GSTAT

State Bench Cuttack

Court No. Court II

APL/10/CTT/2026

MANORANJAN DASH **.....Appellant**

Versus

COMMISSIONERATE OF CT GST, COMMISSIONER, ODISHA & ORS. **.....Respondent**

Quorum

Hon'ble Suchismita Misra, Member(Judicial)
Hon'ble Ananda Satpathy, Member (Technical)

Counsel for Appellant

ABHISHEK OJHA,CA

Counsel for Respondent
ANAND DAS, ADVOCATE

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 : Yes

Order reference no. : ZA210271026000015H **Date of order :** 08/10/2026

1.	GSTIN/Temporary ID/UIN - 21AADCM1100F2ZH	
2.	Appeal Case Reference no. - APL/10/CTT/2026	Date - 29/11/2025
3.	Name of the appellant - MANORANJAN DASH , motherpowerhouse16@gmail.com , 9937337908	
4.	Name of the respondant - 1. Commissionerate of CT GST , sunil.barik@odisha.gov.in , 8895447232 2. Commissionerate of CT GST	

5.	Order appealed against - AD210822003924F	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - ZD2112230115734	Date - 13/12/2023
6.	Personal Hearing - 08/10/2026 01/10/2026 25/09/2026 22/07/2026 08/07/2026 04/05/2026	
7.	Order in brief - (i) amount of tax demand upheld in the impugned appeal order is hereby confirmed; (ii) the order relating to computation of the interest liability is set aside and remanded back for fresh computation strictly as per section 42 (8) of the Act after identifying and specifying the invoices not populated in the GST portal. (iii) Amount of interest levied placing reliance upon Rule 36(4) is hereby deleted since such levy was not contemplated in the SCN issued under Section 73.	

Summary of Order

8.	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	51006	51006	51006	51006	0		0		102012	102012
(b) Interest	49340	0	49340	0	0		0		98680	0
(c) Penalty	5101	5101	5101	5101	0		0		10202	10202
(d) Fees	0		0		0		0		0	0

(e) Others										0
(f) Refund										0

9.	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	102012	TAX DEMAND CONFIRMED
Levy of interest or late fee or fine	98680	
Levy of Penalty	10202	
10.	If remanded with directions:	
	a) Remanded to: Adjudicating Authority	
	b) Directions subject to which remanded, if any: Interest on the ineligible ITC to be computed as per Section 42(8) of the Odisha GST Act, 2017(now omitted) after specifying the invoices not populated in GSTR1.	

Place :CUTTACK

Date : 08.10.2026

ORDER

1. The instant Appeal order is being passed under Section 113(1) of the Odisha Goods and Services Tax Act, 2017, or the Act in short.
2. Appeal has been filed under section 112(1) of the said Act.
3. The case was listed for hearing on 01-10-2026. Learned Counsel appearing for the Appellant as well as the Respondent were heard at length and hearing was completed. The order impugned passed under section 107(11) of the Act, or the OIA in short, the underlying Adjudication order passed under section 73 of the Act, or OIO in short, the grounds of appeal, documents in support of grounds of appeal and the cross objection filed by the Respondent were examined with reference to the relevant provisions in the Act and the Rules framed there under.
4. As revealed from the submission made in the grounds of appeal and the documents submitted in support of such grounds, the OIO and the OIA, the relevant facts and the background of the case in brief are as follows: -

   I. The Appellant, M/S Mother Power House Limited, represented by its Director, Shri Manoranjan Dash, is registered under the Act for supply of works contract service to Govt of Odisha and others.

   II. The Appellant reportedly filed periodical Returns required to be filed under the Act in the prescribed form, GSTR-3B and availed ITC amounting to Rs27,07,095.73 during the FY-2020-21.

   III. As per information available in the GST Portal in form GSTR -2A, input tax paid by the appellant on its inward supply reportedly stood at rupees 15,70,871.43 under, CGST, IGST, and OGST.

IV. On noticing such glaring difference between the amount of ITC availed and the maximum amount of ITC available as per portal information, statutory notice was reportedly issued under Section 61 of the Act in form ASMT -10 on date 19.02.2022 intimating the difference.

V. Since no reply was submitted by the Appellant explaining the difference between ITC availed and ITC available, SCN in DRC-01 was issued under section 73 of the Act conveying the intention to raise a demand of the differential amount of Rs15,70,871.43 along with penalty equivalent to 10% of the proposed demand together with applicable interest at the prescribed rate.

