GOODS AND SERVICES TAX APPELLATE TRIBUNAL
ERNAKULAM BENCH
Division Bench :: Court No. I

APPEAL NO: APL/20/ERN/2026

[Arising out of OIA/JCEKM/2023/GSTA 213 dated 28/2/2026 passed by the Joint Commissioner (Appeals), SGST Department Ernakulam]

CHENNAMKUDIYIL TIMBERS, ERNAKULAM **.....Appellant**

Versus

THE COMMISSIONER OF STATE TAX, STATE GST DEPARTMENT, KERALAM STATE, THIRUVANANTHAPURM **.....Respondent**

for Appellant
Broono P D, Advocate

for Respondent
Anil Gopinath, AR

CORAM:
Hon'ble Shri Subramanya V Rayaprol, Vice President
Hon'ble Shri Ramamoorthi Sriram, Member (Technical)

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FINAL ORDER NO: 13/EKM/KERALAM/2026

Date of Hearing: 23-9-2026
Date of Order: 16-10-2026

Order per: Shri Ramamoorthi Sriram, Member (Technical)

1.0 The present Appeal (APL/ERN/20/2026) has been preferred by M/s Chennamkudiyil Timbers (GSTIN 32AVAPM9769K1Z2) (Appellant) against Order-in-Appeal No. OIA/JCEKM/2023/GSTA 213 dated 28/2/2026 passed by the Joint Commissioner (Appeals), SGST Department Ernakulam. (Appellate Authority).

2.0 Question of law to be decided:

2.1 Whether a notice under section 73 can be issued for short payment of tax when shortfall due to ineligible ITC is offset by an excess of output tax paid?

2.2 Is refund of excess paid output tax subject to the test of unjust enrichment?

3.0 Brief Facts of the Case:

3.1 On the basis of scrutiny of returns filed by the appellant for the year 2017-18, show cause notice was issued under section 73(1) of the KGST /CGST Act and later order in original was issued under section 73(9) of KGST / CGST Act confirming demand of tax, interest and penalty.

3.2 The appeal filed against the said order in original was rejected by the appellate authority.

Aggrieved by the impugned order in appeal, the appellant has filed this appeal before the Tribunal.

4.0 Grounds of Appeal / Submissions of the Appellant:

Shri PD Broono, learned counsel for the appellant made the following submissions.

4.1 The Appellant has not availed any excess ITC as per the GSTR 3B filed. Instead of reversal of output tax by declaring the debit note and credit note, they declared the tax involved as ITC credit due to ignorance. As such there is no tax liability in this case.

4.2 The allegation is that the claim of sales return to the tune of Rs. 3,55,206 is without any support documents. The appellant has produced the relevant Debit Notes and Credit Notes and the same was not accepted as the Debit Notes and Credit Notes were not declared in the GST portal.

4.3. The Proper Officer has not only disallowed the exemption claimed for sales return but also added back the tax amount again without any reason and authority.

4.4 The Appellant has paid an amount of Rs.99,449.20 in excess of what is due without any tax obligation as per GSTR 1 and as per the updated GSTR 2A, the excess input tax availed is only for an amount of Rs. 31,313 under the CGST and Rs. Rs. 31,313 under the SGST. As such the Appellant has made an excess payment in and hence there is no short-paid amount in this case.

5.0 Submissions of the Respondent /AR

Shri Anil Gopinath, learned AR urged the following submissions:

5.1 The Appellant's contention that excess payment of Outward Tax (OPT) in GSTR-3B (Rs. 99,449.20) should automatically offset the excess ITC claimed is legally untenable. Discharge of outward liability and availment of ITC are two distinct legal mechanisms under GST. Unilateral adjustment of excess output tax against invalid ITC without following the statutory refund process under Section 54 is impermissible.

5.2 Section 34(2) of the CGST Act mandates that any registered person who issues a credit note/debit note must declare the details in the return for the month during which such notes are issued. Physical possession of credit notes without portal declaration deprives the tax machinery of cross-verifying corresponding reversals in the recipient's ledger.

5.3 The Appellant cannot claim total exemption from statutory obligations under the guise of initial rollout or transitional confusion. While administrative relaxations were granted for specific return filing dates, core compliance rules governing credit notes were never waived.

5.4 The Joint Commissioner of State Tax Appeals rightly confirmed the assessment demand because the Appellant failed to prove ITC eligibility under Section 16. Simultaneously, the Appellate Authority issued a clear direction permitting the Appellant to file a formal refund application for any excess outward tax paid (Rs. 99,449.20).

