GSTAT

State Bench Bengaluru

Division Bench Court No. Court III

APL/43/BUR/2026

NAGAMANGALAMURTHY GANESH KUMAR **.....Appellant**

Versus

M G AUTOMOBILES SALES & SERVICE, KARTA OF HUF, HOUSE NO 177 PATEL NAGAR 2ND CROSS BALLARI KABAL 583101 **.....Respondent**

Quorum

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

Counsel for Appellant
SHRI PRABHAT KUMAR, AC (AR)

Counsel for Respondent
SHRI RAJESH, CA

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. : ZN570171026000031H **Date of order :** 08/10/2026

1.	GSTIN/Temporary ID/UIN -	
2.	Appeal Case Reference no. - APL/43/BUR/2026	Date - 08/05/2026
3.	Name of the appellant - NAGAMANGALAMURTHY GANESH KUMAR , ganeshkn.c028801@gov.in , 9448827072	
4.	Name of the respondant - 1. M G AUTOMOBILES SALES & SERVICE , mgautomobiles@yahoo.co.in , 9845317658	
5.	Order appealed against -	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - BGM-JJ-ADC-42-2024-25-GST	Date - 30/09/2024
6.	Personal Hearing - 08/10/2026 10/09/2026	

7.	Status of Order under Appeal - Reject - Order under Appeal is annulled
8.	Order in brief - The impugned period is first year of implementation of GST during which there was less clarity on various adjustments in the Returns and also there was no loss of revenue on account of the impugned adjustment as discussed above. Therefore, we think it proper and just to take a lenient view in this matter in accordance with the legal position discussed above. Considering the submissions made by the AR for the Appellant and the Respondent, analysing the Appeal papers, written submissions and records, we pass the following order: (i) The appeal is dismissed (ii) No interference is called for in the Order passed by the First Appellate Authority to the extent of setting aside the order of Adjudicating Officer. (iii) The demand of tax, interest and penalty confirmed by the Assistant Commissioner Central Tax, Ballari Division vide Order no. BEL-EXCUS-000-BLY-DIV-AC-SRS-09/2023-24 AC-GST dated 30.06.2023 for the period July 2017 to March 2018 is set aside. (iv) There shall be no order as to costs.

Summary of Order

9.	If demand order then whether demand quantified: Yes

Section-I

Particulars	Central tax		State/UT tax		Integrated tax		Cess		Total	
	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount
1	2	3	4	5	6	7	8	9	10	11
(a) Tax	1115064		1115064		0		0		2230128	0
(b) Interest	0		0		0		0		0	0
(c) Penalty	111506		111506		0		0		223012	0
(d) Fees	0		0		0		0		0	0
(e) Others										0
(f) Refund	0		0		0		0		0	0

10.	For Other orders and Demand orders which are not quantified:	
Issues as raised by proper officer	Issues as determined by Appellate/Revisional authority	Order by GST Appellate Tribunal
Short or non-payment of tax	The Appellate Authority (OIA dated 30.09.2024) set aside the OIO. The Authority determined that the Taxpayer had paid the full amount of tax to the Government, though under the incorrect head (IGST). It held that because the error occurred in the early stages of GST (2017) , a "lenient view" was warranted. The Authority concluded that since the Government exchequer received the total tax due, there was "no net loss of revenue." It ruled that demanding the tax again would constitute "double taxation" and violate the principles of natural justice.	

Place :BENGALURU

Signature

Date : 08.10.2026

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/43/BUR/2026

Against the OIA No. BGM-JJ-ADC-42-2024-25-GST Dated 30.09.2024

COMMISSIONER OF CENTRAL GST, BENGALURU .....APPELLANT

Versus

M G AUTOMOBILES SALES AND SERVICES, BALLARY .....RESPONDENT

……

FINAL ORDER NO: Dated 8th October 2026

……

Represented by:

Shri Prabhat Kumar Asst Commissioner and DR , for the Appellant

Shri Rajesh Kumar T R Chartered Accountant AR for the Respondent

Per: PRABHAKARAN P M, Member (Judicial)

Introduction

1.0 The present appeal is preferred under sub-section (4) read with sub-section (3) of Section 112 of the Central Goods & Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act')/ Karnataka Goods and Services Act, 2017 (hereinafter referred to as the 'KGST Act') against the Order in Appeal No. BGM-JJ-ADC-42-2024-25-GST Dated 27.09.2026/30.09.2024 (Impugned OIA) passed by the Additional Commissioner (Appeals) Belagavi. The impugned order set aside the Adjudication Order passed by Assistant

Commissioner Ballari Division vide Order no. BEL-EXCUS-000-BLY-DIV-AC-SRS-09/2023-24 AC-GST dated 30.06.2023.

