GSTAT

State Bench Ghaziabad

Division Bench Court No. Court I

APL/D26/GZB/2026

M/S FIBERHOME INDIA PRIVATE LIMITED **.....Appellant**

Versus

LALIT MISHRA, ADDITIONAL COMMSIONER , SECTOR 148 NOIDA & ORS. **.....Respondent**

Quorum

Hon'ble Dr. Sanjay Kumar Chandhariyavi, Member(Judicial)
Hon'ble Sungita Sharma, Member (Technical)

Counsel for Appellant
ARVIND KALRA
ABHINAV KALRA

Counsel for Respondent

ORDER

Brief introductory facts.

1. The appellant provides information and communication network solutions, optical communications and data networking construction services. It is registered with the State GST department. The present dispute arose during scrutiny of its returns for financial year 2018–19. The appellant had issued certain invoices to M/s BSNL during financial year 2017–18. It initially treated the supplies as inter-State supplies, reported them in its returns and discharged tax under the IGST head. During annual reconciliation, it found that the supplies should have been treated as intra-State supplies. The appellant amended the invoice particulars in GSTR-1 filed during financial year 2018–19. Those amendments reflected CGST and SGST liability in that year. The appellant says that the corresponding tax had already reached the Government under IGST in the earlier year and remained available for correction. It therefore disputes the treatment of the amended liability as a fresh, wholly unpaid tax demand.

2. From a perusal of the case record, we find that the controversy started with GST ASMT-10 dated 07.10.2023, which was followed by the appellant's reply dated 25.11.2023 and the notice dated 27.12.2023 under Section 73. The notice compares GSTR-1 and GSTR-3B for 2018–19. The comparison shows a difference of Rs. 3,30,834.39 under each of CGST and SGST, whereas the DRC-01 summary and concluding demand state Rs. 3,30,934 under each head. These figures differ; the latter figures may be rounded versions. The amount ultimately confirmed, as recorded below, was Rs. 3,30,834 under each head.
3. The Deputy Commissioner, State Tax, Division-10, Noida passed Order-in-Original No. ZD090424474429X dated 30.04.2024. The proposed ITC demand of Rs. 3,00,911 was dropped. The authority confirmed CGST of Rs. 3,30,834 and SGST of Rs. 3,30,834, aggregating Rs. 6,61,668, with interest of Rs. 6,55,052 and penalty of Rs. 66,166 under Section 73(9). By Order-in-Appeal Ref. No. ZD0911244675447 dated 22.11.2024, the Additional Commissioner, Grade-II (Appeals), Noida set aside the interest demand by applying Section 77(2). The tax and penalty were maintained. However, the first appellate authority directed the appellant to first pay CGST and SGST and then seek refund of the IGST paid under the wrong head. The ITC proposal of Rs. 3,00,911 was dropped in the Order-in-Original. The surviving dispute concerns output tax under CGST and SGST and the request to appropriate an earlier IGST payment. We therefore distinguish the conditions for entitlement to input tax credit from the treatment of tax paid under the wrong head.
4. Hearings in this appeal took place on 06.08.2026, 21.08.2026, 08.09.2026 and 22.09.2026. The appellant submitted that the Government already held tax on the same supplies; the amendments did not represent additional turnover. It sought appropriation through the authorities, removal of the penalty and relief from a second payment pending refund.

