GSTAT

State Bench Ghaziabad

Division Bench Court No. Court I

APL/D11/GZB/2026

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

Versus

LALIT MISHRA, ADDITIONAL COMMISSIONER, 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. M/s Fiberhome India Private Limited, GSTIN 09AABCF9623N1Z4, provides information and communication network solutions, optical communication services and data networking construction services. For Financial Year 2019–20, the Department compared the input tax credit reflected in GSTR-2A/2B with the credit claimed in GSTR-3B and found a difference. It treated the IGST credit of Rs.2,50,42,960 claimed in February 2020 as excess credit. On comparing GSTR-1 with GSTR-3B, it also alleged short payment of IGST of Rs.14,06,477.
2. Following scrutiny under Section 61, the Department issued a show-cause notice dated 18.01.2023 under Section 73(1) of the CGST/UPGST Act, 2017. It proposed recovery

of tax of Rs.2,64,49,437, interest under Section 50 and penalty under Section 73. In its reply dated 17.02.2023, the appellant explained that, in Financial Year 2017–18, it had wrongly treated supplies to BSNL as inter-State supplies by using BSNL's out-of-State GSTINs. It paid IGST through the electronic credit ledger. While preparing GSTR-9 and GSTR-9C in January 2020, it discovered that these were intra-State supplies liable to CGST and SGST.

3. The appellant voluntarily paid the correct CGST and SGST, with applicable interest, through DRC-03 dated 04.02.2020. It then credited Rs.2,50,42,960 in GSTR-3B for February 2020 to restore the credit earlier used to pay IGST. It described this as an accounting adjustment to correct payment of tax twice on the same supplies.
4. By order dated 29.08.2023, the Deputy Commissioner, State Tax, Division-10, Noida, accepted the reconciliation between GSTR-1 and GSTR-3B and dropped the demand of Rs.14,06,477. However, the authority treated the credit of Rs.2,50,42,960 as inadmissible under Section 16(2). It also imposed interest of Rs.1,84,06,576 under Section 50 and penalty of Rs.25,04,296 under Section 73(11).
5. The appellant challenged the adjudication order by filing its first appeal in Form GST APL-01. The Additional Commissioner, Grade-II (Appeals), Noida, rejected the appeal by Order-in-Appeal Reference No. ZD091124250570N dated 18.11.2024 and upheld the adjudication order. The first appellate authority held that IGST could not be recredited or adjusted through GSTR-3B without a formal refund order. It further held that Section 77 required payment under the correct head followed by a refund application for tax paid under the wrong head. Unilateral recredit in the electronic credit ledger did not satisfy Section 16. The appellant has now filed this second appeal under Section 112 of the CGST/UPGST Act, after making the mandatory pre-deposit of 10 per cent, amounting to Rs.25,04,296.
6. The surviving dispute thus concerns the character and treatment of the February 2020 credit entry. The alleged short payment of Rs.14,06,477 was separately examined and dropped by the Revenue.
7. Hearings were held on 06.08.2026, 21.08.2026, 08.09.2026 and 22.09.2026. After the defects were cured, counsel for the appellant made further submissions. Counsel argued that the Government held excess funds and that Sections 73 and 74 deal with non-payment or short payment of tax. Counsel described the electronic credit ledger as a common resource or wallet, divided into CGST, SGST and IGST compartments, and submitted that proceedings under Section 73 could not continue if sufficient funds remained in that common pool.

Submissions of the appellant

8. The appellant submits that the entry of Rs.2,50,42,960 in February 2020 was not a fresh claim of ITC on inward supplies under Section 16. It was an accounting entry restoring credit already used to pay tax under the wrong head. It had voluntarily paid the correct CGST and SGST through DRC-03 on 04.02.2020, before any departmental inquiry. It therefore submits that the Government suffered no loss of revenue. Relying on Section 77 of the CGST Act, Section 19 of the IGST Act and CBIC Circular No.162/18/2021-GST dated 25.09.2021, the appellant argues that tax paid under the wrong head must be neutralised once the correct tax is paid. It submits that refund is one method of correction, but not the only method. It also claims protection from interest under Section 77(2) and argues that penalty under Section 73(9) or Section 73(11) cannot stand where there is no tax evasion or short payment. Counsel further submitted that restoring an amount debited twice is an accepted accounting correction. Section 16, according to counsel, governs fresh ITC on inward supplies and not restoration of credit after payment of the correct tax. The appellant also stated that, during scrutiny under Section 61 for Financial Year 2017–18, the Department had accepted the CGST and SGST paid through DRC-03. It sought the same treatment for Financial Year 2019–20.
9. 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