VI. The appellant did not participate in the proceeding despite issue of SCN followed by reminders to explain the excess amount of ITC claimed. As a result, the following demand was confirmed on account of tax, interest and penalty under section 73 (9) of the Act for alleged violation of the condition mandated in section 16 (2) (c) of the Act.

Tax (CGST+SGST)	Interest (CGST+SGST)	Penalty (CGST+SGST)	Total (CGST+SGST)
11,34,474,00	2,52,878,00	1,13,448,00	15,00,800,00

VII. Being aggrieved with by aforementioned demand, the Appellant preferred appeal under section 107(1) of the Act contesting the demand as well as the ground of demand on account of tax and interest.

VIII. In the OIA passed under section 107(11) of the Act, additional ITC amounting to rupees 12,20,108.80 has been admitted by placing reliance

upon the reconciliation statement of the Appellant and the updated position of GSTR 2A, thus reducing and modifying the demand to the extent tabulated below: -

Tax (CGST+SGST)	Interest (CGST+SGST)	Penalty (CGST+SGST)	Total (CGST+SGST)
1,02,012,00	98,680,00	10,201,20	2,10,893,20

IX. Not being satisfied with the extent of relief in the OIA, the Appellant preferred the instant appeal seeking further relief by way of full admission of the amount of ITC availed during the relevant year of 2020-21.

5. The Appellant contests the impugned appeal on the following grounds: -

i. That, the appellant availed ITC only after receipt of invoices and is in possession of all the invoices supporting the amount of ITC availed during the relevant year i.e., 2020-21.

ii. That, the appellant is in possession of the invoices supporting the amount of ITC i.e., rupees 01,02,011.28, not admitted in the impugned appeal on the ground that those invoices are not populated in the GST portal in form GSTR-2A.

iii. That, non-population of invoice details in GSTR-2A doesn't imply non-payment of tax by the corresponding suppliers.

iv. That, such suppliers might have paid the corresponding tax by discharging full tax liability in the returns filed by them. Some such suppliers might have discharged the liability while filing the annual return by making payment through DRC -03.

v. That, the Act casts responsibility on the supplier for payment of tax and the recipient has no control over the suppliers to ensure uploading the invoice details in GSTR-01 and payment of tax at the time filing return.

vi. That, even while Section 16(2)(c) mandates payment of tax by the supplier a condition president for availing ITC, the said provision is subjected to section 41 of the Act which allows tax payers to avail ITC provisionally even in respect of invoices not reported by the corresponding supplier.

vii. That, further payment of tax to discharge the demand liability would result in double payment of tax – first to the supplier at the time of receiving supply and second for discharging the demand liabilities.

viii. That, Rule 36(4) which has been relied upon in the impugned OIA for determining the amount of interest payable has no legal backing to be sustained in view of the mandate for availing ITC provisionally in section 41 of the Act.

6. In the course of hearing, the Learned Counsel appearing for appellant, while reiterating the averments made in the grounds of appeal, drew the attention of the Tribunal to section 75(7) of the Act and contested the levy of interest which was not indicated in the SCN. However, the Learned Counsel failed to adduce any proof evidencing payment of tax by the suppliers in respect of the invoices not populated in the GST portal. In this regard, it was also contended that the allegation of excess claim of ITC has been framed simply by matching the summary information available in GSTR-2A and the amount of ITC availed by

the appellant in GSTR-3B. While framing such an allegation no invoice level matching has been undertaken to pinpoint the specific invoices which are not populated in GSTR -2A. In the absence of such crucial information, the burden of proof cast on the recipient-appellant cannot be discharged by adducing any credible document / information evidencing payment of tax in respect of the invoices not populated in the GST portal.