Submissions of the appellant

5. The appellant submitted that the difference of Rs. 3,30,834 each under CGST and SGST arose from adjustments in its books. Certain amendments relating to financial year 2017-2018 had been filed during financial year 2018-2019. The invoices had initially been reported under IGST. It was later found that they related to intra-State supplies, and the invoices were amended accordingly. The tax on those invoices had already been paid under IGST, but that payment had not been adjusted.
6. The appellant stated that the tax on the invoices had been duly deposited. The amount paid under IGST had not been adjusted against any future liability. It therefore requested that this payment be adjusted against the tax payable under CGST and SGST. It further submitted that there was no loss of revenue because the entire tax due on the supplies had already been paid in financial year 2017-2018.
7. The appellant relied on the decision of the Kerala High Court in Saji S. v. Commissioner, State GST Department. According to the appellant, that decision permitted tax paid under one head to be adjusted against liability under another head. Relying on the facts of the case, that decision and the fact that the dispute concerned the initial period of GST, the appellant requested that the demand be dropped.
8. Under ground B2, the appellant challenged interest under Section 50 of the CGST/SGST Act, 2017. It relied on Section 77(2) of the CGST Act, 2017, which provides relief from interest on central tax and State tax where integrated tax was paid on a transaction treated as an inter-State supply but subsequently held to be an intra-State supply. The appellant submitted that it had paid integrated tax

instead of central tax and State tax. It therefore contended that no interest was payable on the confirmed tax amount of Rs. 6,61,668.

9. Under ground B3, the appellant challenged the penalty under Section 73 of the UPGST Act, 2017. It submitted that the tax demand of Rs. 6,61,668 was not sustainable for the reasons already given. It therefore contended that no penalty could be imposed under Section 73 of the CGST/SGST Act, 2017.
10. The appellant relied on MJBR Marketing & Financial Services Pvt. Ltd. v. Union of India, W.P.(C) No.26333 of 2024, decided on 01.04.2025 by the Kerala High Court. It cited this decision for the proposition that the electronic credit and cash ledgers operate as a common pool or wallet and that the overall availability of funds must be considered before Section 73 is invoked for use of credit under the wrong head. It relied on Saji S. v. Commissioner, State GST Department, 2018 (19) GSTL 385 (Ker.), for adjustment of tax paid under the wrong head against liability under the correct head. It also cited S. Subrahmanyan & Co. v. CCE, 2011 (268) ELT 497 (Tri.-Ahmd.), affirmed in 2013 (296) ELT A123 (Guj.), for correction of duplicate duty debits without a formal refund application. The appellant cited Visakhapatnam Steel Plant v. CCE, 2002 (149) ELT 708 (Tri.-Bang.), for correction of accounting errors without prior departmental approval. It relied on Bayer Vapi Pvt. Ltd. v. CCE & ST, for restoration of duplicate duty payments through self-recredit where the second payment is undisputed. It also relied on Rejimon Padickapparambil Alex v. Union of India, referring to CBIC Circular No.192/04/2023-GST and treatment of the electronic ledger as a common resource across its compartments.

Submissions of the Revenue

11. The authorised representatives of the State Department submit that the electronic credit ledger is governed by statute. The Revenue relies on Section 77 of the CGST Act, Section 19 of the IGST Act and CBIC Circular No.162/18/2021-GST. It submits that the taxpayer must pay tax under the correct head and seek refund of the tax paid under the wrong head. The Revenue further submits that the conditions of Section 16(2)(c) must be satisfied.
12. The Revenue relies on Union of India v. Bharti Airtel Ltd. & Ors., (2021) 13 SCC 1 / 2021 SCC OnLine SC 1006, for compliance with the statutory return and ledger mechanisms. It distinguishes Saji S. on the ground that the case concerned departmental adjustment during detention proceedings and did not authorise unilateral recredit through GSTR-3B. It also relies on State of Karnataka v. Ecom Gill Coffee Trading Pvt. Ltd., Civil Appeal No.230 of 2023, and Thirumalakonda Plywoods v. Assistant Commissioner (ST), W.P. No.24235 of 2022. It cites these decisions for the requirement to prove eligibility for ITC and comply with the statutory conditions and time limits. The Revenue therefore seeks to sustain the recovery under Section 73, interest under Section 50 and penalty under Section 73(11).
13. The Revenue submitted that CGST, SGST and IGST arise under distinct enactments and are separately accounted for. It relied on the return and ledger framework, CBIC Circular No.162/18/2021-GST dated 25.09.2021 and Union of India v. Bharti Airtel Ltd. It opposed automatic cross-adjustment and maintained that absence of payment under the correct heads justified the demand. The tax heads cannot simply be ignored.

