GOODS AND SERVICES TAX APPELLATE TRIBUNAL

BENGALURU BENCH

DIVISION BENCH – COURT NO. 3

APL/71/BUR/2026

M/s Advaith Motors Private Limited **……..Appellant**

Versus

The Commissioner of Central GST,

Bengaluru South Commissionerate **…….Respondent**

Counsel for Appellant	**Counsel for Respondent**
Shri Ravi Raghavan	Shri Prabhath Kumar
Advocate	Departmental Representative

Hon'ble Shri Prabhakaran P.M., Judicial Member

Hon'ble Shri Ravi Jesuraj S., Technical Member (State)

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the Goods and Services Tax Appellate Tribunal

Whether Remand Order: No

1.	GSTIN	29AADCA2399A1ZT
2.	Appeal Case Reference No.	APL/71/BUR/2026
	Appeal Date	30-03-2026

3.	Name of the Appellant	M/s. Advaith Motors Private Limited, No. 12, Shama Rao Compound, Mission Road, Sampangiram Nagar, Bengaluru – 560 027 Through Shri Ravi Raghavan, Advocate, Lakshmi Kumaran & Sridharan Attorneys
4.	Name of the Respondent	The Commissioner of Central GST, Bengaluru South Commissionerate. Through Departmental Representative, Central Tax Department, Government of India.
5.	Order Appealed Against	Order-in-Appeal 06/2024-25 COMMR-APPEALS-1 passed by the Commissioner (Appeals – I), Central Tax, Bengaluru.
	Order Type	Order-in-Appeal under Section 107 of the CGST Act, 2017 affirming the demand order no:10/2023-24 (GST-ADC) -GEXCOM/ADJN/GST/ADC/1656/2023 -Adjn, DIN: 20231257000000444C0A dated: 19-12-2023 passed by the Additional Commissioner of Central Tax, Bengaluru South Commissionerate.

	Reference No	Appeal No. 13/2023-24 GST Commr A-I, DIN: 20240457000000888F3D
	Order Date	25-04-2024.
6.	Personal Hearing	18-09-2026 and 09-10-2026
7.	Order in Brief	Appeal allowed. The Order-in-Appeal and the Order-in-Original No. 10/2023-24 (GST-ADC) dated 19.12.2023 are set aside. For supplies made before 26.07.2023, ground clearance under Entry 52B of Notification No. 01/2017-Compensation Cess (Rate) is measured in laden condition. The vehicles fall under Entry 52A (20%). The demand of differential Compensation Cess, interest and penalty is set aside.

Summary of Order

8.	If Demand order then whether Demand Quantified	Demand after this order: Nil

9.	For Other Orders and Demand Orders which are Not Quantified		
	Issues as Raised by Proper Officer	Issues as determined by Appellate/ Revisional Authority	Order by GST Appellate Tribunal

	Short payment of Compensation Cess at 2% on Hyundai Creta 1.6L, Tucson 2.0L and Alcazar 2.0L supplied from 11.09.2017 to 31.07.2023, by classifying them under Entry 52A (20%) instead of Entry 52B (22%), with ground clearance taken in unladen condition.	Ground clearance to be taken in unladen condition. The Explanation inserted by Notification No. 03/2023-Compensation Cess (Rate) is clarificatory. The vehicles fall under Entry 52B. Cess, interest and penalty confirmed.	For supplies before 26.07.2023, ground clearance under Entry 52B is measured in laden condition. The Explanation applies only to later supplies. The ARAI-certified figures are below 170 mm. The vehicles fall under Entry 52A. Cess, interest and penalty set aside.

Place: Bengaluru **Date: 27-10-2026**

FINAL ORDER

Per: Shri Ravi Jesuraj S., Technical Member (State)

Introduction

1. The question involved in this appeal is whether, for supplies made before 26.07.2023, the date of Notification No. 03/2023-Compensation Cess (Rate), the expression “ground clearance” used in Entry 52B of Notification No. 01/2017-Compensation Cess (Rate) dated 28.06.2017 was to be measured

with the vehicle laden or unladen. The answer decides whether the Appellant owed Compensation Cess at 22% or at 20% on three Hyundai models that it sold between 11.09.2017 and 31.07.2023.

2. The Appellant, M/s. Advaith Motors Private Limited, is an authorised dealer of Hyundai Motor India Limited ("HMIL") in Bengaluru. It challenges Order-in-Appeal No. 06/2024-25 COMMR-APPEALS-1 dated 25.04.2024 of the Commissioner of Central Tax (Appeals-I), Bengaluru ("the First Appellate Authority"). That order upheld Order-in-Original No. 10/2023-24 (GST-ADC) dated 19.12.2023 of the Additional Commissioner of Central Tax, Bengaluru South Commissionerate ("the Adjudicating Authority"). The Adjudicating Authority confirmed differential Compensation Cess of Rs. 9,76,21,566/-, interest under Section 50 and a penalty of Rs. 97,62,157/- under Section 73(9) of the CGST Act.

3. The appeal lies under Section 112 of the Central Goods and Services Tax Act, 2017 ("the CGST Act"). That Act applies to the Compensation Cess by virtue of Section 11(1) of the Goods and Services Tax (Compensation to States) Act, 2017, which is extracted below. A reference to a provision of the CGST Act, or of the Central Goods and Services Tax Rules, 2017 ("the CGST Rules"), is a reference to that provision as so applied.

4. In this order, "the Cess Act" means the Goods and Services Tax (Compensation to States) Act, 2017; and "the Rate Notification" means

Notification No. 01/2017-Compensation Cess (Rate) dated 28.06.2017. Any section cited in this order without explicitly naming the underlying statute refers to a section of the CGST Act, as made applicable to Cess by virtue of Section 11(1) of the Cess Act. Section 11(1) of the Cess Act reads as follows:

> "11. (1) The provisions of the Central Goods and Services Tax Act, and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, mutatis mutandis, apply, in relation to the levy and collection of the cess leviable under section 8 on the intra-State supply of goods and services, as they apply in relation to the levy and collection of central tax on such intra-State supplies under the said Act or the rules made thereunder."

Facts

5. The Appellant bought Hyundai Creta 1.6L (petrol and diesel), Tucson 2.0L (petrol and diesel) and Alcazar 2.0L (petrol) from HMIL. HMIL charged cess at 20% under Entry 52A of the Rate Notification. The Appellant sold the vehicles to retail buyers and charged cess at the same rate.

