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State Bench Lucknow

Court No. Court II

APL/37/LCK/2026

M/S NEW STAR TRADING COMPANY **.....Appellant**

Versus

SHRI H C VERMA, ADDL. COMM. APPEALS CGST & CX APPEAL ALLAHABAD , CGST ALLAHABAD & ORS. **.....Respondent**

Quorum

Hon'ble Narendra Kumar, Member(Judicial)
Hon'ble Alok Chopra, Member (Technical)

Counsel for Appellant
SHRI ALEKH KUMAR AGARWAL, ADVOCATE

Counsel for Respondent
SMT. NIDIHI SHARMA, SUPERINTENDENT, CGST

Form GST APL-04A

[See rules 113(1) & 115]

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

whether remand order : Yes

Order reference no. : ZN090371026000547H **Date of order :** 28/10/2026

1.	GSTIN/Temporary ID/UIN - 09BWOPK9429G1ZW	
2.	Appeal Case Reference no. - APL/37/LCK/2026	Date - 25/03/2026
3.	Name of the appellant - M/S NEW STAR TRADING COMPANY , nstknp@hotmail.com , 9044800900	
4.	Name of the respondant - 1. Amit Kumar , amitkumar.82@gov.in , 9955398149 2. Shri H C Verma	
5.	Order appealed against - AD090225082894N	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - 79/GST/ALLD/2026	Date - 19/02/2026

6.	Personal Hearing - 28/10/2026 06/10/2026 22/09/2026 08/09/2026 03/08/2026 21/07/2026 12/06/2026 09/06/2026 04/06/2026
7.	Order in brief - the appeal filed by the appellant against order-in-appeal is hereby rejected and the order-in-appeal is partly upheld. The penalty amounts imposed in both the order-in-original as well as the order-in-appeal are set aside and the case is remanded to the adjudicating for redetermination of the penalty amount keeping in mind the provisions of Section 75(13) of CGST Act, 2017.

Summary of Order

8.	If demand order then whether demand quantified: Yes

Section-I

Particulars	Central tax		State/UT tax		Integrated tax		Cess		Total	
	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount
1	2	3	4	5	6	7	8	9	10	11
(a) Tax	154328	154328	154328	154328	460800	460800	0	0	769456	769456
(b) Interest	0	0	0	0	0	0	0	0	0	0
(c) Penalty	0	0	0	0	0	0	0	0	0	0
(d) Fees	0	0	0	0	0	0	0	0	0	0
(e) Others		0		0		0		0		0
(f) Refund		0		0		0		0		0

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
Levy of Penalty	The First Appellate Authority has upheld the order passed by the Adjudicating Authority and confirmed the disallowance of Input Tax Credit under Section 74 of the CGST Act. It has been held that the supplier was non-existing and therefore the ITC claimed by the Appellant is not admissible. The Appellate Authority has further observed that the Appellant failed to establish the genuineness of the transactions to its satisfaction. Accordingly, the demand of tax, interest, and penalty has been confirmed of Rs. 769456.00.	the appeal filed by the appellant against order-in-appeal is hereby rejected and the order-in-appeal is partly upheld. The penalty amounts imposed in both the order-in-original as well as the order-in-appeal are set aside and the case is remanded to the adjudicating for redetermination of the penalty amount keeping in mind the provisions of Section 75(13) of CGST Act, 2017.
10.	If remanded with directions:	
	a) Remanded to: Adjudicating Authority	

	b) Directions subject to which remanded, if any: the appeal filed by the appellant against order-in-appeal is hereby rejected and the order-in-appeal is partly upheld. The penalty amounts imposed in both the order-in-original as well as the order-in-appeal are set aside and the case is remanded to the adjudicating for redetermination of the penalty amount keeping in mind the provisions of Section 75(13) of CGST Act, 2017.