Questions for determination

14. The questions are: whether the show cause notice supplies the essential facts supporting the proposed demand and whether the general reference to Section 16(2)(c) supplies the missing particulars; whether a reply or a later order can cure that omission; and whether the surviving CGST and SGST demand and penalty can stand.
15. Separately, we must decide the requested appropriation of the earlier IGST payment.
16. The question is whether that distinction requires another payment from the appellant even when the identified earlier payment can be formally appropriated. The distinction between an unauthorised entry by a taxpayer and a correction ordered and carried out by the competent authorities is central to this appeal.

Statutory provisions governing the notice

17. Section 16(1) permits a registered person, subject to the statutory conditions and restrictions, to take credit of input tax on supplies used or intended to be used in the course or furtherance of business. For the period in dispute, Section 16(2) required possession of a prescribed tax document, receipt of the goods or services, actual payment of the tax to Government and furnishing of the return under Section 39. The applicable provisos and restrictions also remain relevant. Later conditions cannot be applied retrospectively merely because they appear in the current text. On examination of the show cause notice, we find that Section 16(2)(c) has been invoked in the notice but it does not itself identify a defaulting supplier, an unpaid invoice or the factual basis of an alleged breach. A reference to this provision cannot replace those particulars where they are necessary to understand and answer the allegation.
18. Section 73(1) applies to this financial year and provides for notice where tax has not been paid or has been short paid or erroneously refunded, or input tax credit has been wrongly availed or utilised, for reasons other than fraud, wilful misstatement or suppression of facts to evade tax. Moreover, as per Section 73(9) of the GST Act the proper officer must consider the representation, if any, and determine the tax, interest and a penalty of ten per cent of the tax or ten thousand rupees, whichever is higher. The power to determine liability follows the notice and opportunity to answer; it does not permit the order to supply an entirely different factual case. Hence, we find that Section 73 requires a meaningful show cause notice before an adverse determination. A notice need not prove the case finally, reproduce every document or resemble a judgment. It must, however, tell the taxpayer what factual case is proposed and why the stated amount is recoverable. Similarly, Section 73(1) requires the officer to notify the relevant case and require an explanation of the specified liability, interest and penalty. Mentioning Section 16 of the CGST Act without identifying the material facts does not satisfy that purpose. The outward-tax and input-credit proposals must each have an intelligible factual basis. Section 75(4) requires an opportunity of hearing in the circumstances stated there. Section 75(6) requires the order to state the relevant facts and the basis of decision. Section 75(7) prohibits confirmation on grounds other than those specified in the notice. These safeguards require disclosure of the case, a meaningful answer and a decision within the notified grounds. It is also settled law that a detailed final order cannot retrospectively supply an essential allegation omitted from the notice.