6. Entries 52A and 52B were inserted in the Rate Notification by Notification No. 05/2017-Compensation Cess (Rate) dated 11.09.2017. Until the amendment of July 2023 they read:

Sl. No.	Heading	Description of goods	Rate
52A	8703	Motor vehicles of engine capacity exceeding 1500 cc other than motor vehicles specified against entry at S. No. 52B	20%
52B	8703	Motor vehicles of engine capacity exceeding 1500 cc, popularly known as Sports Utility Vehicles (SUVs) including utility vehicles. Explanation. – For the purposes of this entry, SUV includes a motor vehicle of length exceeding 4000 mm and having ground clearance of 170 mm and above.	22%

7. The Headquarters Preventive Unit of the Bengaluru South Commissionerate received a Modus Operandi Circular titled "Short payment of tax in the sale of Hyundai Creta (1.6 variant)". It issued summons to the Appellant on 15.12.2021. Shri N.V. Sreenivasa, Head – Finance and Accounts, gave a statement under Section 70 on 17.12.2021. He stated that the brand owner fixes the ex-showroom price inclusive of tax and cess, and that the Appellant was not in a position to confirm whether cess was being charged as required by Notification No. 05/2017. By letter dated 21.12.2021 the Appellant produced its sales and purchase registers and sample invoices for the Creta 1.6 variant. By letter dated 01.03.2023 it produced the certificate issued by the Automotive Research Association of India ("ARAI") for that model, which records a ground clearance below 170 mm.

8. At its 50th meeting held on 11.07.2023, the GST Council decided "to amend the entry 52B in compensation cess notification to include all utility vehicles by whatever name called provided they meet the parameters of Length exceeding 4000 mm, Engine capacity exceeding 1500 cc and having Ground Clearance of 170 mm & above and to clarify by way of explanation that 'Ground clearance' means Ground Clearance in un-laden condition." Notification No. 03/2023-Compensation Cess (Rate) dated 26.07.2023 followed. Clause (xlv) of paragraph 1 and paragraph 2 of that notification read:

> "(xlv) against S. No. 52B, in column (3), for the entry, the entry "Motor vehicles known as Utility Vehicles, by whatever name called including Sports Utility Vehicles (SUV), Multi Utility Vehicles (MUV), Multi-purpose vehicles (MPV) or Cross-Over Utility Vehicles (XUV), with engine capacity exceeding 1500 cc; Length exceeding 4000 mm and Ground Clearance of 170 mm and above.
>
> Explanation: For the purpose of this entry, the Ground Clearance means ground clearance in unladen condition." shall be substituted;
>
> …
>
> 2. This notification shall come into force on 27th July, 2023."

9. By letter dated 04.08.2023 the Preventive Unit called for details of every vehicle sold with engine capacity above 1500 cc and length above 4000 mm.

The Appellant replied the same day. It furnished ledgers, brochures, sample invoices and ARAI certificates for the Tucson 2.0L and the Alcazar 2.0L as well. An intimation in Form GST DRC-01A dated 24.08.2023 proposed differential cess of Rs. 9,76,21,565.81 for the period 11.09.2017 to 31.07.2023, that is, from the date on which Notification No. 05/2017-Compensation Cess (Rate) dated 11.09.2017 inserted Entry 52B. The Appellant replied in Part B of that form on 06.09.2023.

The show cause notice

10. Show Cause Notice No. 15/2023-24 dated 22.09.2023 was then issued in Form GST DRC-01 under Section 73(1). It covered supplies from 11.09.2017 to 31.07.2023. The notice accepted that the three models were popularly known as SUVs and that their engine capacity and length crossed the thresholds. The Appellant does not dispute these three facts. On ground clearance the notice recorded as follows:

    (a). ground clearance was not stated in the brochures produced by the Appellant or on the Indian website of Hyundai, and the "minimum ground clearance" in the ARAI certificates "is in fact the ground clearance in laden condition";

    (b). the Creta 1.6 and Alcazar 2.0 variants had been discontinued in India, so their specifications could not be physically verified;

(c). the unladen figures were therefore taken from the website of Hyundai South Africa, where the Alcazar is sold as the "Grand Creta", and from Indian automobile portals;

(d). a vehicle is supplied unladen, so its ground clearance for tax purposes must be the unladen figure, and the Explanation added by the notification of 26.07.2023 only clarified this; and

(e). after 26.07.2023 the Appellant had begun to charge cess at 22% on the Tucson 2.0.

The notice proposed cess of Rs. 9,76,21,565.81 with interest under Section 50, a penalty under Section 73 and a penalty under Section 125.

11. The figures relied on by each side are these:

Model	**Engine capacity**	**Length**	**Ground clearance, laden (ARAI certificate)**	**Ground clearance, unladen (as alleged in the notice)**
Creta 1.6L (petrol / diesel)	1591 cc / 1582 cc	4270 mm	165 mm	190 mm
Tucson 2.0L (petrol / diesel)	1999 cc / 1995 cc	4480 mm	135 mm	172 mm
Alcazar 2.0L (petrol)	1999 cc	4500 mm	154 mm	200 mm ("Grand Creta")

12. The notice computed the demand year by year as follows:

Financial year	Taxable value (Rs.)	Differential cess at 2% (Rs.)
2017-18 (from 11.09.2017)	91,81,27,747.37	1,83,62,554.95
2018-19	1,61,12,50,408.49	3,22,25,008.17
2019-20	89,31,88,863.38	1,78,63,777.27
2020-21	11,36,90,579.16	22,73,811.58
2021-22	44,79,23,016.84	89,58,460.34
2022-23	74,16,52,696.09	1,48,33,053.92
2023-24 (up to 31.07.2023)	15,52,51,983.53	31,05,039.67
Total	4,88,10,85,294.86	9,76,21,705.90

Reply and adjudication

13. The Appellant replied in Form GST DRC-06 on 27.10.2023. It relied on Clause 5.8 of Indian Standard IS 9435 and on the ruling of the Maharashtra Appellate Authority for Advance Ruling in *In re: Tata Motors Limited*, and contended that Notification No. 03/2023 was prospective. Personal hearing was fixed on 20.11.2023, 28.11.2023 and 29.11.2023. The Appellant's authorised representative, Shri Akbar Basha, appeared on 29.11.2023 and filed a synopsis.

14. The Adjudicating Authority held as follows. The Explanation of July 2023 only clarified the existing entry. In its words, "Ground clearance for a vehicle

varies in a range — minimum in Laden condition and maximum in unladen condition. Explanation only sought to clarify which of these is to be taken for taxation." The ARAI figure is a "minimum ground clearance" measured at full payload for road safety, and cannot be imported into a taxing entry. Entries 47 and 48 of the Rate Notification refer to the Motor Vehicles Act, 1988 while Entry 52B does not. The Appellant, as supplier, is answerable for the rate on its own supplies. The Tata Motors advance ruling binds only the applicant under Section 103. The Appellant had not shown that unladen ground clearance was below 170 mm, and had begun to pay 22% after the amendment. The Adjudicating Authority confirmed cess of Rs. 9,76,21,566/-, interest under Section 50(1) and a penalty of Rs. 97,62,157/- under Section 73(9). It declined to impose a further penalty under Section 125.

