GOODS AND SERVICES TAX APPELLATE TRIBUNAL

State Bench Thane

Court No. Court I

APL/52/THN/2026

TRIVESH ENTERPRISES LLP **.....Appellant**

Versus

VIJAY EKNATH KUMBHAR, JOINT COMMISSIONER OF STATE TAX, THANE / KALYAN GST DEPARTMENT **.....Respondent**

Quorum

Hon'ble Shri Ramesh Nair, Member(Judicial)
Hon'ble Shri Prallhad S. Paranjape, Member (Technical)

Counsel for Appellant	**Counsel for Respondent**
INPERSON CA. DIMPLE CA. AMIT KUMAR SOMANI MS. DIMPLE AMIT SONI, CHARTERED ACCOUNTANT	SHRI PARIKSHIT SAWANT, DEPUTY COMMISSIONER-SGST, AUTHORISED 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 : Yes

Order reference no. :	**Date of order :**
ZA270231026000053H	22/10/2026

1.	GSTIN/Temporary ID/UIN - 27AAPFT5324F1ZZ

2.	Appeal Case Reference no. - APL/52/THN/2026	Date - 02/02/2026
3.	Name of the appellant - TRIVESH ENTERPRISES LLP , rahul198657@gmail.com , 9987001250	
4.	Name of the respondant - 1. VIJAY EKNATH KUMBHAR	
5.	Order appealed against - AD2712230425491	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - ZD271125106474M	Date - 27/11/2025
6.	Personal Hearing - 22/10/2026 24/09/2026 11/09/2026 03/09/2026	
7.	Order in brief - Impuged orders were set aside and appeals are allowed by way of remand to the Adjudicating Authority for denovo adjudication.	
	Summary of Order	
8.	If demand order then whether demand quantified: No	

9.	For Other orders and Demand orders which are not quantified:	
Issues as raised by proper officer	Issues as determined by Appellate/Revisional authority	Order by GST Appellate Tribunal

Short or non-payment of tax	The Appellate Authority confirmed the short payment of tax of Rs.6,80,142/- as the appellant claimed ITC from suppliers whose GST registrations were cancelled ab-initio for being non-functioning, fraudulent, or non-existent. It was noted that under Section 16(2) of the CGST/MGST Act, the appellant was required to prove actual receipt of goods/services, payment of tax to the government, and filing of returns by the suppliers. The appellant failed to submit complete documentary evidence such as lorry receipts, consignment notes, freight and handling payments, updated e-way bills, stock registers, and delivery proofs, and thus could not discharge the burden of proof under Section 155. Accordingly, the demand for short payment of tax was upheld.	Impuged orders were set aside and appeals are allowed by way of remand to the Adjudicating Authority for denovo adjudication.
Levy of Penalty	The Appellate Authority upheld the penalty of Rs.68,016/- on the appellant, noting that the appellant failed to provide complete documentary evidence to substantiate the ITC claimed. Despite repeated opportunities, the appellant did not furnish proof of receipt of goods/services or compliance by suppliers. Consequently, the appellant could not discharge the burden of proof, and the penalty was rightly confirmed.	

Levy of interest or late fee or fine	The Appellate Authority confirmed interest of Rs.2,96,170/- on the appellant, as the ITC claim was not substantiated with proper documents. Since the appellant could not prove receipt of goods/services or supplier compliance, the interest on the disputed amount was rightly levied	
10.	If remanded with directions:	
	a) Remanded to: Adjudicating Authority	
	b) Directions subject to which remanded, if any: The adjudicating authority has been directed to comply with the principles of natural justice and reconsider the matter on all the issues.	

