GSTAT

State Bench Lucknow

Court No. Court I

APL/53/LCK/2026

AJIT KUMAR MINZ **.....Appellant**

Versus

M/S B.L. AGRO INDUSTRIES LIMITED, DIRECTOR, C 86 RAJENDRA NAGAR BAREILLY UPBAR 243001 **.....Respondent**

Quorum

Hon'ble Santosh Kumar Srivastava, Member(Judicial)
Hon'ble Arvind Kumar, Member (Technical)

Counsel for Appellant
MR. ANUPAM KUMAR, SUPERINTENDENT, CGST
MRS. NIDHI SHARMA, SUPERINTENDENT, CGST

Counsel for Respondent
MR. KAPIL VAISH, CA

Form GST APL-04A

[See rules 113(1) & 115]

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

whether remand order : No

Order reference no. : ZN540371026000414H **Date of order :** 22/10/2026

1.	GSTIN/Temporary ID/UIN - 09AABCB9200B1Z8	
2.	Appeal Case Reference no. - APL/53/LCK/2026	Date - 25/03/2026
3.	Name of the appellant - Ajit Kumar Minz , ajitkm.c109301@gov.in , 9835161422	
4.	Name of the respondant - 1. M/S B.L. AGRO INDUSTRIES LIMITED , gk_md@blagro.org , 9837027302	
5.	Order appealed against - AD0906250479897	
	(5.1) Order Type - Refund Order	
	(5.2) Ref Number - ZD0909251012679	Date - 10/09/2025
6.	Personal Hearing - 22/10/2026 16/10/2026 05/10/2026 01/09/2026 18/08/2026 10/08/2026 03/08/2026	

7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed
8.	Order in brief - M/s B.L. Agro Industries Limited provisionally reversed ITC of Rs. 14.35 crore following an alleged stock shortage. The Department rejected its refund claim, contending that the reversal represented tax liability. The Appellate Authority allowed the refund, holding that no self-assessed liability had been established. The Tribunal dismissed the Department's appeal, observing that a provisional ITC reversal and pending investigation alone do not establish tax liability. The refund remains subject to compliance with Section 54 of the CGST Act, 2017.

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
Erroneous refund	Set aside the OIO dated 13.06.2025	the Department's appeal is liable to be dismissed.

Place :LUCKNOW

Signature

Date : 22.10.2026

LUCKNOW ANAMIKA DEVI

Designation : Stenographer/Law researcher

Jurisdiction :Lucknow

ORDER

1.

CGST Department (hereinafter referred to as the "appellant"), has preferred an appeal before Tribunal challenging orders-in-appeal dated 02-09-2025 issued by the Additional Commissioner, CGST (Appeals), Noida, which withheld the rejection orders issued by the Additional Commissioner, CGST G. B. Nagar for the refund claim filed for provisionally reversed Input Tax Credit (ITC) amounting to Rs.14.35 crore (Rs.7.175 crore each for CGST and SGST) in their GSTR-3B return for August 2018.

2. Brief Facts of the Case

2.1 M/s B.L. Agro Industries Limited (hereinafter referred to as the "respondent" or the "taxpayer"), having GSTIN 09AABCB9200B1Z8, is registered under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act, 2017") with effect from 01.07.2017. Its principal place of business is situated at B-31, Parasakhera, Road No. 2, Bareilly, Uttar Pradesh – 243001. The respondent is engaged in the manufacture and supply of various types of edible oils, including goods falling under HSN Codes 15141910, 15141920, 15141990, 15111000 and 15121910, and is also engaged in the supply of services relating to goods transport operations.

2.2 The present proceedings originated from a search conducted by the Income Tax Department at various premises of the respondent during the period from 04.10.2018 to 07.10.2018. During the course of the search, an alleged discrepancy in the stock of goods was reported, which, according to the information initially available, amounted to approximately Rs.287 crore. Various books of account and documents were reportedly seized during the search proceedings. Subsequently, vide letter dated 08.10.2018, the respondent informed the GST authorities about the alleged stock discrepancy and the provisional reversal of input tax credit (ITC) amounting to Rs.14.35 crore, comprising CGST of Rs.7.175 crore and SGST of Rs.7.175 crore, through its GST return.

2.3 In its communication dated 08.10.2018, the respondent submitted that the reversal had been made provisionally in view of the allegations concerning stock shortage reported in connection with the Income Tax Department's search. The respondent stated that it was examining the correctness of the allegations and the reasons for the alleged discrepancy and

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that the reversal was intended to safeguard the Government's revenue against any liability that might ultimately be determined under Section 9, Section 17(5)(h) or other applicable provisions of the CGST Act, 2017. The respondent maintained that the alleged shortage did not, by itself, establish the removal or clandestine supply of goods and that the discrepancy could also have arisen on account of accounting errors or other reconcilable differences. It reserved its right to seek restoration or refund of the amount provisionally reversed upon ascertainment of the actual facts and liability.

2.4 Following the aforesaid communication, the GST authorities addressed several letters to the Income Tax Department seeking relevant information and clarification regarding the stock position recorded in the books of account, the physical stock found during the search, and the actual extent and nature of the alleged shortage. According to the department's account of the proceedings, despite repeated correspondence and the lapse of several years, the precise reconciliation of the alleged stock discrepancy remained a matter requiring clarification. The issue was also stated to have been raised repeatedly in meetings of the Regional Economic Intelligence Committee (REIC) in connection with the non-sharing of information relating to searches conducted by the Income Tax Department.

2.5 The Income Tax Department, vide its letter dated 08.08.2024, informed the GST authorities that the physical stock found during the search, including goods in transit and goods lying at ports, was valued at Rs.119.60 crore. Subsequently, the respondent, vide its letter dated 09.04.2025, furnished a copy of an earlier communication dated 08.08.2022, referring to the findings of the Assistant Commissioner of Income Tax, Circle, Bareilly, which had reportedly assessed the stock shortage at Rs.236.78 crore. The said report was stated to have been prepared pursuant to a direction issued by the Interim Board for Settlement-III, New Delhi, seeking a report under Rule 9 of the Income Tax Settlement Commission (Procedure) Rules, 1997, in relation to the annexure to the petition filed by the respondent before the Settlement Commission.