Findings of the First Appellate Authority

15. The Appellant appealed on 22.02.2024. After hearing it on 08.04.2024, the First Appellate Authority dismissed the appeal on 25.04.2024. It held that the Explanation removed an ambiguity and was clarificatory, relying on the press release of the 50th meeting of the GST Council and on *Sree Sankaracharya University of Sanskrit v. Dr. Manu* and *S. Sundaram Pillai v. V.R. Pattabiraman*. It observed that the Appellant had not produced evidence that unladen ground clearance was below 170 mm, and that the Appellant had paid cess at 22% after the amendment. It rejected the ARAI certificates because they speak of "minimum ground clearance" while the entry speaks of "ground

clearance". The summary of that order in Form GST APL-04, uploaded on 25.03.2025, quantifies the interest at Rs. 8,09,56,961/-.

16. On 30.04.2025 the Appellant applied for rectification under Section 161, placing on record Circular No. 247/04/2025-GST dated 14.02.2025. The record does not show that the application has been decided. A pending rectification application does not bar this appeal. Towards the pre-deposit for this appeal, the Appellant paid Rs. 97,62,157/- by debit to its electronic credit ledger on 26.03.2026. The Revenue has raised no objection on the pre-deposit or on limitation. As limitation goes to jurisdiction, we have examined it ourselves. Section 112(1) reads:

> "(1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal, or the date, as may be notified by the Government, on the recommendations of the Council, for filing appeal before the Appellate Tribunal under this Act, whichever is later."

By Notification S.O. 4220(E) dated 17.09.2025, issued under this sub-section, an appeal against an order communicated before 01.04.2026 may

be filed up to 30.06.2026. The Order-in-Appeal was communicated well before 01.04.2026, and the present appeal, filed on 30.03.2026, is within that time.

Submissions of the Appellant

17. It was submitted in the memorandum of appeal that a single notice covering the financial years 2017-18 to 2023-24 runs against Section 73, under which limitation is counted separately for each financial year. Reliance was placed on the decisions of the Hon'ble High Court of Madras in Titan Company Ltd. and Uno Minda Ltd., and of the Hon'ble High Court of Karnataka in Veremax Technologie Services Ltd. This ground was not pressed at the hearing.

18. It was also submitted in the memorandum of appeal that Compensation Cess is in the nature of a fee. Under Article 279A the GST Council may recommend only on matters relating to goods and services tax, not on a separate levy. As Section 8 of the Cess Act requires the Council's recommendation, the levy fails. This ground, too, was not pressed at the hearing.

19. It was further submitted that before 27.07.2023 "ground clearance" was not defined in the GST law. Vehicles are certified under the Motor Vehicles Act, 1988 and Rule 126 of the Central Motor Vehicles Rules, 1989 ("the CMV Rules"), and their dimensions are measured under AIS-007 and IS 9435. Clause 5.8 of IS 9435 measures ground clearance on a fully laden vehicle. The

ARAI certificates show the ground clearance in respect of the three vehicles under consideration at 165 mm, 135 mm and 154 mm, all below 170 mm.

20. It was further submitted that the Explanation enlarges the tax burden. It is substantive and prospective, as held in *Commissioner of Income Tax v. Vatika Township (P) Ltd.*, (2015) 1 SCC 1, and *Union of India v. Martin Lottery Agencies Ltd.*, (2009) 12 SCC 209.

21. It was further submitted that on the recommendation of the 55th meeting of the GST Council held on 21.12.2024, the Board issued Circular No. 247/04/2025-GST dated 14.02.2025, which states that the amendment applies only from 26.07.2023. The circular binds the Revenue.

22. It was further submitted that the question is no longer open. The Hon'ble High Court of Bombay in *Mercedes-Benz India Pvt. Ltd. v. Union of India* and the Hon'ble High Court of Kerala in *Popular Motor World Pvt. Ltd. v. Union of India* have held the amendment to be prospective.

23. It was further submitted that figures taken from a foreign website and from commercial portals are sales material and cannot found a tax demand.

24. It was further submitted that the Appellant does not change the nature of the goods supplied by the manufacturer. It only adopted the classification and rate of the manufacturer, as contemplated in Question 30 of the CBIC "FAQs for Traders".

25. It was further submitted that with no short payment there can be no interest, which is compensatory. A penalty cannot rest on a failed demand, the more so where the dispute is one of interpretation and the Appellant acted in good faith.

Submissions of the Respondent

26. It was submitted by the learned Authorised Representative for the Revenue, in support of the orders below, that the four conditions of Entry 52B are cumulative and the first three are admitted. A vehicle is sold unladen, so its ground clearance for tax purposes is the unladen figure.

27. It was further submitted that the Explanation of July 2023 only removed a doubt. It was clarificatory, as the press release of the 50th meeting of the GST Council shows, and as the principles in *Sree Sankaracharya University of Sanskrit v. Dr. Manu* and *S. Sundaram Pillai v. V.R. Pattabiraman* permit.

28. It was further submitted that the ARAI figure is a "minimum ground clearance", measured under full payload for road safety. Where the Rate Notification wished to borrow motor-vehicle law, it said so, as in Entries 47 and 48.

29. It was further submitted that the manufacturer's published figures and market data show unladen ground clearance above 170 mm, and the Appellant paid 22% once the entry was amended.

30. It was further submitted that the Appellant is the supplier and answers for the rate on its own supplies. The demand, interest and penalty were rightly confirmed.

Additional submissions

31. After the appeal was admitted, both sides filed further written submissions with authorities. We record them here, so far as they add to what is set out above.

Additional submissions of the Appellant

32. The Appellant filed a synopsis and a compilation of authorities, both dated 18.09.2026, and written submissions on 09.10.2026.

33. It was submitted by the learned Advocate for the Appellant that Entry 52B has had three forms. From 01.07.2017 to 10.09.2017 all motor vehicles under heading 8703 not otherwise specified fell in Entry 52 at 15%. From 11.09.2017 to 26.07.2023 Entries 52A and 52B, as inserted by Notification No. 05/2017, applied. From 27.07.2023 the substituted Entry 52B, with the Explanation on unladen ground clearance, applied. Almost the whole of the demand relates to the second period, when no rule of unladen measurement existed.

34. It was further submitted that in the absence of a definition in the GST law, Section 56 of the Motor Vehicles Act, 1988, read with Clause 5.8 of IS

9435:2004, governs the measurement, and requires a fully laden vehicle. The ARAI certificates for each model, and the brochures, were produced as Annexures 6 to 11 to the appeal.

35. It was further submitted that paragraph 5.3 of Circular No. 247/04/2025-GST dated 14.02.2025 settles that the amendment applies only on or after 26.07.2023. From that date the Appellant has paid cess at 22% on these models.

36. It was further submitted that the issue is no longer res integra. Reliance was placed on *Mercedes-Benz India Pvt. Ltd. v. Union of India*, 2025 (5) TMI 552 (Bom.), Writ Petition No. 5208 of 2025, decided on 29.04.2025; *Popular Motor World Pvt. Ltd. v. Union of India*, 2025 SCC OnLine Ker 4864; and *In re: Tata Motors Limited*, 2019 (11) TMI 421 (AAAR, Maharashtra).

