

GSTAT

State Bench Prayagraj

Division Bench Court No. I

APL/1/ALB/2026

NEELIMA GOENKA

.....Appellant

Versus

COMMISSIONER, COMMISSIONER STATE TAX,
COMMISSIONER STATE TAX LUCKNOW & ORS.

.....Respondent

Quorum

Hon'ble Mahtab Ahmad, Member(Judicial)
Hon'ble Ashish Varma, Member (Technical)

Counsel for Appellant
AJAY KUMAR YADAV

Counsel for Respondent
SMT. VIBHA MISHRA DC,
STATE TAX/ STATE
REPRESENTATIVE

SHRI SUNEEL KR NIRMAL AC
STATE TAX/STATE
REPRESENTATIVE

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. : ZA090411026000049H

Date of order: 14/10/2026

1.	GSTIN/Temporary ID/UIN - 09AFUPG5059E1Z4	
2.	Appeal Case Reference no. - APL/1/ALB/2026	Date - 03/01/2026

3.	Name of the appellant - NEELIMA GOENKA , shreekrishna121@rediffmail.com , 9450631937	
4.	Name of the respondent - 1. Shri Prakash Yadav Joint Commissioner(IT) State Tax Headquarters Lucknow , ctithqlu-up@nic.in , 7235002314 2. COMMISSIONER 3. Additional Commissioner Grade-II(Appeal)- First Sate Tax Prayagraj Uttar Pradesh 4. Commercial Tax Officer/State Tax Officer Sector-3	
5.	Order appealed against - AD0903210089248	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - ZD0907220326592	Date - 11/07/2022
6.	Personal Hearing - 14/10/2026 24/09/2026 25/08/2026 12/08/2026 23/07/2026 21/04/2026	
7.	Status of Order under Appeal - Reject - Order under Appeal is annulled	
8.	Order in brief - Impugned orders dated 22.12.2020 and 11.07.2022 are set aside. The demand Rs.1,92,866.00 (CGST Rs.68,881.00 interest Rs.20,664.00 and penalty Rs.6,888.00 and SGST Rs. Rs.68,881.00 interest Rs.20,664.00 and penalty Rs.6,888.00) under section 73 of the Act on the basis of mismatch in GSTR-3B and GSTR-2A of April, 2019 (FY. 2019-20) raised in Order-in-Original and confirmed by Order-in-Appeal is struck off.	
Summary of Order		
9.	If demand order then whether demand quantified: No	

Place :PRAYAGRAJ

Date : 14.10.2026

Mahtab Ahmad
Designation: Member (Judicial)
Jurisdiction :Prayagraj

Per Mahtab Ahmad (Judicial Member)

Judgement

The present appeal is filed by the taxpayer (hereinafter referred to as the appellant) against the judgement and order reference no ZD0907220326592 dated 11.07.2022 (hereinafter referred to as OIA) passed by the Appellate Authority/Additional Commissioner Grade-II (Appeal-1), Prayagraj Shri Hari Nath Singh in Appeal No AD0903210089248 (FY 2019-20) Smt. Neelima Goenka vs. Commercial Tax Commissioner, Sector-3, Prayagraj which was directed against the OIO no. ZD090720002631U dated 22.12.2020 u/s 73(9) of CGST/SGST Act 2017 (hereinafter referred to as the Act) by the Jurisdictional Proper Officer/Commercial Tax officer Prayagraj Sector-3 thereby, the learned proper officer has raised a demand of CGST Rs. 68,880.96, Interest Rs 20,664.00 and Penalty Rs. 6,888.00 and SGST Rs. 68,880.96, interest Rs. 20,664.00 and penalty Rs. 6,888.00 total Rs 1,92,865.92 against the appellant u/s 73 of the Act on the basis of mismatch of available ITC in GSTR 2A viz-a-viz ITC claimed in GSTR 3B resulted in wrong availment and utilization of ITC up to the tune of Rs. 1,37,761.92.

2. Facts of The Case:

As transpires from the records, necessary facts in brief are that the appellant is a registered dealer under GST law bearing GSTIN 09AFUPG5059E1Z4 and carrying her trading business in the name and style of M/s Shri Krishna Enterprises. The appellant had filed her GST returns

electronically on GST Portal regularly including for the period in question i.e. April 2019. The appellant had claimed in her GSTR-3B return of April 2019 a total ITC of Rs 1,62,818. (IGST Rs 1,30,952.00, CGST Rs. 15,933.00 and SGST Rs. 15,933.00) but in GSTR-2A of said month total available ITC to the appellant was Rs. 25,056.00 under IGST and nil under CGST and SGST heads. Upon noticing the above mismatch of ITC during scrutiny, the Proper officer issued a notice along with DRC-1 under Section 73 of the Act vide reference number ZD091220005788F dated 05.12.2020 on GST Portal fixing 14.12.2020 for reply with 'NA' in the columns meant for date, time and venue of hearing. As the appellant did not respond, a reminder notice was again issued fixing 22.12.2020 for date of reply. Since, no reply was received from appellant the proper officer proceeded with the case and raised the above demand u/s 73 of the Act. Being aggrieved by the said demand, the appellant preferred the aforesaid Appeal u/s 107(9) of the Act before the Appellate Authority, which was admitted and registered and a notice no. ZD090522035152R dated 12.05.2022 was issued fixing 21.05.2022 for hearing. Since the appellant did not turn up on the said date for hearing, the learned Appellate Authority appears to have proceeded ex-parte and dismissed the appeal by the impugned judgment and order dated 11.07.2022 observing that since the appellant did not turn up for hearing, she had nothing to say in the appeal and there appeared no infirmity in the order under appeal which is subject matter of challenge under the instant appeal by the appellant herein.