Place :LUCKNOW

Date : 28.10.2026

Signature

LUCKNOW Deepak Yadav

Designation : Stenographer/Law researcher

Jurisdiction :Lucknow

1. M/s New Star Trading Company (hereinafter referred to as the "Appellant"), having its place of business at 85/71, Afim Kothi, Kanpur-208003, Uttar Pradesh, a proprietorship concern registered under the provisions of the Central Goods and Services Tax Act, 2017 ("the CGST Act") bearing GSTIN 09BWOPK9429G1ZW has filed the subject appeal against Order-in-Appeal No. 79/GST/ADC/All/2026 dated 19.02.2026, passed by the First Appellate Authority i.e. Commissioner (Appeals), CGST & Central Excise, Allahabad who had upheld the adjudicating authority's Order-in-Original No. GST/06/R-X/DIV-II/2024-25 dated 04.12.2024.

1.1 The issues that we seek to address, and have also been raised by the appellant, are encapsulated as below:

i. Whether furnishing of invoices, e-way bills, transport / bilty documents, weighment slips, ledger with stock inventory and banking-channel payments are sufficient to allow buyer avail of the ITC?

ii. Whether non fulfilment of Section 16 (2) (b) stymies the ITC credit availment by appellant despite him being in possession of documents as per (i) above?

iii. Whether an adverse report concerning the supplier automatically establishes fraud or collusion on the part of the purchasing dealer?

iv. Whether penalty under Section 122 can survive without establishing the specific contravention and without compliance with the statutory requirement of reasonable opportunity of hearing?

v. Whether Section 74 of the CGST Act can be invoked merely on the basis of an Intelligence Report, suspicion or third-party adverse information without establishing fraud, wilful misstatement or suppression of facts with intent to evade tax?

vi. Whether the fact that a supplier was registered/active at the time of transaction is a material fact which the adjudicating authority is required to consider?

vii. Whether a mere allegation that a particular vehicle was a scooter/motorcycle etc, without independent corroborative evidence linking the allegation to the Appellant's specific transactions, can establish that the goods were never transported?

viii. Whether the First Appellate Authority was justified in mechanically relying upon Anil Rice Mill without examining the materially different documentary evidence available in the present case?

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1.2 Since these issues entail questions of law, the subject appeal was heard by the Division Bench.

1.3 The appellant was represented by Ld Sh. Alekh Agarwal, Advocate ('Ld. Counsel') and the respondent was represented by Ld Smt. Nidhi Sharma, Superintendent CGST as the Departmental Representative ('Ld. DR').

2.0 To state in brief, the Appellant raised the issue that the impugned order is bad in law as well as on facts and is liable to be set aside since the authorities had failed to properly consider and appreciate the valid documents and submissions that had been filed by him, resulting in a violation of the principles of natural justice and further submitted that the impugned order was arbitrary, unjustified, and non-speaking in nature, having been passed without proper consideration of the facts, documents, submissions, and without assigning adequate and cogent reasons. Arguing that the demand of tax, interest, and penalty imposed upon the Appellant is excessive, unjustified, and liable to be quashed, he raised the following aspects in his appeal before the Tribunal.

2.1 The appellant submitted that payments towards the purchase of goods were duly made through online/banking channels and there was no cash payment or any other unaccounted mode of payment involved in the transactions. He had produced the relevant tax invoices before the First Appellate Authority to establish the existence and nature of the transactions. Ld Counsel argued that Revenue built a case, on the basis of an investigation report, despite genuine transactions undertaken by him submitting details of vehicles used for transportation of the goods, kanta parchi and e way bill for the vehicles used for transportation of the goods and these cannot be treated as genuine without bringing any cogent and conclusive evidence against the appellant.

2.2 He also argued that during the relevant period the concerned suppliers had duly furnished their statutory GST returns, including GSTR-1/GSTR-3B and the corresponding transactions were reflected in the GST system. The availability of the relevant inward supplies in GSTR-2A of the appellant further support the fact that the suppliers had reported the transactions to the Department. He had made payment of the applicable tax/duty to the Government and thereafter availed the Input Tax Credit (ITC) in accordance with the provisions of the GST law.

