Hon'ble Supreme Court in *Paper Products Ltd. v. Commissioner of Central Excise, 1999 (112) E.L.T. 765 (S.C.)* and in *Commissioner of Central Excise, Bolpur v. Ratan Melting & Wire Industries, 2008 (231) E.L.T. 22 (S.C.)* that circulars issued by the Board bind the departmental officers, though not the courts. It was held by the Hon'ble Supreme Court in *Suchitra Components Ltd. v. Commissioner of Central Excise, Guntur, 2007 (208) E.L.T. 321 (S.C.)* that a beneficial circular applies retrospectively. Circular No. 251/08/2025-GST issued referring to the Circular no. 92/11/2019-GST is clarificatory and beneficial. It therefore governs this dispute, though it was issued after the impugned order.

8.8 We are in agreement with the clarification issued by CBIC for the reason that by issuing financial/commercial Credit notes by the supplier, there is no reduction in the original transaction value of the supply, the corresponding tax liability would also not get reduced and therefore the supplier could not reverse the GST paid earlier in respect of the original invoice. Such credit note will not be reported in Form GSTR 1 of the suppliers and consequently will not appear in the return in Form GSTR 2A of the receiver. Accordingly financial/commercial

Credit notes issued by the supplier will not alter the ITC availed by the receiver based on the original invoice.

8.9 As stated above Rs 1,25,35,100/- only was paid by the Appellant as against the value of 3 invoices totalling Rs 1,40,63,240/- keeping the balance of Rs 15,28,140/- as unpaid. Subsequently the Appellant received value discount from the supplier through a financial/commercial Credit note No. 01 dated 9th November 2021 for Rs 15,28,140/. As at the end of 31st March 2020, as noticed by Audit, the Appellant had written back the unpaid amount in its accounts as 'Liabilities no longer payable'. Once the supplier issues the financial credit note in the name of the receiver such document would get credited to the 'Discount received A/c' and accordingly nullify the liability to pay the balance amount.

8.10 Now the issue to be examined is whether the Financial credit received by the Appellant would enable them to take back or retain the input tax credit that ought to have been reversed in terms of Second proviso to Section 16(2) of the Act.

8.11 It is held in the impugned order that *the second proviso 2 to Sec 16(2)(d) talks only about the payment against the Invoice and does not reflect on Credit note / debit note related transactions*.

8.12 In this regard we refer to the Third proviso to Section 16(2) of the Act which deals with re-availing of input tax credit. The proviso as available during the relevant period reads as follows:

> *Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon. (As available prior to 01.10.2023).*

8.13 The Third proviso states that receiver is eligible to re-credit the ITC on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon. Therefore, the moot question is whether the receipt of the financial credit note and its entry in the books of the recipient would be treated as in compliance to the Third proviso *ibid*.

8.14 The answer lies in the nature of a financial credit note. As discussed above, such a credit note does not reduce the transaction value of supply or the tax charged on the invoice. The supplier has paid the full tax to the Government. The Appellant has paid Rs 1,25,35,100/, which is more than the tax of Rs 21,45,240/- charged on the invoices. What the supplier gave up, by a commercial settlement, is only a part of the price. Once the supplier waived that part in full settlement, no amount towards the value of supply remained payable by the Appellant.

8.15 The object of the second proviso is that credit should not be enjoyed on a supply that is not paid for. That object is met where the supplier has accepted the reduced amount in full settlement and has itself borne the tax on the undiscounted value. Circular No. 251/08/2025-GST confirms that the recipient is not required to reverse credit attributable to such a discount. On the waiver, the Appellant became entitled under the third proviso to Section 16(2) to hold the credit. Rule 37(4) of the CGST Rules makes the time limit in Section 16(4) inapplicable to such re-availment.

8.16 On the above discussion, in terms of second and third proviso to Section 16(2) of the CGST Act and the Circulars no. 92/11/2019-GST dtd.07.03.2019, Circular no. 251/08/2025-GST dtd 12.09.2025 and Flyer on "Input Tax Credit Mechanism", it is held that the Appellant being the recipient of goods will be eligible to retain the Input Tax Credit as available in the original invoice after accounting for the financial credit note issued as discounted by the supplier.