3. Appellant's Grounds of Challenge-

3(a)- The appellant's threshold challenge to the impugned OIA as well as the OIO is on these factual and legal premises that the ITC availed and utilized in GSTR-3B of month of April 2019 by the appellant was pertaining to the appellant's certain purchases/inward supplies of month of July, September, December and January of previous F.Y. 2018-2019 which could not inadvertently have been availed and utilized by her in GSTR-3B of the respective month of F.Y. 2018-2019. The appellant, furnishing the details of such purchases/inward supplies stated that in the month of July 2018 a purchase of taxable value RS.7,26,750.00 pertaining an ITC of Rs.1,30,815.00 had been made from M/s Nagpur Pyrolusite Pvt. Ltd, Nagpur bearing GSTIN No. 27AAACN9812C1ZN. In September 2018, the appellant had further got supply first, from M/s Sharma Enterprises, Jalandhar GSTIN No. 03AJOPS5211J1Z4 valuing Rs.760.00 bearing ITC Rs,137.00 and second, from M/s Lakshmi Abrasives Pvt. Ltd., Saharanpur bearing GSTIN 09AAACL2460Q1Z4 valuing Rs. 49,087.50 consisting of an ITC of Rs. 8,835.76 (SGST 4,417.88, CGST 4,417.88). In the month of December 2018 another inward supply of Rs. 95,250.00 involving ITC of Rs. 17,145.00 (CGST- 8,572.50 and SGST- 8,572.50) was received from M/s Abhimanyu Packagers, Prayagraj bearing GSTIN 09AAZFA8050F1Z1. The appellant also received testing services from Senior Quality Assurance Establishment General Store Kanpur bearing GSTIN No 09AAAGS0027C1ZR which issued two tax Invoices of Rs. 26,196.00 with tax component of Rs. 3,996.00. In January 2019, another supply of Rs. 500.00 was received bearing ITC of just Rs. 90.00 from Spectro Research Lab Ventures (P) Ltd., Kanpur, GSTIN 09AAJCS6897D1ZQ. Lastly, the appellant refers to an inward supply from Senior Quality Assurance Establishment General Store,

Kanpur with aforesaid GSTIN of Rs.10,000.00 bearing an ITC of Rs 1,800.00. Thus, the total ITC that were available to the appellant in respect of the above supply in F.Y 2018-2019 but claimed in the GSTR-3B of April, 2019 (F.Y. 2019-2020) are Rs. 1,30,815.00 + 137.00 + 8,835.76 + 17,145.00 + 3,996.00 + 90.00 + 1,800.00 = Rs.1,62,818.76. The appellant further clarified that on 30.04.2019, she made a purchase/inward supply of Rs. 1,39,200.00 pertaining to ITC of Rs. 25,056.00 from M/s Glow Packaging Pvt. Ltd., Delhi, GSTIN 07AABCG9718K1Z9 vide Tax Invoice No. 257 dated 30.04.2019. This purchase though auto-populated in GSTR-2A for the month of April 2019, however, the goods were received in the month of May 2019, therefore, the appellant claimed the aforesaid ITC in the month of June 2019. The learned Proper Officer, in the OIO, has drawn the conclusion against the appellant on the basis of alleged mismatch of ITC claimed in GSTR-3B and the ITC auto-populated in GSTR-2A that the appellant had availed and utilized excess ITC of Rs. 1,37,762.00 by deducting the ITC of Rs. 25,056.00 of the above transaction from the ITC Rs.1,62,818.76 claimed in GSTR-3B of April 2019 which is erroneous in the above backdrop. The appellant is legally entitled to avail and utilized the available but due to inadvertence, omitted to be availed and utilized the above ITC of F.Y. 2018-19, in the next F.Y. 2019-2020 up to the last date of filing the return of September 2019 or before filing of annual return of F.Y. 2018-2019 as per the provisions of Section 16(4) read with Section 39 (9) of the Act. Accordingly, the appellant had rightly claimed the aforesaid inadvertently left-over ITC of F.Y. 2018-2019 in the GSTR-3B for month of April 2019. Be it noted that the appellant provided the above details of her claimed of ITC in question in her appeal memo before the Appellate Authority along with

supporting document and reiterated the same in the appeal memo before this Appellate Tribunal Bench.

3(b)- We also notice that the same Proper Officer, apart from issuing notice under Section 73 of the Act on the ground of mismatch of the ITC in GSTR-2A and GSTR-3B of the month of April, 2019 to the appellant, had previously issued two notices under Section 61 of the Act for the same period for the month of April 2019 on the same ground of mismatch of the ITC in GSTR 2A and 3B of April, 2019. These notices are available on record as annexures of first appeal memo as Reference No. ZA091019005709E dated 23.10.2019 and Reference No. ZD090820028572E dated 31.08.2020 and both notices had been dropped by GST ASMT-12 Reference No. ZD090621011493N dated 17.06.2021 and GST ASMT-12 Reference No. ZD090621011509I dated 17.06.2021 respectively. It is noteworthy that no reply to these two notices is found to be submitted by the appellant but as transpires from ASMT-12 dated 17.06.2021, the said notices were dropped on the observation that the reply filed by the taxpayer was found satisfactory. The appellant on this basis, contended that when above notices were dropped as such, no reason was left for the Proper Officer to pass the OIO dated 22.12.2020 under Section 73 of the Act.

3(c)- The appellant has set-out in the memo of appeal another fact which relates to a development following the dismissal of the Appeal by the Appellate Authority by order dated 11.07.2022. The appellant states that the Proper Officer, on scrutiny of the returns of whole FY 2019-2020, had again issued to her a notice under Section 61 of the Act inter alia, on the basis of a mismatch of the ITC in GSTR-2A and 3B including the month of April, 2019. This notice

was uploaded in the tab of “Due Notices & Orders “which was responded by the appellant explaining the facts with evidences that certain ITC availed and utilized in GSTR-3B were related to certain inward purchases/supplies made by the appellant in the previous FY 2018-2019 but inadvertently could not be claimed in that FY 2018-19 and had been claimed in 2019-20 before 30th September 2019 under Section 16(4) read with Section 39(9) of the Act as it then stood. This notice under Section 61 has been dropped by the Proper Officer vide Order Reference no. ZD090524415573B dated 30.05.2024. This fact itself shows that what the ITCs the appellant had claimed in the GSTR-3B of month of April 2019 were unclaimed ITCs of previous FY2018-2019 which were legally availed and utilized by the appellant. Thus, demand raised vide OIO and confirmed in OIA is unsustainable.