2.6 The respondent further reiterated, vide its letter dated 24.06.2025, that the discrepancy referred to in the Income Tax Department's report dated 08.08.2022 had been evaluated at Rs.236.78 crore. Thereafter, in response to the GST authorities' letter dated 20.06.2025, the Income Tax Department, vide its letter dated 27.06.2025, communicated that the stock balance as per the books of account of the respondent on the date of search was Rs.406.86 crore. On comparing the book stock of Rs.406.86 crore with the physical stock valued at Rs.119.60 crore, the department worked out the alleged stock shortage at Rs.287.26 crore.

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2.7 Accordingly, the department proceeded on the basis that the stock position on the date of search was as follows:

- stock as per the books of account, Rs.406.86 crore;
- physical stock, including goods in transit and at ports, Rs.119.60 crore;
- and the resultant difference, Rs.287.26 crore.

2.8 The department treated the said difference as an unexplained stock shortage and inferred that the same indicated clandestine removal or unaccounted supply of goods. On this basis, the department calculated a GST liability of approximately Rs.14.36 crore at the rate of 5% and proposed to appropriate the amount already reversed or deposited by the respondent towards the alleged liability. The department further alleged contravention of Sections 16, 35(1), 35(2) and 74(1) of the CGST Act, 2017. The aforesaid computation and inference constituted the department's case; the respondent, on the other hand, had maintained that the alleged shortage required proper verification and reconciliation before any tax liability could be conclusively determined.

2.9 A separate issue arose pursuant to an alert circular dated 01.07.2020 received from the CGST Bhopal Commissionerate, reporting that the respondent had availed ITC on invoices purportedly issued by two suppliers, namely M/s R.P. Agro Oils and M/s Shyam Baba Food Products, whose existence and business activities were questioned by the department. In consequence of the said alert, the jurisdictional GST authorities initiated an inquiry into the admissibility of the ITC availed by the respondent from the aforesaid suppliers.

2.10 In this connection, summons bearing F. No. CEXCOM/AE/INV/GST/61/2020-AE-O/o-Commr-CGST-GBN/1703 dated 24.02.2021 and letter C. No. 342 dated 28.06.2021 were issued to the respondent, calling upon it to reverse the disputed ITC amounting to Rs.1,08,56,192/-. The disputed credit was also blocked by the department as a measure to safeguard the Government revenue pending verification.

2.11 During the course of the inquiry, the respondent furnished various documents in support of the purchases and the corresponding ITC, including tax invoices, e-way bills, transport bilty, weighment slips relating to goods received at its premises, bank account statements and party-wise ledger accounts. These documents were examined by the department. The inquiry also involved verification of the registration particulars and cancellation status of the two suppliers on the GST portal.

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2.12 On examination of the GST registration particulars, it was observed that the registration of M/s Shyam Baba Food Products had been cancelled at the request of the supplier itself. The departmental visit to the principal place of business of the said supplier was stated to have taken place after such cancellation. In contrast, the registration of M/s R.P. Agro Oils had been cancelled retrospectively. Having regard to the documents furnished by the respondent and the circumstances relating to the cancellation of registration, the department considered the ITC of Rs.75,48,940/- availed from M/s Shyam Baba Food Products to be admissible, whereas the ITC of Rs.33,07,252/- (IGST) availed from M/s R.P. Agro Oils was considered inadmissible.

2.13 In respect of M/s R.P. Agro Oils, the department alleged that the respondent had availed and utilised ITC without actual receipt of the corresponding goods, on the basis of invoices purportedly issued by a non-existent supplier. It was alleged that such credit had been availed in violation of Section 16(2) of the CGST Act, 2017, and the applicable provisions governing the furnishing of returns under Section 39. The department further alleged that the disputed ITC had been availed with the intention of utilising ineligible credit for the discharge of tax liability and that the alleged irregularity came to light following the alert dated 01.07.2020 issued by the CGST Bhopal Commissionerate.

2.14 Accordingly, the department proposed to disallow and recover ITC amounting to Rs.33,07,252/- (IGST), relating to the financial year 2019–20, under Section 74(1) of the CGST Act, 2017, together with applicable interest under Section 50 and penalty under the relevant provisions. The disputed ITC relating to M/s Shyam Baba Food Products, amounting to Rs.75,48,940/-, was, however, considered admissible in view of the evidence examined during the inquiry.

2.15 On the basis of the aforesaid investigations and the information received from the Income Tax Department, Show Cause Notice No. 29/2025-26/ADC/AE/GBN dated 30.06.2025 was issued to M/s B.L. Agro Industries Limited. The notice proposed confirmation of GST amounting to Rs.14,36,00,000/- on the alleged clandestine removal or unaccounted supply of goods corresponding to the stock shortage of Rs.287.26 crore. It also proposed recovery of ITC amounting to Rs.33,07,252/- (IGST), allegedly availed on invoices issued by M/s R.P. Agro Oils without actual receipt of the corresponding goods. The proposed demands were accompanied by the proposals for recovery of applicable interest and imposition of penalties under Section 74(1) of the CGST Act, 2017, read with the corresponding provisions of the UPGST Act, 2017, wherever applicable.

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2.16 The respondent submitted written replies dated 27.10.2025 and 02.12.2025, contesting the allegations and placing reliance on the documents and explanations furnished during the proceedings. The adjudicating authority considered the replies and the accompanying annexures. However, in relation to the alleged stock shortage, the authority observed that the respondent had not satisfactorily reconciled the difference between the stock recorded in its books of account and the physical stock reported by the Income Tax Department. It relied upon the communications dated 08.08.2024 and 27.06.2025, which recorded the physical stock at Rs.119.60 crore and the book stock at Rs.406.86 crore, respectively.

2.17 In its discussion and findings, the adjudicating authority held that the alleged stock shortage of Rs.287.26 crore, coupled with the respondent's failure to provide a satisfactory reconciliation, supported the department's allegation of clandestine removal or unaccounted supply of goods. It accordingly confirmed the GST demand of Rs.14.36 crore, comprising CGST of Rs.7.18 crore and SGST of Rs.7.18 crore, under Section 74(1) of the CGST Act, 2017, read with the corresponding provisions of the UPGST Act, 2017. The authority also ordered recovery of applicable interest under Section 50 and imposed a penalty equivalent to the tax amount confirmed.