Contents and sufficiency of the present show cause notice

19. The show cause notice states that the explanation furnished in response to ASMT-10, issued following the AI notice received through the portal for the relevant year, was acceptable only in part. On examining the returns for that year, the Department alleged that the appellant had paid less tax than required and/or wrongly claimed excess ITC. The notice further alleges that the appellant claimed excess ITC in GSTR-3B compared with GSTR-2A. It states that credit was claimed only on the basis of invoices and that the corresponding purchases and credit were not reflected in GSTR-2A. It treats the absence of credit from GSTR-2A as showing that the selling dealers neither declared the sales in their returns and GSTR-1 nor deposited the corresponding tax with the Department or the Government treasury. On that basis, it states that the credit cannot be allowed. The notice refers to the requirement that tax charged on a supply must actually have been paid to the Government, either in cash or by using admissible input tax credit, and alleges that this condition was not fulfilled. It therefore treats the ITC as wrongly claimed and proposes recovery under Section 73, together with interest and penalty. In its concluding part, the notice requires the appellant to explain why those amounts should not be paid, together with interest under Section 50 and penalty under Section 73.
20. On a perusal and evaluation of the material particulars of the show cause notice and DRC-01, we find that the notice contains a comparison of GSTR-1 against GSTR-3B for output tax, and GSTR-2A against the ITC figures used in the notice. It draws general conclusions of short payment, improper passing of credit and non-payment by suppliers. It does not identify the disputed invoice numbers, dates, suppliers, recipients or particular supplies supporting those conclusions. The omission is factual, not merely a defect in the heading or format. It alleges short payment and excess ITC, and expressly invokes Section 16(2)(c). The defect is that these are general allegations drawn from aggregate data without the necessary transaction details or supporting factual explanation. No identified invoice is alleged to be fictitious; no identified supplier is shown to have failed to pay tax; and no identified transaction is connected to the asserted statutory breach. In the notice and accompanying material placed before us, no identified invoice schedule is incorporated to explain the alleged default. The SCN should disclose the material on which the proposed demand is based. Undisclosed departmental records cannot be assumed to supply the missing particulars. For the surviving output-tax proposal, the notice states annual figures but does not identify the entries or supplies producing the alleged unpaid CGST and SGST. In this case that omission matters because the appellant attributes the difference to invoice amendments concerning supplies on which IGST had already been paid. In this regard, we refer to the following decisions of the Hon'ble Supreme Court to clarify the legal requirement.
21. *Commissioner of Central Excise v. Brindavan Beverages (P) Ltd. (2007) 5 SCC 388. In Brindavan Beverages, the Supreme Court explained that the show cause notice is the foundation of the departmental case. Allegations which are vague or lack necessary details deny a proper opportunity to answer.*
22. Applying that principle, naming the returns, the year and an aggregate amount does not replace the missing factual particulars where the department alleges specific wrongdoing in supplies or credit. Hence, we find that the present notice gives numerical differences but does not adequately disclose the transactions and facts supporting its conclusions.

23. *Commissioner of Customs v. Toyo Engineering India Ltd. (2006) 7 SCC 592. In Toyo Engineering, the Supreme Court held that the department could not travel beyond the show cause notice. A new factual ground could not be introduced in appeal to sustain the demand.*
24. Here, the department cannot turn an aggregate mismatch into an unnotified case of fictitious invoices, non-receipt of supplies or unilateral re-credit. Those matters require their own factual particulars and an opportunity to answer. They cannot be presumed from the figures in this notice.
25. *Gorkha Security Services v. Government of NCT of Delhi (2014) 9 SCC 105. Gorkha Security Services explains that a notice must convey the grounds and the proposed action so that the affected person can answer effectively.*
26. The case arose from blacklisting, but the requirement of meaningful disclosure is relevant here. The deficiency lies in the material facts supporting it. Knowledge of the amount sought does not necessarily amount to knowledge of the case to be met.
27. *Oryx Fisheries (P) Ltd. v. Union of India (2010) 13 SCC 427. Oryx Fisheries stresses fair consideration and an open mind in show cause proceedings. Here, however, the notice moves from a return mismatch to a conclusion of supplier non-payment without identifying the underlying transactions or evidence. A genuine opportunity requires disclosure of the basis of that proposed conclusion and consideration of the answer.*
28. We do not lay down an inflexible rule that every mismatch notice must reproduce every invoice. A clearly explained return-entry discrepancy, supported by accessible particulars, may be sufficient. The present notice must be judged on its own contents. It alleges improper passing of credit and supplier non-payment, yet gives no corresponding particulars. Read as a whole, it does not adequately state the factual case underlying the disputed recovery. We therefore hold that the impugned demand cannot be sustained on this notice. The defect is substantial: it prevents a meaningful answer to the factual case and violates the safeguards of Section 73 read with Section 75 and natural justice. This conclusion is an independent ground for setting aside the demand and its consequential penalty.