7. The grounds of appeal have been countered in the cross objection (CO) filed by the Respondent with the following averments: -

   i. The impugned appeal order is well reasoned and in sync with the statutory provision in section 16 (2)(c) of the Act requiring no interference since the appellant has failed to discharge the burden of proof regarding payment of tax by the suppliers in respect of the invoices not populated in GSTR-2A.

   ii. That, input tax credit is not an absolute or vested right but rather a statutory concession subjected to strict fulfilment of the condition laid down in clause (a), (b), (c) and(d) of sub section 2 of section 16 of the Act cumulatively. Non-fulfilment of even one of the conditions will render the entitlement to ITC inadmissible. Therefore, not admitting ITC amounting of the rupees 1,02,011.08 for want of proof of payment of tax by the respective suppliers in respect of the invoices not populated in GSTR -2A is very much in sync with the statutory condition in section 16 (2) (c) of the Act. In this regard, reliance has been placed on the judgement of Hon'ble Patna High Court in Astha Enterprises v. State of Bihar (CWJC No.10395 of 2023).

iii. That the appellant's contention that possession of tax invoices, receipt of goods/services and payment of consideration including tax to the supplier are sufficient to claim Input Tax Credit is contrary to the express language of Section 16(2)(c), which specifically mandates that the tax charged in respect of such supply must have actually been paid to the Government. The Legislature has consciously used the expression "paid to the Government" and not merely "paid to the supplier".

iv. That the constitutional validity of Section 16(2)(c) of the CGST Act has been affirmed by the Hon'ble Gujarat High Court in Maruti Enterprise v. Union of India.

v. The Hon’ble Supreme Court of India has, in SLP(C) 2393/2026 in case of “Bhandari Scrap Traders v. Union of India (24.07.2026), affirmed the constitutional validity of the provision and declined to read it down.

vi. That, Section 155 of the CGST Act expressly casts the burden of proving eligibility to Input Tax Credit upon the person claiming such credit. The appellant, therefore, is under a statutory obligation to establish compliance with every condition prescribed under Section 16(2), including clause (c).

vii. That, the Appellant's contention regarding Rule 36(4) is without merit. Rule 36(4) was in force during the relevant tax period and prescribed the limit up to which provisional Input Tax Credit could be availed over and above the credit reflected in FORM GSTR-2A. The learned First Appellate Authority has correctly applied the said Rule and extended its benefit to the Appellant by reducing the demand. Only the excess Input Tax Credit

claimed beyond the permissible limit has been sustained. Hence, the consequential levy of interest is in accordance with law.

viii. That, the impugned order suffers from no legal infirmity, perversity or warranting interference by this Hon'ble Tribunal. On the contrary, the order is fully consistent with the statutory scheme of the CGST/OGST Act as well as the law laid down by the Hon'ble Supreme Court and various High Courts.

8. On examination of grounds of appeal vis-à-vis the grounds in this CO together with the impugned OIA and the underlying OIO, it is found that –

i. ITC has been denied solely on the ground of non-fulfilment of the condition in section 16 (2) (c) of the Act.

ii. Payment of tax by the supplier is a mandatory condition for availing input tax credit,

iii. The constitutionality of section 16 (2) (c) of the Act has not been questioned in the grounds of appeal and accordingly, the cases relied upon by the respondent do not need any examination or elaboration,

iv. The burden of proof cast under section 155 of the Act for justifying eligibility for input tax credit is not questionable and has also not been questioned,

v. The Appellant however, questions equating non-population of invoice details in the GST portal as non-payment of tax by the suppliers,

vi. The Appellant also questions applicability of the Rule 36 (4) for the purpose of computing interest liability even while, section16(2)(c) is subject to section 41, which permits availing ITC on provisional basis as per self-assessment.

vii. The Appellant also questions the justifiability of disentitling the statutory concession in shape of ITC availed by the recipient for default on the part of the supplier on whom, the recipient has no control.

9. For deciding the issues enumerated as above, the statutory scheme is required to be examined with reference to the relevant provisions governing input tax credit in the Act and the Rules framed there under. Chapter 5 of the Act deals with input tax credit and under chapter 5 Section 16 provides for the eligibility conditions for taking input tax credit. The relevant portions of said section 16, reads as follows: -

"(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, –

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation. — For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person

(c) ***subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply****; and*

(d) he has furnished the return under section 39 xxxxxx".

10. On reading the aforesaid statutory provisions it transpires that, Section 16 (1) is creating the entitlement to take credit of input tax "*charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business"* implying there by, the first and foremost condition for being eligible to ITC is the intent for using inward supply of goods and services in business ; and the extent of such entitlement is subject to some conditions and restrictions. However, this aspect having not been examined and relied upon in framing of the allegation and confirmation of the demand in dispute in the instant appeal, requires no examination.