2.0 The Appellant assails the impugned OIA on the grounds that it fails to appreciate Section 9 and Section 49 of the CGST Act, 2017, which mandate the deposit of tax under specific tax heads. Furthermore, the impugned OIA proceeds on an incorrect interpretation of the CBIC Circular No. 26/26/2017-GST dated 29.12.2017.

Brief Facts of the case

3.1 The Respondent is a partnership firm engaged in the business of sales and service of motor vehicles and its parts. They are situated in Ballari, Karnataka and registered under GST with GSTIN 29AACFM3427B1ZN.

3.2 During the course of audit on the records of the Respondent undertaken by the officers of Audit Circle, Ballari, for the period July 2017 to March 2018 it was observed that they have paid tax attributed to credit notes received for the months of September-2017, October-2017 and November-2017 in GSTR 3B of respective months instead of reversing ITC as below:

Tax paid for credit notes received	Taxable Value	CGST	SGST	IGST
September 2017	667567			186919
October 2017	363456	4200	4200	93368
November 2017	9458873	349344	349344	1949797
Total	10489896	353544	353544	2230083

3.3 In December 2017, the Respondent has reduced their liability in GSTR 1 and GSTR 3B on account of the tax paid for credit notes for September-2017, October-2017 and November-2017. Further the Respondent had reversed ITC towards the above mentioned credit notes.

However, while reducing the output tax liability they have reduced liability in CGST and SGST payable instead of IGST, as below:

	Taxable Value	CGST	SGST	IGST	Total Tax
Tax payable as per sale register	60258671	8376404	8376404	4436	16757244
Less tax reduced/ excess paid in Sep-17, Oct-17, Nov-17	10489896	353544	353544	2230083	2937171
Tax payable	49768775	8022860	8022860	(-)2225647	13820073
Tax declared in GSTR 1 and paid in GSTR 3B	49767972	6907796	6907796	4436	13820028
Balance tax payable and adjusted		1115064	1115064		

3.4 The excess amount of IGST of Rs 22,30,083/- was stated to be utilised against the liability of CGST of Rs 11,15,064 and SGST Rs 11,15,064 for the month of Dec 2017.

3.5 A Show cause notice was issued vide Sl.No.23/2022-Audit(AC) dated 06.05.2022 proposing to demand and recover an amount of Rs.22,30,083/- being the IGST input tax credit short paid from the Respondent under Section 73(1) of the CGST/KGST Act 2017 read with Section 20 of the IGST Act, 2017 along with interest under Section 50 of CGST/KGST Act, 2017 read with Section 20 of the IGST Act, 2017 and penalty under Section 73 of CGST/KGST Act, 2017 read with Section 20 of the IGST Act, 2017 (*as per para 11 of the notice*).

3.6 The taxpayer has replied to the Show Cause Notice vide his letter dated 16.09.2022 and contended that they have adjusted excess IGST against the payment of CGST and SGST which is in line with the decision of the Honourable Kerala High Court in the matter of Saji S Vs

Commissioner, State Tax department and therefore pleaded for dropping of the proposal to charge interest and levy penalty.

3.7 The Adjudicating Authority after hearing the Respondent passed the Order -in -Original no. BEL-EXCUS-000-BLY-DIV-AC-SRS-09/2023-24 AC-GST dated 30.06.2023 and confirmed an amount of Rs. 22,30,128/- (CGST of Rs. 11,15,064/- and SGST Rs. 11,15,064/), (as against the proposed demand of short payment of IGST of Rs 22,30,083/-, The amount confirmed is Rs 45 more than the amount proposed in the notice) under Section 73(1) along with interest and penalty under Section 50 and 73(9) of the Act. The Order relied on the procedure prescribed in the CBIC Circular No. 26/26/2017-GST dated 29.12.2017. Although the order found the Respondent in violation of Section 9 of the CGST Act and Section 5 of the IGST Act, it held that neither Section 19(1) of the IGST Act nor Section 77(2) of the CGST Act, 2017 applies to this matter.

3.8 The Respondent preferred an appeal before the First Appellate Authority against the Order of the Adjudicating Authority. The Appellate Authority passed the impugned order and set aside the order passed by the Adjudicating authority mainly on the following grounds:

(i) While making the reversal of ITC for the months Sept- Nov 2017 and setting right the excess Output tax through GSTR 3B filed in the month of Dec 2017 the excess paid IGST of Rs.22,30,083/- could not be reduced. Accordingly, the Respondent adjusted the said taxes from the CGST and SGST heads.

(ii) The Respondent receives ITC under IGST head predominantly and has outward liability predominantly under the CGST and SGST heads. Since their excess payment arose from having treated the credit notes received from their supplier to be outward tax liabilities, the tax excess paid under the IGST head was much more than their regular outward IGST liability in the tax period December 2017.

(iii) The Respondent had sufficient credit balance in their IGST credit ledger to discharge the abovesaid liability of tax. Even the outward liabilities of the four tax periods under all the three tax heads, including the excess payments made in September to November, have been discharged largely by utilizing their ITC under the IGST head. The said excess payments of September to November 2017 were declared only in their GSTR-3B returns and not in their corresponding GSTR-I returns.

