GSTAT

State Bench Agra

Court No. Court I

APL/25/AGR/2026

RAHUL KUMAR DWIVEDI **.....Appellant**

Versus

M/S SHRI SHYAM KRIPA ASSOCIATES, PARTNER, C-32 KAMLA NAGAR ROAD AGRA KAMLA NAGAR UPAGR 282005 **.....Respondent**

Quorum

Hon'ble Ajeet Singh, Member(Judicial)
Hon'ble Vivek Kumar, Member (Technical)

Counsel for Appellant
SH. MUKESH KUMAR, AUTHORIZED REPRESENTATIVE

Counsel for Respondent
SH. GAGAN BAGHEL, ADVOCATE

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the GST Appellate Tribunal

whether remand order : No

Order reference no. : ZA090401026000151H **Date of order :** 16/10/2026

1.	GSTIN/Temporary ID/UIN - 09ACPFS0362Q1ZB	
2.	Appeal Case Reference no. - APL/25/AGR/2026	Date - 24/04/2026
3.	Name of the appellant - Rahul Kumar Dwivedi , rahul.231978@gov.in , 7235003235	
4.	Name of the respondant - 1. M/S SHRI SHYAM KRIPA ASSOCIATES , singhalinfradevelopers@gmail.com , 9837045037	
5.	Order appealed against - AD091124102572H	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - ZD0906251098237	Date - 13/06/2025
6.	Personal Hearing - 16/10/2026 24/09/2026 11/08/2026	
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed	

8.	Order in brief - This second appeal is dismissed by upholding the Order in appeal dated-13.06.2025 passed by first appellate authority.
Summary of Order	
9.	If demand order then whether demand quantified: No

10.	For Other orders and Demand orders which are not quantified:	
Issues as raised by proper officer	Issues as determined by Appellate/Revisional authority	Order by GST Appellate Tribunal
Short or non-payment of tax	ADC GR-2 APPEAL 2ND AGRA	AGRA, BENCH

Place :AGRA

Date : 16.10.2026

Signature

AGRA Sandeep Yadav

Designation : Stenographer/Law researcher

Jurisdiction :Agra

ORDER

Per. Ajeet Singh (Judicial Member)

(Passed on 16th day of October, 2026)

1. Being aggrieved by the order dated- 13.06.2025, passed by first appellate authority in first appeal no. AD091124901102572H/2024, Sh. Rahul Kumar, Dy. Commissioner, state tax has preferred this second appeal on behalf of state tax department u/s 112 of Central Goods and Services Tax, Act/ Uttar Pradesh Goods and Services Tax, Act, 2017, (for short CGST/UPGST, Act). Vide order under appeal, first appeal filed by the taxpayer/respondent herein has been allowed and by setting aside Order-in-Original, demand of tax, penalty and interest has been quashed. For convenience hereinafter in the order appellant and respondent will be addressed as department and taxpayer, respectively.
2. It is admitted or not in dispute that taxpayer is a partnership firm engaged in the business of construction of residential complexes having GSTIN 09ACPFS0362Q1ZB. Department has alleged that in the year 2019-20 taxpayer firm had claimed excess input tax credit of CGST Rs. 10,40,830/- and of SGST Rs. 10,40,830/- as shown such difference in his GSTR-3B and available in GSTR-2A. It was also alleged that taxpayer firm has wrongly availed Input tax credit of Rs. 4592.45/- as CGST and 4592.45/- as SGST which is not permissible as per provision contained in section 17(5) of CGST/UPGST as services received by taxpayer from Oriental Bank of Commerce. On the above learned departmental authorized officer issued SCN to taxpayer firm u/s 73 of CGST/SGST, Act, in which Rs. 10,40,830/- as CGST and Rs. 10,40,830/- as SGST was asked to be deposited as reversal of ITC availed. As per record, SCN was not responded by taxpayer firm despite multiple opportunities given by proper officer. Learned proper officer has passed the Order-in-Original ex-parte against taxpayer by holding that taxpayer firm has claimed input tax credit of Rs. 20,81,660/- in GSTR-3B in excess from ITC available in GSTR 2A. Additionally ITC claimed of Rs. 9184.92/- pertaining to banking services was also cancelled in view of section 17(5) of CGST/SGST, Act. Apart from that Rs. 18,04,427/- were also imposed as interest on tax amount along with penalty of Rs. 2,09,084/-
3. Being aggrieved by the Order-in-Original passed by proper officer taxpayer firm has preferred first appeal u/s 107 of CGST/UPGST, Act before additional commissioner Gr.II, appeal (second) state tax, Agra. Learned first appellate authority by conducting further enquiry in the matter allowed the first appeal by holding that taxpayer firm did not claim its due input tax credit for the financial year 2017-18 and such deferred ITC

was claimed in the year 2019-20 which is permissible to him as per provisions. It has further held that ITC on banking services which was disallowed by the proper officer is also permissible under law. In such a way first appeal has been allowed in favor of taxpayer firm and Order-in-Original and accordingly demand raised was quashed, hence this second appeal by the department.