10. The authorised representatives of the State Department submit that the electronic credit ledger is governed by statute. Credit can be restored only if it is eligible ITC under Section 16 or if a prescribed statutory process permits restoration. They argue that a taxpayer cannot, without departmental authority, unilaterally restore an earlier payment made under the wrong head. 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. A credit entry in GSTR-3B cannot replace that procedure. The Revenue further submits that the conditions of Section 16(2)(c) must be satisfied, including payment to the Government of the tax charged on an inward supply and communication under Sections 37/38. It argues that the disputed IGST credit of Rs.2,50,42,960 had no corresponding eligible inward-supply invoices in GSTR-2A.
11. *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).*

12. Show-cause notice

. *The explanation submitted by you in response to the notice issued under Section 61 regarding excess input tax credit claimed in GSTR-3B as compared with GSTR-2A for the relevant year has not been found acceptable. Regarding the IGST input tax credit of ? 2,50,42,960.00 claimed in excess in GSTR-3B for February 2020, you explained that this credit was claimed because the IGST invoices issued by you to BSNL in different States during 2017–18 were amended in February 2018, treating the transactions as intra-State supplies. Accordingly, liability of ?1,25,21,480.00 as SGST and ?1,25,21,480.00 as CGST was admitted. While filing GSTR-9, the amount was deposited through DRC-03 dated 04.02.2020, and the same amount of ?2,50,42,960.00 was claimed as IGST input tax credit in GSTR-3B for the relevant month. On examination, the IGST input tax credit of ?*

2,50,42,960.00 so claimed was not found admissible under the rules. You have claimed excess or erroneous input tax credit in GSTR-3B. The conditions governing entitlement to input tax credit are prescribed in Section 16(2) of the Uttar Pradesh Goods and Services Tax Act. A dealer is entitled to input tax credit only upon fulfilment of those conditions. Thus, for the relevant financial year, IGST short payment of ?2,64,49,437.00 (?2,50,42,960.00 + ? 14,06,477.00) has been found. Ensure payment of this amount together with IGST interest of ?2,42,01,235.00 payable under Section 50 and the penalty prescribed under Section 73. Otherwise, show cause why proceedings for demand and recovery of the above amounts should not be initiated. Interest has been calculated from 15.12.2017 to 15.01.2023. It must be recalculated up to the date of payment and deposited accordingly.

13. The central question is whether the demand can be sustained on the show-cause notice reproduced above. The notice identifies an amount, reproduces Section 16(2) and refers to Section 73, but does not explain the precise facts and details supporting the demand. I examine this question separately from whether unilateral recredit through GSTR-3B was authorised by law. Section 61 permits scrutiny of returns; it does not, by itself, provide a basis for a final tax demand. Proceedings under Section 73 must identify the tax said to be unpaid or the credit said to have been wrongly availed or utilised, along with the supporting facts. Section 75(6) requires the order to state the relevant facts and reasons. Section 75(7) bars confirmation of a demand beyond the amount or grounds stated in the notice.

Section 73 and the requirement of a valid notice

14. The material part of Section 73 is sub-section (1). Its language, governing non-fraud proceedings, is reproduced below. The dispute concerns Financial Year 2019–20.

“(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any willful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.”

15. Section 73 (9) requires the proper officer to consider the taxpayer's representation before determining tax, interest and the prescribed penalty. Sub-sections (5) to (8) deal with payment before or after notice and the corresponding consequences, subject to their conditions. Sub-section (11) concerns the penalty where self-assessed tax or an amount collected as tax remains unpaid beyond thirty days from its due date. These provisions require attention to the liability actually alleged and established; none dispenses with a proper notice for the disputed adjudication.
16. The words requiring service of notice are a substantive safeguard in the adjudicatory process. The officer's preliminary view must be communicated through an intelligible charge which the taxpayer can answer. A demand figure explains how much is claimed, but the notice must also explain why it is claimed. Section 73 permits recovery of wrongly availed or utilised ITC; therefore, absence of ultimate revenue loss is not, by itself, a complete answer. Nevertheless, the statutory ground for treating the particular entry as wrongful must be disclosed.