2.18 With regard to the disputed ITC, the adjudicating authority held that the respondent had failed to establish the admissibility of the credit of Rs.33,07,252/- availed on invoices issued by M/s R.P. Agro Oils. It considered the credit inadmissible on the ground that the supplier's registration had been cancelled retrospectively and that the respondent had allegedly failed to establish actual receipt of the corresponding goods. Consequently, it ordered recovery of the disputed ITC under Section 74(1), along with applicable interest under Section 50 and penalty under the relevant provisions of the CGST Act, 2017.

2.19 Accordingly, the adjudicating authority, vide Order-in-Original No. 35/ADC/CGST/GBN/2025-26 dated 23.12.2025, confirmed the demand of GST amounting to Rs.14,36,00,000/- in respect of the alleged stock shortage, ordered recovery of applicable interest, disallowed ITC of Rs.33,07,252/- relating to M/s R.P. Agro Oils, and imposed a penalty equivalent to the aggregate tax amount confirmed, under Section 74(1) of the CGST Act, 2017, read with the corresponding provisions of the UPGST Act, 2017, as applicable.

2.20 Independently of the aforesaid adjudication proceedings, M/s B.L. Agro Industries Limited pursued a refund claim in respect of the amount of Rs.14.35 crore provisionally reversed in October 2018 in connection with the alleged stock shortage reported by the Income

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Tax Department. The respondent maintained that the reversal had not been made in discharge of any self-assessed or finally determined tax liability, but had been undertaken provisionally in response to the allegations concerning stock discrepancy, pending verification of the actual facts and determination of any liability under the GST law.

2.21 On 06.10.2020, the respondent filed a manual refund application seeking refund of Rs.14.35 crore. The jurisdictional Assistant Commissioner returned the claim papers with the direction to file the refund application electronically in Form GST RFD-01 on the common portal. The respondent challenged the said direction before the Additional Commissioner (Appeals), contending that a technical glitch on the portal had prevented the filing of the claim electronically.

2.22 The Additional Commissioner (Appeals), vide order dated 27.09.2023, allowed the appeal and directed that the manual refund application filed by the respondent be considered and decided on merits, after observing the principles of natural justice. Pursuant thereto, the respondent filed the refund application through the common portal using the category of "on account of order of appeal".

2.23 Subsequently, the jurisdictional Assistant Commissioner issued a show cause notice dated 28.05.2025 proposing rejection of the refund claim. The principal grounds stated in the notice were that the respondent had reversed the amount of Rs.14.35 crore voluntarily through its GSTR-3B return for August 2018, without any specific direction from the GST department; that the return had been filed on a self-assessment basis; and that the reversal could not, therefore, be treated as an excess payment of tax. It was further observed that the Respondent had referred to the Income Tax Department's allegations concerning stock shortage and had not furnished the final outcome of the related proceedings. On these grounds, the proposed rejection proceeded on the premise that the amount represented a liability accepted by the Respondent.

2.24 In its reply, the Respondent disputed the proposed rejection and submitted that the reversal had been made in response to media reports concerning the alleged stock shortage, at a time when the precise nature and extent of the alleged discrepancy had not been established. It contended that the amount had not been paid against any self-assessed GST liability and that no demand under Section 73 or Section 74 of the CGST Act, 2017, had been raised in respect of the said amount at the time of the reversal. The Respondent further submitted that a mere allegation of stock shortage by another department could not, by itself, constitute a valid basis

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for retaining GST revenue without determination of the corresponding liability. It relied upon Article 265 of the Constitution of India, which prohibits the levy or collection of tax except by authority of law, and maintained that the amount was refundable in the absence of a legally sustainable demand.

2.25 The adjudicating authority, however, rejected the refund claim vide Order-in-Original No. ZD090625108500 dated 13.06.2025. The rejection was based primarily on the observations that the Respondent had reversed the amount through its GSTR-3B return without any specific direction from the department, that the reversal appeared to have been made as part of the self-assessment for August 2018, and that the investigation relating to the alleged stock shortage was pending before the headquarters. The authority further observed that the precise liability could not be ascertained while the investigation remained pending.

2.26 Aggrieved by the rejection, the Respondent preferred an appeal before the Additional Commissioner (Appeals), contending that the reversal of Rs.14.35 crore was provisional and did not constitute acceptance of a tax liability. It submitted that the amount had been disclosed in the GSTR-3B return for August 2018, filed on 08.10.2018, and that the department had not issued any demand or direction requiring payment of the said amount. It was further contended that the pendency of an investigation could not constitute a legally valid ground for rejecting an otherwise admissible refund claim, particularly when the said ground had not been specifically proposed in the show cause notice. The Respondent also reiterated that GST liability could not be determined merely on the basis of an allegation of stock shortage made by the Income Tax Department without independent verification under the GST law.

2.27 The appellate authority, after examining the record and the submissions of the Respondent, observed that the refund claim could not be rejected merely on the ground that an investigation was pending before the headquarters. It noted that the reversal of ITC had been made provisionally and was not supported, at the relevant stage, by a demand determined under Section 73 or Section 74 of the CGST Act, 2017. The authority further observed that, in the absence of verification establishing the alleged stock shortage and determination of the corresponding GST liability, the department could not lawfully retain the amount solely on the basis of the pending investigation. It also took note of the fact that the Respondent had disclosed the reversal in its return and communicated the circumstances through its letter dated 08.10.2018, and that the earlier appellate order dated 27.09.2023 had directed consideration of the refund claim on merits.

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2.28 Accordingly, the appellate authority held that the grounds relied upon for rejecting the refund claim were not sustainable and that the Respondent was eligible for the refund of Rs.14.35 crore, subject to the applicable statutory procedure. The appeal was allowed, the impugned rejection order was set aside, and the jurisdictional Assistant Commissioner was directed to sanction the refund under Section 54 of the CGST Act, 2017, by crediting the amount to the Respondent's electronic credit ledger.