(iv) As per the section 39, the adjustment done by the Respondent on their own ascertainment in the GSTR-3B return of December 2017 is permissible.

(v) The CBIC Circular No. 26/26/2017- GST dated 29.12.2017 did not state that the adjustment should have been done only under the respective tax heads.

(vi) There was no net loss of revenue to the exchequer on account of this adjustment.

(vii) Since there were a lot of changes that the taxpayers were coping with in the initial periods of introduction of GST, demanding payment of the taxes again under the CGST and SGST heads, in addition to the excess paid tax under IGST head, would unjustly burden the Respondent with payment of tax, when the tax had already been paid once.

3.9 The impugned order that was prejudiced to the interest of the Revenue is reviewed by the Principal Commissioner Belagavi GST & CE Commissionerate under sub-section (3) of the Section 112 of the Act Order-in Appeal No. BGM-JJ-ADC-42- 2024-25-GST Dated 30.09.2024 passed by the Additional Commissioner (Appeal), Belagavi, is not proper and legal and passed the Order in Review in F.No. GEXCOM/REV/GST/OIA/ 1604/2025-Rev-O/o COMMR-CGST-BELAGAVI dated 25.03.2025 with a direction to be file appeal before the Appellant Tribunal against the said Order-in-Appeal with a prayer to set aside the Order-in -

Appeal No. BGM-JJ-ADC-42-2024-25-GST Dated 30.09.2024 passed by the Additional Commissioner (Appeals) Belagavi.

3.10 Accordingly, the present Appeal is filed by the Appellant Department.

4.0 Shri Sampath Kumar Assistant Commissioner appeared as Authorised Representative for the Appellant Department and Shri Rajesh Kumar T R Chartered Accountant appeared virtually on behalf of the Respondent.

Submissions by the Appellant:

4.1 The Ld Assistant Commissioner AR appeared for the Appellant and submitted as follows:

4.2 Order-in Appeal No. BGM-JJ-ADC-42-2024-25-GST Dated 30.09.2024 passed by the Additional Commissioner (Appeal), Belagavi, is not proper and legal. The Respondent had wrongly availed the input tax credit for adjustment in CGST and SGST instead of IGST. The OIA failed to apply Section 9 and Section 49, which mandate payment in specific heads. There is no provision in the CGST Act allowing a taxpayer to "offset" IGST overpayment against CGST/SGST liability via GSTR-3B. The Circular 26/26/2017 allows adjustments within the same head in future months, not across different heads. As per Section 54, the only remedy for overpayment is a refund claim, which the Taxpayer failed to file. Interest under Section 50 is a statutory attachment for any short payment, regardless of the intent of the taxpayer or overpayment elsewhere.

Submissions by the Respondent:

5.0 The Ld Authorised Representative appeared on behalf of the Respondent submits as follows:

5.1 In the months of Sept-2017, Oct-2017 & Nov-2017, instead of reversing corresponding Input Tax Credit, the respondent had added to the tax liability and paid the same as output tax. The output tax was essentially paid using Input Tax Credit out of credit ledger (not by Cash ledger). In the month of December 2017, having realised the error in reporting of the said reversal as tax liability, to correct the same, in Dec-17 returns filing, the respondent reduced his liability in the return and paid the net balance. The excess payment of tax under IGST of Rs. 22,30,083/- was adjusted towards the liability of CGST of Rs. 11,15,064/-and SGST of Rs. 11,15,064/-.

5.2 Looking at the overall liabilities for the entire financial year 2017-18 the adjustment of excess taxes paid during the months from Sep-17 to Nov 17 would get adjusted in subsequent months upto March in totality as the total liability especially in the month of March 2018 under IGST was Rs. 1,04,84,872/-.

5.3 From the above, it could be seen that, the adjustment carried out by the Respondent in the GSTR-3B return of December 2017 was precisely the mechanism prescribed by the CBIC vide Circular No. 26/26/2017-GST dated 29.12.2017, which clarified in para 4 that since FORM GSTR-3B did not provide for reporting of differential figures pertaining to past months, corrections are to be given effect to on a net basis in the return of the month in which the error is noticed, and that the amount remaining for adjustment, if not fully absorbed, might be carried to the return(s) of subsequent month(s).

5.4 The Respondent's correction of the credit-note related error in the December 2017 return was permissible under the law. The proceeding looking only the December 2017 month in isolation was not proper.

5.5 Further the payments were being made by utilisation of ITC only (except for RCM liability). There is no violation of Section 49 which permits cross utilisation of IGST ITC towards payment of CGST and SGST.