3(d)- Apart from the above, the appellant raises some serious challenges to both the OIO as well as the OIA the subject matter of this appeal, alleging substantial violation of principles of natural justice. The appellant stated that both the Proper Officer as well as the Appellate Authority while sending the notices for reply/ hearing uploaded the same on GSTIN Portal in the Tab meant for “Additional Notices & Orders” instead of “Notices & Orders” Tab. The appellant is not expected to check every Tab on Portal to get known about or acknowledge the notices. Since the notices were not uploaded in the primary and right Tab meant for the “Notices & Orders”, appellant could not acknowledge them and come to know about the date of reply/hearing and resultantly could not participate in those proceeding. As such she was denied of the opportunity of hearing. This is against the principle of Audi Alteram Partem one of the key facets of doctrine of natural justice. In support, reference has been made to a

Division Bench decision of the Hon'ble High Court of Allahabad in Writ Tax No. 1882 of 2024 M/s Ashish Traders Vs State of U.P. & another (Neutral Citation No. 2024: AHC:173796 DB).

3(e)- The appellant's further contention is that in the notice dated 05.12.2020 under Section 73 of the Act and further in reminder notice dated 17.12.2020, no date of hearing was mentioned rather, the columns meant for date, time and place of hearing filled with 'NA' which is contrary to the provision of Section 75(4) of the Act. The mandate of this provision is that an opportunity of hearing must be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person. The appellant's absence and failure to file a reply in response to the notice on the dates of reply set out in the notice and reminder may result in closure of opportunity to file reply for the appellant but still he should be given an opportunity of hearing because an adverse order was proposed to be passed against her in the notice and has also been passed, which is mandatory under the second part of Section 75(4) of the Act and omission to do so before passing the OIO dated 22.12.2020 by the Proper Officer is not only a serious disregard of above provision of law but also a blatant violation of principles of natural justice which the said provision enshrines in and as such bad in law and unsustainable. In support, the appellant places reliance on a decision of the Hon'ble High Court of Allahabad passed in Writ Tax No. 333 of 2026 decided on 06.04.2026.

3(f)- The appellant also contends that the Appellate Authority did not pass the OIA on the dates fixed for hearing. It is true, on the dates fixed, the appellant was not present and the appellate authority appears to have proceeded ex-parte

while passing the impugned order but the order was not passed on the same date rather, the order was passed on the later date on 11.07.2022 without fixing the date and communicating the same to the appellant. Passing the orders in such a way without date and notice, again causes breach of the principle of natural justice and render the impugned orders bad in the eye of law as being violative of principle of natural justice. In support of the above contention references have been made to the decisions of the Hon'ble High Court of Allahabad in Writ Tax No. 243 of 2016 M/s Videocon D2h Ltd. Her vs State of U.P. And 3 others Neutral Citation No. 2016:AHC:51382-DB, Writ Tax No. 199 of 2024 M/s Shubham Steel Traders Vs State of UP and Another decided on 21.02.2024, Neutral Citation No. 2024:AHC:31108-DB and Writ Tax No. 4253 of 2025 M/s Mahesh Fashion Vs State of UP and 2 others decided on 15.09.2025, Neutral Citation No.2025:AHC:163127 DB.

3(g)- The appellant has also urged that the Appellate Authority even though, proceeded ex-parte against the appellant, was legally not permitted to pass an adjudication order without taking into consideration the grounds raised in appeal memo, the documents filed in support thereof and too without recording reasons thereof, however, he has passed the impugned order just making an observations that the appellant was absent so, she appeared not to say anything against the OIO which appears not to suffer from any infirmity. It is nothing but in the direct contravention of provisions of Section 107(12) of the Act. Which specifically provides that the order of appellate authority disposing of appeal shall be in writing and shall state the point of determination, the decision thereon and the reason for such decision. In fact, in view of said provision the appellate authority has passed a totally non-speaking order which is a nullity in law.

4. Revenue defenses-

The Revenue has filed no written reply/objection to the appeal in question by uploading the same on the GSTAT Portal, the reason for this failure stated to be inability on the part of SR (State Representative) to make excess on GSTAT Portal due to technical reason and lack of co-ordination. In fact, this issue came before us on the very first day of hearing on 23.07.2026. Therefore, the appeal was adjourned for enabling the Revenue to file its reply/objection, if any, by uploading the same on GSTAT Portal which was proposed to submit in hard copy at the time of hearing. Apart from giving opportunity to do so, the issue was also brought to the notice of Principal Secretary State, State Taxes Government of Uttar Pradesh and The Commissioner, State Taxes Lucknow UP by the Tribunal, with the direction to sort-out this problem on priority basis. Thereafter two further dates were afforded to the Revenue to upload its reply on GSTAT Portal. Even on the third date, one month time was afforded to her as the last opportunity at the request of the learned SR, however, up to last date of hearing and even after lapse of two months from the first date of hearing, there was no improvement in the situation. Hearing of appeals by the Tribunal cannot be halted due to inaction of Revenue Authority infinitely specially, when there was no clear-cut assurance by the Revenue that up to what specific timeline, the SR could file the desired reply/objection on the GSTAT Portal. Consequently, the opportunity to file reply on GSTAT Portal was closed for the Revenue and we proceeded to hear and decide the appeal on merit. However, on the request of the learned SR, and in the interest of fair and just decision of this appeal, we permitted the learned SR to submit Revenue's stand orally in respect of the appeal.