2.3 The Ld Counsel maintained that ITC cannot be denied merely on the basis of subsequent allegations against the suppliers, particularly when the Appellant has discharged its burden by producing tax invoices, ledger accounts, payment particulars, transportation details and other supporting documents and further submitted that there is no allegation supported by cogent evidence that the Appellant had colluded with the

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suppliers, participated in any alleged fraudulent activity, or had knowledge of any alleged irregularity on the part of the suppliers.

2.4 Ld Counsel contended that the invocation of Section 74 of the CGST Act is bad in law, as there is no fraud, wilful misstatement, or suppression of facts on the part of the Appellant and the impugned order has been passed without any cogent or substantive evidence to establish that the transactions undertaken by the Appellant were not genuine.

3.0 Ld DR countered the appellant's assertions arguing that investigation, physical verification of the suppliers, examination of transport records, statements recorded during investigation, taken together established that the disputed ITC was availed on invoices not supported by actual receipt and movement of goods. Ld DR informed that the investigation commenced on the basis of specific intelligence received from the concerned State Tax authorities. State Tax Officer, Anti-Evasion Bureau, Bhopal vide letter dated 05.09.2019 intimated the Respondent that on 27.09.2019 physical verification of the registered premises of a supplier of the appellant i.e. M/s Diamond Enterprises was carried out and the firm was found to be non-existent. The statements of the tenant and of the owner of the premises were also recorded, confirming that no commercial activity was carried out from the said premises.

3.1 Similar information received from the Commercial Tax Department, Ghaziabad, through the Joint Commissioner (AE), CGST Ghaziabad, disclosed serious irregularities in the functioning of M/s Raj Trade Link Corporation, another supplier of the appellant. The investigation revealed that the said entity was involved in issuance of invoices without corresponding actual movement of goods and that the e-way bills generated in respect of such transactions contained vehicle particulars which were non-existent and that the nature and quantity of goods were such as could not be transported in the vehicles mentioned in e way bill.

3.2 Ld DR stressed that the given facts are significant because the Department did not proceed merely on the ground that subsequently the suppliers were unavailable or that their registrations were cancelled. There was specific field verification of the transport particulars and findings against the appellant were based on tangible material collected during investigations. The Respondent submitted the verification reports in respect of the appellant 's suppliers viz., M/s Diamond Enterprises and M/s Raj Trade Link Corporation.

3.3 In respect of M/s Diamond Enterprises, Bhopal, physical verification of its declared premises on 27.08.2019 revealed that the firm was non-existent and this was corroborated by the statements of the tenant and owner of the premises. The five disputed

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invoices Nos. 207 to 211 dated 04.07.2018 involve taxable value of Rs.25,60,000/- and IGST of Rs.4,60,800/-. Independent verification of the corresponding e-way bills and vehicles disclosed material discrepancies. For Invoice No. 207, vehicle No. RJ-83-AT-6721 was not traceable in the RTO records. For Invoice No. 208, although vehicle No. RJ-02-GA-6782 was registered, actual movement could not be established and no toll receipts, freight bills or delivery acknowledgements were furnished. For Invoice No. 209, vehicle No. RJ-14-GH-6782 had a carrying capacity of only 1,690 kg against 19,215 kg declared in the e-way bill, as confirmed by the RTO report dated 25.08.2026. For Invoice No. 210, vehicle No. RJ-01-GB-6822 did not have the requisite national permit during July 2018 and no interstate tax payment was found. For Invoice No. 211, vehicle No. RJ-14-GA-7125 was not traceable in the RTO records and the registration particulars related to a vehicle of the mid-1990s, raising serious doubt regarding its validity and fitness during the relevant period. Thus, the transportation particulars relating to all five invoices suffer from substantial discrepancies, which materially undermine the claim of actual movement and receipt of the goods.