Place :THANE

Signature

Date : 22.10.2026

THANE Shri Ramesh Nair

Designation : Member

Jurisdiction :Thane

ORDER

GOODS AND SERVICES TAX APPELLATE TRIBUNAL

THANE BENCH, MAHARASHTRA

Appeal Nos.: APL/52/THN/2026 & APL/53/THN/2026

IN THE MATTER OF:

M/s. Trivesh Enterprises LLP

Shree Sharanam CHS, C-501,

Ghodbunder Road, Patlipada,

Thane West, Thane, Maharashtra, 400607 .....Appellant (Assessee)

VERSUS

The Joint Commissioner of State Tax, Thane / Kalyan .....Respondent (Revenue)

Order per: Ramesh Nair, Judicial Member

1. The present two appeals have been filed by the Appellant, M/s Trivesh Enterprises LLP, assailing two separate Orders-in-Appeal both dated 28.11.2025 (with one bearing communication date 27.11.2025 for FY 2021-22), passed by the Joint Commissioner of State Tax (Appeals), Kalyan. Since the underlying facts, the nature of the dispute, and the questions of law involved in both appeals are identical, they are taken up together for disposal by way of this common order.
2. **Brief Facts of the Case**

2.1 The Appellant is a registered Limited Liability Partnership under the CGST/MGST Act, 2017, primarily engaged in the business of providing works contract and construction services. The dispute pertains to the disallowance of Input Tax Credit (ITC) for two financial years:

- **For Financial Year 2020-21:** The Appellant availed ITC amounting to Rs. 4,89,456/- (CGST Rs. 2,44,728/- and SGST Rs. 2,44,728/-) on inward supplies procured from registered suppliers, namely M/s Eagle Enterprises, M/s Prati Enterprises, and M/s Bhagaban Barik / M/s Maruti Enterprises.
- **For Financial Year 2021-22:** The Appellant availed ITC amounting to Rs. 6,80,142/- (CGST Rs. 3,40,071/- and SGST Rs. 3,40,071/-) on inward supplies procured from a registered supplier, M/s Singh Lakshay Traders.

2.2 The genesis of the dispute lies in the subsequent categorisation of the aforementioned suppliers by the Department as "Non-Genuine Taxpayers" (NGTPs). The GST registrations of these suppliers were cancelled by the Department *ab-initio* (retrospectively) on the premise that their registrations were obtained by means of fraud, wilful misstatement, or suppression

of facts, and that they had allegedly passed on ITC without any underlying supply of goods or services.

2.3 Based solely on these supplier-side cancellations, Show Cause Notices (SCNs) in Form GST DRC-01 dated 25.03.2023 were issued to the Appellant under Section 73 of the CGST/MGST Act, 2017 for both financial years, proposing to disallow the respective ITC amounts. It is a matter of record that the SCNs issued lacked substantive reasoning in the body of the notices, cryptically stating "AS PER ATTACHMENT" under the 'Brief Fact of the Case' and 'Grounds' sections.

2.4 The Appellant did not file a reply to the SCNs at the adjudication stage. Consequently, the Adjudicating Authority (Deputy Commissioner of State Tax, Bhiwandi-501) passed ex-parte Orders-in-Original in Form GST DRC-07 dated 12.10.2023 for both periods, mechanically confirming the tax demands. The total demand confirmed for FY 2020-21 was Rs. 8,39,640/- (Tax Rs. 4,89,456/-; Interest Rs. 3,01,238/-; Penalty Rs. 48,946/-). The total demand confirmed for FY 2021-22 was Rs. 10,44,328/- (Tax Rs. 6,80,142/-; Interest Rs. 2,96,170/-; Penalty Rs. 68,016/-).

2.5 Aggrieved by these adjudication orders, the Appellant preferred statutory appeals under Section 107 of the Act before the Joint Commissioner of State Tax (Appeals), Kalyan, after making the mandatory pre-deposits. The Appellant placed on record written submissions along with primary and contemporaneous documentary evidence, including tax invoices, bank statements, and E-way bills, to substantiate the genuineness of the transactions.

2.6 However, the First Appellate Authority, vide the impugned Orders-in-Appeal dated 27/28.11.2025, rejected the appeals. The rejection was based concurrently on two grounds: first, on merits, stating that the Appellant failed to discharge the burden of proof under Section 155 of the Act as they did not produce complete collateral transport documents (such as lorry receipts, proof of payment of transport charges, toll receipts, etc.); and second, on the ground of "non-prosecution", citing the Appellant's failure to attend multiple scheduled personal hearings. The present appeals have been preferred against these impugned Orders-in-Appeal.