11. Section 16(2) puts in place some mandatory conditions for being entitled to credit of input tax and the said mandatory conditions have been set forth in clause (a) (b) (c) and (d) of this said subsection. There is no allegation regarding nonfulfillment of the condition set forth in clause (a) (b) and (d), thus requiring no examination.

12. The remaining condition in clause (c) of section 16(2) makes payment of tax charged in any supply transaction mandatory for the recipient to be entitled to take credit of such input tax. While putting such a strong condition, the said clause is made subjected the

provisions of section 41. Therefore, for proper understanding of the scheme, examination of section 41 is necessary.

13. Section 41 has been amended in the meanwhile, and prior to the amendment the said section 41 reads as follows: -

"(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

(2) The credit referred to in sub-section (1) shall be utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section."

14. Section 41 entitles tax payers to take credit of eligible input tax as per self -assessment in the return with further mandate for crediting such self-assessed input tax in the return to his electronic credit ledger. While creating such entitlement, section 41 expressly makes it provisional and subjected to some conditions and restrictions. This implies that, credit of input tax allowed under section 41 of the Act is merely provisional and not free from the statutory conditions and restrictions. On conjoint reading of the provisions of section 16 (2) (c) and section 41m, it is made amply clear that while tax payer is allowed under section 41 to take credit of input tax paid on any inward supply, such credit is provisional and not absolute. Such credit is also subjected to the statutory conditions and restrictions. Thus, taking shelter of section 41 the appellant cannot skip the statutory conditions put in clause (a) (b) (c) and (d) of section 16 (2) of the Act including the primary condition in section 16 (1) of the Act.

15. The statutory scheme for availing input tax credit continued in section 42 and 43 of the Act as well, which provide for matching, reversal and reclaim of input tax credit. For deciding the issue in question, the provisions in sub section (3), (5), (7), (8) and (9) of section 42 are relevant. The relevant portions of the said section 42 read as follows: -

"42. Matching, reversal and reclaim of input tax credit. -

(1) xxxxxxxx

(2) xxxxxxx

(3) Where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the same supply or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.

(4) xxxxxx

(5) The amount in respect of which any discrepancy is communicated under sub-section (3) and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the recipient, in such manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.

(6) xxxxxx

(7) The recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5), if the supplier declares the details of the invoice or debit note in his valid return within the time specified in sub-section (9) of section 39.

(8) A recipient in whose output tax liability any amount has been added under sub-section (5) or sub-section (6), ***shall be liable to pay interest at the rate specified under sub-section (1) of section 50*** *on the amount so added* ***from the date of availing of credit till the corresponding additions are made*** *under the said sub-sections.*

(9) Where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the recipient by crediting the amount in the corresponding head of his electronic cash ledger in such manner as may be prescribed: Provided that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the supplier.

(10) The amount reduced from the output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50."

16. On conjoint reading of section 41 and 42 of the Act, it transpires that, while section 41 allows tax payers to take credit of input tax provisionally without ensuring payment of tax paid to the suppliers, section 42 (5) mandates the recipients to add the amount of ITC not declared by the corresponding supplier to the output tax liability of the month specified in the said sub section. The mandate for adding the undeclared input tax (by the supplier) essentially implies refund of ITC availed against transactions which have not been declared by the corresponding suppliers. Here, the cause for refund of the undeclared ITC is simply failure on the part of the supplier to declare the transaction in the prescribed manner and not failure to pay tax. This scheme further stipulates in sub section 7 to reduce the output tax liability if the supplier declares the invoice in its valid return within the specified time i.e., before the due date for furnishing the return for the month of September or second quarter of the succeeding financial year. Thus, refund by way of enhancing output liability as mandated in sub section (3) above does not extinguish the entitlement fully, but rather suspends the entitlement up to the date the unpopulated invoices are declared by the corresponding suppliers.

17. Further, subsection (8) creates liability to pay interest at the rate specified in section 50 (1) of the Act on the amount refunded by way of enhancing the liability and such interest is to be calculated for the period commencing from the date of availing credit till the date of refund by way of addition to the output tax liability. Again, when a case for reduction in liability arises under subsection (9) due to uploading of unpopulated invoices by the supplier(s), there is a mandate for payment of interest to the recipient not exceeding the interest paid by the supplier due to delayed reporting of transactions

followed by delayed discharge of liability. Thus, the mandate in subsection (9) secures the entitlement of recipients to re-avail credit of input tax with interest on discharge of tax liability by the supplier.