5.5 Section 54 read with Section 57 mandates that any refund of excess tax paid must undergo scrutiny for unjust enrichment. Granting an automatic set-off in assessment proceedings would bypass the statutory mandate of verifying whether the tax burden was passed on to consumers

6 Discussions and Findings:

6.1 On perusal of the SCN and the OIO, we find that in the instant case, the proceedings arose on account of comparison of GSTR3B and GSTR2A for the year 2017-18. The OIO confirmed the following amounts as due:

a. An amount of Rs 62 628 (CGST + IGST) along with the interest due, on account of input tax credits not reflected in GSTR 2A
b. An amount of Rs 97458 (CGST + IGST) along with interest due, on account of debit notes which were not declared in the portal.
c. An amount of Rs 15873 (CGST) , Rs 15873 (SGST) and Rs122568 (IGST) on account of interest towards belated filing of tax.

6.2 We find that even as recorded in the order in appeal (para 3 & 4) the appellant had made elaborate submissions with respect to (i) setting-of of excess output tax remitted towards the excess input credit disallowed (ii) validity of the credit notes notwithstanding the fact they were not reflected in the GSTR 2A. (iii) non applicability of interest on late filing of returns.

6.3 However, we regret to note that these submissions running into five pages as recorded in the order in appeal were brusquely rejected in one line in paragraph 7 of the order in appeal which is reproduced as follows:

On a consideration of the entire matter it is found that the demand in this case can be confirmed, as there is no evidence in support of the disputed input tax credit claim.

We find that this cavalier approach to the case has resulted in an order, which to say the least, is non-speaking and has non application of mind writ large on the face of it. For this reason alone we find that the order in appeal is tainted by the vice of being arbitrary, non-speaking and lack of application of mind and has been passed in complete violation of all canons of natural justice. For this reason alone, the order in appeal deserves to set aside.

7. Be that as it may, mindful of the fact that this matter pertains to 2017-18, we proceed to decide the case on merits.

7.1 On the aspect of the demand of Rs 62628 on account of excess availment of ITC, we find that this demand has been countered by the appellant who has stated that

they have paid an amount of Rs.99,449.20 in excess of what is due without any tax obligation as per GSTR 1. As per the updated GSTR 2A, the excess input tax availed is only for an amount of Rs. 31,313 under the CGST and Rs. Rs. 31,313 under the SGST. As such the Appellant has paid excess and hence there is no short-paid amount in this case.

7.2 The above said facts are not in dispute as seen from the written submissions of the learned AR and the only contention of the Revenue is that discharge of outward liability and availment of ITC are two distinct legal mechanisms under GST. Unilateral adjustment of excess output tax against invalid ITC without following the statutory refund process under Section 54 is impermissible.

7.3 We find that in this case, even if the appellant has made a short payment to the extent of ITC disallowed, there is no reason why he cannot be allowed to set it off against the excess duty paid (a fact which is not in dispute). This does not violate any statutory provisions and in our view the appellate authority ought to have allowed this request of the appellant. Expecting the appellant to pay up the shortfall demanded and then file a claim for refund of the excess amount paid would be an exercise in futility. As such we find that when the excess of output tax paid is more than the input credit denied, there is no short payment of tax warranting invocation of proceedings under section 73 of the KGST / CGST Act.

7.4 We find broad support for our decision in the judgement of the division bench of the honourable High Court of Kerala in the case of Rejimon Padickaparamabil Alex vs Union of India 2024-TIOL-2024-HC-KERALA-GST wherein the Court observed as follows:

9. We find that on the facts in the instant case, the notice issued to the appellant, and the demand confirmed against him, were in proceedings initiated under Section 73 of the GST Act. The said provisions are attracted only when it appears to a proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax has been wrongly availed or utilised for any reason. The case before us clearly reveals that there has been no wrong availment of credit, and that the only mistake committed by the appellant was an inadvertent and technical one, where he had omitted to mention the IGST figures separately in Form GSTR 3A. The mistake was

also insignificant because it is not in dispute that there was no outward supply attracting IGST that was effected by him.

7.5 We find that the ratio of the above case (though issued in the context of cross utilisation of ITC) applies to the instant case where the appellant has contended that there was no short payment of tax as the shortfall on account of ineligible ITC can be set off from the amount of excess duty paid in the same month.

7.6 As such we find that in the above case the honourable High Court has upheld the legal principle that input tax credit (ITC) available in the electronic credit ledger should be considered as a pool of funds designated for different types of taxes, such as IGST, CGST and SGST. These accounts represent a wallet with compartments for IGST, CGST, and SGST funds and that there is no loss of revenue, either to the Centre or to any State, arising from the availment and utilisation of CGST/SGST instead of IGST and that there cannot be said to be case of short payment on account of the above.