6.0 A written submission instead of cross objection also was uploaded by the Respondent on 12.09.2026 and reiterated as follows:

a. Firstly all the payment of taxes were only utilising ITC and no cash payment.

b. Secondly, the system was allowing to set off the IGST ITC for payment of CGST and SGST liability, hence the intention of the law was to allow the IGST for payment of CGST and SGST.

c. Further, even with regard to deposit into Cash Ledger, the GSTN provided PMT-09 application to transfer the cash deposited from one head to another head.

d. This clearly shows the intention of the law is to allow the taxes deposited under one head can be adjusted to another head.

6.1 Therefore there is effectively no short payment of taxes, thereby there cannot be proceedings and demand under Section 73 of CGST/SGST Act, 2017

6.2 Response to the Written submission was submitted by the Appellant vide reply dated 23rd Sept 2026. The para wise reply is as below:

(i) It is undisputed that the Respondent had made payments under the IGST head during the earlier months and the taxpayer itself admitted that the amount of Rs 22,30,083/- was adjusted against CGST and SGST liability in December 2017. However, the existence of excess payment under the IGST head did not automatically amount to payment of the corresponding CGST and SGST liabilities. Thus, the relevant

question is whether such unilateral cross-head adjustment was permissible under the statutory mechanism.

(ii) In reply to the Respondent submission that there was no effective short payment because Rs 22,30,083/- had already reached the Government under the IGST head and, therefore, demanding CGST and SGST again would amount to recovering the same tax twice, it is replied that the excess IGST could not be adjusted against the CGST and SGST liability merely because the Respondent had excess payment under IGST. The proper course was to discharge the CGST /SGST liability and separately seek refund of the excess IGST in accordance with law.

(iii) The Respondent incorrectly equates utilisation of eligible Input Tax Credit as provides under Section 49 with adjustment of excess output tax already paid under one tax head. These are two distinct situations. The fact that eligible IGST ITC may be utilised towards CGST/SGST, subject to statutory conditions, does not create a general power to transfer or adjust an excess payment of IGST output tax against CGST/SGST liability.

(iv) The CBIC Circular No. 26/26/2017-GST dated 29.12.2017 referred by the Respondent cannot be read as conferring an unrestricted power to alter the statutory liability under one tax head by reducing liability under another tax head. It does not, by itself, authorise unilateral transfer of an excess IGST tax payment to the CGST and SGST heads.

(v) The fact that GST was newly implemented during the relevant period may explain the circumstances in which the error occurred, but it does not alter the statutory incidence of CGST, SGST and IGST or authorise an adjustment contrary to the prescribed mechanism.

(vi) The existence of a mechanism for transfer of eligible amounts lying in the electronic cash ledger through PMT-09 cannot be equated with a statutory mechanism for treating excess tax already discharged under the IGST head as payment of CGST/SGST liability.

(vii) Section 77 of the CGST Act and Section 19 of the IGST Act relied upon by the Respondent did not establish a right to unilaterally adjust an excess payment under one tax head against liability under another tax head.

(viii) The decisions Saji S. v. Commissioner of State Tax, Ocean E-Mart v. State of U.P. and Ayiswarya Polymers v. Assistant Commissioner of GST & Central Excise relied upon by the Respondent have to be examined with reference to their respective facts and statutory circumstances and cannot automatically be applied to validate the present unilateral adjustment. The specific question in the present appeal is whether the taxpayer was legally entitled to reduce CGST and SGST liability in its December 2017 GSTR-3B by the amount of excess IGST paid in earlier months.

(ix) The principle of revenue neutrality cannot by itself override the statutory mechanism for levy, collection, accounting and payment of CGST, SGST and IGST. Revenue neutrality may be a consideration in appropriate circumstances, but it cannot create a substantive entitlement to make an adjustment which is otherwise not authorised by the statutory return/payment mechanism.

(x) A subsequent or prospective IGST liability cannot automatically validate a past reduction of CGST/SGST liability. Tax liability was required to be correctly reported and discharged for the relevant tax period in accordance with law.

(xi) Once it was established that the CGST and SGST liabilities remained unpaid under the respective heads during the relevant period, the consequential liability to interest had to be determined in accordance with Section 50.

(xii) The penalty was consequential to the determination that the Respondent had short-paid CGST and SGST by adjusting the excess IGST payment against the wrong tax heads.

Analysis and decision:

7.1 We have heard both sides, perused through the relevant documents and applied our mind.

7.2 The main, issue here is whether Respondent is right in utilising the excess amount of IGST in a tax period could be utilised against the liability of CGST and SGST for the following tax period.