Commissioner of Central Excise v. Brindavan Beverages (P) Ltd.
(2007)5 SCC 388 *The Supreme Court described the show-cause notice as "the foundation on which the department has to build up its case". Vague allegations lacking necessary details deny the noticee a proper opportunity to meet the Department's case. The principle concerns effective disclosure of the charge, not the length of the notice.*

17. we apply that principle to the notice as a whole. The test is whether the appellant was told the material facts and legal grounds supporting the proposed demand, rather than whether the Department used a particular form of words. Merely reproducing Section 16(2) does not answer the central question: did the disputed entry claim fresh ITC on purchases, or restore credit already used to pay output tax under the wrong head?

Section 16 subsection 2 and the nature of the disputed entry

18. For the February 2020 entry, the relevant conditions in Section 16(2), including the explanation then in force, read as follows. The following extract sets out the opening part and clauses (a) to (d); the separate provisos concerning instalments and payment to suppliers are not reproduced because they do not explain the ground taken against this restoration entry.

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

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

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

Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:"

19. These clauses concern credit of input tax on supplies received by the registered person. The appellant's explanation concerns restoration of credit used for its own output-tax liability. The Revenue authorities had to identify and examine this distinction before reaching a finding. The first appellate order reproduces clause (aa), concerning supplier-furnished invoice details. That clause came into force on 01.01.2022, after the disputed February 2020 entry. The applicable provisions must be those in force during the relevant period. I do not base the outcome on this textual point alone. The more fundamental defect is the failure to examine and decide the appellant's actual explanation within the grounds communicated in the notice. The impugned orders do not show a reasoned examination of the earlier IGST debit and the accepted DRC-03 payments. The explanation cannot be rejected merely because the appellant entered the correction in the ITC column. The supplies and ledger history must first be correctly identified before the legal effect of that method is examined.

What the notice states and what it leaves unexplained

20. The notice dated 18.01.2023 is not silent about the amount or the month. It identifies Rs.2,50,42,960 in February 2020 and records that the appellant had explained the earlier IGST payment, the change to intra-State treatment and the CGST and SGST payment through DRC-03 dated 04.02.2020.

The notice states: "On examination, the IGST input tax credit of ?2,50,42,960.00 so claimed was not found admissible under the rules." After reproducing Section 16(2), it concludes: "Thus, you have claimed the above input tax credit without fulfilling the conditions of Section 16(2)."

21. These statements convey the proper officer's conclusion but do not explain which condition failed in relation to the appellant's restoration claim. If the allegation concerned the original purchase credit, the relevant inward supplies and the alleged defect required identification. If it concerned unauthorised restoration of an output-tax debit, the notice needed to state that factual and legal case clearly. Merely placing the restoration amount beside the conditions for purchase credit does not supply the missing reasoning. A notice need not contain the final adjudication or answer every possible defence. However, on examining the record, we find that this notice failed to communicate the essential basis of the proposed adverse action. A clear preliminary allegation, supported by the material facts and proposed consequence, would have sufficed.

In Ecom Gill Coffee Trading, the Supreme Court considered the proof required to establish genuine purchases under the Karnataka VAT Act. In that case, invoices and cheque payments alone did not discharge the taxpayer's burden.

That principle is relevant where eligibility for purchase credit is disputed. It does not mean that restoration of credit used to pay output tax under the wrong head must always be treated as fresh ITC or supported by a second purchase invoice. we therefore find that this decision does not advance the Revenue's case.

22. The notice reproduces Section 16(2), while the first appellate order further states that the supplier did not deposit the tax. If the original inward supplies are disputed, that allegation must be supported by evidence concerning those supplies. Here, however, the appellant's case is that the disputed entry restored its own credit earlier used to pay output tax. Repeating the statutory provision without addressing this distinction leaves the main defence unanswered. This causes practical prejudice. To answer an allegation that a supplier did not pay tax, the appellant would need the supplier's identity, the invoices, the period and the material relied upon. To answer an allegation that the law forbids self-restoration and requires a refund application, it would need to address the original debit, payment under the correct heads, the applicable refund mechanism and any prior benefit. These are different factual and legal inquiries. A general reference to Section 16(2) does not fairly communicate all of them.

23. The precise terms of the notice determine the permissible scope of inquiry. Neither the Tribunal nor the officer implementing its order may introduce a new allegation of fraud, blocked credit or unrelated defects in purchases to sustain the same demand. If a ground already stated in the notice requires verification, the appellant must receive the proposed reconciliation and a meaningful opportunity to respond. Both authorities below failed to distinguish fresh ITC from restoration of credit earlier used to pay IGST under a mistaken tax head.