3.3.1 While in respect of M/s Raj Trade Link Corporation, the four disputed invoices Nos. 172, 174, 177 and 180 dated 21.08.2017 involving taxable value of Rs. 17,14,768/- and CGST and SGST of Rs.1,54,328/- each. Verification of the corresponding vehicles also disclosed substantial inconsistencies and discrepancies. Vehicle No. HR-38-K-6055 mentioned in Invoice No. 172 did not have a valid permit. Vehicle No. UP-67-C-4302 mentioned in Invoice No. 174, though registered, was not insured during the relevant period. Vehicle No. UP-65-AR-2178 mentioned in Invoice No. 177 had already been sold on 31.03.2012, creating serious doubt regarding its use for the alleged transportation in August 2017. In respect of Invoice No. 180, vehicle No. HR-38-J-3200 had no valid permit, no fitness certificate during 2017-18 and no available insurance record for the relevant period. These discrepancies, considered cumulatively, are not mere technical defects but directly affect the credibility of the alleged transportation and receipt of the goods.

3.4 Respondent informed that scrutiny of the records and GST portal data revealed that the appellant had availed and utilized ITC amounting to Rs.7,69,456/, comprising CGST of Rs.1,54,328/-, SGST of Rs.1,54,328/- and IGST of Rs.4,60,800/, against invoices attributed to the aforesaid suppliers. The disputed transactions related to (i) M/s Raj Trade Link Corporation – FY 2017-18, taxable value of Rs.17,14,768/-; and (ii) M/s Diamond Enterprises – FY 2018-19, taxable value of Rs.25,60,000/-.

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3.5 The investigation raised serious doubts on the ITC claim of appellant since the very entities from whom the purchases were purportedly made, were found to be non-existent/non-operational and the transportation particulars did not support actual movement of the goods. Respondent stressed on the importance of the statement of the proprietor, Shri Mohd. Javed Khan, recorded under Section 70 of the CGST Act on 28.08.2020 and 14.09.2020. In the course of investigation, the proprietor stated that the purchases were arranged through unidentified agents/brokers rather than through direct dealings with the concerned suppliers.

3.6 The Respondent also contended that Section 16 of the CGST Act does not confer an unconditional right to ITC merely upon production of documents. The statutory conditions prescribed for availment of ITC have to be satisfied. In particular, actual receipt of the goods is a material statutory requirement. In the present case, the Department's contention is that the Appellant failed to establish actual receipt of the goods covered by the disputed invoices. This conclusion is not based on a mere presumption. It is supported by the physical verification of the suppliers, investigation into the transportation particulars, the nature of the vehicles shown in the e-way bills, and the circumstances emerging from the Appellant 's own statement.

3.7 The Respondent further submitted that under Section 155 of the CGST Act, the burden of proving the eligibility to ITC lies upon the person claiming such credit. Once the Department placed the above material on record, the appellant was required to satisfactorily discharge that burden by producing reliable evidence of actual receipt and movement of the goods. Mere reiteration that payments were made through banking channels does not discharge that burden.

3.8 Ld DR disputed the erroneous reliance of appellant on the appearance of invoices in GSTR-2A, which is a system-generated statement reflecting the information furnished/uploaded by suppliers. Uploading of an invoice cannot, by itself, establish that the goods covered by such invoice were actually supplied and received by the recipient.

3.9 The respondent also disputed the allegation of violation of natural justice when adequate opportunities had been granted during the adjudication proceedings and advocated that once the availment and utilization of ITC amounting to Rs.7,69,456/- is found to be inadmissible, the consequential liability of interest follows in accordance with the applicable provisions of Section 50 of the CGST Act. The enhancement of penalty by the learned First Appellate Authority from Rs.76,946/- to Rs.7,69,456/-, being equivalent to the amount of wrongly availed ITC, was made after considering the nature of

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the contravention and the applicable provisions of the CGST Act. The Respondent submitted that the said finding does not warrant interference in the present appeal.