Examination of the orders under challenge

29. At this stage, we consider the reasoning in the adjudication order and the first appellate order. The adjudication order substantially reproduces the details of the show cause notice. It records that a notice was issued under Section 73 for the reasons stated therein and that no payment was made within 30 days of its issue. The demand was therefore determined on the basis of the documents available with the Department and the information furnished by the appellant. The order finds that the appellant paid Rs. 3,30,834.00 less under CGST and Rs. 3,30,834.00 less under SGST through GSTR-3B than the amounts disclosed in GSTR-1. It accordingly determines short payment under those heads and creates a demand for those amounts, together with interest under Section 50 and penalty under Section 73. The first appellate order adopts the same approach to the appellant’s submission concerning payment under the wrong head.
30. According to the first appellate order, the appellant's returns for the relevant year were examined. Show cause notice number ZD0901230791220 dated 18.01.2023 was issued on two issues. The first issue, as described in the order, was that the appellant had claimed less ITC in GSTR-3B than in GSTR-1 by Rs. 3,30,834.39 under CGST and Rs. 3,30,834.39 under SGST. The sales had nevertheless

been shown in GSTR-1 against the names of various purchasing dealers, and ITC had been passed on to them. On disputed point number 1, the appellant submitted that the liability related to outward supplies declared under CGST and SGST. By mistake, the admitted liability was shown and paid under IGST instead of CGST and SGST. According to the appellant, this caused the difference. The appellant also submitted that the proper officer had calculated interest even though no interest was payable under Section 50. The first appellate authority considered these submissions and held that the appellant sought the benefit of tax payment on the ground that tax relating to CGST and SGST had mistakenly been paid under IGST. This request cannot be accepted. The appellant had billed under CGST and SGST but paid the tax under IGST. As a result, no tax was paid to the State Government in this regard. The appellant's submission is therefore not acceptable. The amount was not paid under CGST and SGST in the filed GSTR-3B, and it was utilised under the IGST head. The claimed benefit cannot therefore be allowed. However, considering Section 77(2) interest of Rs. 6,55,052.00 imposed by the proper officer under CGST and SGST has been set aside. Appeal number AD090724056519L/830/24 for financial year 2018-19, covering April 2018 to March 2019, concerning proceedings under Section 73 of the UPGST Act, 2017, is partly allowed. The total interest of Rs. 6,55,052.00 imposed by the assessing authority under CGST and SGST is set aside. The tax and penalty imposed under CGST and SGST are confirmed. For the reasons discussed above, we find that the first appellate authority passed the impugned order without considering the material defects in the show cause notice.

Issue of payment under the wrong head and official appropriation

31. For proper adjudication of this issue, we discuss Section 77 of the CGST Act and 19 of the IGST Act. Section 77(1) provides for refund, in the prescribed manner and subject to prescribed conditions, of central and State tax paid on a transaction initially treated as intra-State but subsequently held to be inter-State. Section 77(2) gives relief from interest on the central and State tax payable where integrated tax was paid on a transaction initially treated as inter-State but subsequently held to be intra-State. The latter is the direction of error in the present case. The two provisions deal with opposite directions of error. Section 77(1) of the CGST Act concerns CGST and SGST paid on a supply first treated as intra-State but later held to be inter-State. Section 77(2) concerns interest where IGST was paid on a supply later held to be intra-State. Corresponding State provisions must be applied to the State component. Section 19 of the IGST Act deals with the corresponding consequences under that Act. The relevant part of subsection (1) states that the registered person “shall be granted refund of the amount of integrated tax so paid”. It applies where the supply was considered inter-State and is subsequently held to be intra-State. The prescribed manner and conditions remain relevant. Section 19(2) concerns exemption from interest on IGST in the reverse situation, where CGST and SGST were originally paid. It is not the subsection which directly grants the appellant relief from interest on CGST and SGST here. That relief follows from Section 77(2), already applied in the first appeal. Section 19(1) of the IGST Act provides the corresponding refund entitlement where integrated tax was paid on a supply considered inter-State but subsequently held to be intra-State. Section 19(2) removes interest on integrated tax payable in the opposite situation, where central and State tax were originally paid. Thus, Section 19(1) and Section 77(2) operate together for the error asserted here. Neither provision expressly grants an unrestricted right of unilateral cross-head adjustment. These provisions recognise