5. Oral Reply/Stand of Revenue-

5(a)- On behalf of Revenue, in her oral reply, the learned SR Smt. Vibha Mishra, assisted by learned ASR Sri Sunil Nirmal, submitted that it is not in dispute that on 05.12.2020 when the notice under Section 73 of the Act in form of GST DRC-01 was issued by Proper Officer, there existed a discrepancy between the ITC claimed in form GSTR 3B and the ITC reflected in GSTR-2A of April 2019. Accordingly, the proper officer issued the notice to the appellant fixing 14.12.2020 for reply through GST Portal. As on the said date, no reply was received a reminder notice dated 17.12.2020 was also issued fixing 22.12.2022 but again no reply was received. So, the Proper Officer proceeded to conclude the proceeding and passed the Order-in-Original (OIO) dated 22.12.2020 on the basis of said mismatch of ITC to the tune of Rs. 1,37,761.92 reversing the same. Accordingly, a demand of CGST+GST of the same amount along with interest and penalty total Rs.1,92,865.92 was raised. The OIO was passed on the date fixed i.e. 22.12.2020.

5(b)- On appellant failure to file reply and to appear and asking for hearing, the Proper Officer was well within law to proceed and decide the case. Since, the appellant neither submitted a reply nor sought an opportunity for personal hearing, therefore, fixing a future date for ex-parte hearing was not warranted. As such, there was sufficient compliance of the provision of Section 75(4) of the Act on the part of the Proper Officer while passing the OIO.

5(c)- The learned SR further submitted that when the notices are issued through portal, the portal itself generates SMS notification on the registered Mobile Number of the registered person/taxpayer which constitutes a proper

service in terms of section 169 of the act. The mere placement of notice in the “Additional Notice/Order” Tab on the portal does not make any difference regarding effectiveness of service of the notice on the taxpayer because the mechanism was in practice at that time period and well-known to the taxpayer.

5(d)- The learned SR has also submitted that it is true in the appeal memo before the Appellate Authority, the appellant tried to explain her stand regarding her claims of ITC in GSTR -3B of April 2019 with transactional details and supporting document namely, Tax invoices, e-Way bills, bilty and GSTR-2A containing invoice details also. However, appellant had not turned-up before the Appellate Authority on the fix date of hearing, in response to the notice uploaded on the GST Portal as per procedure and abstained to get verified his claim of ITC with the relevant documentary proof, therefore, the Appellate Authority has rightly concluded that the appellant was not willing to contest the appeal and there appeared no infirmity in the Order-in-Original without verifying the appellant claim himself on the basis of record which required appellant’s active participation. As such Order-in-Appeal is quite proper and just and complies with the provision of Section 107(12) of Act.

5(e)- The Appellate Authority has passed Order-in-Appeal on 11.07.2022 and not on 21.05.2022 the date of hearing as per notice. However, on the date of hearing i.e. 21.05.2022 the appellant was absent and the Appellate Authority appears to have proceeded ex-parte against the appellant and thereafter only final order was to be passed which needed no further date to be fixed. Accordingly, when the order was prepared on 11.07.2022 the same was passed. There is no mandate under law which requires the order to be passed on the date fixed. As

such in passing the OIA the Appellate Authority appears not to violate principles of natural justice.

6. Issues for Determination

Upon consideration on the rival submissions of the parties, the following questions of law and fact arise for determination in this Appeal: -

- i. Whether the ITC in a tune of Rs.1,62,818.76 pertaining to alleged inward purchase/supplies of FY 2018-19 was available to the appellant which was un-availed and unutilized in the said tax period? If yes, whether, the appellant was legally entitled to availed and utilized the same in the GSTR-3B of the April, 2019 (FY 2019-20)?
- ii. Whether the impugned Order-in-Appeal along with OIO are vitiated by violation of principles of natural justice as alleged by the appellant and consequently not sustainable in law?

7. We have heard the learned counsel for the appellant Shri Ajay Kumar Yadav, Adv. and the learned SR Smt. Vibha Mishra assisted by ASR Shri Sunil Nirmal representing the Revenue and perused the record.

The learned counsel for the appellant Sri Yadav has taken us through the memo of appeal as well as memo of appeal before the Appellate Authority and documentary evidences annexed herewith and reiterated the grounds raised in

aforesaid appeal of memos, referred to as the above. Per-contra, the learned SR for Revenue asserted her oral submission as referred to hereinabove.

8. Discussion

8(a)- It is not in dispute that there was a mismatch of ITC availed and utilized by the appellant in her GSTR-3B and the ITC auto-populated in GSTR-2A for the month of April 2019. In the GSTR-3B, ITC was claimed Rs.1,62,818.76 while in GSTR-2A, it was just Rs. 25,056.00. As such, there was deficiency of Rs. 1,37,762.00. The applicant's claim is that the whole ITC claimed in GSTR-3B of April, 2019 pertained to certain purchases/inward supplies of financial year 2018-19 which were inadvertently omitted to be claimed in the GSTR-3B of months of July, September, December 2018 and January 2019 when the purchases were made. In fact, the ITC of Rs.25,056.00 auto-populated in GSTR 2A of month of April 2019 (FY 2019-20) was related to a transaction that took place on 30.04.2019, the delivery thereof was received in month of May, 2019 and the appellant had claimed ITC of this transaction in his GSTR-3B of June 2019 and not in April, 2019. The appellant meticulously provided all details of those inward supplies with references to the suppliers, their GSTIN, month of supply and taxable value of the transactions and ITC, along with supporting documents namely tax invoices, e-Way bills, bilty and screenshot of GSTR 2A along with invoice details in the appeal memo before the first appellate authority and has also referred to it in the appeal memo before this Tribunal. As per appellant's claim, inward purchase having taxable value of Rs.7,26,750.00 bearing ITC Rs.1,30,815.00 had been received from M/s Nagpur Pyrolusite Pvt. Ltd., Nagpur bearing GSTIN 27AAACN9812C1ZN in July 2018. Upon perusal