18. The scheme for recovery of interest under subsection (8) from the recipients and payment of interest under sub section (9), even though linked to non-disclosure and disclosure of the invoice details by the supplier, it essentially means and implies discharge of liability on the unreported transactions by the supplier. Indisputably, non-population of the invoice details in the portal is not a conclusive proof of tax having not been paid. But on holistic examination of the scheme of availing ITC under section 41 and reversal and reclaim of ITC under section 42 of the Act it transpires that, the statute recognises non-disclosure as non-payment tax and disclosure as payment of tax, and accordingly, the statutory provisions have been drafted providing for reversal of ITC (by enhancing the output tax liability) with interest in the event of non-disclosure of the invoice details by the supplier; and further allowing reclaim of ITC(by reducing the output tax liability) with interest, on subsequent disclosure of the invoice details by the supplier.

19. The analysis of section 41 and 42, as above, clarifies the question raised by the appellant questioning non-population of invoice details in GSTR 2A is not a proof of tax having not been paid by the supplier. Section 42 of the Act implicitly recognises non-disclosure of invoice details in the prescribed manner as non-payment of tax by the supplier and subsequent disclosure of the undisclosed invoices as payment of tax for which the statute mandates payment of interest by the supplier and refund of interest to the recipient. If it were not so, the statute would not have mandated for payment of interest and refund of interest to the recipient on non-discloser or disclosure of invoice details by the suppliers. Thus, the answer to the questioned raised by appellant is in affirmative. To make it clearer, as per the statutory scheme envisaged in section 42 of the Act, non-

disclosure of invoice details in the prescribed form and manner means and implies tax having not been paid.

20. The analysis of section 42(8) also clarifies the time period for computing the interest liability commencing from the date of availing credit to the date on which the amount is added to output liability on non-payment of tax by the supplier. In this case in hand, the appellant having not refunded in eligible ITC by way of enhancing the output liability, the period of interest is to be computed from the date ITC is availed, albeit ineligibly, till the date of payment of the demand. To make it clearer, Section 41 of the allows credit of self-assessed eligible input tax to the electronic credit ledger and self-assessment tool is provided in the periodical return. Thus, the date of availing the ineligible credit is day after the due date for filing the periodical return in which credit of input tax against the un-populated transaction was availed.

21. In this context, a supplementary question may be raised because of subsequent omission of section 42 and also because no exercise was undertaken for matching of invoices and communicating the discrepancy to the recipient. Admittedly section 42 envisaged matching of invoice and communicating the discrepancy to the recipient affording opportunity for rectification. Nevertheless, as revealed from OIO, summary level matching of ITC available vis-a-vis ITC availed has been done and the discrepancy noticed has been communicated to the appellant in the notice issued under section 61 of the Act on 19.02.2022 which was much before the proceeding under section 73 of the Act was initiated. The aforesaid scrutiny seems to have been undertaken long after the period specified in section 42 (7) and section 39(9) of the Act for availing ITC on account of delayed reporting of invoice details by the suppliers. The appellant seems to have failed to avail the opportunity so afforded to explain the discrepancy at that stage. Thus, to some extent, the mandatory requirement for communicating the unmatched ITC has been met through return scrutiny under section 61 of the Act.

22. The appellant seems to have wasted the opportunity to explain the tax payment position in respect of the un-populated transactions both at the adjudication stage as well as the first appeal stage. While participating in the hearing of the impugned appeal the appellant has submitted a reconciliation statement of the amount of ITC availed during the material year of 2020-21 where in it has been categorically admitted that the invoices covering ITC amounting to Rs 1,02,011.28 have not been uploaded in the GST portal by the corresponding suppliers. Even at stage, no credible effort seems to have been made to prove payment of tax by those defaulting suppliers for which, the impugned appeal has been decided reducing the tax demand to Rs 1,02,011.28 due to non-fulfilment of the condition in section 16(2)(c) of the Act. In view of such factual back-ground further opportunity by of remand is not justifiable.