the obligation to correct a mistaken classification. They do not expressly say that a taxpayer may treat all tax heads as interchangeable or make any ledger entry it chooses. They also do not, by themselves, extinguish the correct-head liability. The expression "tax" does not merge the separate statutory levies. Payment as IGST is not automatically payment as SGST merely because both arise within GST. We therefore do not accept the appellant's wider submission that payment of any one levy necessarily discharges every other levy. Relief must follow from a lawful treatment of the particular payment, rather than from erasing the identity of the heads.

Strict construction substantive compliance and procedural requirements

32. Payment under the correct heads followed by unilateral recredit may also be examined through purposive interpretation. We are mindful of the principles that there is no equity in tax law and that taxing provisions require strict interpretation. Their scope must nevertheless be understood in the light of the Supreme Court's decisions. In Gursahai Saigal v. Commissioner of Income Tax, Punjab, 1962 SCC OnLine SC 71, the Supreme Court stated:
33. *8. The question thus raised is one of construction of sub-section (6) and (8). The assessee relies on a rule of construction applicable to taxing statutes which has been variously stated. Rowlatt J. put it in these words in Cape Brandy Syndicate v. Inland Revenue Commissioners[1]. "In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax . There is no presumption as to a tax. Nothing is to be read in ,nothing is to be implied. One can only look fairly at the language used . "The object of this rule is to prevent a taxing statute being construe "according to its intent, though not according to its words Inre: Bethlehem Hospital[2]. This Court has accepted this rule.*
34. *Bhagwati J. in A.V. Fernandez v. State of Kerala[3] said, "If ... the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter. "It has even been said that "if the provision is so wanting in clarity that no meaning is reasonably clear, the courts will be unable to regard it as of any effect." : see Inland Revenue Commissioners v.BladnochDistillery Co. Ltd.? The assessee therefore contends that on the plain words of sub-sections (8) and (6) he cannot be charged any interest and in fact in a case like his, sub-section (8) has to be regarded as of no effect. 9. Now it is well recognised that the rule of construction on which the assessee relies applies only to a taxing provision and has no application to all provisions in a taxing statute. It does not, for example, apply to a provision not creating a charge for the tax but laying down the machinery for its calculation or procedure for its collection. The provisions in a taxing statute dealing with machinery for assessment have to be construed by the ordinary rules of construction, that is to say, in accordance with the clear intention of the legislature which is to make a charge levied effective. Reference may be made to a few cases laying down this distinction. In CIT v. Mahaliram Ramjidas? it was said "The Section, although it is part of a taxing Act, imposes no charge on the subject, and deals merely with the machinery of assessment. In interpreting provisions of this kind the rule is that that construction should be preferred which makes the machinery workable utres valeat potius quam pereat"*

35. *Mangalore Chemicals and Fertilisers Ltd. v. Deputy Commissioner of Commercial Taxes, 1992 Supp (1) SCC 21. The taxpayer was admittedly eligible for adjustment of sales-tax refunds, had applied for permission, and was held up by interdepartmental issues. The Court rejected denial of the adjustment on that technical basis.*
36. In this matter, the Hon'ble Supreme Court distinguished essential conditions serving the policy of a tax provision from procedural or technical steps giving effect to an established entitlement. The decision supports effective implementation of an established entitlement. The identity of the supplies, the correct liability, the existence and availability of the earlier payment, and proper allocation between Governments must be established. Once those requirements are met, the authorities should complete the procedure necessary to give effect to the appropriation directed in this order. This is an application by analogy.
37. In State of Punjab v. Shamlal Murari, (1976) 1 SCC 719, the Supreme Court again recognised that procedure should facilitate justice. This principle cannot create an ITC entitlement contrary to statute. It requires procedural irregularities to be considered in their proper context, while protecting substantive rights and mandatory statutory safeguards. Here, there is an entitlement to refund after payment under the correct heads. The question is the legal treatment of those payments and the failure to follow the refund procedure.