24. Natural justice requires a meaningful opportunity to answer the show-cause notice.

In Gorkha Security Services v. Government of NCT of Delhi, (2014) 9 SCC 105, the Supreme Court held that a notice must communicate both the grounds necessitating action and the proposed action. Its contents must enable the recipient to understand and answer the precise case. Here, the appellant knew which entry was questioned and gave an explanation. That does not establish that every ground later relied upon by the Revenue had been disclosed. In Oryx Fisheries Private Limited v. Union of India, (2010) 13 SCC 427, the Supreme Court emphasised that a quasi-judicial authority must approach show-cause proceedings fairly and with an open mind. It also disapproved an order that rejected the reply without adequate reasons. The notice must permit a real defence, and the final decision must show that the defence was considered.

25. On examining the notice, we find that it expresses a preliminary adverse view. The defect is that it rejects the explanation recorded in it by a bare conclusion. The subsequent orders also fail to resolve the distinction on which that explanation rests. A fair process required the Department to state its objection clearly and then decide the actual reply with reasons. Merely inviting a reply does not discharge that duty. The notice must identify the contraventions supporting the proposed demand. A DRC-01 summary cannot replace a proper notice.

The demand cannot acquire new grounds in adjudication or appeal

26. Section 75(6) requires the adjudication order to state the relevant facts and the basis of the decision. Section 75(7) separately limits the amount demanded and the grounds on which it may be confirmed. Retaining the same amount does not permit substitution of a different factual case. Nor can a detailed appellate discussion retrospectively make an insufficiently particularised notice a valid foundation for an undisclosed allegation.

In Commissioner of Customs v. Toyo Engineering India Ltd., (2006) 7 SCC 592, the Supreme Court did not permit the Revenue to advance grounds outside the show-cause notice. The Department must sustain its demand on the case put to the taxpayer, rather than reconstruct that case at the appellate stage.

Similarly, in Commissioner of Central Excise v. Champdany Industries Ltd., (2009) 9 SCC 466, the Supreme Court rejected an argument that had not formed part of the case in the show-cause notice. Referring to Toyo Engineering and Ballarpur Industries, it reaffirmed that the Revenue cannot argue a new case without laying its foundation in the notice.

The distinction is between explaining an allegation already fairly disclosed and introducing a new material ground of demand. An authority may evaluate the evidence and reject an unpersuasive defence within the notice. It cannot replace a general allegation about purchase-credit conditions with an uncommunicated allegation about particular supplier defaults, or sustain the demand solely by constructing a different refund-procedure case later.

27. The adjudication order also fails to give a reasoned answer to the restoration explanation. The first appellate order records the DRC-03 payment but later proceeds on the footing that tax under the correct heads was not deposited. It further refers to non-payment by the seller or supplier without identifying evidence concerning the original inward supplies. These statements do not resolve the defence or provide a reasoned reconciliation of the payments and disputed entry. The authority must fairly consider the appellant's material and give reasons that permit effective review.

In Kranti Associates Private Limited v. Masood Ahmed Khan, (2010) 9 SCC 496, the Supreme Court emphasised that quasi-judicial conclusions must be supported by clear reasons. Reasons demonstrate consideration of relevant material, restrain arbitrariness and permit effective review. Merely affirming a result without explaining its basis does not discharge that duty.

The taxpayer filed an online reply to the show cause notice dated 18 January 2023. The reply addressed the proposed demand of Rs. 2,50,42,960 for non-compliance with section 16(2) of the CGST Act, 2017, and the proposed IGST short-payment demand of Rs. 14,06,477 for FY