23. From the legislative history of the Act it is seen that, section 42 was omitted in 2022, but while omitting section 42, section 41 was also amended incorporating the provisions for reversal of ITC provisionally availed with applicable interest, in the event of non-payment tax by the corresponding suppliers, and reclaim of ITC by re-availing the reversed amount to the extent paid by the supplier. In essence, the provisions of reversal and reclaim of ITC with interest under the amended section 41 is equivalent to the provisions of addition and reduction of output tax liability under section 42 of the Act. In either case, the core idea is to recover the ITC from the recipient which has not been paid by the supplier. In view of the basic statutory scheme of reversal and reclaim continuing in the amended section 41 of the Act, there is no breach or deviation from the core scheme due to subsequent omission of section 42. Nevertheless, the demand in dispute in the instant appeal relates to the financial year 2020-21 and hence the provision of section 42, as it stood then, would apply to the present appeal.

24. The next contentious issue is in relation to applicability of Rule 36 (4) in the matter of determination of interest liability. Rule 36 (4), as it stood during the relevant year 2020-21 reads as follows: -

"Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using the invoice furnishing facility shall not exceed 5 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility.

Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM GSTR-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.

Provided further that such condition shall apply cumulatively for the period April, May and June, 2021 and the return in FORM GSTR-3B for the tax period June, 2021 or quarter ending June, 2021, as the case may be, shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above."

25. Rule 36 (4), as above, simply puts a limit on availing provisional ITC in excess of the amount of ITC available in GSTR 2A. However, it does not validate or makes the amount of provisional ITC availed absolute. The amount of ITC availed provisionally continues to remain provisional, and is reversible under the erstwhile section 42 or under subsection (2) of the amended section 41 in the event of tax not paid by the supplier. Therefore, the additional leeway provided under rule 36(4) by way of

additional ITC within the specified limit does not validate the provisional ITC availed in the event of non-payment of tax by the supplier. In the result interest liability is due from the date the ITC is availed ineligibly to the date the amount is refunded by way of addition to the output liability or otherwise.

26. In the impugned OIA, interest has been computed on two accounts- first on the amount of tax demand confirmed by holding the unmatched ITC as ineligible and second on the amount of provisional ITC availed in excess of the limit set in rule 36(4). Levy of interest on the second account was clearly not contemplated in the SCN and thus outside the scope of both the original adjudication as well as the impugned appeal requiring deletion for being outside the scope of the original SCN. Again, interest on the tax demand upheld in the impugned appeal having not been computed strictly as per the mandate in section 42(8) requires remand to the Adjudicating Officer for fresh determination of interest liability strictly as per section 42 (8) of the Act.

27. For computation of the interest liability strictly as per section 42 (8) of the Act, invoice level matching is required so as to specify the invoices not populated in GSTR 2A, the date of receipt of the invoice and the amount of input tax involved in such invoices so as to determine the date from which the interest is due in respect of a specified invoice. For identifying and specifying the invoices not populated, the date of such invoice, and the input tax related to such invoice for determining the interest liability as per section 42 (8) of the Act remand is warranted.

28. On the question raised placing reliance upon section 75 (7) of the Act it is made clear that interest liability to be computed under section 42 (8) of the Act is mandatory and incidental to recovery of the ITC ineligibly availed. Therefore, whether or not levy of interest was proposed in the SCN, it cannot be separated from recovery of ineligible ITC in view of the mandate for such recovery along with the amount of ineligible ITC availed by the recipient. Besides the mandate in section 42 is for the recipient availing

ITC ineligibly to pay back the ITC with interest as per section 42(8) of the Act. In view of such statutory provision mandating recovery of the ineligible ITC with interest computed strictly as per section 42 (8), the correct approach would be to compute the interest liability strictly as per section 42(8) of the Act.

29. In view of the discussion above, the following orders are hereby passed:

(i) amount of tax demand upheld in the impugned appeal order is hereby confirmed;

(ii) the order relating to computation of the interest liability is set aside and remanded back for fresh computation strictly as per section 42 (8) of the Act after identifying and specifying the invoices not populated in the GST portal.

(iii) Amount of interest levied placing reliance upon Rule 36(4) is hereby deleted since such levy was not contemplated in the SCN issued under Section 73.

The appeal is disposed of accordingly.

No order as to costs.

The judgement is pronounced in the open Court on 08-10-2026.

(Suchismita Misra)

(Ananda Satpathy)

Dated: 08.10.2026