The objection of the Revenue based on Bharti Airtel

38. The authorised representative for the Revenue relies on Union of India v. Bharti Airtel Ltd. The Revenue submits that the Supreme Court required compliance with the prescribed method of correcting returns and rejected unrestricted rearrangement of earlier GSTR-3B returns. We find that this limits the appellant's argument that an accounting adjustment is sufficient. It does not, however, permit the Revenue to ignore an established payment that has discharged the CGST and UPGST liability. In this context, we also refer to the Supreme Court's decision in Central Board of Indirect Taxes and Customs v. M/s Aberdare Technologies Pvt. Ltd.:
39. *Human errors and mistakes are normal, and errors are also made by the Revenue. Right to correct mistakes in the nature of clerical or arithmetical error is a right that flows from right to do business and should not be denied unless there is a good justification and reason to deny benefit of correction. Software limitation itself cannot be a good justification, as software are meant to ease compliance and can be configured. Decisions of the High Courts in Bar Code India Limited v.Union of India and others1 and Yokohama India Private Limited v.State of Telangana2", prima facie, do not lay down good law in this regard.*
40. In Yokohama India Private Limited and Bar Code India Limited, the requests to amend GSTR-3B returns were denied by relying on Bharti Airtel and citing the cascading effect on the system. In light of the observations quoted above, we find that the Revenue's submission is no longer legally sustainable. Counsel for the appellant also relies on the jurisdictional High Court's decision in Ocean E Mart v. State of U.P. There, the writ petitioner stated that tax payable as IGST had mistakenly been paid as CGST and SGST, and that both the original and appellate authorities had ignored those payments. The Revenue submitted that there was no mechanism to transfer CGST and SGST payments to IGST, but accepted that tax appeared to have been paid under the wrong head. After considering the

rival submissions, the High Court quashed the impugned demand orders.

High Court decisions concerning official appropriation

41. *Ocean E Mart v. State of Uttar Pradesh Writ Tax No.1358 of 2025 decided on 1 December 2025 Allahabad High Court Lucknow Bench.*
42. The taxpayer had paid CGST and SGST although IGST was payable. The authorities imposed liability without adequately accounting for the wrong-head payments. The High Court set aside the orders and directed fresh consideration taking those payments into account towards IGST, with refund of any excess in accordance with Section 77. This decision of the jurisdictional High Court is directly relevant as here, the appellant seeks application of IGST towards CGST and SGST.
43. *Saji S. v. Commissioner State GST Department WP C No.35868 of 2018 decided on 12 November 2018 Kerala High Court.*
44. In a goods-detention matter, tax and penalty were paid as SGST instead of IGST. The Court directed release of the goods and official transfer of the payment to IGST. It considered the refund and adjustment framework and declined to make the taxpayer bear the consequences of administrative time needed for the transfer. Read with Ocean E Mart, it supports meaningful relief which accounts for the money already remitted and places responsibility for official implementation on the authorities.
45. *SYA Homes v. Assistant Commissioner ST WP No.23463 of 2026 decided on 7 July 2026 Madras High Court paragraphs 6 to 8.*
46. The Court dealt with an admitted, timely payment mistakenly made under IGST instead of CGST and SGST. It rejected an insistence on fresh payment followed by refund in those circumstances. The present appellant describes an actual reclassification of supplies. The useful reasoning here concerns implementation: whether an existing payment can be appropriated through official action.
47. Taken together, these decisions support a limited solution. Correct-head liability remains recognised. The taxpayer must establish the identity and availability of the payment. The competent authorities must carry out the correction. Any excess or shortfall requires separate accounting.