37. It was further submitted, in reply to the Revenue's objection that *Mercedes-Benz* is not a judgment of the jurisdictional High Court, that a tribunal constituted under an all-India statute must follow the judgment of any High Court on a point of law, so long as no other High Court has taken a contrary view. Otherwise the same central law would mean different things in different States. Reliance was placed on three decisions:

    (i). *Commissioner of Income Tax v. Smt. Godavari Devi Saraf*, (1978) 113 ITR 589 : 1978 (2) E.L.T. (J 624) (Bom.), decided by a Division Bench of the Hon'ble High Court of Bombay at Nagpur. The Court

held that an Income-tax Tribunal anywhere in the country must respect the law laid down by a High Court, though of a different State, so long as there is no contrary decision of any other High Court. It stressed that the Income-tax Act is an all-India statute. It drew upon *East India Commercial Co. Ltd. v. Collector of Customs*, AIR 1962 SC 1893, where the Hon'ble Supreme Court held that a tribunal cannot ignore the law declared by the High Court which exercises superintendence over it, and upon *K.S. Venkataraman & Co. (P) Ltd. v. State of Madras*, AIR 1966 SC 1089;

(ii). *Khanbhai Esoofbhai v. Collector of Central Excise*, 1999 (107) E.L.T. 557, decided by a Larger Bench of the Customs, Excise and Gold (Control) Appellate Tribunal. Relying on *Godavari Devi Saraf*, the Larger Bench held that "in the absence of any decision of a High Court holding a contrary view, the decision given by a High Court is binding on the Tribunal", and followed a judgment of the Hon'ble High Court of Allahabad in matters arising from several States; and

(iii). *Amritlal Lalubhai v. Collector of Central Excise*, 1985 (21) E.L.T. 908, decided by a Special Bench of the same Tribunal. Keeping in view the object of uniform assessment across the country, the Special Bench held that where a High Court has decided a specific issue and no other High Court or the Supreme Court has taken a

contrary view, the Tribunal would respectfully follow that judgment, leaving the parties to their further remedies. It followed a judgment of the Hon'ble High Court of Gujarat in a matter that did not arise in Gujarat, even though special leave petitions against that judgment were pending.

38. It was further submitted, without prejudice, that the classification of goods cannot be questioned at the dealer's end when the dealer does not change the nature of the goods and adopts the manufacturer's classification.

39. The synopsis repeated, without prejudice, the plea that Compensation Cess is a fee on which the GST Council could not make recommendations under Article 279A. As stated above, the plea was not pressed at the hearing.

40. It was further submitted that interest is compensatory and follows the tax. Reliance was placed on *Pratibha Processors v. Union of India*, (1996) 11 SCC 101, and other decisions to the same effect.

41. It was further submitted that no penalty can survive when the demand fails, as held in *Commissioner of Central Excise v. H.M.M. Ltd., Commissioner of Central Excise, Aurangabad v. Balakrishna Industries, Hyva India Pvt. Ltd.* and *Commissioner of Central Excise v. Krishna Sahakari Sakkare Karkhane Niyamit*. No penalty lies where the dispute turns on the interpretation of law, as held in *Maruti Suzuki Ltd. v. Commissioner of Central Excise,* or where the

assessee acted in good faith, as held in *Hindustan Steel Ltd. v. State of Orissa*, (1969) 2 SCC 627.

Additional submissions of the Respondent

42. The Revenue filed its para-wise comments on the grounds of appeal under cover of a letter in File No. GEXCOM/75887/2026-CGST-RANGE-ASD1-DIV-SD-1-COMMRTE-BENGALURU(S), signed on 07.10.2026 by Shri Ravishekar N.J., Assistant Commissioner of Central Tax, South Division-1, Bengaluru South Commissionerate. The comments answer the grounds under six heads. We record them as the Revenue framed them.

A. The consolidated show cause notice

43. It was submitted by the learned Authorised Representative for the Revenue that Section 73 prescribes limitation for each financial year, but nowhere requires a separate notice for each year. Limitation applies to each year independently. Consolidation neither extends nor alters it, and the Department remains bound to determine the liability for each year within time.

44. It was further submitted that the notice identifies and quantifies the liability year by year. The Appellant could, and did, defend each year. It has shown no prejudice and no denial of natural justice.

45. It was further submitted that the single judge decision in *Titan Company Ltd. v. Joint Commissioner of GST & Central Excise* (Madras) was set aside by the Division Bench. The Division Bench did not hold a consolidated notice to be barred. It recorded the assessee's agreement to reply, directed year-wise adjudication, and kept all contentions, including limitation, open. *Uno Minda Ltd. v. Joint Commissioner* (Madras) concerned a notice under Section 74 for July 2017 to October 2023. It was disposed of on the assessee's request for separate notices to avail the amnesty scheme, and on its undertaking not to raise limitation or claim refund.

46. It was further submitted that *Veremax Technologie Services Ltd.*, 2024 (9) TMI 347 (Kar.), no longer holds the field. A Division Bench of the Hon'ble High Court of Karnataka in *Commissioner of Central Tax, Bengaluru North-West Division v. Chimney Hills Education Society*, W.A. No. 1751 of 2024 and connected appeals, decided on 23.04.2026, held that proceedings under Sections 73 and 74 are not confined to a single year, that no statutory bar prevents a common notice for several years, and that reading in such a bar would rewrite the statute. Veremax was itself the respondent in the connected W.A. No. 1590 of 2024.

47. It was further submitted that the same view was taken in *Mathur Polymers v. Union of India*, 2025 SCC OnLine Del 6892, which held that where the allegations span several years a consolidated notice may be necessary to show a common modus operandi; in *Ambika Traders v. Commissioner*, 2025

SCC OnLine Del 6913, which relied on the words "for any period" and "for such periods" in Sections 73 and 74; and in *New Gee Enn & Sons v. Union of India*, 2025 SCC OnLine J&K 1180, which permits a composite notice when the period is specified, the notice is within time, the allegations are clear, and the liability is quantified year-wise.

B. The role of the GST Council and the nature of the cess

48. It was submitted that the Appellant confuses three distinct things: the recommendatory role of the GST Council under Article 279A, the legislative power of Parliament that enacted the Cess Act, and the statutory power of the Central Government to notify rates under Section 8.

49. It was further submitted that Article 279A(4)(a) itself speaks of "the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax". Article 279A(4)(h) cannot be read to limit the competence of Parliament.

50. It was further submitted that Section 8 of the Cess Act builds the Council's recommendation into the levy, and Section 11 applies the machinery of the CGST and IGST Acts to it. The recommendatory character of the Council, explained in *Union of India v. Mohit Minerals Pvt. Ltd.*, does not invalidate a statute that acts on those recommendations.