2019-20, together with interest and penalty. The taxpayer submitted that, for July 2017 to March 2018, Rs. 2,49,96,590 had mistakenly been paid under IGST by using the available input tax credit balance. This tax should instead have been paid under CGST and SGST.The mistake was discovered while filing GSTR-9 and GSTR-9C for FY 2017-18. The correct figures were reported in GSTR-9, showing excess payment under IGST and tax payable under CGST and SGST. A note explaining this was included in GSTR-9C. Copies of GSTR-9 and GSTR-9C were submitted as Annexure 1. The CGST and SGST liabilities were then paid through DRC-03 dated 4 February 2020. A copy was submitted as Annexure 2.Because the earlier IGST payment had been made through the credit balance, the taxpayer claimed Rs. 2,49,96,590 as IGST credit in February 2020. The taxpayer stated that this adjustment explained the difference between the credit claimed in GSTR-3B and the credit appearing in GSTR-2A for FY 2019-20.According to the taxpayer, after excluding this adjustment relating to the annual reconciliation for FY 2017-18, the net IGST credit was Rs. 2,05,71,917, calculated as Rs. 4,55,68,507 minus Rs. 2,49,96,590. This was less than the credit available in GSTR-2A. The CGST and SGST credit claims were also stated to be below the amounts available in GSTR-2A.The taxpayer therefore submitted that there was no unexplained difference between the credit claimed and the credit available for April 2019 to March 2020. On point 1, concerning the excess input tax credit claim, the taxpayer's explanation is not found acceptable. The conditions for claiming credit under section 16(2) of the Uttar Pradesh GST Act have been set out above. The taxpayer claimed Rs. 2,50,42,960 as input tax credit against the tax deposited through DRC-03. This is contrary to the conditions of section 16(2). The explanation is therefore rejected.The IGST credit of Rs. 2,50,42,960 claimed in February 2020 is held to have been claimed contrary to law and without fulfilling the conditions of section 16(2). A demand is accordingly created for that amount, together with interest under section 50 and penalty under section 73(11),The passage from the proper officer's order reproduced above records the appellant's submissions. Apart from discussing Section 16, however, it gives no reason for rejecting them. It does not identify the specific sub-section or clause of Section 16 on which that rejection rests. We therefore find that the order lacks reasons and is non-speaking on material points.

28. The defect in the notice and the failure to give reasons are connected but distinct. The first concerns what the appellant was called upon to answer; the second concerns how its answer was decided. Both require examination of the actual documents. Reproducing the statutory text cannot replace a factual charge in the notice. Similarly, reproducing the notice or the appellant's submissions cannot replace reasons in the adjudication order. Repetition at successive stages does not cure the omission. The proper officer

treated the disputed credit as contrary to Section 16(2) and rejected the explanation without the factual analysis needed to support that conclusion.

Payment under the correct tax heads and the disputed recredit

29. we now consider payment under the correct heads and the disputed recredit. According to the appellant, it paid IGST using available credit from July 2017 to March 2018, although its later reconciliation showed that the supplies attracted CGST and UPGST. Its explanation refers to BSNL invoices and amendments made in February 2018. It states that the mistake was discovered while preparing GSTR-9 and GSTR-9C for Financial Year 2017–18. Those documents disclosed the excess IGST payment and the corresponding CGST and UPGST liability. The appellant then paid CGST of Rs.1,25,21,480 and UPGST of Rs.1,25,21,480, totalling Rs.2,50,42,960, through DRC-03 dated 04.02.2020. This payment cannot be ignored. Acceptance of DRC-03, supported by the ledger and payment reference, establishes the payment. The liability under the correct heads may therefore stand discharged, even though the method used to restore the earlier mistaken debit remains to be decided. To examine the legal effect of that payment, we turn to the relevant provisions of the CGST and IGST Acts.

Section 77 of the CGST Act

"(1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.
(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable."

Section 19 of the IGST Act

The corresponding provision applicable to the refund of mistakenly paid IGST is Section 19 of the Integrated Goods and Services Tax Act, 2017. Section 19 of the CGST Act deals with credit on inputs and capital goods sent for job work and does not govern this wrong-head payment. Section 19(1) of the IGST Act addresses a registered person who paid IGST on a supply considered inter-State but subsequently held to be intra-State. Its operative words are:

"shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed."