7.7 We find that the above said principles are all the more applicable in the instant case where the output tax paid by the appellant was much in excess of the shortfall on account of ITC dis-allowed and therefore there was no overall short payment of tax warranting invocation of proceedings under section 73 of the KGST / CGST Act. We therefore find that on this matter, the appellant is entitled to succeed and the demand of tax, interest and penalty on the above grounds is not sustainable.

7.8 The learned AR has also contended that:
“Section 54 read with Section 57 mandates that any refund of excess tax paid must undergo scrutiny for unjust enrichment. Granting an automatic set-off in assessment proceedings would bypass the statutory mandate of verifying whether the tax burden was passed on to consumers”

7.9 We find that section 54(c) of the KGST / CGST Act reads as follows:
54 (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—

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;

7.10 We find that in the instant case, the excess payment of out put tax over and above what was due would clearly fall within the above exemption and would not be subject to the principles of unjust enrichment. We therefore find that the apprehensions of the Revenue regarding the "statutory mandate of verifying unjust enrichment" being bypassed is misplaced as there is no statutory mandate in the first place. We therefore find that the said contention is not sustainable.

7.11 In view of the findings as above, we answer both the questions of law in para 2.1 and para 2.2 in the negative and find that:

a. whenever there is a shortfall on account of ineligible ITC and the same is offset by an excess of output tax paid, there is no short payment of tax and hence no notice would lie under section 73 of the KGST / CGST Act.

b. Refund of excess paid output tax is not subject to the test of unjust enrichment.

8.1 On the second issue of sales return not proved, it is seen that the SCN states as follows:

You have claimed sales return to the tune of Rs.3,55,206/ - without any support documents. In the absence of evidence you have to remit corresponding tax of Rs 99 4587- (SGST and CGST Rs.49,729/- each) with interest of Rs.79,566/ - (on SGST and CGST Rs.39,783/- each)

8.2 The appellant has contended that they have produced the relevant Debit Notes and Credit Notes and the same was not accepted as the Debit Notes and Credit Notes were not declared in the GST portal. They have also produced copies of the credit / debit notes in question.

8.3 The OIO has rejected these on the ground that debit note issued by M/s.Pinnacle Trading Company was verified with their Form GSTR-1 filed for the month and in Form GSTR-9 filed for the year, and found that M/s.Pinnacle Trading Company has not declared such a debit note in either of them.

8.4 It is hereby noted that while the ground in the SCN spoke of non-production of support documents (an allegation strongly refuted by the appellant who has produced copies of the documents in question), the OIO has travelled beyond the SCN and confirmed the demand on a ground not found in the SCN, ie the other party has not declared the debit note in their GSTR-1/GSTR-9.

8.5 We find that the OIA has upheld the OIO without any worthwhile finding / discussion.

8.6 The learned AR has contended that Section 34(2) of the CGST Act mandates that any registered person who issues a credit note/debit note must declare the details in the return for the month during which such notes are issued. Physical possession of credit notes without portal declaration deprives the tax machinery of cross-verifying corresponding reversals in the recipient's ledger. Thus it appears that the demand has been confirmed on a ground not taken in the SCN and therefore is liable to be set aside.

8.7 We find that this matter pertains to the year 2017-18 when the GSTR 2A was initially rolled out as a tax payer facility for reconciliation of ITC and became a mandatory return only from October 2019. Therefore, we find during the period in dispute, there was no mandatory provision for declaring these credit / debit notes in the GST portal and the credit / debit notes, if otherwise in order, cannot be invalidated on the ground that they were not uploaded in the portal.

8.8 Therefore we find that the demand is not sustainable and, on this ground also the appellant is entitled to succeed and the demand of tax / interest / penalty on account of the above is not sustainable.

9.1. On the issue of demand of interest on account of late filing, the appellant has contended that:

a. Due to the fault with the GST Portal the due dates were extended continuously and the Proper Officer has not considered the final dates prescribed for the filing the return.

b. The delay is only due to the fault with the Portal and as such no interest is payable.

9.2 On perusal of para 3 of the SCN, we find that:

a. the SCN is vague and does not mention the specific month(s) when the default happened , the quantum of duty on which interest is being demanded and the period for which the interest is being demanded.

b. While as per the SCN the amount of interest to be paid for default is Rs 113017, as per the OIO the amount is Rs 15873 (CGST) + Rs 15873 (SGST) + Rs 122568(IGST) = Total of Rs 154314. There is no explanation as to the basis on which either figure (113017 or 154314) was arrived at.

c. As such we find that on this aspect the SCN is vague, lacks specificity and is clearly in violation of the principles of natural justice and is therefore not sustainable.

10. In view of the findings as above, the appeal is allowed and the Order in Appeal is set aside, with consequent relief.

(Order pronounced in open court)

Subramanya V Rayaprol
Member (Judicial)

Ramamoorthi Sriram
Member (Technical)

Dated: 16-10-2026

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