51. It was further submitted that the cess is a compulsory exaction for a public purpose, with no service rendered in return. It is a tax, not a fee. The name

"cess" does not decide its nature, as recognised in *Commissioner of Central Excise v. Shree Renuka Sugars Ltd.*

52. It was further submitted that Article 366(12A) defines goods and services tax for constitutional purposes. It does not exclude a separate levy enacted by Parliament.

C. The rate applicable to the vehicles

53. It was submitted that the dispute is confined to the fourth condition. The Motor Vehicles Act, 1988 and the CMV Rules govern registration, certification and road safety. The Rate Notification is a fiscal instrument under Section 8(2) of the Cess Act and did not adopt IS 9435, AIS-007, Rule 126 or any ARAI method.

54. It was further submitted that "minimum ground clearance" and "ground clearance" are not interchangeable. The Appellant's reading would add the words "minimum ground clearance measured in fully laden condition in accordance with IS 9435/AIS-007" to the entry. Strict construction of a taxing statute does not permit words to be added.

55. It was further submitted that an ARAI certificate answers whether a vehicle meets automotive standards. It does not answer whether a supply falls within a tax entry. It is relevant evidence, not a binding determination of tax.

56. It was further submitted that whether the amendment is prospective, and what the earlier entry meant, are distinct questions. Even if the amendment is prospective, it does not follow that every vehicle with a laden ground clearance below 170 mm was outside Entry 52B. The 55th meeting of the GST Council and Circular No. 247/04/2025-GST did not adjudicate the characteristics of each vehicle.

57. It was further submitted, without prejudice, that the Revenue accepts that, after Circular No. 247/04/2025-GST, its case for the period before 26.07.2023 cannot rest solely on retrospective operation of Notification No. 03/2023. The demand must be tested on the law applicable during that period and on contemporaneous evidence.

58. It was further submitted that *Mercedes-Benz* is not a judgment of the jurisdictional High Court. Its precedential effect must be judged by the settled principles of territorial jurisdiction, and it turned on its own evidentiary record.

59. It was further submitted that the website and portal material concerns the same models. It is relevant corroborative evidence and cannot be dismissed as "marketing gimmick". The Appellant relies on manufacturer-related technical material when it helps and rejects it when it does not. Once the Department brought material showing the higher rate, the Appellant had to prove, model by model: the exact variant supplied; its specifications; the

method by which its ground clearance figure was arrived at; how that figure relates to the words of the Rate Notification; and that the vehicles did not satisfy Entry 52B during the period.

60. It was further submitted that the Appellant's payment at 22% after 26.07.2023 cannot by itself create a liability for the past, but it is a corroborative circumstance to be weighed with the other evidence.

61. It was further submitted that the *Tata Motors* ruling binds only the applicant and its jurisdictional officer. That the Department did not challenge it does not make it a precedent against other taxpayers.

D. Classification at the dealer's end

62. It was submitted that a registered person must self-assess the tax on its own outward supplies. The manufacturer's classification is relevant evidence of the nature of the goods, but it creates no estoppel against the Department. There is no estoppel against a taxing statute, and an error at one stage of the supply chain cannot be carried to the next. Question 30 of the CBIC "FAQs for Traders" says only that classification "in general" follows the manufacturer's; a FAQ cannot override the Acts or the Rate Notification. Continuity of the HSN heading does not mean continuity of the rate, since rates within heading 8703 turn on engine capacity, length, ground clearance and type of vehicle. The manufacturer's invoices therefore cannot prove that the 20% rate was correct.

E. Interest

63. It was submitted that Section 11 of the Cess Act applies the interest provisions of the CGST Act to the cess. Interest is payable under Section 50(1), and the objection that the sub-section was not specified has no force. Payment at 20% when 22% was due is not payment of the tax; the difference remained unpaid. Under Section 50(2), interest runs from the day after the due date until payment. Section 50(3), which concerns undue or excess claims of input tax credit, has no application. Because interest is compensatory, it is due precisely because the Government was kept out of the differential amount. *Pratibha Processors* and the other decisions cited by the Appellant on the compensatory nature of interest do not help it once short payment is established. Interest is sustainable, subject to verification of the amount and the period of delay.

F. Penalty

64. It was submitted that a penalty does not fail for want of mention of a particular provision when the notice, the proceedings and the order, read as a whole, disclose the contravention, the tax short paid and the statutory basis. Penalty was imposed under Section 73(9), which follows once short payment is determined. Short payment at a lower rate is also within Section 122(2)(a), which does not require that no tax at all was paid.

65. It was further submitted that the Revenue does not dispute that a penalty resting solely on a demand that finally fails ordinarily cannot survive. *Commissioner of Central Excise v. H.M.M. Ltd.*, *Commissioner of Central Excise, Aurangabad v. Balakrishna Industries*, *Hyva India Pvt. Ltd.* and *Commissioner of Central Excise v. Krishna Sahakari Sakkare Karkhane Niyamit* rest on that premise and do not apply where the demand stands.

66. It was further submitted that *Maruti Suzuki Ltd. v. Commissioner of Central Excise* does not lay down that every plea of interpretation bars a penalty. *Hindustan Steel Ltd. v. State of Orissa* holds that penalty is not to be imposed for a technical or venial breach, and that the circumstances must be weighed. A short payment of tax at a lower rate is a substantive contravention, not a venial one.

67. It was further submitted that a plea of good faith must be supported by material showing a reasonable reading of the law. The manufacturer's classification and the FAQ do not by themselves establish it. Otherwise every rate dispute would escape penalty. The penalty is sustainable, subject to the provision invoked in the notice and the findings recorded on it.

Issues for determination

68. We heard both sides and have examined the record. The following issues arise:

(i). Whether, for supplies made before 26.07.2023, ground clearance under Entry 52B was to be measured in laden or in unladen condition;

(ii). Whether the Revenue proved that the vehicles had ground clearance of 170 mm and above in that measure;

(iii). Whether the Appellant can rely on the rate charged by the manufacturer; and

(iv). Whether the demand, interest and penalty can be sustained.

Discussion and findings

Grounds not pressed

69. Two grounds raised in the memorandum of appeal were not pressed at the hearing. The first is that Compensation Cess is a fee, on which the GST Council could not make recommendations under Article 279A. That ground is, in substance, a challenge to the validity of Section 8(2) of the Cess Act and of the levy itself. It was held by a Constitution Bench of the Hon'ble Supreme Court in L. Chandra Kumar v. Union of India, (1997) 3 SCC 261, that a tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. The second ground is that a single notice covering several financial years vitiates the proceedings. As neither ground was pressed, we do

not examine them. The Appellant is free to raise the first before the appropriate forum.

***Issue (i): Laden or unladen ground clearance* before 26.07.2023**

70. Before the amendment, Entry 52B applied only when four conditions were met together. The Board said so in paragraph 6.2 of Circular No. 189/01/2023-GST dated 13.01.2023:

> "6.2 In this regard, it is clarified that Compensation Cess at the rate of 22% is applicable on Motor vehicles, falling under heading 8703, which satisfy all four specifications, namely: - these are popularly known as SUVs; the engine capacity exceeds 1,500 cc; the length exceeds 4,000 mm; and the ground clearance is 170 mm and above."