2.29 The foregoing facts disclose two distinct but interconnected proceedings arising from the alleged stock shortage identified during the Income Tax Department's search conducted from 04.10.2018 to 07.10.2018. The first proceeding concerned the alleged stock shortage of Rs.287.26 crore, calculated by comparing the book stock of Rs.406.86 crore with the physical stock of Rs.119.60 crore, and the consequent demand of GST amounting to Rs.14.36 crore. The second concerned the admissibility of ITC amounting to Rs.33,07,252/- availed on invoices issued by M/s R.P. Agro Oils. These issues culminated in the Order-in-Original dated 23.12.2025, confirming the demands, interest and penalty as specified therein.

2.30 Separately, the Respondent pursued a refund of Rs.14.35 crore, representing the amount provisionally reversed in 2018 in response to the alleged stock shortage. The refund claim was initially rejected by the jurisdictional authority on the grounds that the reversal had been made voluntarily and that the investigation was pending. On appeal, the rejection was set aside and the jurisdictional Assistant Commissioner was directed to sanction the refund by crediting the amount to the electronic credit ledger.

2.31 Being aggrieved by the said Order-in-Appeal, the Department has preferred the present second appeal before the Tribunal, mainly challenging Order-in-Appeal No.NOI-CGST-NOIDA-002-APPL-383-2025-26 dated 02-09-2025 and requesting to restore the rejection of the refund claim issued vide Refund Order No.23/R/AC/CGST/Div.-II-BLY/2024-25 dated 13-06-2025 (OIO ARN: ZD090625108500 dated 13-06-2025), as the amount is a confirmed tax liability.

3. Grounds of Appeal:

3.1 The impugned order (OIA) is legally flawed as it holds that the reversal of Rs.14.35 crore by the taxpayer was "not backed by any demand under Sections 73 or 74". This finding ignores the fact that a Show Cause Notice (SCN) had already been issued on 30.06.2025 specifically invoking Section 74(1) for the recovery of GST on stock shortages and ineligible ITC. Furthermore, the vide Order-in-Original No.35/ADC/CGST/GBN/2025-26 dated

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23.12.2025 has now confirmed a total demand of Rs.14,36,00,000/- on account of clandestine removal, alongside interest and penalties. Therefore, the reversal was not "excess" tax but a partial discharge of a confirmed liability.

3.2 The Additional Commissioner (Appeals) erred in holding that the reversal in GSTR-3B did not constitute a self-assessed liability. Under Section 59 of the CGST Act, 2017 every registered person is mandated to self-assess the taxes payable and furnish a return. By reversing the credit in their GSTR-3B for the period August 2018 return following the detection of stock shortages by the Income Tax Department, the taxpayer effectively acknowledged a liability arising from those discrepancies. The Department contends that once a taxpayer self-assesses and reverses credit in a statutory return, such an act cannot be dismissed as "provisional" simply to facilitate a refund claim later.

3.3 The impugned order incorrectly states that the Department failed to verify stock shortages or establish liability. On the contrary, the records show a massive discrepancy of Rs.287.26 crore between the taxpayer's book balance (Rs.406.86 crore) and the physical stock found (Rs.119.60 crore). This shortage was calculated based on the taxpayer's own statutory records. The OIO has since concluded that this unexplained disappearance of goods constitutes a strong and unrebutted presumption of clandestine removal and undisclosed outward supply.

3.4 The OIA allowed the refund of Rs.14.35 crore while substantive adjudication proceedings regarding the underlying tax evasion were still active. The OIO later confirmed that the taxpayer engaged in the clandestine removal of goods. Granting a refund under these circumstances is premature and results in a direct loss to the government exchequer, as the amount is legally due to the Department as per the confirmed demand in the OIO.

3.5 A refund under Section 54 is only permissible if the tax paid is in "excess" of the actual liability. Since the OIO dated 23.12.2025 has confirmed a tax liability of Rs.14.36 crore for the very same stock shortage issue, the Rs.14.35 crore previously reversed by the taxpayer is legally due to the State. The OIA's direction to sanction the refund is, therefore, in direct contradiction to the final adjudication of the taxpayer's liability.

4. Submission of the Respondent:

4.1 The respondent submitted that as mentioned earlier, consequent to the media reports about alleged shortage of Rs. 287 crore in stock, appellants had reversed amount of Rs. 14.35

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crore by way of reversal of credit and disclosed the same in Table 4(B)(2) of GSTR-3B for the month of August 2018.

4.2 The respondent submitted that the claim for refund of Rs. 14.35 crore by way of credit in Electronic Credit Ledger was proposed to be rejected mainly on the ground that the amount was paid as self-assessed liability and the same cannot be considered as excess reversal. The Order-in-Original dated 13-06-2025 also rejected the claim on the said ground.

4.3 The respondent submitted that the Appellate Authority, in paragraphs 5.5, 5.6 and 5.7, observed as under:

Para 5.5:

On perusal of GSTR-3B and the other relevant records, We find that the reversal of Rs. 14.35 crore (along with other reversals) has been disclosed in Table 4(B)(2) of GSTR-3B for the month of August 2018. As per the GSTR-3B format, details of liabilities on outward supplies are required to be disclosed in Table 3.1 of GSTR-3B. Admittedly, appellants have not disclosed any liability on account of shortage of stocks in the said Table 3.1 of GSTR-3B. In their letter dated 08-10-2018, appellants have specifically submitted that the reversal has been done provisionally. Perusal of GSTR-3B read with their letter dated 08-10-2018 makes it clear that the appellants have not reversed/paid amount of Rs. 14.35 crore towards any self-assessed liability.

Para 5.6:

The impugned order does not hold that appellants were liable for payment of Rs. 14.35 crore against any supply.

Para 5.7:

In view of above, I hold that the amount of Rs. 14.35 crore had not been reversed/paid by the appellants towards any self-assessed liability and the claimed refund cannot be rejected on this ground.

(iv) In the grounds of appeal, department contends that by receiving credit in GSTR-3B, taxpayer effectively acknowledged the liability. Once a taxpayer self-assesses and reverses credit, such an act cannot be dismissed simply to facilitate a refund claim.