7.3 Before getting in to the analysis we would like to look at the notice issued and the adjudication orders. Para 3.1 refers to the Audit observation which reads:

*3.1 Hence as per the Section 9 of CGST Act, 2017 and Karnataka SGST Act, 2017 tax of **CGST Rs. 1115064/- and tax of Karnataka SGST Rs. 1115064/- is recoverable** in terms of Section 73 (1) of CGST Act, 2017 and Karnataka SGST Act, 2017 read with Section 19(1) of IGST Act, 2017 and Section 77 (2) of CGST Act, 2017 and Karnataka SGST Act, 2017.*

7.4 Para 11 of the notice reads as follows:

11. Therefore M/s. M.G.Automobiles Sales & Service, Patel Nagar, Anantapur Road, Ballari-583101, are required to show cause to the Assistant Commissioner of Central

Tax, Ballari Division, 3rd Floor, Sri Basava Arcade, G.S.M. Road, Gandhi Nagar, Ballari-583103 as to why as to why –

*i) **An amount of Rs.2230083/- being the IGST input tax credit short paid should** not be demanded and recovered from the taxable person under Section 73(1) of the CGST/KGST Act 2017 read with Section 20 of the IGST Act, 2017;*

7.5 Whereas the order of the Adjudicating authority considered the proposed demand as:

4. Therefore M/s. M. G. Automobiles Sales & Service, Patel Nagar, Anantapur Road, Ballari583101, was called upon to show cause to the Assistant Commissioner of Central Tax, O/o The Assistant Commissioner of Central Tax, Ballari Division, 3rd Floor, Sri Basava Arcade, G.S.M. Road, Gandhi Nagar, Ballari -583 103, as to why:

i) An amount of Rs. 22,30,128/-(CGST Rs. 11,15,064/- and SGST Rs. 11,15,064/-) short paid should not be demanded and recovered from the taxpayer under Section 73(1) of the CGST/KGST Act 2017 read with Section 20 of the IGST Act, 2017;

7.6 This shows that the show cause notice dated 18.08.2022 was issued very casually and result in to Order of the Adjudicating Authority dated 30.09.2024 at variance. This could have led in to a legal position that the adjudication order that goes beyond the demand proposed in the notice could be considered as erroneous. This issue has not been taken up by the Respondent at any stages. We therefore consider this mistake of the Department as an oversight while issuing the notice at the initial stages of GST, and therefore condoned.

7.7 We now look at the notice and the Order passed. The notice stated that '*it was observed that the taxable person has paid tax for credit notes received for the months of sep-17, oct-17 & nov-17 in GSTR 3B of respective months instead of reversing ITC*'. There was no legal support for this statement.

7.8 We have examined the provisions related to issue of credit notes and adjustment in the hands of the recipient of credit note during the period July 2017 to March 2018.

7.9 Section 34 of the Act deals with Credit and Debit notes, which stands during the year 2017-18 as follows:

> *34. Credit and debit notes.—*
>
> *(1) Where a tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient a credit notes containing such particulars as may be prescribed.*
>
> *(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:*
>
> ***Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person***.
>
> [Emphasis in bold]

7.10 Section 34 provides for reduction in output tax liability of the supplier subject to passing of the incidence of tax and interest on such supply on to any other person. There was no stipulation of reduction of tax in the hands of the receiver under the Act or rule during the relevant period.

7.11 Section 43(1), which was available in the Act during the period probably would have led to the reduction of ITC but never enforced. Section reads:

"43. (1) The details of every credit note relating to outward supply furnished by a registered person (hereafter in this section referred to as the "supplier") for a tax period shall, in such manner and within such time as may be prescribed, be matched— (a) with the corresponding reduction in the claim for input tax credit by the corresponding registered person (hereafter in this section referred to as the "recipient") in his valid return for the same tax period or any subsequent tax period; and (b) for duplication of claims for reduction in output tax liability."

7.12 The matching under Section 43 was never put into operation, because the returns GSTR-2 and GSTR-3 through which it was to work were kept in abeyance after the 23rd GST Council Meeting in November 2017 decided to suspend the filing of those Returns. The Finance Act, 2022 finally omitted the section with effect from 01.10.2022.

7.13 The First proviso to Section 34 stands amended by way of substitution with effect from 01.10.2025 to read:

Provided that no reduction in output tax liability of the supplier shall be permitted, if the–

*(i) input tax credit as is attributable to such a credit note, if availed, **has not been reversed by the recipient**, where such recipient is a registered person; or*

(ii) incidence of tax on such supply has been passed on to any other person, in other cases.

7.14 The mandatory requirement linking the supplier's output tax reduction directly to the recipient's compulsory reversal of Input Tax Credit (ITC) upon the issuance of a credit note officially came into effect on 1st October 2025 as introduced vide Section 126 of the Finance Act (No. 7) 2025 and operationalised through Notification No. 16/2025–Central Tax dated 17.09.2025. It means that during the period 2017-18 there was no mandatory provision under the GST law for reversal of Input Tax Credit by the recipient upon the issuance of a credit note

by the supplier. Rule 37, however, deals with the non-payment of value of such supply along with the tax payable thereon within 180 days from the date of issue of invoice.