3. **Grounds of Appeal and Submissions by the Appellant**

3.1 Ms. Dimple Amit Soni, learned Chartered Accountant appearing for the Appellant strongly challenged the impugned orders, submitting that the ex-parte Orders-in-Original and the Orders-in-Appeal are entirely arbitrary, non-speaking, mechanical, and have been passed in gross violation of the principles of natural justice. The Appellant contended that the Adjudicating Authority mechanically confirmed the demands without any independent verification, and the Appellate Authority unlawfully dismissed the statutory appeals citing "non-prosecution", deliberately ignoring the settled legal position that a quasi-judicial appellate authority is mandated to decide the case on merits based on the documentary evidence available on record.

3.2 On the merits of the ITC claim, the Appellant submitted that they had strictly fulfilled all the statutory conditions prescribed under Section 16(2) of the CGST Act, 2017. They were in possession of valid tax invoices issued by suppliers who were registered and reflecting as "Active" on the GST Common Portal at the time of the transactions. Furthermore, the goods and services were actually received, utilized in outward taxable

supplies, and the consideration, inclusive of GST, was paid through normal banking channels.

3.3 The Appellant invoked the legal maxim *"Lex Non Cogit Ad Impossibilia"*, arguing that the law does not compel a man to do what he cannot possibly perform. It was submitted that there is no statutory mechanism empowering a recipient to audit the supplier's bank accounts or ensure their post-transaction tax compliance. The Appellant contended that retrospective cancellation of a supplier's registration is an administrative action between the Department and the supplier, which cannot be used to retrospectively divest a bona fide purchaser of their vested right to ITC.

3.4 To demonstrate that the burden of proof under Section 155 of the Act stood fully discharged, the Appellant relied on voluminous documentary evidence submitted during the appellate proceedings, which included tax invoices, bank statements reflecting payments, and statutory E-way bills evidencing the physical movement of goods. The Appellant pointed out that the Department had accepted the outward tax liability discharged on the sale of goods/services, which implicitly establishes the existence and genuineness of the

corresponding inward purchases, thereby barring the Revenue from adopting a contradictory stance.

3.5 The Appellant placed reliance on several binding judicial precedents, including the Hon'ble Supreme Court's decisions in *State of Maharashtra v. Suresh Trading Company* [1998 taxmann.com 1747 (SC)] and *Commissioner of Trade & Tax, Delhi v. M/s Shanti Kiran India (P) Ltd.*, [2025-TIOL-77-SC-VAT] as well as High Court judgments in *Suncraft Energy Pvt. Ltd.* (Calcutta HC-)-MAT 1218 0f 2023 and *D.Y. Beathel Enterprises* (Madras HC)-85 GSTR 170 (Mad). It was argued that these judgments consistently hold that a bona fide recipient cannot be penalized for the supplier's default in the absence of collusion or fraud.

3.6 Finally, the Appellant submitted that since the principal demand of tax is unsustainable in law, the consequential levy of interest under Section 50(3) and penalty under Section 73(9) must automatically fail, as there is no contumacious conduct, suppression, or misstatement on the Appellant's part.

4. **Submissions by the Respondent (Revenue)**

4.1 Per contra, Shri. Parikshit Sawant, Learned Deputy Commissioner, SGST, Authorized Representative for the Respondent reiterated the findings recorded in the impugned Orders-in-Appeal and vehemently justified the disallowance of the ITC. It was submitted that the suppliers in question were subjected to inquiry and were found to be "Non-Genuine Taxpayers" whose registrations were subsequently cancelled *ab-initio* for having obtained registration by means of fraud and for issuing fake invoices without any underlying supply of goods/services.

4.2 The Respondent argued that mere possession of a tax invoice and payment through banking channels do not inherently entitle a taxpayer to ITC. Under Section 16(2)(b) of the CGST Act, actual receipt of goods is a mandatory pre-condition. Relying on Section 155 of the Act, the Respondent emphasized that the burden of proving the eligibility for ITC, particularly the physical movement of goods/receipt of services, rests entirely on the claimant.

4.3 The Respondent pointed out that despite being granted multiple opportunities during the appellate proceedings, the Appellant failed to produce crucial collateral evidence necessary

to substantiate the physical receipt of goods, such as lorry receipts, consignment notes, proof of payment of transport charges, road toll booth receipts, updated part-B of e-way bills, payments made to *mathadi* workers (loaders), or comprehensive stock registers.