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(v) It is submitted that as per Section 39, every registered person shall, for every calendar month, furnish a return of inward and outward supplies of goods or services or both, ITC availed, tax payable and tax paid. All these particulars are duly furnished in GSTR-3B for the month of August 2018. Reversal of ITC of Rs. 14.35 crore is not towards any self-assessment. It would be appreciated that any provisional reversal or reversal under protest could have been done only by way of declaring the same in Column 4(B)(2) of GSTR-3B. Any such disclosure/declaration does not amount to acceptance of liability. In any case, it was provisional payment/reversal.

(vi) There is no provision under the law, nor cited in the departmental appeal, that any reversal disclosed in Table 4(B)(2) of GSTR-3B is acceptance of liability. Liability for payment of GST is always disclosed in Table 3.1 of GSTR-3B.

(vii) Without prejudice to above, it is submitted that on receipt of information about the shortage alleged by the IT Department, department should have initiated necessary investigation and issued a show cause notice within the normal period of limitation, for appropriating the amount already paid. Having not done so, department cannot reject the claimed refund on the ground of self-assessment.

(i) As mentioned earlier, the show cause notice proposed to reject the claimed refund only on the ground of self-assessed liability.

(ii) The Appellate Authority has held that the reversal of Rs. 14.35 crore was not towards self-assessed liability. Now department has taken various other grounds in the appeal before GSTAT.

(iii) It is the settled law that orders cannot be passed beyond the scope of show cause notice. Reliance in this connection is placed on the following decisions:

4.4 The respondent placed reliance on the following Judicial precedents:

(a) Reckitt & Colman of India Ltd. Versus Collector of Central Excise, reported in 1996 (88) E.L.T. 641 (S.C.).

Exemption disallowed by CEGAT on a ground that was never canvassed by Revenue — CEGAT Order set aside — Appeal allowed by Supreme Court — Section 5A of the Central Excise Act, 1944.

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(b) Saci Allied Products Ltd. Versus Commissioner of Central Excise, Meerut, reported in 2005 (183) E.L.T. 225 (S.C.).

Tribunal cannot sustain case of Revenue against assessee on a ground not raised by Revenue either in show cause notice or in the order — Section 35B of Central Excise Act, 1944.

(c) Commissioner of Central Excise & Customs, Nagpur-I Versus Fabrimax Engineering Pvt. Ltd., reported in 2016 (344) E.L.T. 920.

Said issue never raised in show cause notice as ground for rejection of refund claim — Ground in appeal cannot go beyond show cause notice — Refund cannot be denied on this ground — Section 35B of Central Excise Act, 1944 and Rule 5 of CENVAT Credit Rules, 2004.

(d) Bajaj Auto Limited Versus Union of India, reported in 2003 (151) E.L.T. 23.

4.5 The respondent submitted that gounds in appeal cannot go beyond scope of show cause notice — Sections 11A and 35E of Central Excise Act, 1944. In the present case, the following grounds of appeal are not maintainable, as the same had never been taken during proceedings before the adjudicating authority. These are beyond the scope of show cause notice:

(a) Erroneous Conclusion Regarding the Absence of Tax Liability.

(b) Failure to Acknowledge the Evidence of Clandestine Removal.

(c) Premature Grant of Refund Violating Revenue Interests.

(d) Incorrect Application of Section 54 for Refund.

4.6 The respondent submitted that department, in Ground 1, has referred to show cause notice dated 30-06-2025 and the order dated 23-12-2025 to contend that demand of Rs. 14.36 crore on account of clandestine removal stands confirmed. Besides reiterating that the said ground is beyond the scope of show cause notice, it is submitted that the said show cause notice and order dated 23-12-2025 are the subject matter of separate proceedings and are not open for consideration before the Tribunal.

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4.7 Moreover, the order dated 23-12-2025 has been issued much after the issuance of the impugned order dated 02-09-2025 and cannot be relied upon in the present proceedings. Respondent-assessee has already filed an appeal before the Commissioner (Appeals), Noida, which is still pending.

4.8 Department has not conducted any independent investigation. There is absolutely no evidence of clandestine removal.

4.9 There is no provision under the law, nor cited in the grounds of appeal, which provides that refund can be withheld during investigation or adjudication.

4.10 The claimed refund cannot be rejected on the ground of confirmation of liability by an order dated 23-12-2025, passed much after the filing of refund claim/show cause notice/Order-in-Original/Order-in-Appeal.

4.11 In the present case, the order dated 23-12-2025 has been passed on the basis of information received from the IT Department. Independent investigation has not been carried out. It is the settled law that demands cannot be confirmed on the basis of third-party information. Reliance in this connection is placed on the following decisions:

(i) JP Iscon Pvt. Ltd. v. CCE, reported in 2022 (63) GSTL 64 (T).

(ii) Sharma Fabrications & Erections Pvt. Ltd. Versus C.C.E., Allahabad, reported in 2017 (5) G.S.T.L. 96. The said order has been upheld by the Hon'ble Allahabad High Court.

It is the settled law that the show cause notice is the foundation on which the Department has to build up its case. If the allegations in the show cause notice are not specific and, on the contrary, are vague, lack details and/or are unintelligible, it is sufficient to hold that proper opportunity was not given to meet the allegations indicated in the show cause notice.

Reliance in this connection is placed on the decision in **Commissioner of Central Excise, Bangalore Versus Brindavan Beverages (P) Ltd.**, reported in 2007 (213) E.L.T. 487 (S.C.).

In cases of shortages, show cause notice should be issued within the normal period of limitation. Notices issued after the normal period of limitation are barred.

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Reliance in this connection is placed on the decision in **HI Tech Abrasives Ltd. Versus Commissioner of Central Excise & Customs, Raipur**, reported in 2018 (362) E.L.T. 961 (S.C.).

4.12 The respondent submitted that during proceedings before the IT authorities, respondent-assessee has not accepted/admitted any shortage. Assessee filed an application before the Settlement Commission. The said application was rejected. A petition was filed before the Lucknow Bench of the Allahabad High Court. Vide order dated 10-08-2026, the Hon'ble High Court has been pleased to quash the order passed by the Settlement Commission.