7.15 The Rule as available for the year 2017-18 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.*
>
> *(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.*

[Emphasis supplied in bod]

7.16 Therefore during the period July 2017 to March 2018 in case a supplier issue credit note there was no provision under the Act or Rules to direct the recipient to reduce the input tax credit on account of such credit notes. Rule 37 however provides, 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 shall be liable to pay such amount equal to the input tax credit availed by the recipient by way of adding to his output tax liability along with applicable interest.

7.17 In the case on hand Respondent received Credit notes in the months of Sept-2017, Oct-2017 & Nov-2017. Initially they had added amount equivalent to the tax involved in the credit notes to the output tax liability and paid. In the month of December 2017, thinking that the payment through output tax liability was an error in their hand and reversed an amount equivalent to the tax involved in the credit notes received during from Sept-2017, Oct-2017 & Nov-2017 from the ITC available in Electronic credit Ledger. Consequently, they had accounted the tax paid during Sept-2017, Oct-2017 & Nov-2017 as excess payment tax in Dec-17. The Respondent made the adjustment of excess tax against the tax payable in Dec 2017 and reported the net as liability for the month and filed the GSTR 3B. While doing so the excess payment of tax under IGST of Rs. 22,30,083/- was adjusted towards the liability of CGST of Rs. 11,15,064/-and SGST of Rs. 11,15,064/- suomoto with seeking refund of the excess payment of tax under IGST.

7.18 According to the AR appearing on behalf of the Appellant, the excess amount of IGST of Rs 22, 30,083/-, which was utilised by the Respondent against the liability of CGST of Rs 11,15,064 and SGST Rs 11,15,064 for the month of Dec 2017 is contradictory to the clarification issued vide Circular 26/26/2017 and in violation of the provisions of Section 54

of the Act. On the contrary the Respondent while admitting the procedural error committed initially in not reversing the ITC attributable to the credit notes received but in having paid it as output tax equivalent to the value of credit note, subsequently, rectified the error by way of reversal of ITC and taking back the excess output tax paid. According to the Respondent the excess IGST accounted in the month of December 2017 was available for payment by way of settlement of CGST /SGST liability for the month of Dec 2017, which results in no impact on the overall tax payment.

7.19 We have analysed the above two contentions. It is clear from the fact that there was no quarrel on the reversal of ITC for the month of Sept 2017, Oct 2017 and Nov 2017 during the month of Dec 2017 soon after the Respondent noticed the procedural mistake, according to them. There was also no quarrel on the availability of excess CGST of Rs 3,53,544/-, SGST of Rs 3,53,544/- and IGST of Rs 22,30,083/- for the said period. The excess CGST and SGST was utilised against the output tax liability for the month of Dec 2017. There is no contention by the Respondent on this adjustment also.

7.20 It is clear from the fact that the Respondent though had excess IGST of Rs 22,30,083/- for Dec 2017, there was no sufficient output tax liability under the IGST head, and also there was no column provided in Form GSTR 3B to account it as carried forward. The alternative option is to claim the excess tax paid as refund under Section 54 of the Act or keep the account of the such excess tax paid outside the returns and adjust it against liability in the subsequent GSTR 3B returns.

7.21 CBIC issued a Circular No. 26/26/2017-GST dated 29.12.2017, which interalia clarified the aspects of amendment of errors in submitting / filing of FORM GSTR-3B. Para 4 of the Circular reads thus:

4. It is clarified that as return in FORM GSTR-3B do not contain provisions for reporting of differential figures for past month(s), the said figures may be reported on net basis alongwith the values for current month itself in appropriate tables i.e. Table No. 3.1, 3.2, 4 and 5, as the case may be. It may be noted that ***while making adjustment in the output tax liability or input tax credit, there can be no negative entries in the FORM GSTR-3B. The amount remaining for adjustment, if any, may be adjusted in the return(s) in FORM GSTR-3B of subsequent month(s) and, in cases where such adjustment is not feasible, refund may be claimed. Where adjustments have been made in FORM GSTR3B of multiple months, corresponding adjustments in FORM GSTR1 should also preferably be made in the corresponding months.***

[Emphasis supplied]

7.22 Two aspects are clear from the above clarification. (i) FORM GSTR-3B do not contain provisions for reporting of differential figures for past month(s) and (ii) the differential figures should be reported on net basis alongwith the values for current month itself in appropriate tables of GSTR 3B. This means that in Form GSTR 3B being a summary Form for purpose of Monthly Return to be filed under Section 39 of the Act, the numbers in different columns have to be filled after making necessary adjustment and computation outside the Form. Obviously therefore, the backend working may not appear in the Form GSTR 3B as such. The backend working and numbers declared in GSTR 3B for the month Dec 2017 as submitted by the Respondent and as not disputed by the Appellant is as follows:

Particulars	Taxable value	CGST	SGST	IGST	Total
Tax payable as per Sales Register Dec 17	60258671	8376404	8376404	4436	16757244
Less Tax excess paid in Sept-17, Oct-17& Nov 2017	10489896	353544	353544	2230083	2937171
Tax payable	49768775	8022860	8022860	-2225647	13820073

Less Excess IGST utilised for payment of CGST and SGST		1115064	1115064		2230128*
Tax declared in GSTR 1 and paid in GSTR 3B	49767972	6907796	6907796	4436	13820028

[*The CGST and SGST reductions (Rs 22,30,128/-) exceed the IGST excess adjusted (Rs 22,30,083/-) by Rs 45.]