4. Learned authorized representative for respondent has also submitted a memorandum of cross objection on its title and face but in such memorandum of cross objection no finding of first appellate authority has been assailed. Therefore, same is being treated as reply to the memorandum of second appeal or written submissions made by taxpayer's authorized representatives.

5. We have heard the arguments of both the authorized representatives and perused the record available in GSTAT portal. In order to decide the second appeal, the point for determination may be formulated as under-

i)Whether a taxpayer is entitled to claim deferred ITC for FY 2017-18 in the GSTR-3B in later FY 2019-20? ii) Whether first appellate authority has rightly allowed the ITC of 9184.90 on banking services availed by taxpayer?

FINDINGS WITH REASON

6. As per chart given in the impugned order itself which is not disputed by the authorized representative of department, in the relevant year 2019-20 in GSTR-2A of taxpayer ITC of Rs. 17,42,911.12/- was available but taxpayer firm had claimed ITC in GSTR-3B of Rs. 20,81,660/- in this way ITC of Rs. 3,38,748.88/- is shown to be claimed as excess one. Learned first appellate authority has also recorded on the basis of materials available on record that taxpayer claimed previous years deferred ITC in the relevant FY which was declared in GSTR 09 of the year 2017-18 and the remaining ITC for the year 2017-18 was claimed in upcoming FY under column 8C of GSTR 09. It was a bonafide mistake that the taxpayer skipped to claim the ITC in the same year in which bill was raised to him and on realizing the mistake taxpayer claimed the remaining ITC for 2017-18 later in the year 2019-20 in GSTR 03B return.

7. So far, legality of claiming the ITC belatedly in the year 2019-20 for the year 2017-18 is concerned, learned counsel for taxpayer has drawn our attention to section 16(5) of CGST, Act which provides that notwithstanding anything contained in sub section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the FY 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take ITC in any return u/s 39 which is filed up to the 30th day of November 2021. The above amendment was introduced by circular no. 237/31/2024-GST and applied retrospectively.

8. In para no. 05 of impugned order in an another chart pertaining to deferred ITC for 2017-18 has also been given, which has not also been disputed by the department.

9. In respect of point under consideration before us, in case of A2Z infra engineering ltd. Vs Union of India and others Wp civil no. 25/2024 Sikkim High court has held that in view of inserted section 16(5) in CGST Act by Finance Act, 2024, a taxpayer is entitled for deferred ITC for years 2017-18, 2018-19 and 2019-20 till 30th November 2021.

10. Apart form above, it has been settled by the judicial pronouncements that mismatch in form GSTR 2A and GSTR 3B is a mere discrepancy which forms a reconciliation issue not issuing order of reversal of ITC directly because of GSTR 2A is an informational dynamic reporting tool whereas GSTR 3B is a self assessed return. In the present case and as held by first appellate authority the tax payer firm has succeeded in providing verifiable books of accounts, tax invoices, proof of payment for the proving the genuine nature of the ITC claimed by him. Further, CBIC circular no. 183/15/2022 GST explicitly addresses mismatches between GSTR 2A and GSTR 3B for FY 2017-18 and 2018-19 extended to FY 2019-20 vide circular no. 193/05/2023-GST. It clarifies that if tax was actually remitted to the exchequer and genuine supply occurred, ITC cannot be denied solely due to non-reflection in GSTR 2A subject to verification from suppliers.

11. In view of the discussion made so far we are of the considered view that learned first appellate authority has rightly recognized the ITC claimed by taxpayer for the year 2017-18 later in the year 2019-20 and thus, mismatch between GSTR 2A and GSTR 3B shall not extinguish the right of taxpayer to get such ITC. Accordingly, question no. 1 formulated above is answered against department.

12. Now we come to the second point of consideration. In this regard taxpayer had claimed ITC of Rs. 9,184.90/- for the relevant year 2019-20 as he availed banking service from Oriental Bank of Commerce, which was disallowed by the proper officer by taking note of provision contained in section 17(5) of CGST/UPGST, Act.

13. Learned first appellate authority has held that there is no impediment in section 17(5) of CGST/UPGST, Act which bars a taxpayer to claim ITC for receiving banking services in furtherance of his business. After going through the provisions contained in section 17(5) of CGST/UPGST, Act, we are also in agreement with the findings recorded above by the first appellate authority as department has not succeeded to show that

categories of goods and services mention u/s 17(5) in which respect ITC is not allowable to a business entity are existing in the case in hand. Therefore, answer to the second question of determination also goes against the department.

14. Consequently, as both the questions formulated in para no. 05 have been answered against department/appellant, this second appeal fails and accordingly dismissed by upholding the Order in appeal dated- 13.06.2025 passed by first appellate authority.
15. There is no pending interim application in the appeal.
16. Order is pronounced in open court on this day of 16th of October, 2026.
17. Copy of order be communicated to all concerned, as per rules.

(Ajeet Singh)

(Vivek Kumar)

Dated: 16.10.2026