30. Section 19(2) addresses the converse situation: Central and State or Union territory tax paid on a transaction treated as intra-State but subsequently held to be inter-State. It excludes interest on the IGST payable in that situation. In the present direction of error, the relevant combination is Section 19(1) of the IGST Act for refund of IGST and Section 77(2) of the CGST Act for interest on the correct Central and State tax liability. The provisions must be read together, with the applicable rules.
31. CBIC Circular No.162/18/2021-GST dated 25.09.2021 explains that an incorrect classification of a supply may be discovered by the taxpayer or determined through adjudication. It applies Rule 89(1A) to refunds under both Section 19 and Section 77. Where payment under the correct head was made before 24.09.2021, it provides a transitional refund period of two years from that date. The statutory framework thus recognises an entitlement concerning IGST mistakenly paid on a supply later found to be intra-State. It does not envisage retention of both IGST and CGST/SGST as the final tax burden on the same supply. However, the separate tax heads and prescribed refund process have legal significance. The requirement that refund be subject to prescribed conditions prevents that process from being treated as optional in every case. Equally, the framework does not authorise the Department to ignore tax actually paid under the correct heads. Recognition of a payment, eligibility for refund and validity of a unilateral credit entry are distinct questions, each with its own statutory requirements. This appeal cannot be decided by combining them into a single unsupported allegation about purchase credit.
32. The electronic credit ledger records eligible ITC under Sections 16, 41 and 49 of the CGST Act. IGST paid as output tax on the appellant's own outward supply does not become "input tax" under Section 2(62) merely because that supply was later found to have been wrongly classified. Such payment does not automatically create fresh ITC under Section 16. An entry in a return cannot create a credit entitlement that the statute does not provide. The appellant's unilateral recredit is therefore not automatically lawful merely because the earlier payment under the wrong head is established. Equally, an unauthorised or irregular credit entry does not establish every requirement of a demand and cannot cure an invalid notice. The Department must identify the disputed entry, the applicable statutory provision, the alleged wrongful availment or utilisation and the recoverable amount. A valid notice must state those grounds. I accordingly reject both automatic conclusions. It is not enough for the appellant to say that a revenue-neutral

accounting entry must necessarily be lawful. It is also not enough for the Revenue to say that an irregular entry makes any demand lawful, whatever the notice alleged. The statutory return mechanism governs the appellant's correction; the statutory notice and adjudication safeguards govern the Department's demand . Both must be respected in the same proceeding.

33. we now consider the relationship between procedure and substantive rights.

The principle that procedure is the maid of justice means that procedure should help achieve justice and should not defeat substantive rights on technical grounds.

In Mangalore Chemicals & Fertilisers Ltd. v. Deputy Commissioner, 1991 (55) ELT 437 (SC), the Supreme Court distinguished substantive statutory conditions from procedural requirements for implementing a benefit.

The taxpayer in that case was otherwise entitled to a sales-tax concession and adjustment, but the required departmental permission had not been granted. The Court directed that permission be given retrospectively from the relevant application dates and recognised adjustment of refunds against outstanding tax. We find that this decision fully applies here. Entitlement to refund after payment under the correct heads is hardly disputed; denial of refund and the resulting demand arise from non-compliance with the refund procedure. The decision is relevant where entitlement is established but relief is denied for want of procedural approval, documentation or compliance with adjustment requirements.

34. 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:

35. *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.

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.Bladnoch Distillery 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. *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.*
36. *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.:

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.

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.

Revenue neutrality

37. 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.

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.

Here, the appellant's voluntary disclosure in its annual reconciliation and subsequent payment through DRC-03 are relevant to its defence of good faith. They also support its submission that voluntary payment should be considered in the light of ease of doing business. The period in question fell within the initial implementation of GST and the introduction of the place-of-supply concept. GSTR-9 and GSTR-9C, with the explanatory note, provide the documentary basis for the appellant's explanation. The authorities should have examined these facts and the appellant's conduct, but did not do so. we also find that these circumstances provide good grounds to give effect to revenue neutrality.

Article 265 and other constitutional provisions

38. Article 265 requires legal authority for both the levy and collection of tax. A demand summary does not itself confer that authority. The Revenue must identify the taxable event, the charging provision and the amount still lawfully recoverable after accounting for payments already made. A dispute about restoration of an earlier IGST debit does not erase an accepted CGST and SGST payment through DRC-03. If the tax liability has been validly discharged, we find no constitutional mandate for a fresh demand on the same transaction.
39. Articles 270(1A), 270(1B) and 246A are relevant to the federal structure of GST. Article 246A distributes legislative power over GST and gives Parliament exclusive power over inter-State supplies. Article 269A governs the levy, collection and apportionment of GST on inter-State supplies. In Union of India v. Mohit Minerals Pvt. Ltd., the Supreme Court upheld the principles of federalism and cooperative federalism and considered the impact of payment by the taxpayer. Here, the appellant relies on actual payments under the Central and State tax heads. Once those payments are matched with the relevant liabilities and accepted, the federal allocation framework cannot justify recovery of the same liability under the correct heads again. The provisions for allocation and settlement of tax receipts between the Centre and the States protect the distribution of revenue and prevent an additional substantive tax burden for the same identified liability.