7.23 The above table indicates that the Respondent had indeed reported the GSTR 1 and GSTR 3B numbers by indicating only the balance number after adjusting the excess CGST, SGST and IGST as clarified in Para 4 of CBIC Circular No. 26/26/2017-GST dated 29.12.2017.

7.24 The only question remains is whether the Respondent is right in utilising the excess IGST available for payment of output tax of CGST and SGST.

7.25 It is the submission of the Appellant that the Respondent, instead of utilising the excess IGST paid and available at the end of a Month for payment of CGST or SGST for that month, would have opted either for adjustment against IGST in the subsequent months or refund under Section 54 of the Act.

7.26 At this point Section 54 of the Act deals with refund is referred. The relevant part of the Section reads thus:

> *Section 54: Refund of Tax.*
>
> *(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed :*
>
> ……
>
> *(4) The application shall be accompanied by-*

(a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

(b) such documentary or other evidence (including the documents referred to in section 33 as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

……..

(5) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in section 57.

……..

(8) ***Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to-***

(a) …….;

(b) …….;

(c) …….;

(d) …….;

(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

[Emphasis supplied]

7.27 It is also imperative to examine the Rule 92 of the CGST Rules that prescribe the method of issuing the order sanctioning refund. Sub Rule 1A as inserted vide Notification no. 16/2020-CT dated 23.03.2020 is relevant here.

Rule 92. Order sanctioning refund.-

(1) …….

(1A)Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under sub-section (5) of section 54 of the Act is due and payable to the applicant, he shall make an order in FORM GST RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and ***the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue FORM GST PMT-03 recrediting the said amount as Input Tax Credit in electronic credit ledger.***

[Emphasis supplied]

7.28 It is also relevant to examine Sub section (4) and (5) of Section 49 of the Act which provides the procedure for utilisation of Input Tax Credit available in Electronic Credit Ledger.

Section 49. Payment of tax, interest, penalty and other amounts.-

(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.

(3) …… .

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and

Services Tax Act in such manner and subject to such conditions and restrictions within such time as may be prescribed.

(5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of-

(a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;

(b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;

(c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax.

[Emphasis supplied]

7.29 It is submitted by the Respondent that during the period July 2017 to March 2018 they have remitted their output tax liability only through the Input Tax Credit available in the Electronic Credit Ledger except for RCM liability.

7.30 The foregoing analysis indicates that if the Respondent claims a refund for the excess IGST originally discharged using the Electronic Credit Ledger, the refunded amount would ultimately be restored to their Electronic Credit Ledger as Input Tax Credit under IGST head in terms of Rule 92. Once amount of IGST is credited to Electronic Credit Ledger that would be available for the Respondent to be utilised towards payment of CGST and SGST as prescribed under Section 49 of the Act.

7.31 The other option available to the Respondent was to keep the excess payment of tax under IGST for adjustment against IGST during the subsequent tax period. In this regard we refer to the submission of the Respondent that they had substantial IGST liability in subsequent months, particularly Rs 1,04,84,872/- in the month of March 2018. Therefore, they could have

utilised the excess payment of tax under IGST reported in Dec 2017 against IGST output tax liability during 2017-18 itself.

7.32 The foregoing analysis indicates that had the Respondent claimed the refund for the excess IGST originally discharged using the Electronic Credit Ledger, the refunded amount would have ultimately be restored to their Electronic Credit Ledger as Input Tax Credit under IGST head in terms of Rule 92. Once amount of IGST is credited to Electronic Credit Ledger that would have been available for the Respondent to be utilised towards payment of CGST and SGST as prescribed under Section 49 of the Act. The only issue is that the Respondent had not followed the procedure for refund and re-credit. This procedural infraction indeed happened after two bonafide adjustment in the hands of Respondent.

7.33 The Respondent relied on the decision in the case of Saji S. v. Commissioner of State Tax, Ocean E-Mart v. State of U.P. and Ayiswarya Polymers v. Assistant Commissioner of GST & Central Excise to contend that payment under the wrong head should not result in a fresh tax demand where the tax has already been paid.

7.34 We find that the above referred judgements are not in support of the Respondent. In Saji S. v. Commissioner of State Tax 2018 (19) GSTL 385 (Ker), the issue raised out of detention of goods in transit due to a technical mistake where tax and penalty were remitted under SGST instead of IGST. The Honourable Kerala High Court held that tax paid under the wrong head by mistake can be transferred and adjusted to the correct head.