A vehicle that failed any one condition fell in Entry 52A and bore cess at 20%. The first three conditions are admitted. The case turns on the fourth.

71. Until 26.07.2023 neither the Cess Act nor the Rate Notification defined "ground clearance" or said how it was to be measured. The Adjudicating Authority itself found that a vehicle's ground clearance "varies in a range — minimum in Laden condition and maximum in unladen condition". A vehicle therefore has no single ground clearance until the law says how it is to be measured for determining the applicability of the cess. The entry, read alone,

is silent. The answer must come from the law that governs how motor vehicles are measured in India.

72. It was held by the Hon'ble Supreme Court in *Akbar Badruddin Jiwani v. Collector of Customs*, (1990) 2 SCC 203, that a word left undefined in a fiscal entry is read in the sense in which those who deal in the goods understand it. No evidence of trade usage was led by either side. But "ground clearance" is a technical term of automobile engineering. Those who make, test and register motor vehicles in India understand it in the sense fixed by the standard under which vehicles are type-approved. Here the trade meaning and the technical meaning are the same. Where a fiscal entry uses a technical term without defining it, and another law prescribes how that very attribute of the goods is to be measured, the meaning given by that law is the safest guide. Motor vehicles are type-approved under the Motor Vehicles Act, 1988 and the CMV Rules. Rule 126 of the CMV Rules requires every manufacturer to submit a prototype to a notified testing agency, such as ARAI, for a certificate that the vehicle complies with the Act and the Rules. ARAI measures dimensions under AIS-007, which adopts IS 9435. Clause 5.8 of IS 9435:2004 reads:

> "5.8 Minimum Ground Clearance – The distance between the ground and the lowest point of the centre part of the vehicle. The centre part is that part contained between two planes parallel to and equidistant from the longitudinal median plane (of the vehicle) and separated by a distance which is 80 percent

of the least distance between points on the inner edges of the wheels on any one axle.

NOTE — This measurement has to be done on fully laden vehicle to the maximum authorized GVW."

73. No Indian standard brought to our notice measures ground clearance in unladen condition. The Revenue did not point to one. Its own notice records that the ARAI figure "is in fact the ground clearance in laden condition". During the disputed period the laden measure was the only measure of ground clearance prescribed under the law governing motor vehicles. That is the measure Entry 52B must be taken to have used.

74. The authorities below drew a line between "minimum ground clearance" and "ground clearance". Clause 5.8 does not support that line. The word "minimum" in Clause 5.8 points to where the distance is taken: from the ground to the lowest point of the centre part of the vehicle. The load is dealt with separately, by the Note. What Clause 5.8 measures is what anyone means by the ground clearance of a vehicle. The word "minimum" does not turn it into some other dimension.

75. The Revenue says a vehicle is sold unladen, so the unladen figure governs. We do not accept this. The entry describes the vehicle, not the state in which it leaves the showroom. A dimension used to classify goods is measured in

the way the law prescribes for that dimension. The manner of delivery is not part of the test that the entry lays down.

76. The argument based on Entries 47 and 48 of the Rate Notification does not help the Revenue either. Those entries say that "the specification of the motor vehicle shall be determined as per the Motor Vehicles Act, 1988 (59 of 1988) and the rules made there under." That shows the Central Government treated motor-vehicle law as the source of vehicle specifications. The absence of such a sentence in Entry 52B leaves the term undefined. It does not supply an unladen meaning that the words of the entry do not carry. When the Central Government wished to adopt the unladen measure, it said so in plain words in July 2023.

77. The Revenue rightly says that the meaning of the old entry and the reach of the amendment are separate questions. We have answered the first question on its own terms. Even if the old entry were open to two readings, the result would be the same. Entry 52B imposes a higher rate. It is a charging entry, not an exemption. It was held by a Constitution Bench of the Hon'ble Supreme Court in *Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company*, (2018) 9 SCC 1, that an ambiguity in a charging provision goes to the benefit of the subject, while an exemption notification is construed strictly and an ambiguity in it goes to the Revenue. A doubt about which ground clearance Entry 52B meant must be resolved in favour of the Appellant.

78. The amendment of July 2023 points the same way. Clause (xlv) of Notification No. 03/2023 did more than add an Explanation. It substituted the whole entry. It widened the class from vehicles "popularly known as" SUVs to all utility vehicles "by whatever name called", including MUVs, MPVs and XUVs, and it fixed the unladen measure. By changing the measure, the substituted entry brought into Entry 52B vehicles that were outside it, and so enlarged the burden of cess. That is a change in the law, not a clarification of it.

79. It was held by a Constitution Bench of the Hon'ble Supreme Court in *Commissioner of Income Tax v. Vatika Township (P) Ltd.*, (2015) 1 SCC 1, that a provision which imposes a new burden, or enlarges an existing one, is presumed to be prospective unless it provides otherwise, expressly or by necessary implication. It was held by the Hon'ble Supreme Court in *Union of India v. Martin Lottery Agencies Ltd.*, (2009) 12 SCC 209, that an Explanation which changes the law does not operate retrospectively merely because it is called an Explanation. Paragraph 2 of Notification No. 03/2023 provides that it shall come into force on 27.07.2023. It contains nothing, express or implied, to make it apply to supplies made before that date. The substituted entry, with its Explanation, therefore operates only prospectively. The date from which it applies, 26.07.2023, is explained below.

80. The authorities below relied on *Sree Sankaracharya University of Sanskrit v. Dr. Manu*, 2023 SCC OnLine SC 640, and *S. Sundaram Pillai v. V.R.*

Pattabiraman, (1985) 1 SCC 591. It was held by the Hon'ble Supreme Court in those decisions that a provision which only clarifies or declares the existing law may apply to the past, and that the label given to a provision does not decide its nature. The test is whether the provision explains the law as it stood or changes it. Applied here, that test shows that the Explanation changed the measure, and with it the rate, for vehicles such as these. The principles laid down in those decisions therefore lead to a prospective reading.

81. The question of retrospective operation is also closed for the Revenue by the Board's own circular. Section 168(1) reads:

> "168. (1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions."

82. On the recommendation of the GST Council at its 55th meeting, the Board issued Circular No. 247/04/2025-GST dated 14.02.2025 under Section 168(1). Paragraphs 5.1 to 5.3, numbered as they appear in the circular, read:

> "5.1 Representations were received that there are different views in some jurisdictions regarding the effective date of

amended entry 52B in notification No. 1/2017-Compensation Cess (Rate) dated 28.06.2017.

5.2 Prior to the 50th GST Council meeting, vide entry at S.No. 52B in the notification No. 01/2017-Compensation Cess (Rate) dated 28.06.2017, motor vehicles of engine capacity exceeding 1500 cc, popularly known as SUVs, including utility vehicles attracted 22% Compensation Cess.