4.4 The Respondent heavily relied upon the judgment of the Hon'ble Supreme Court in *State of Karnataka v. Ecom Gill Coffee Trading Private Limited*, asserting that in cases where the genuineness of the transaction is in doubt due to the supplier's fraudulent profile, the purchasing dealer must prove the actual physical movement of the goods by producing cogent materials beyond just invoices and payment particulars.

4.5 Defending the dismissal of the appeals on the grounds of "non-prosecution," the Respondent highlighted that the First Appellate Authority had issued numerous personal hearing notices and adjournment notices to the Appellant. The Appellant's persistent failure to attend the hearings demonstrated a complete lack of interest in pursuing the appeals and explaining the submitted documents. Consequently, the Appellate Authority was entirely justified in deciding the matter based on the

available records, which, in the Revenue's view, failed to establish the Appellant's claims.

5. **Questions of Law Involved**

5.1 In view of the facts of the case as discussed above, in our view these analogous appeals give rise to the following substantial questions of law for consideration by this Tribunal:

(a) Whether the denial of Input Tax Credit (ITC) under Section 16 of the CGST/MGST Act, 2017, through Show Cause Notices and Orders-in-Original that are cryptic, non-speaking, and completely devoid of independent reasoning, constitutes a gross violation of the principles of natural justice?

(b) Whether a First Appellate Authority, exercising statutory jurisdiction under Section 107 of the CGST/MGST Act, 2017, is legally empowered to dismiss a statutory appeal on the ground of "non-prosecution" or default in appearance, without independently adjudicating the substantive documentary evidence placed on record?

(c) Whether, in light of the procedural infirmities and the absence of reasoned factual findings at both the adjudication and appellate

stages, the matters warrant a remand to the Adjudicating Authority for a fresh, *de novo* assessment?

6. **Discussion and Findings**

6.1 We have carefully considered the extensive submissions made by the Appellant and the learned Authorized Representative for the Respondent, and have meticulously perused the records of both the financial years (FY 2020-21 and FY 2021-22). The core issue before this Tribunal at this stage is not the final determination of the Appellant's substantive eligibility for the Input Tax Credit (ITC), but rather the procedural propriety, legal validity, and adherence to the bedrock principles of natural justice by the lower authorities.

6.2 The entire dispute fundamentally revolves around the Appellant's entitlement to claim ITC on inward supplies from vendors whose registrations were retrospectively cancelled. The substantive law governing this entitlement is enshrined in Section 16 of the CGST/MGST Act, 2017. The relevant extracts of Section 16 are reproduced below for ease of reference:

Section 16. Eligibility and conditions for taking input tax credit.

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

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

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

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

6.3 Furthermore, the burden to prove that these statutory conditions have been fulfilled rests squarely upon the taxpayer claiming the ITC, as explicitly mandated by Section 155 of the CGST/MGST Act, 2017:

Section 155. Burden of proof.

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

6.4 While the statutory burden of proof lies on the Appellant under Section 155, the revenue authorities are equally bound by a procedural and constitutional mandate to afford the taxpayer a fair and reasonable opportunity to discharge this burden. This administrative obligation begins with the issuance of a legally valid, detailed, and speaking Show Cause Notice. Upon perusal of the Show Cause Notices issued in Form GST DRC-01 dated 25.03.2023 under Section 73 of the Act, we find a glaring lack of substantive reasoning. Under both the "Brief Fact of the Case" and "Grounds" sections, the notices cryptically state "AS PER ATTACHMENT", without elaborating on any specific findings or detailing the exact nature of the Appellant's alleged contravention.

6.5 This procedural infirmity was severely compounded by the Adjudicating Authority in the ex-parte Orders-in-Original in Form GST DRC-07 dated 12.10.2023. The orders describe the entire issue in a single line as "In-eligible ITC claimed from non-existant supplier" and mechanically proceed to confirm

substantial demands without recording any independent analysis, detailing factual findings, or discussing the transactions in question. It is a settled position of administrative law, as enunciated by the Hon'ble Supreme Court in *Kranti Associates Pvt. Ltd. v. Masood Ahmed Khan [(2010) 9 SCC 496]*, that every quasi-judicial authority must pass a speaking order, and the recording of reasons is an essential facet of natural justice. The failure of the Adjudicating Authority to do so fundamentally vitiates the initial assessment proceedings.