Article 14 and arbitrariness

40. Article 14 requires fair and non-arbitrary administration of tax law. The authority must examine relevant evidence, distinguish different types of transactions and give clear reasons. Treating a disclosed claim for restoration in the same way as a claim based on fictitious purchases, without examining the explanation, ignores a material distinction. Equally, a taxpayer cannot obtain favourable treatment simply by claiming good faith.

In Om Kumar v. Union of India, (2001) 2 SCC 386, the Supreme Court explained proportionality in judicial review, including the distinction between review of restrictions on rights and review of administrative arbitrariness.

The decision supports examination of the purpose of the action, the relevant facts and any excessive burden. Here, the disputed credit is about Rs.2.50 crore, with a further burden of interest and penalty. Reversal followed by delayed restoration can substantially affect working capital. That burden is relevant to a just and fair decision. Ease of doing business is relevant in this limited sense. A procedure that encourages voluntary disclosure and correction supports effective tax administration and deserves due weight. If the correct liability has been discharged, requiring payment of that same liability again would amount to double taxation and would require a legal basis and a clear explanation of the outstanding obligation.

Interest

41. Section 77(2) excludes interest on Central and State tax payable when a supply originally treated as inter-State is later found to be intra-State. we find that the appellant must receive this statutory protection. The Revenue has also demanded interest on the ground of wrongful availment of ITC. As discussed above, the demand itself is unsustainable, and consequential interest cannot survive.

In Pratibha Processors v. Union of India, (1996) 11 SCC 101, the Supreme Court explained the compensatory nature of interest.

Interest liability under GST must be determined under Section 50 and the applicable rules. Interest on wrongly availed ITC must be examined under Section 50(3) and Rule 88B, and both wrongful availment and utilisation must be established. Availment alone is not utilisation. The ledger balance, debit dates, amount actually utilised and period of wrongful benefit must be identified. Interest cannot be imposed on the entire disputed amount without these findings. For these reasons, we find that the interest demand of Rs.1,84,06,576 is also legally unsustainable.

42. ***Penalty under the GST Act***

We are of the view that in this matter issue of penalty must be considered separately.

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.

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.

Summary of findings

43. The appellant made the disputed recredit through GSTR-3B instead of following the refund procedure under Section 19(1) of the IGST Act read with Rule 89(1A) of the CGST Rules. The earlier mistaken IGST payment does not, by itself, make that entry eligible ITC under Section 16 or make unilateral recredit a lawful method of correction. However, the legality of the recredit and the legality of the demand actually raised are separate questions. An irregular method of correction cannot validate a defective show-cause notice. Section 75(7) prohibits confirmation of a demand on grounds not stated in the notice. The demand cannot be sustained on a materially deficient notice, or on grounds not fairly disclosed in it, merely because an objection can later be raised to the method of recredit. At the same time, the appellant's entitlement to refund of the IGST already paid is almost undisputed, and the effect of its procedural non-compliance must be addressed. In State of Punjab v. Shamlal Murari, (1976) 1 SCC 719, the Supreme Court recognised that procedure should facilitate justice. Procedural irregularities must be considered in their proper legal context, without allowing either party to defeat substantive rights or mandatory safeguards. Here, CGST and SGST have admittedly been paid on the supplies in question. There is no allegation of fabricated invoices, fictitious transactions or fraudulent evasion. Section 19(1) recognises the entitlement to refund of IGST initially paid on supplies subsequently found to be intra-State. we therefore find that proper fiscal reconciliation is necessary. It must account for the original IGST payment, the payments under the correct heads and any benefit already obtained through unilateral recredit.

Order

44.1 The appeal is allowed and impugned order of First appellate Authority as well as Proper officer order are set aside. Demand of tax of Rs.2,50,42,960 , together with consequential interest of Rs.1,84,06,576 and penalty of Rs.25,04,296, are set aside in so far as it is based on grounds not disclosed in the show-cause notice.

44.2 The CGST payment of Rs.1,25,21,480 and UPGST payment of Rs.1,25,21,480 made through DRC-03 dated 04.02.2020 shall be recognised against the supplies and liabilities to which they relate.

44.3 The competent authority shall give due effect to the CGST and SGST already paid and undertake reconciliation of the original IGST payment and subsequent recredit. The taxpayer shall not be granted any duplicate refund or credit.

44.4 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