5.3 Following the 50th GST Council meeting, vide notification No. 03/2023-Compensation Cess (Rate) dated 26.07.2023, the entry 52B was substituted to provide that the cess will be applicable to all motor vehicles known as utility vehicles by whatever name called, with engine capacity exceeding 1500cc, length exceeding 4000mm and ground clearance of 170mm and above. Further, a new explanation was added that ground clearance means ground clearance in unladen condition.

5.3 As per the recommendation of the GST Council, it is hereby clarified that the amendment carried out vide notification No. 03/2023-Compensation Cess (Rate) dated 26.07.2023 will apply on or after 26.7.2023."

83. It was held by the Hon'ble Supreme Court in *Ranadey Micronutrients v. Collector of Central Excise*, (1996) 10 SCC 387, and in *Commissioner of*

Central Excise v. Dhiren Chemical Industries, (2002) 10 SCC 64, that circulars issued by the Board bind the Department, which cannot take a stand contrary to them. It was held by a Constitution Bench of the Hon'ble Supreme Court in *Commissioner of Central Excise v. Ratan Melting & Wire Industries*, (2008) 13 SCC 1, that circulars of the Board bind the authorities under the statute, though not the courts. The circular was issued after both the orders under appeal, so the authorities below did not have it. It binds the Revenue before us. The Revenue does not question the circular. It concedes that, after the circular, its case for the period before 26.07.2023 cannot rest solely on the retrospective operation of Notification No. 03/2023. The circular states that the amendment applies on or after 26.07.2023, the date of the notification, although paragraph 2 of the notification brings it into force on 27.07.2023.

84. The Hon'ble High Court of Bombay decided the same question in *Mercedes-Benz India Pvt. Ltd. v. Union of India*, Writ Petition No. 5208 of 2025, decided on 29.04.2025, 2025 (5) TMI 552. It was held by the Hon'ble High Court that:

> "Now the Board itself [albeit based on the GST Council recommendation and clarification] has clarified that the amendment carried out vide Notification No. 3/2023-CC (Rate) dated 26th July, 2023 is prospective in nature. This clarification issued by the Board is binding on the Respondents. The disputed period in the present case is from September 2017 to July 2022. Hence, for the aforesaid period, the ground clearance of motor

vehicles for the purpose of determining applicable Cess rate under the Cess Notification had to be considered in a laden condition, as was being done by the Petitioner."

85. The Hon'ble High Court of Kerala, in *Popular Motor World Pvt. Ltd. v. Union of India*, W.P.(C) No. 35881 of 2024, decided on 04.07.2025, 2025 SCC OnLine Ker 4864, set aside a show cause notice issued to a motor-vehicle dealer on the same issue. It did so because the amendment applies only on or after 26.07.2023, and it left the Department free to proceed afresh in accordance with law.

86. Both High Courts have thus taken 26.07.2023, the date of issue of the notification, as the date from which the substituted entry applies. The Board's circular says the same. We therefore take 26.07.2023 as that date.

87. The Revenue says that the Bombay judgment is not from the jurisdictional High Court. That is correct. The Appellant relied on *Commissioner of Income Tax v. Smt. Godavari Devi Saraf*, (1978) 113 ITR 589 (Bom.), and on the decisions of the Customs, Excise and Gold (Control) Appellate Tribunal that followed it, to contend that the judgment binds this Tribunal. The same High Court later held in *Commissioner of Income Tax v. Thana Electricity Supply Ltd.*, (1994) 206 ITR 727 (Bom.), that the decision of one High Court does not bind courts and tribunals outside its territorial jurisdiction, though it has persuasive value. We need not decide which view governs this Tribunal, and

we express no opinion on it. It is enough that the judgment is the considered view of a High Court on the same entry and the same circular, and is entitled to respect for that reason. We have examined its reasoning for ourselves. It rests on the Board's circular, which binds the Revenue, and it accords with the conclusion we have reached independently above. The Hon'ble High Court of Kerala has proceeded on the same footing. No contrary view of any High Court, including the Hon'ble High Court of Karnataka, has been brought to our notice. We find the reasoning of the Hon'ble High Court of Bombay sound, and we respectfully adopt it as persuasive authority.

88. The view also accords with the reasoning of the Maharashtra Appellate Authority for Advance Ruling in *Tata Motors*. We accept the Revenue's point that, under Section 103(1), that ruling binds only the applicant and its jurisdictional officer. Section 103(1), as it then stood, reads:

> "(1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only on— (a) the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling; (b) the concerned officer or the jurisdictional officer in respect of the applicant."

We refer to the ruling only for its reasoning.

89. We hold that, for supplies made before 26.07.2023, ground clearance under Entry 52B was to be measured in laden condition, and that the substituted entry, with its Explanation, does not apply to those supplies.

Issue (ii): ARAI certificates or website data

90. The ARAI certificates are issued after statutory testing of the very models that the Appellant sold in India. They record laden ground clearance of 165 mm for the Creta 1.6L, 135 mm for the Tucson 2.0L and 154 mm for the Alcazar 2.0L. Each figure is below 170 mm. The Revenue says that the Appellant had to prove the figure for each variant. The certificates cover the models in dispute. The Revenue placed nothing on record to show that any variant sold in India had a different laden ground clearance.

91. Against these, the Revenue relied on the website of Hyundai South Africa and on commercial portals. The South African figures relate to vehicles made for another market. For the Alcazar, the notice relied on the "Grand Creta", a vehicle sold abroad under another name. Nothing on record shows that those vehicles share the specifications of the variants sold in India. The portals do not disclose the source of their figures, the load condition or the method of measurement. Such material is meant for buyers. It is not evidence of a measurement made according to law.

92. The Revenue says the Appellant relies on technical material that helps it and rejects material that does not. The comparison is not apt. The Appellant relies

on statutory certificates for the Indian variants. It rejects unverified figures for vehicles made for another market. These are not two pieces of evidence of the same kind.

93. The burden of proving that goods fall under the entry that the Revenue invokes lies on the Revenue. It was so held by the Hon'ble Supreme Court in *Hindustan Ferodo Ltd. v. Collector of Central Excise*, (1997) 2 SCC 677, and in *HPL Chemicals Ltd. v. Commissioner of Central Excise*, (2006) 5 SCC 208. Both authorities below placed the burden on the Appellant by faulting it for not proving the unladen figure. That was an error. The notice itself records that the Indian website of Hyundai did not state ground clearance and that two of the variants had been discontinued. If the Revenue needed the declared specifications of the Indian variants, the source was HMIL. Section 70(1) gave the proper officer the power to obtain them. It reads:

> "70. (1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908."