of the record, we find that at pages 70 and 72 of memo of appeal, two tax invoices were available regarding this transaction having taxable value of Rs.7,26,750.00 and at pages 73 and 74 the corresponding e-Way bills and bilty. At pages 68 and 69, GSTR-2A of June of FY2018-19 with transaction details is also available. Although this transaction is not related to July 2018 but to June 2018, however, the details available in these papers leave no doubt that this is the transaction which the applicant states in appeal memo as transaction of month of July, 2018. In our considered view, it is just an inadvertent error in description and appellant's claim can very well be reconciled from these papers and only on the basis of said erroneous description regarding the month of receipt in appeal memo does not justify the denial of the ITC claim in respect of said purchase. Similarly, purchase from M/s Sharma Enterprises, Jalandhar bearing GSTIN 03AJOPS5211J1Z4 in the September, 2018 taxable value of Rs.760.00 bearing ITC Rs.137.00 is supported by tax invoice dated 11.09.2018 and GSTR-2A of September 2018 available at page no 64 and 63. The next purchase is from M/s Lakshmi Abrasives Pvt. Ltd., Saharanpur bearing GSTIN 09AAACL2460Q1Z4, with ITC of Rs.8,835.76 (SGST 4,417.88, CGST 4,417.88) is supported by a tax invoice dated 08.09.2018 and GSTR-2A of September, 2018 at pages 66 and 65. The purchase from M/s Abhimanyu Packagers, having a taxable value Rs. 95,250.00 bearing ITC Rs.17,145.00 (SGST 8,572.50, CGST 8,572.50) is also supported by tax invoice at page nos. 59-61 and GSTR-2A of September 2018 at page 68. The appellant has also received certain testing services from Senior Quality Assurance Establishment General Store Kanpur bearing GSTIN No 09AAAGS0027C1ZR in December under two invoices taxable value of Rs. 26,196.00 bearing ITC Rs 3,996.00 auto-populated with invoice details and

GSTIN of the said concerned in GSTR-2A of December (FY 2018-19) available at page 58. This concern also provided the appellant another service of taxable value of Rs.10,000.00 having ITC of Rs.18,00.00 in March 2019 which the appellant claimed in the April 2019, however, the bill of this transaction was raised in April 2019 which was found to be auto-populated in GSTR-2A of June 2019. The appellant has also received inward supply from Spectro Research Lab Venture Pvt Ltd. Kanpur in the form of a service of Rs. 500.00 which had ITC of Rs. 90.00 in January, 2019. We have also verified the total sum of these ITCs given in the appeal memo and find correct. As such, the appellant has successfully proved that all these inward purchases/supplies were genuine and received in FY 2018-19, however, ITC thereof inadvertently could not be claimed in the GSTR-3B of corresponding month of financial year 2018-19 and had been claimed in April, 2019 through GSTR-3B.

8(b)- The appellant has also brought on record as annexure of first appeal memo the invoice, e-way bill, billty and GSTR-2A of April, 2019 of an inward transaction having taxable value Rs 1,39,200.00 and ITC Rs 25,056.00 from M/s Glow packaging Pvt Ltd Delhi, which support appellant claims that the ITC auto-populated in GSTR-2A of April 2019 to the tune of Rs 25,056.00 was not the ITC she had claimed in April, 2019 but was claimed in GSTR-3B of June, 2019 because the supply of this consignment received in May, 2019. After deducting this amount of ITC of Rs. 25,056.00 from the ITC claimed by the applicant in GSTR-3B April, 2019 Rs.1,62,818.76 we find the amount of demand Rs.1,37,762.00 raised by the Proper officer in OIO dated 22.12.2020. Thus, it is proved that the ITC Rs.1,62,818.76 claimed by the appellant in her GSTR-3B of April, 2019 was exclusively related to the aforesaid purchases/inward supply by

the appellant in different months of F.Y. 2018-19 which were advertently omitted to the claimed in their respective month of the said F.Y. Year.

8(c)- Appellant's case is corroborated by the fact that in the financial year 2018-19 the appellant had excess and unutilized ITC of Rs. 3,67,216.51 after discharging her tax liability. In this regard, the applicant included in paragraph 16 of the appeal memo before the Tribunal the comparative GST Portal Chart of appellant tax liability as per GSTR-3B and the ITC available to her for FY 2018-19.

8(d)- As a new development after the appellate order was passed, the appellant has also brought this fact that on scrutiny of annual statement of 2019-20, the same Proper Officer had issued a notice under section 61 of the Act to the appellant regarding the issue of mismatch of ITC claimed in GSTR-3B and ITC auto-populated in GSTR 2A including month of April, 2019 and as per reconciliation. Since the said notice was uploaded in Notice and Order Tab of Portal, in response to which, the appellant has filed a detailed reply with supporting documents in response, and upon consideration of the said reply and the supporting documents, the Proper Officer has dropped the notice observing that appellant's reply was found satisfactory. The above assertion is supported by notice under section 61 of the Act dated 24.02.2024 reference number ZD090224241308I and order Reference no ZD090524415573B dated 30.05.2024, which are available on record at pages 95 to 105 memo of appeal.

8(e)- Now the question remains for consideration whether the appellant legally entitled to avail and utilize the above omitted ITC of FY.2018-19 in the GSTR-3B of April, 2019?

8(f)- From the foregoing discussion, it is evident that the appellant was subjected to reversal of ITC of Rs. 1,37,761.92 along with interest and penalty, totaling Rs.1,62,818.00 and accordingly, the impugned demand has been raised. The appellant asserts that in view of the provision of section 16(4) read with Section 39(9) of the Act, she is entitled to claim the said ITC of Rs.1,62,818.76/- pertaining to said inward purchases/supplies of FY-2018-19 in the GSTR 3B of April, 2019 (FY 2019-20). Now, it would be relevant to refer to the said provision of the Act (as they then stood), which are as under-

“16 (4)- A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing return under Section 39 for the month of September following the end of financial year to which such invoices or invoices to such debit note pertains or furnishing of the available annual return whichever is earlier”

39(9)- Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission are incorrect particulars therein, other than result of scrutiny, audit, inspection or enforcements activity by the tax authorities, he shall rectify such omission are incorrect particulars in the return to be furnished for the month or quarter during which such omission are incorrect particulars or notices, subject to the payment of interest rate

***Provided** that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter or the actual date of furnishing the date of relevant annual returns, whichever is earlier.”*

8(g)- From the above provisions of law, it is apparent that the appellant, being a registered person and taxpayer, is entitled to rectify omissions or incorrect particulars in the returns before the due date for furnishing of return for the month of September of following financial year provided that such omissions or incorrect particulars were not discovered, as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities. In this case, claims of the ITC in the GSTR-3B is carried out in the month of April, 2019 before any scrutiny, audit, inspection or enforcement activity by the tax authorities. Therefore, the appellant’s above claim/rectification of ITC is within the four corners of the provision of Section 39 (9) of the Act. It is also evident from the provision of Section 16(4) of the Act that the appellant was entitled to claim the input tax credit as claimed in the GSTR-3B of April, 2019 in respect of the omitted ITC claims in the return of respective months of financial year 2018-19 because the appellant made the said claim before due date of furnishing the return under Section 39 for the month of September of FY 2019-20.