5. Discussion and Findings

5.1 We have carefully considered the grounds of appeal filed by the Department, the submissions made by the respondent, the impugned Order-in-Appeal dated 02.09.2025, the Order-in-Original dated 13.06.2025 rejecting the refund claim and other records available.

5.2 We find that that since the matter in the appeal pertains to refund claim and no amount or tax/duty is involved, therefore there is no need of pre-deposit under section 107(6) of CGST Act, 2017.

5.3 The principal issue for determination is whether the reversal of input tax credit (ITC) amounting to ₹14.35 crore in Table 4(B)(2) of GSTR-3B for August 2018 constituted discharge of a self-assessed GST liability, thereby disentitling the respondent from seeking restoration of the amount, or whether the refund claim could be rejected merely because the reversal had been made voluntarily and an investigation concerning an alleged stock shortage was pending.

5.4 The record indicates that the respondent reversed ₹14.35 crore, comprising CGST of ₹7.175 crore and SGST of ₹7.175 crore, following reports of an alleged stock shortage during the Income Tax Department's search conducted in October 2018. By its letter dated 08.10.2018, the respondent expressly described the reversal as provisional and reserved its right to seek restoration of the amount upon verification of the actual facts and determination of the liability under the GST law. The Department has not established that, at the time of such reversal, a demand for the said amount had been determined under Section 73 or Section 74 of the CGST Act, 2017, or that the respondent had admitted a quantified GST liability arising from the alleged shortage.

5.5 The distinction between the disclosure of an ITC reversal in a return and the declaration of tax payable on outward supplies is material. Under Section 39 of the CGST Act, read with

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the prescribed return format, the particulars of outward supplies and tax liability are distinct from the particulars of ITC availed and reversed. In the present case, the appellate authority recorded that the amount of ₹14.35 crore was disclosed in Table 4(B)(2) of GSTR-3B and that no corresponding liability on account of the alleged stock shortage had been declared in Table 3.1. This distinction supports the respondent's contention that the reversal, by itself, did not constitute an admission of a corresponding output tax liability.

5.6 The records indicates that on perusal of GSTR 3B and the other relevant records, we find that the reversal of Rs. 14.35 crore (along with other reversals) has been disclosed in table 4B (2) of GSTR 3B for the month of August 2018. As per the GSTR 3B format, details of liabilities on outward supplies are required to be disclosed in table 3.1 of GSTR 3B. admittedly appellants have not disclosed any liability on account of shortage of stocks in the said table 3.1 of GSTR 3B. In their letter dt. 08-10-2018, appellants have specifically submitted that the reversal has been done provisionally. Perusal of GSTR 3B read with their letter dt. 08-10-2018 makes it clear that the appellants have not reversed/paid the amount of Rs. 14.35 cores towards any self-assessed liability.

5.7 Section 59 of the CGST Act provides for self-assessment of the taxes payable under the Act. However, the mere fact that a registered person has furnished a return under Section 39 does not mean that every amount disclosed in every table of that return constitutes an admitted tax liability. The legal character of the transaction must be determined from the nature of the entry, the relevant statutory provisions and the contemporaneous documents. Where an amount is expressly disclosed as a provisional reversal, the Department must examine the surrounding circumstances before treating that entry as a conclusive admission of tax payable.

5.8 The respondent's letter dated 08.10.2018 assumes particular significance because it was contemporaneous with the reversal. It stated that the amount had been reversed provisionally in response to the alleged stock discrepancy and that the respondent was examining the correctness of the allegations. The letter is consistent with the respondent's subsequent stand that the reversal was not intended to acknowledge a finally determined liability. In the absence of contrary contemporaneous material demonstrating an unequivocal admission of liability, the Department's contention that the mere disclosure of the reversal conclusively established a self-assessed liability cannot be accepted.

5.9 In the present case, however, the refund rejection order proceeded primarily on the fact that the reversal had been made without a specific departmental direction and had been

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reflected in a self-assessed return. Those circumstances, without a finding that the amount represented tax actually payable under the Act, were insufficient to establish that the respondent had discharged an admitted GST liability.

5.10 The constitutional principle embodied in Article 265 of the Constitution of India is also relevant. No tax shall be levied or collected except by authority of law. This principle does not dispense with the statutory requirements governing refund claims, nor does it automatically entitle a taxpayer to the return of every amount voluntarily reversed or paid. It does, however, require that the retention of an amount as tax be supported by the applicable statutory provisions and the legally established liability. Accordingly, an alleged stock discrepancy reported by another department cannot, without the requisite examination under the GST law, be treated as conclusive proof of an equivalent GST liability.

5.11 The Supreme Court's decision in Commissioner of Central Excise, Bangalore v. Brindavan Beverages (P) Ltd., reported in 2007 (213) E.L.T. 487 (S.C.), lays down that the show cause notice is the foundation on which the Department must build its case. The allegations must be sufficiently specific to enable the noticee to understand and answer the case against it. Although that decision arose under the erstwhile central excise law, the principle of fair notice and effective opportunity to respond is equally relevant to adjudication under the GST enactments. The authority deciding a refund claim must, therefore, remain within the grounds properly notified to the taxpayer and cannot substitute an unnotified basis of rejection without affording the legally required opportunity.

5.12 The same principle finds support in Reckitt & Colman of India Ltd. v. Collector of Central Excise, reported in 1996 (88) E.L.T. 641 (S.C.), and Saci Allied Products Ltd. v. Commissioner of Central Excise, Meerut, reported in 2005 (183) E.L.T. 225 (S.C.), relied upon by the respondent. These decisions support the proposition that an adjudicatory or appellate authority cannot sustain the Department's case on a materially different ground that was neither raised in the proceedings nor formed part of the case the taxpayer was called upon to answer. The application of this principle must, however, be assessed in the context of the actual show cause notice, the impugned order and the statutory scope of the appeal. The hon'ble Supreme Court in the case of Reckitt & Colman of India Ltd Vs Collector of Central Excise reported in 1996 (88) ELT 641 (SC) has observed as under –

"It will be remembered that the case of the Revenue, which the appellant had been required to meet at every stage from the show cause notice onwards, was that the said product was a preparation based on starch. Having come to the conclusion that the said product was not a

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preparation based on starch, the Tribunal should have allowed the appeal. It was beyond the competence of the Tribunal to make out in favour of the Revenue a case which the Revenue had never canvassed and which the appellants had never been required to meet. It is upon this ground alone that the appeal must succeed".