94. Figures gathered from the internet are not proof of a measurement made according to law. The demand here was of nearly ten crore rupees. The

Revenue had the power under Section 70 to obtain the specifications from the manufacturer itself. The point in dispute received little investigation. The notice accepted three of the four conditions from documents. On the fourth, the only one in contest, no vehicle was examined, no statement was recorded on the technical question, and no question was put to the manufacturer. The Revenue printed pages from websites and drew its conclusion from them. The law gave the Revenue several means to prove its case. None was used:

(a) **Summoning the manufacturer.** HMIL made every vehicle in question. A summons under Section 70 would have produced its declared figures for each Indian variant, laden and unladen, with its type-approval papers and the method behind them. HMIL was asked nothing.

(b) **Obtaining the test reports.** ARAI tested the prototypes under Rule 126. The Revenue could have asked ARAI, under Section 70, for its test reports and for any unladen figure recorded during testing. It did not.

(c) **Testing the source.** The notice relied on the website of Hyundai South Africa and on Indian portals. It did not establish who published the figures, when, for which variant, under what load, or by what method. It did not show that the South African "Grand Creta" shares the build of the Indian Alcazar. A printout tells us what a website

said on the day it was printed. It does not tell us whether what it said was true.

95. Section 145 may make a computer printout admissible as a document. It reads:

> "145. Notwithstanding anything contained in any other law for the time being in force,— (a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or (b) a facsimile copy of a document; or (c) a statement contained in a document and included in a printed material produced by a computer, subject to such conditions as may be prescribed; or (d) any information stored electronically in any device or media, including any hard copies made of such information, shall be deemed to be a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible."

Admissibility, however, is not proof. A document may be received in evidence and still carry little weight. The weight of a document depends on its source and on whether its contents can be tested. Figures of unknown origin, for vehicles built for another market, cannot prevail over statutory

certificates for the very vehicles sold. It was held by the Hon'ble Supreme Court in *Omar Salay Mohamed Sait v. Commissioner of Income Tax*, AIR 1959 SC 1238, that a finding which rests on suspicion, conjecture or surmise, and not on evidence, cannot stand. The finding that the vehicles had an unladen ground clearance of 170 mm and above is a finding of that kind.

We say this not to fault the officers but to mark what a demand of this kind requires. When the rate of tax turns on a physical measurement, the Revenue must prove the measurement by evidence that can be tested: the manufacturer's declaration, the certifying agency's report, or a measurement made in the presence of the assessee. A tax demand cannot be built on material that the assessee cannot question and the adjudicator cannot verify.

96. Even if the unladen figures were correct, they would not matter for supplies made before 26.07.2023, because the laden figure governs those supplies. The Revenue concedes that the Appellant's payment at 22% after 26.07.2023 cannot by itself create a liability for the past, but it says that the payment corroborates its case. We do not agree. From 26.07.2023 the substituted entry adopted the unladen measure, and the Appellant paid 22% under it. A payment made in obedience to a new entry shows only that the new entry was obeyed. It says nothing about what the earlier entry required, and so it cannot corroborate a demand for the earlier period. We hold that the ARAI

certificates are the reliable evidence of ground clearance, and that the vehicles did not satisfy the fourth condition of Entry 52B during the disputed period.

Issue (iii): The rate charged by the manufacturer

97. We do not accept the plea that a dealer cannot be asked to pay more than the manufacturer charged. Section 59 reads:

> "59. Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39."

The dealer's sale to its customer is a separate supply. The dealer is the person liable to pay cess on it and must apply the correct rate. The FAQ relied on says that classification "in general" follows the manufacturer's. It does not relieve a dealer of its own duty. The statement of the Appellant's officer on 17.12.2021, that the Appellant could not confirm whether cess was being charged correctly, shows that this duty was lost sight of. The rate charged by the manufacturer may show good faith, but it is not a defence in law. The plea is rejected. It does not affect the result, in view of our finding on Issues (i) and (ii).

Issue (iv): Demand, interest and penalty

98. The demand rests on reading the unladen measure into the period before 26.07.2023. That reading fails. The demand also covers supplies up to

31.07.2023. For supplies from 26.07.2023 the substituted entry applies, and those supplies stand on a different footing. The Revenue did not separate them, did not quantify any short payment on them, and did not show that cess was charged at 20% on any of them. Its own notice records that the Appellant charged 22% on the Tucson after the amendment, and that the Creta 1.6 and Alcazar 2.0 variants had been discontinued. The Revenue's own written submissions proceed on the footing that the Appellant paid cess at 22% after 26.07.2023. A demand must rest on proof of short payment. No short payment is shown for those days.

99. The figures in the notice also do not reconcile. Two per cent of the taxable value of Rs. 4,88,10,85,294.86 is Rs. 9,76,21,705.90, which is the year-wise total. The notice instead took the difference between its figures at 22% and at 20%. The figure at 20%, Rs. 97,62,17,199.06, is not 20% of the stated taxable value. The orders below confirmed Rs. 9,76,21,566/- without reconciling this. The First Appellate Authority also described the period as starting in November 2017, while the notice starts on 11.09.2017. The amount confirmed in an order must match the computation on which it rests. In view of our conclusion, nothing turns on these differences.

100. Accordingly, the demand of Rs. 9,76,21,566/- is set aside in full.

101. Interest and penalty follow the tax. Section 50(1) reads:

> "50. (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council."

It was held by the Hon'ble Supreme Court in *Pratibha Processors v. Union of India*, (1996) 11 SCC 101, that interest is compensatory and is geared to the tax actually withheld. With no tax unpaid, no interest is due.

102. Section 73(9) reads:

> "(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order."

A penalty under Section 73(9) can be imposed only on a person from whom tax is determined to be due. With no tax due, no penalty can be imposed. The Revenue itself accepts that a penalty resting on a demand that fails ordinarily cannot survive. It distinguished *H.M.M.*, *Balakrishna Industries*, *Hyva India* and *Krishna Sahakari Sakkare Karkhane* only on the footing

that the demand here stood. That footing is gone. The penalty was imposed under Section 73(9) alone, so the Revenue's reference to Section 122(2)(a) does not arise. The penalty of Rs. 97,62,157/- falls with the demand. We need not examine the other grounds raised against interest and penalty.

Conclusion

103. For these reasons, the appeal is allowed in the following terms:

(i). Order-in-Appeal No. 06/2024-25 COMMR-APPEALS-1 dated 25.04.2024 and Order-in-Original No. 10/2023-24 (GST-ADC) dated 19.12.2023 are set aside.

(ii). The demand of differential Compensation Cess of Rs. 9,76,21,566/-, the interest under Section 50 and the penalty of Rs. 97,62,157/- under Section 73(9) of the CGST Act, read with Section 11 of the Cess Act, are set aside.

(iii). There shall be no order as to costs.

(iv). The appeal is disposed of accordingly.

Pronounced in Open Tribunal on this the 27 th day of October, 2026.

(Prabhakaran P.M.)
Judicial Member

(Ravi Jesuraj S.)
Technical Member (State)

GST APPELLATE TRIBUNAL
जीएसटी अपीलीय अधिकरण