7.35 The principle laid out in the decision that 'an assessee should not suffer due to administrative delays or technical misclassifications when there is no loss of revenue' however, may support the Respondent in this case.

7.36 In Ocean E-Mart v. State of U.P. Writ Tax No. 1358 of 2025, the petitioner mistakenly deposited tax under CGST and SGST instead of IGST, and the tax department raised a demand

for non-payment of IGST without adjusting the wrong-head deposits. The Honourable Allahabad High Court set aside the demand orders, ruled that paying under the wrong head does not mean tax evasion, and directed authorities to adjust the amount or grant a refund under Section 77 of the CGST Act.

7.37 In Ayiswarya Polymers v. Assistant Commissioner of GST & Central Excise W.P. No. 22814 of 2026 the Honourable Madras High Court considered an issue requirements of a waiver under Section 128A of the Act, wherein the Petitioner deposited the money under IGST instead of CGST/SGST. It was held that it was a curable procedural lapse, not a substantive default and set aside the rejection of the petitioner's waiver application and remanded the matter back for fresh consideration with an option to rectify the head-wise accounting.

7.38 The present case is not of wrong payment of CGST and SGST as against of IGST. It is the case of utilisation of excess IGST against CGST and SGST. Therefore, the above case laws may not have direct application in this case.

7.39 We further noticed that the initial payment of tax and subsequent reversal of ITC shows the bonafide act of the Respondent. The procedure followed by the Respondent in respect of utilisation of excess IGST against the liability of CGST and SGST for the month Dec 2017 did not lead to any revenue loss but of procedural infraction.

7.40 The High Court of Karnataka in M/s Orient Traders v. Deputy Commissioner of Commercial Taxes – 2023-VIL-46-KAR (W.P. No. 2911 of 2022, decided on 16.12.2022) held that bona fide and inadvertent errors deserve a lenient view, particularly since the tax periods related to the very first year of GST implementation.

> "*A perusal of the same makes it apparent that ITC, which is admittedly available to the petitioner has been entered under the wrong column; the material on record also discloses that the said errors are entirely bona fide and inadvertent and that a lenient*

view is required to be taken, particularly since the tax periods involved relate to the very first year of the GST regime." (Para 8 of the judgment)

7.41 The adjustment for the present was done suo motu by the Respondent immediately after noticing the excess payment, within the permissible period of adjustment. However, the subsequent adjustment was procedurally wrong, which was noticed only when the notice was received from the Department, leaving the Respondent with no choice.

7.42 Section 39 provides for furnishing of returns under which it is clearly provided that a return is required to be furnished electronically indicating the inward and outward supplies of goods and services or both, input tax credit availed, tax payable, tax paid or such other particulars in such form and manner, and within such time, as may be prescribed. Sub-section (9) although provides for rectification of any omission or incorrect particulars, the proviso therein precludes the assessee from any such rectification or omission or incorrect particulars being allowed after the due date for furnishing the return for the month of September following the end of financial year to which such details pertain (the date was changed to the 30th day of November with effect from 01.10.2022), or the actual date of furnishing of relevant annual return, whichever is earlier. Subsection (10) bars the furnishing of a return for a tax period where the registered person has not furnished the return for one or more previous tax period or has not furnished the details of outward supplies as per sub- section (1) of section 37 in the said tax period, subject to a proviso allowing the Government to relax this.

7.43 The GST regime as contemplated under the GST Law unlike the prior regime, has evolved a scheme which is largely based on the electronic domain. The diversity, in which the assessees in our country function, with the limited expertise and resources they would have, likely to face inadvertent and bonafide human errors, in adopting themselves to the new regime.

7.44 The impugned period is first year of implementation of GST during which there was less clarity on various adjustments in the Returns and also there was no loss of revenue on account of the impugned adjustment as discussed above. Therefore, we think it proper and just to take a lenient view in this matter in accordance with the legal position discussed above.

8.0 Considering the submissions made by the AR for the Appellant and the Respondent, analysing the Appeal papers, written submissions and records, we pass the following order:

(i) The appeal is dismissed

(ii) No interference is called for in the Order passed by the First Appellate Authority to the extent of setting aside the order of Adjudicating Officer.

(iii) The demand of tax, interest and penalty confirmed by the Assistant Commissioner Central Tax, Ballari Division vide Order no. BEL-EXCUS-000-BLY-DIV-AC-SRS-09/2023-24 AC-GST dated 30.06.2023 for the period July 2017 to March 2018 is set aside.

(iv) There shall be no order as to costs.

Order pronounced in the open court on 8th October 2026.

RAVI JESURAJ S **PRABHAKARAN P M**

Member Technical (State) **Member (Judicial)**

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