Revenue neutrality and proportionality

48. Revenue neutrality means that the correct treatment and the disputed treatment make no ultimate difference to the tax retained by the Government, after accounting for admissible credit, refunds and corresponding payments. It helps assess the financial effect of a transaction. Aggregate neutrality concerns the total amount retained by the Government. Credit neutrality concerns whether payment of the demanded amount would give rise to an equivalent credit that is actually admissible.
49. In Nirlon Ltd. v. Commissioner of Central Excise, (2015) 14 SCC 79, the Supreme Court held that revenue neutrality is relevant when examining the absence of an intention to evade tax.
50. Revenue neutrality must be demonstrated, not presumed. It requires matching the disputed supplies, their value, rate, original IGST payment and later CGST and SGST liability. It also requires confirmation that the original amount has not been refunded, restored to the appellant’s ledger, adjusted elsewhere or otherwise made available again to the appellant. Merely saying that all taxes ultimately reach Government is insufficient. Once those matters are established, collecting the same

amount again from the appellant serves no purpose.

51. Proportionality supports the same conclusion. Invoice matching, confirmation of availability and proper settlement protect the legitimate fiscal objective. Insisting on a fresh deposit of the verified equivalent amount adds a burden without improving that protection. Ease of compliance is a supporting consideration, not an independent exemption. The initial period of GST also supplies context for the error.

52 . In the light of above mentioned defects in the SCN and no proper consideration of these defects by the First Appellate authority we set aside impugned demand of Tax . Now we take up issue of penalty.

penalty

55. We are of the view that the issue of penalty must be considered separately in this matter.
56. In Union of India v. Rajasthan Spinning and Weaving Mills, (2009) 13 SCC 448, the Supreme Court required proof of the statutory conditions for an excise penalty.
57. Section 73 applies to cases not involving fraud. However, the mere absence of fraud does not automatically exclude a penalty under that section. Section 73(11) does not impose a ten per cent penalty on every corrective entry. If the finding of wrongly availed credit fails, a penalty based on it cannot survive independently. For the reasons discussed above, we find that the penalty of Rs. 25,04,296 is unsustainable.
58. The interest of Rs. 6,55,052 was set aside in the first appeal under Section 77(2). That relief is maintained. The penalty of Rs. 66,166 cannot survive because the demand proceeding lacks a sufficient show cause notice. A consequential penalty cannot be maintained on the same defective foundation and we therefore set it aside.

Appellate power and findings

59. Section 113 supplies the statutory appellate power to examine the orders and grant relief within the appeal. We set aside the impugned demand for the notice defect explained above. The accounting directions separately implement the appellant's request concerning the accepted supplies and existing payment. They do not authorise a new adjudication on undisclosed allegations or a departure from the applicable statutory accounting and refund requirements.
60. Our findings are these. The notice discloses aggregate data discrepancies and general allegations, but lacks the transaction details and factual explanation necessary in this case. Its reference to Section 16(2)(c) does not supply those particulars. The later reply, adjudication and appeal do not cure that omission. The surviving demand and penalty must therefore be set aside. Independently, the appellant's request for official appropriation of the corresponding IGST payment is allowed, subject to identification of the payment and prevention of duplicate benefit.

Order

61. The appeal is allowed. The Order-in-Appeal dated 22.11.2024 and the Order-in-Original dated 30.04.2024 are set aside to the extent that they sustain the disputed CGST demand of Rs. 3,30,834, SGST demand of Rs. 3,30,834 and penalty of Rs. 66,166. Those demands cannot be sustained on the

deficient show cause notice dated 27.12.2023. The relief already granted from interest of Rs. 6,55,052 and the dropping of the ITC proposal of Rs. 3,00,911 are maintained.

62. It is further directed that the jurisdictional proper officer shall arrange appropriation of the IGST already paid on the disputed supplies towards the corresponding CGST and SGST amounts of Rs. 3,30,834 each through reconciliation of accounts between the Centre and the State.
63. The authorities shall not insist on a second deposit of the verified equivalent amount merely to complete the coordinated appropriation.
64. The registry shall communicate this order to the parties. There shall be no order as to costs.

(Dr. Sanjay Kumar Chandhariyavi)

(Sungita Sharma)

Dated: 27.10.2026