5.13 Further, we rely on the decision of hon'ble Supreme Court in the case of *Caprihans India Ltd Vs CCE reported in 2015 (325) ELT 632 (SC)* wherein Court has held that the Tribunal could not have passed order beyond the scope of show cause notice. Para 6 of the order reads as under –

"The findings in these paragraphs by the Tribunal have to be set aside on the simple ground that they are beyond the show cause notice of the Revenue, which accepts the fact that at least in the present case, no new product emerges after printing and consequently, therefore, that cannot be said to be any manufacture. On this ground alone, we set aside the Tribunal's judgment and restore that of the Commissioner, making it clear that the classification of the product remains under Chapter 39 Heading No. 39.20".

5.14 In the present case, the show cause notice dated 28.05.2025 proposed rejection of the refund principally on the grounds that the respondent had voluntarily reversed the amount through GSTR-3B, that the reversal formed part of self-assessment. The respondent was thus called upon to answer the question whether the reversal represented a self-assessed liability. The Department's subsequent reliance upon the Order-in-Original dated 23.12.2025, confirming a demand on the alleged stock shortage, raises a distinct issue concerning the effect of a subsequent adjudication order on the refund proceedings.

5.15 The Department has relied upon the subsequent Order-in-Original dated 23.12.2025 to contend that the alleged stock shortage of ₹287.26 crore resulted in a confirmed GST liability of ₹14.36 crore and that the earlier reversal of ₹14.35 crore should accordingly be treated as payment towards that liability. The respondent, on the other hand, submits that the said order was passed after the impugned Order-in-Appeal dated 02.09.2025 and is the subject of separate appellate proceedings.

5.16 The legality of the impugned Order-in-Appeal must ordinarily be examined with reference to the material and circumstances existing when it was passed. The subsequent Order-in-Original cannot retrospectively alter the reasons recorded in the refund rejection order or cure a defect in the original reasoning merely by its subsequent existence. Equally, the mere

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fact that an adjudication order was passed later does not, as an abstract rule, make it irrelevant to every pending proceeding. Its relevance must be determined in accordance with the scope of the present appeal, the applicable procedural law and whether the subsequent order has attained finality or remains under challenge.

5.17 In the present matter, the respondent has stated that an appeal against the Order-in-Original dated 23.12.2025 is pending before the appellate authority. The demand confirmed in that order is, therefore, the subject matter of separate proceedings and its merits cannot be conclusively determined in the present refund appeal merely by relying upon the Department's assertion that the stock discrepancy establishes clandestine removal.

5.18 The distinction is particularly important because the refund claim concerns an amount reversed in October 2018, whereas the demand relied upon by the Department was adjudicated in December 2025. The fact that the amounts are broadly comparable does not, by itself, establish that the earlier reversal was made in discharge of the subsequently confirmed demand. The Department must demonstrate the legal and factual nexus between the reversal and the liability sought to be discharged, having regard to the terms of the relevant order, the nature of the amount reversed and the statutory provisions governing appropriation or adjustment.

5.19 The High Courts have also emphasised that an amount cannot be retained merely because it was deposited during an investigation, where the statutory basis for treating it as tax payable has not been established. In M/s. Bhumi Associate v. Union of India, Gujarat High Court, the Court issued directions to safeguard taxpayers against coercive collection during search and investigation and stressed that a payment claimed to be voluntary must genuinely satisfy the applicable statutory requirements. The Delhi High Court, in M/s. Vallabh Textiles v. Senior Intelligence Officer, 2022 SCC OnLine Del 4508, directed the return of amounts deposited during search proceedings after finding that the deposits lacked voluntariness in the circumstances of that case.

5.20 More recently, the Rajasthan High Court in M/s. Baba Contractors and Engineers v. Union of India, decided on 22.06.2026, reiterated that a payment made during search proceedings cannot be presumed voluntary merely because it was recorded in Form GST DRC-03. The Court examined the circumstances of the deposit, the absence of prior ascertainment of liability, compliance with statutory safeguards and the subsequent conduct of the parties, and directed refund of the amount in the circumstances before it. The judgment reinforces the

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principle that the statutory character of a payment must be established from the relevant facts and law rather than inferred solely from the act of payment.

5.21 The aforesaid judgments are relevant to the general principle that the Department cannot retain an amount without lawful justification. Nevertheless, the facts of those cases must be distinguished from the present matter. The cited decisions principally concern amounts allegedly obtained under coercion during search proceedings, whereas the present record shows a reversal disclosed by the respondent in its GSTR-3B return and explained by a contemporaneous letter as provisional. The respondent's entitlement must, therefore, be decided on the basis of the statutory character of that reversal, the evidence of liability and the provisions governing refund, rather than by assuming coercion where it has not been established.

5.22 The Department's reliance on the alleged stock shortage also requires independent scrutiny. The difference between the book stock of ₹406.86 crore and the physical stock of ₹119.60 crore was calculated on the basis of information communicated by the Income Tax Department. Such information may provide a legitimate basis for initiating GST investigation; however, the existence of a difference in stock valuation does not, without further examination, conclusively establish that goods were clandestinely removed or supplied without payment of GST. The Department must establish the factual and legal basis for the alleged taxable event, the relevant tax period, the taxable value and the rate of tax applicable to the goods concerned.

5.23 The respondent has relied upon Sharma Fabrications & Erections Pvt. Ltd. v. Commissioner of Central Excise, Allahabad, reported in 2017 (5) G.S.T.L. 96, stated to have been upheld by the Allahabad High Court, and J.P. Iscon Pvt. Ltd. v. CCE, reported in 2022 (63) G.S.T.L. 64 (Tri.), in support of its submission that third-party information cannot, by itself, substitute for legally sufficient evidence. The governing principle is that information received from another authority may be used as an investigative lead, but an adverse tax determination must be supported by material that establishes the alleged contravention and affords the taxpayer an effective opportunity to rebut it. Whether the demand arising from the alleged stock shortage satisfies that requirement falls for determination in the separate proceedings concerning the Order-in-Original dated 23.12.2025 and cannot be conclusively decided in this refund appeal.