8.17 Therefore, that part of the impugned order which holds that the Appellant cannot retain the credit cannot be sustained. In fairness to the lower authorities, Circular No. 92/11/2019-GST did not in terms deal with the recipient, Circular No. 251/08/2025-GST, which does, was issued after their orders but further referred to the earlier circular and clarified further. The impugned order is contrary to the binding Board Circulars and GST Flyers in as much as that the recipient is eligible and continue to retain the Input tax credit attributable to the value of the financial credit received by them.

8.18 Issue (ii) and (iii) are answered accordingly.

9.1 It remains to consider the period between the credit availed and the waiver of the balance on receipt of the Financial credit note. During that period, Rs 15,28,140/- was payable and unpaid, and the Appellant continued to hold the full credit. The second proviso to Section 16(2), as it then stood, required the proportionate credit to be added to the output tax liability along with interest. The later waiver entitles the Appellant to retain the credit. It does not wipe out the interest that accrued while the amount remained unpaid.

9.2 What is forthcoming from the above is that the Appellant has availed and retained the Input tax credit attributable to the value not paid to the supplier in contravention to the Second proviso to Section 16(2) of the Act.

9.3 Sub-Rule (3) to Rule 37 as existing during the relevant period provides that:

> *The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.*

9.4 With the aforesaid analysis of documents and submissions, we find that the Appellant failed to justify the availment and retention of Input tax credit attributable to the short payment

of value of supply received and retained the same beyond the allowable period of 180 days from the date of invoice.

9.5 Therefore, during the period, from the date of availment of Input tax credit till the date of receipt and accounting of the financial credit note issued by the supplier, the Appellant is required to pay interest at applicable rate under Section 50 of the CGST Act on the proportionate credit of Rs 2,33,106/- attributable to the value not paid.

10.1 The last issue is whether Section 74 was rightly invoked. Section 74 of the Act read as follows:

> *Section 74.*
> *(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised* ***by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax****, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.*
> *(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.*
> ……..
> *"Explanation 2.- For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure* to furnish any information on being asked for, in writing, by the proper officer."

[Emphasis supplied]

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10.2 Section 74(1) applies where credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax. It was submitted by the learned Authorised Representative for the Respondent that the issue came to light only in audit. In our view detection in audit does not, by itself, prove suppression. The Appellant recorded the unpaid balance in its ledger and wrote it back openly in its audited accounts for 2019-20. The audit team found the facts in those very accounts. The Appellant's view that no reversal was needed was a bona fide view, and the Board has since accepted it in Circular No. 251/08/2025-GST by referring to the earlier circular. It was held by the Hon'ble Supreme Court in *Continental Foundation Joint Venture v. Commissioner of Central Excise, Chandigarh-I, 2007 (216) E.L.T. 177 (S.C.)* that a mere omission to give correct information is not suppression of facts unless it is deliberate and meant to evade duty. The Appellant should, however, have reversed the proportionate credit after the 180th day and re-availed it on the waiver, as Rule 37 contemplates. That lapse is the reason why interest is now payable.

10.3 Sub-section (2) to Section 75 also is relevant here which reads:

> *(1) …….*
> *(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.*

10.4 Section 75(2) of the CGST Act provides that where the Appellate Tribunal concludes that the notice issued under Section 74(1) is not sustainable for the reason that the charges of fraud or wilful misstatement or suppression of facts to evade tax have not been established, the proper officer shall determine the tax payable as if the notice were issued under Section 73(1).

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The notice dated 16.03.2022 was within the time allowed under Section 73. The liability to interest therefore survives, but the penalty under Section 74 does not.

11.1 In the result, the appeal is partly allowed and the impugned order is modified as follows:

(i) The demand of IGST credit of Rs 2,33,718/- is set aside.

(ii) The Appellant shall pay interest under Section 50 of the CGST Act, read with Section 20 of the IGST Act, on the proportionate credit of Rs 2,33,106/- for the period stated above.

(iii) The penalty imposed under Section 74 of the CGST Act is set aside.

11.2 The appeal is disposed of in these terms.

Order pronounced on 30th September 2026.

Ravi Jesuraj S
Member (Technical)

Prabhakaran P M
Member (Judicial)

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