8(h)- In the above legal position, only ITC mismatch in GSTR-3B and GSTR-2A of month of April cannot be a legal ground for reversal of the ITC. The CBIC vide press release dated 19.10.2018 expressly clarified that GSTR-2A is in the nature of taxpayer facilitation and does not impact ability of taxpayer to avail

ITC on self-assessment basis in consonance with the provision under Section 16 of the Act. It may be noted that the provision mandating furnishing of the details of invoices by the supplier in his statement of outward supplies and communicating such details to the recipient of such invoices in the manner specified under Section 37 of the Act as condition precedent for eligibility of ITC under section 16(2) (aa) was inserted into the Act with effect from 01.01.2022 and did not apply to the period under dispute. Since in the previous discussion we find that the ITC claimed by the appellant in GSTR-3B of April, 2019 is found fully verified on the basis from the details given in the memo of first appeal by the appellant and the documentary evidences produced in support thereof, the said mismatch of ITC in GSTR-2A and GSTR 3B ceases to be a basis for slapping the demand in question on the appellant, in view of the provision of Section 16(4) read with Section 39(9) of the Act.

8(i)- Thus, we hold that the ITC claimed by the appellant in GSTR-3B of April 2019 relates to certain specific purchases/inward supplies by the appellant in different months of the financial year 2018-19 which were inadvertently omitted to be claimed, availed and utilized in the corresponding GSTR-3B of financial year 2018-19 and the appellant is legally entitled to do so.

9. As far as issue of violation of principle of natural justice in passing the OIO date 22.12.2020 and OIA dated 11.07.2022 by both the authorities below are concerned, we notice that a systematics pattern of procedural inadequacies resulting in violation of principles of natural justice happened at both stages of adjudication which render the OIO passed by the Proper Officer and the Order-in-Appeal passed by the Appellate Authorities unsustainable in the eye of law.

9(a)- There is assertion on the part of appellant that notices were uploaded by both the Proper Officer and the Appellate Authority in “Additional Notices & Orders” Tab on the GST portal, a secondary less visible location rather than the primary Tab of “Notices & Order”. There is no contrary assertion in this regard by the SR in their oral submission before the Tribunal rather, she tried to explain that at that time, it was the common practice to upload the notices and order on the GST portal in “Additional Notices & Orders” Tab due to some technical reason and the registered persons/taxpayers were well known of this practice. When a notice is issued by the Revenue Authority by uploading on GST portal, a notification message about the notice is flashed on registered mobile number of the concerned registered person. As such, a registered person at that period of time, was also in position to respond the notices by excessing on GST portal in “Additional Notices & Orders” Tab. Therefore, appellant assertion about deficiency in service of notice on the above account is not acceptable. However, we find ourselves unable to accept this assertion of the Revenue. Because at first, there is no material to support this assertion and secondly, the Revenue does not dispute the existence of the primary tab specifically meant for Notices & Orders on the portal at that time. The Hon’ble High Court of Allahabad in Writ Tax No.1882 of 2024 M/s Ashish Traders vs. State of U.P. and another (Neutral Citation No.224:AHC:173796(DB) referring to a decision of a previous judgment of Division Bench in Writ Tax No. 855 of 2024 (Ola Fleet Technologies Pvt. Ltd. Vs. State of U.P. and 2 others decided on 22.07.2024) ruled that if section 73 GST show cause notice is placed only in the “Additional Notices & Orders” Tab of the portal rather being properly communicated, the

demand order is vulnerable and not unsustainable as being violative of principles of natural justice.

9(b)- In view of the above case law there is no doubt that service of the notices in the proceedings before both the authorities were not proper as the notices were uploaded in the “Additional Notices & Orders” Tab rather than in the primary Tab of “Notices & Orders” on the portal. In this situation, there is no reason to disbelieve the appellant version that even after getting notification regarding notices on her registered mobile phone, she was unable to know about the contents of notices and the date fixed for reply/hearing and it amounts to denial of opportunity of hearing based on well-known maxim “Audi Alteram Partem” which is one of the important facets of the principles of natural justice.

9(c)- It is also evident from the record that while issuing SCN under section 73 of the Act dated 05.12.2020 and its reminder dated 17.12.2020 the Proper Officer designated no date for a personal hearing, and the relevant columns in the notice proforma meant for time date and venue of hearing were marked with ‘NA’. This means that no opportunity of hearing was afforded to the appellant by the Proper Officer before passing the OIO in question.

9(d)- Section 75(4) of the Act provides as under: -

“75(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.”

9(e)- In this case, the notice under Section 73 of the Act and its reminder issued by the Proper Officer to the appellant itself contain proposal for reversal of ITC amounting Rs.1,37,762.00 along with interest with penalty mentioning date for reply but the column meant for date time and place of hearing indicate 'NA'. The appellant on the date of reply neither filed reply nor was present. It may be a reason for closure of her opportunity to reply but in view of the mandate contained in second part of Section 75(4) of the Act i.e. where any adverse decision contemplated against such person an opportunity of hearing must be granted, the Proper Officer was obliged to provide an opportunity of hearing to the appellant fixing a date of hearing. Since, no such opportunity of hearing was given to the appellant by the assessing officer before passing adverse order and consequential demands, the action taken by the Proper Officer is found in clear defiance of the said provision of section 75(4) of the Act which, in fact, incorporates the principles of natural justice. The Hon'ble High Court of Allahabad in Writ Tax No.333 of 2026 M/s Harpal Singh vs. State of U.P. and 2 other Neutral Citation No.2026:AHC:73253 referring to an earlier decision of a Division Bench of High Court of Allahabad in Writ Tax No.507 of 2026 M/s Anshika Associates through authorized representative Mr. Amit Nigam vs. State of U.P. through Principal Secretary, Institutional Finance and another decided on 02.04.2026 held that Section 75(4) of the GST Act incorporates the rules of natural justice which prescribes a dual requirement. First with respect to submission of written reply and the second with respect to oral hearing. Failure to avail one opportunity may not lead to denial of the other." The two tests have to be satisfied independently. Accordingly, the notice issued by the Proper Officer to the appellant, in which the columns meant for date, time and place for

hearing in the proforma notice were marked “NA”, was found violative of principles of natural justice and the assessment order along with demand has been quashed.