6.6 When the matters were escalated, the Appellant submitted voluminous documentary evidence including invoices, bank transaction details, and GST filing statuses to discharge their burden under Section 155. However, the First Appellate Authority, vide the impugned Orders-in-Appeal dated 27/28.11.2025, rejected the appeals not only on merits but concurrently dismissed them on the ground of "non-prosecution" due to the Appellant's non-attendance at scheduled hearings.

6.7 We find the dismissal of a statutory appeal for "non-prosecution" to be legally unsustainable. Section 107 of the CGST Act dictates the procedure for the Appellate Authority. Sub-sections (11) and (12) of Section 107 mandate the following:

(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against...

(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

6.8 Interpreting these exact provisions, the Hon'ble Patna High Court in the case of *Purushottam Stores v. State of Bihar [2023] 150 taxmann.com 480 (Patna)* categorically held that the Appellate Authority has a statutory duty to look into the merits of the matter and examine the grounds raised, even if there is no presence recorded of the appellant. Dismissing an appeal for non-prosecution amounts to an abdication of statutory powers. This position was reaffirmed in *Nav Nirman Construction v. Union of India [2023] 157 taxmann.com 343 (Patna)*. Similarly, the Hon'ble Bombay High Court in *CIT v. Premkumar Arjundas Luthra (HUF)* has clarified that an appellate authority is obliged to dispose of the appeal on merits and does not have the power to dismiss an appeal for non-prosecution.

6.9 Since the foundational adjudication orders were devoid of any legal or factual reasoning, and the appellate orders failed to cure this defect by improperly dismissing the appeals on the procedural ground of non-prosecution, we are of the considered view that there has been a gross violation of the principles of natural justice. The Department cannot rely solely on the retrospective cancellation of the suppliers' registrations to confirm a demand without independently verifying the facts and giving the Appellant a fair, transparent opportunity to be heard. Therefore, without expressing any opinion on the final merits regarding the admissibility of the ITC amounts, we deem it necessary and proper to remand both matters back to the Adjudicating Authority to ensure that justice is served.

7. **ORDER**

7.1 For the facts, reasons, and legal provisions discussed hereinabove, the impugned Orders-in-Appeal passed by the Joint Commissioner of State Tax (Appeals), Kalyan, dated 27.11.2025 and 28.11.2025, as well as the Orders-in-Original Reference Nos. ZD271023025255U and ZD271023025282X both dated 12.10.2023 passed by the Deputy Commissioner of State Tax, Bhiwandi-501, are hereby set aside.

7.2 Both matters are remanded to the Adjudicating Authority for a fresh, *de novo* adjudication in accordance of law keeping all the issues open. The Adjudicating Authority is directed to strictly adhere to the principles of natural justice. Specifically, the Authority shall:

(a) Communicate detailed, specific grounds for the proposed disallowance of ITC to the Appellant.

(b) Grant the Appellant a sufficient and reasonable opportunity of being heard in person.

(c) Allow the submission and independent examination of all corroborative documentary evidence in support of their claim under Section 16(2) and Section 155 of the CGST/MGST Act, 2017.

(d) Pass a detailed, speaking, and reasoned order in accordance with the law, addressing all submissions and evidence placed on record.

7.3 The Appellant is directed to cooperate fully with the remand proceedings and proactively adduce all requisite evidence including proof of payment, invoices, and physical movement of goods etc. before the Adjudicating Authority within the timelines

prescribed during the fresh proceedings. Needless to say that this is an open remand and the adjudicating authority needs to consider all the issues on facts and law relevant to this case and shall not get influenced by any of the above observations of this bench.

7.4 The appeals are allowed by way of remand to the adjudicating authority.

(Pronounced in open court on 22.10.2026)

(Shri Prallhad S. Paranjape)	(Shri Ramesh Nair)
Member (Technical)	Member (Judicial)

Dated: 22.10.2026