5.24 In this connection, the Supreme Court's decision in Brindavan Beverages assumes further significance. A notice must disclose the substance of the allegations and the grounds on

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which the proposed action rests. The respondent must be able to understand whether the Department alleges clandestine removal, unaccounted outward supplies, loss of goods attracting a particular statutory consequence, or some other contravention. The mere statement that a stock difference remains unexplained cannot dispense with the need to establish the elements of the particular contravention under the GST law.

5.25 The Department has also contended that the refund was premature because the investigation and adjudication concerning the stock shortage had not concluded when the Order-in-Appeal was passed. The pendency of an investigation is not equivalent to a determination of tax liability. Where the statute permits recovery upon the fulfilment of prescribed conditions, the proper officer must follow that statutory mechanism. An investigation cannot, merely by remaining pending, convert a provisional reversal into an established liability or authorise indefinite retention of an amount without an adequate legal basis.

5.26 Section 54 provides the statutory framework for refund of tax and other amounts falling within its scope. The refund of an amount resulting from reversal of ITC must be examined in the context of the nature of the original credit, the manner of reversal and the statutory mechanism under which restoration is claimed. The fact that the respondent seeks credit to its electronic credit ledger does not dispense with this examination. However, where the authority rejecting the claim has not established that the reversal represented an amount legally payable as tax, it cannot sustain rejection solely on the basis that the reversal was made voluntarily or that an investigation remained pending.

5.27 The Department's reliance on Section 74 must also be considered in its proper statutory context. Section 74 provides for determination of tax not paid or short paid, or ITC wrongly availed or utilised, by reason of fraud, wilful misstatement or suppression of facts to evade tax, subject to the requirements of the provision. The initiation of proceedings under Section 74 does not, by itself, establish the alleged liability. The amount payable must be determined in accordance with the statutory procedure. The subsequent confirmation of a demand may have consequences under the applicable law, but it does not establish that the respondent had admitted that liability in its August 2018 return.

5.28 The respondent's reliance on the limitation principle discussed in CCE v. Hitech Abrasives Ltd., reported in 2018 (362) E.L.T. 961, must likewise be considered in the context of the applicable statutory provisions and the precise facts of the relevant proceedings. The

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question whether a demand concerning the alleged stock shortage is barred by limitation, and whether the extended period is invocable, is distinct from the issue whether the amount reversed in 2018 constituted self-assessed tax.

5.29 The Department's contention that the refund would adversely affect the Government revenue cannot independently determine the respondent's entitlement. Revenue protection must operate within the statutory framework. If a legally sustainable tax liability has been determined, the Department may pursue the remedies and recovery mechanisms available under the Act, subject to the applicable conditions. Conversely, if the amount reversed was not payable as tax and is otherwise refundable under Section 54, the claim cannot be rejected merely because the Department apprehends that a liability may ultimately be established.

5.30 The respondent has further contended that the adjudicating authority rejected the refund claim on grounds that were not supported by the material disclosed in the show cause notice. The legal principle that an order must remain within the scope of the notice is well established. In the present case, the original rejection was substantially founded on the alleged voluntary nature of the reversal, its disclosure in GSTR-3B and the pendency of the investigation. The appellate authority examined those grounds and found that they did not establish a self-assessed liability or justify rejection of the claim. The Department cannot sustain the original rejection merely by repeating those grounds without addressing the contemporaneous letter dated 08.10.2018 and the distinction between the reversal of ITC and declaration of tax payable.

5.31 The Department's reliance on the subsequent Order-in-Original dated 23.12.2025 must finally be considered within the limited scope of this appeal. That order was passed after the impugned Order-in-Appeal dated 02.09.2025 and, according to the respondent, is under challenge in separate appellate proceedings. Its findings cannot be treated as having attained finality merely because the demand was confirmed by the adjudicating authority.

5.32 We also find that the separate dispute concerning ITC of ₹33,07,252 availed on invoices issued by M/s R.P. Agro Oils does not, by itself, determine the respondent's entitlement to refund of ₹14.35 crore. The two matters arise from different transactions and require separate examination of the relevant facts and statutory conditions. The admissibility of the disputed ITC cannot be used as a substitute for establishing the legal basis for retaining the amount reversed in connection with the alleged stock shortage.

5.33 A further distinction must be maintained between the amount of ₹14.35 crore reversed in August 2018 and the demand of ₹14.36 crore confirmed by the subsequent Order-in-

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Original. The amounts are not identical, and the legal relationship between them must be established before any adjustment or appropriation can be justified. The subsequent demand order cannot, merely by reason of the similarity of the amounts and the common reference to the alleged stock shortage, conclusively establish that the earlier reversal was made in discharge of the demand subsequently confirmed.

5.34 Upon an overall consideration of the record, we find that the original refund rejection order did not establish that the amount of ₹14.35 crore had been reversed towards a self-assessed GST liability. The contemporaneous letter dated 08.10.2018, read with the relevant GSTR-3B entries, supports the respondent's contention that the reversal was provisional. The pendency of the investigation, without a legally sufficient determination of liability at the relevant stage, could not by itself justify rejection of the claim. The Department's grounds of appeal do not sufficiently displace the reasoning recorded by the appellate authority on these aspects.

5.35 Accordingly, subject to verification that the refund claim satisfies the applicable requirements of Section 54 of the CGST Act, 2017, and that the amount claimed is otherwise refundable under the applicable statutory provisions, we find no sustainable basis for restoring the original rejection merely on the grounds advanced by the Department. The impugned Order-in-Appeal dated 02.09.2025, insofar as it sets aside the rejection on the grounds examined above, does not call for interference in the present appeal.

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Order

6.1 In view of the foregoing discussion and findings, the Department's appeal is liable to be dismissed. The impugned Order-in-Appeal dated 02.09.2025 is upheld insofar as it holds that the refund claim cannot be rejected merely because the amount was reversed voluntarily in GSTR-3B or because the investigation concerning the alleged stock shortage was pending.

(Santosh Kumar Srivastava)

(Arvind Kumar)

Dated: 22.10.2026

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