9(f)- It also transpires from the record that the Order-in-Original as well as the Order-in-Appeal were not passed by the concerned authorities on the date fixed for reply/hearing. In fact due to absence of the appellant on the date fixed both the authorities appear to proceed ex-parte but no order was passed on the said date rather, orders have been passed on a later date without fixing such a date and communicating the same to the appellant. Appellant’s contention is that since there is no date for passing the impugned order in the proceedings, the action of the authorities again cause breach of principles of natural justice and rendered the impugned order bad in law. On the other hand, learned SR on behalf of the revenue asserted that there is no obligation on the authorities to pass the order on the very date fixed for reply/hearing. However, it is not in dispute in both the proceedings before the authorities below that no date was fixed for passing the orders. It may be accepted that the order may be reserved for a later date from the date of reply/hearing after proceeding ex-parte due to appellant’s action but a date must be fixed so as the notice can approach to the forum with a request to afford an opportunity of hearing before passing the order. In absence of any date the notice certainly deprived of such an opportunity which is detrimental to his/her right of hearing and causes a breach of principle of natural of justice. This issue came before a Division Bench of Hon’ble High Court of Allahabad in Writ Tax No.199 of 2004 M/s Shubham Steel Traders vs. State of U.P. and another decided on 21.02.2024 Neutral Citation No.2024:AHC:31108-DB and held in unambiguous terms that passing the orders

on a date on which no date was fixed for any purpose amounts to denial of opportunity of hearing and against the principles of natural justice. The Division Bench in paras 10, 11 and 12 held as under: -

“10. Rules of natural justice ensure fairness in proceedings.

Once the authority had fixed the matter for hearing on 06.11.2023 it was incumbent on that authority either to pass the order or to fix another date and communicate the same to the petitioner. Communication of the other date was necessary as according to the assessing authority the petitioner failed to appear before it on the date fixed on 06.11.2023.

11. By not passing the order on 06.11.2023 and not communicating the next date fixed in the proceedings, the assessing authority forced the ex-parte nature of the order on the petitioner, by its own conduct.

12. In absence of any provision under the Act to allow for ex-parte proceedings to arise in such facts, we find that the breach of natural justice pressed by the petitioner is real.”

9(g)- Earlier in the VAT period also another Division Bench of the Hon’ble High Court of Allahabad in Writ Tax No.243 of 2016 M/s Videocon D2h Ltd. Her vs. State of U.P. and 3 others, decided on 16.03.2016 with reference to Section 25 of U.P. Vat Tax Act, held at page 5 of the judgment that in light of the aforesaid, we are of the opinion that procedure relating to granting adequate opportunity as provided under section 25 (1) of U.P. Vat Tax was not followed. A reasonable opportunity of being heard was not given. Proper inquiry was not

made and therefore, the ex-parte assessment order cannot be sustained. In this case, the Hon'ble Court also held that the order sheet shows that the petitioner did not appear on 15th February, 2016, but at the same time, we find that if on the second date the petitioner did not appear, the assessing authority had the option to proceed ex-parte or fix another date, which did not happen in the instant case. If the assessing officer proceeded ex-parte he could have fixed another date for ex-parte hearing or after recording the absence of petitioner could have proceeded ex-parte and passed an assessment order on that day itself, which did not happen in the instant case, therefore, any assessment order made on the next date i.e. on 16.02.2016 became erroneous, as no date was fixed for 16th February, 2016 for making an assessment. Such an assessment order, passed on 16th February, 2016 without due notice was apparently in gross violation of principles of natural justice.

9(h)- In view of the above decisions of the Hon'ble Allahabad High Court of Division Benches, both the Order-in-Original and Order-in-Appeal which were not passed on the date fixed in the notices/reminder but on a later dates that were not fixed, rendered the impugned order violative of principles of natural justice.

9(i)- Lastly, on perusal of Order-in-Appeal, it is apparent that when the appellant did not turn up for hearing on the date fixed in the notice, the Appellate Authority dismissed the appeal merely by observing that since appellant is absent, she did not appear to be interested to say anything against the Order-in-Original. On perusal of Order-in-Original no infirmity was found. The appellant has brought on record copy of memo of appeal before the Appellate Authority,

which shows that the appellant had fully explained the reasons of the said mismatch of ITC claimed in GSTR-3B and auto-populated GSTR-2A of April, 2019 and stated that the said mismatch was occurred because in the GSTR-3B, the appellant had claimed ITC amounting Rs.1,62,818.00 of purchases/inward supply by the appellant in FY 2018-19 which she could not advertently claimed in GSTR-3B of respective months of the FY 2018-19. She had also given a meticulous detail of such purchase and filed relevant documents i.e. tax invoices, E-bills, bilty and screen-shot of form-2A of relevant month along with invoice details. Even though, the appellant was not present on the fixed date of hearing but necessary averments along with supportive documents were available on the record and the Appellate Authority could effectively verify the appellant's claim, however, the Appellate Authority without considering the appellant's contentions and supporting evidence, proceeded on the assumption that since appellant was absent she has not to say anything against the Order-in-Original which, upon perusal, was found not to suffer from any infirmity. As such, he has passed an order devoid of proper reasoning and without taking into consideration the material available on record which was essential for a judicial or quasi-judicial ad-judication. Section 107(12) of the Act clearly mandates that the order of Appellate Authority disposing of the appeal shall be in writing and shall state the point of determination, the decision thereon and the reason for such decision. The decision of the Appellate Authority as referred to here-in-above left no iota of doubt to Bench that order passed by the Appellate Authority does not comply with mandate of section 107(12) of the Act. Passing a reasoned order is also one of the essential features of the principles of natural justice so that the parties to a

dispute can know the basis on which the order is passed in her favour or against. So here again the Appellate order suffers from vice and is unsustainable.

10. Findings

Upon consideration of the entire material available on record and the discussion as hereinabove, we record following findings on the aforesaid points of determination on facts and law involve as framed in this appeal.

10.1 The appellant held excess ITC to the tune of Rs. 1,62,818.76 (a portion of total excess ITC of Rs. 3,67,216.51 for FY. 2018-19) in the previous FY. 2018-19 relating to certain purchases/inward supplies mentioned in the appeal memo read with the first appeal memo which she could not inadvertently avail/utilize in GSTR-3B of the corresponding month or in the whole FY.2018-19 and she was legally entitled to avail and utilize the said amount of ITC of FY.2018-19 in GSTR-3B of April, 2018-19 in view of the provisions of section 16(4) r/w section 39(9) of the Act.

10.2 Both the Order-in-Original dated 22.12.2020 and Order-in-Appeal dated 11.07.2022 devoid of principles of natural justice on the aspects underlined in the discussion hereinabove and in violation of mandate of section 75(4) & 107(12) of the Act and unsustainable.

Now, it would be relevant to explain that apparently, in this case, no adjudication at the level of authorities below namely the Proper Officer and the appellate authority could be possible on merit and the orders of the authority below are ex-parte due to non-filing of reply and appellant' absence on the date fixed in the respective notices. The authorities below, however, are found to have

acted in blatant defiance of principles of natural justice and mandates of the provisions of law while passing the impugned orders. The appellant was not afforded real, meaningful and effective opportunity of being heard because the notices were uploaded in the secondary Tab of “**Additional Notices & Orders**” on the portal rather than on the Primary Tab meant for “**Notices & Orders**”. The Proper Officer passed the order dated 22.12.2020 in defiance of the mandate of Section 75(4) of the Act without affording any date of hearing in the notice and in its reminder. Both the authorities below did not pass the impugned orders on the date fixed rather the orders were passed on a later date without fixing a date and notice thereof to the appellant. The appellate authority had passed the impugned order without considering the appellant’s case set out in the appeal memo and documentary evidences of proof thereof and, as such, violated the provisions of section 107(12) of the Act. In such a situation, we have the option to remand the case to the authorities below for a fresh decision. However, it is found that the appellant has not only set out her entire case before the Appellate Authority in the memo of appeal but has also produced the supporting documentary evidences thereof and appeal could have been decided on its part on merit on the basis of the record, but unfortunately, due to the appellant’s absence on the date fixed for hearing in the notice as a consequence of insufficient service it proceeded to dispose of appeal with a cursory order ignoring the mandate of Section 107(12) of the Act. The appellant has filed as annexure of the appeal memo before this Tribunal not only the appeal memo of the first appeal but supportive documentary evidences regarding the case set-up therein. In these circumstances, at the appellate level, we are fully in a position to reconcile and assess the appellant’s case in effective, just and fair way as

evident from the whole discussion. The jurisdiction of this Bench of the Tribunal is not confined to adjudicating the issue of law involved in a case before it but also has jurisdiction to adjudicate the issues of fact involved in a case by assessing the material in the form of the pleadings of the parties and evidences in support thereof. As such, The Tribunal is an adjudicatory forum of law and fact both. This matter is pertaining to FY 2018-19, almost seven years ago. In our considered opinion, no useful purpose would be served by relegating the parties again to the lowest forum in such old matter, when a just, fair and effective adjudication can be ensured at this level. This would merely result in a wastage of time and money of the parties and the system. Therefore, instead of remanding back this matter on technical ground we opt to decide this matter once and for all.

In view of the above discussions and findings thereof the appeal deserves to be allowed. Accordingly, both the orders passed by the authorities below namely Order-in-Original Reference No. ZD090720002631U dated 22.12.2020 and Order-in Appeal Reference No. ZD0907220326592 dated 11.07.2022 are liable to be set-aside. Consequentially, the demand Rs.1,92,866.00 (CGST Rs. 68,881.00 interest Rs. 20,664.00 and penalty Rs. 6,888.00 and SGST Rs. Rs. 68,881.00 interest Rs. 20,664.00 and penalty Rs. 6,888.00) under section 73 of the Act on the basis of mismatch in GSTR-3B and GSTR-2A of April, 2019 (FY. 2019-20) raised in Order-in-Original and confirmed by Order-in-Appeal is liable struck off.

ORDER

1. The appeal no. APL/1/ALB/2026 is allowed. Accordingly, both the orders passed by the authorities below namely Order-in-Original Reference No. ZD090720002631U dated 22.12.2020 and Order-in-Appeal Reference No. ZD0907220326592 dated 11.07.2022 are set-aside. The demand Rs.1,92,866.00 (CGST Rs.68,881.00 interest Rs.20,664.00 and penalty Rs.6,888.00 and SGST Rs. Rs.68,881.00 interest Rs.20,664.00 and penalty Rs.6,888.00) under section 73 of the Act on the basis of mismatch in GSTR-3B and GSTR-2A of April, 2019 (FY. 2019-20) as raised in Order-in-Original and confirmed by Order-in-Appeal is struck off.
2. The amount, if any, deposited by the appellant in pursuance to the impugned proceedings shall be refunded to appellant in accordance with law, subject to verification of payment and statutory requirements.

Dated: October 14, 2026

(Ashish Varma)
Technical Member, GSTAT

(Mahtab Ahmad)
Judicial Member, GSTAT

The judgement is signed, dated and pronounced today in the open court.

Dated: October14, 2026

(Ashish Varma)
Technical Member, GSTAT

(Mahtab Ahmad)
Judicial Member, GSTAT