3.9.1 Ld DR contends that appellant has relied upon various judicial decisions, including decisions concerning situations where genuine purchases were accepted but ITC was sought to be denied merely because of subsequent action against the supplier. The Respondent submits that those decisions have to be considered in the factual context in which they were rendered. The present case stands on a different footing because the Department has relied upon specific physical verification reports, statements, e-way bill analysis and other investigation material to demonstrate that the disputed inward supplies themselves were not genuine. Therefore, the decisions relied upon by the Appellant, insofar as they proceed on materially different factual circumstances, cannot automatically govern the present case.

4.0 We are concerned with the issue whether there is evidence available that goods indeed travelled and were received by the appellant. The fact of filing of returns and monetary transactions effecting payment of money would be secondary to the issue. If goods were received by the appellant satisfying the condition stipulated under Section 16(2)(b) then the subsequent condition embodied within Section 16(2)(c) would need to be examined. The alternative scenario of goods not having travelled and not having been received by the appellant would call for study of application of provisions that deal with fraudulent acts done for availing ITC.

4.1 The appellant vehemently argued in his oral as well as written submissions that he has documents like invoices, e-way bills, transport / bilty documents, weighment slips, ledger with stock inventory and banking-channel payments that support his contention of goods having been received by him.

4.2 Ld DR is his reply has furnished the following as evidence of goods not having travelled and therefore not having been received by the appellant.

4.2.1 Since Ld Counsel stressed on movement of goods via 09 vehicles, which was countered by the Ld DR arguing that there was no actual movement of goods on ground and it was a paper movement, the Bench during hearings directed the respondent to submit a report in this regard. Ld DR submitted a report after obtaining reports on the said 09 vehicles from respective Road Transport Officers (RTOs) of Hathras, Chandauli and Varanasi in UP, Aurangabad in Bihar, Jaipur and Hanumangarh in Rajasthan, Faridabad and Nuh in Haryana.

4.2.2 We feel that the following tabular presentation will help better appreciate the facts.

M/s Diamond Enterprises

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Sl. No.	Invoice No. and date	Vehicle No.	Remarks of the RTO
1	207, 04.07.2018	RJ-83-AT-6721	Registration number of the said vehicle not found on the RTO Portal.
2	208, 04.07.2018	RJ-02-GA-6782	Registration number found registered on RTO portal but movement of the goods through the said vehicle vide said E-way bills is not available on E-way bill Portal. Further the taxpayer has not provided Toll Tax Receipt, Freight bill and acknowledgement Receipt of the goods hence, movement of goods through the said E-way bill could not be established.
3	209, 04.07.2018	RJ-14-GH-6782	Registration number found registered in RTO portal. The said vehicle has maximum carrying capacity is 1,690 Kg but as per the E-way bill weight carried was 19,215 Kg and the same was confirmed by the respective RTO office vide the report dated 25.08.2026.
4	210, 04.07.2018	RJ-01-GB-6822	Registration number found registered in RTO portal but as per the report received from the RTO the National permit was not given to the said vehicle during July 2018 and no payment of tax found against, he said vehicle for any movement of interstate travel.
5	211, 04.07.2018	RJ-14-GA-7125	Registration number of the said vehicle not found in the RTO Portal. Further, the vehicle registration number pertains to mid-1990s (roughly between 1994 and 1998). Since these vehicles are nearly 30 years old, their initial 15-year fitness and registration validity would have expired around 2009–2013.

Sl. No.	Invoice No. and date	Vehicle No.	Remarks of the RTO
1	172, 21.08.2017	HR-38-K-6055	Permit was not valid.
2.	174, 21.08.2017	UP-67-C-4302	Registration number found registered in RTO portal. As per the RTO report the vehicle was not insured during 2017-18 and 2018-19.
3.	177, 21.08.2017	UP-65-AR-2178	Vehicle was sold on 31.03.2012 and the vehicle was registered with RTO, Aurangabad, Bihar report has been called from him and the same is awaited.
4.	180, 21.08.2017	HR-38-J-3200	Permit was not valid. No fitness certificate was issued for the vehicle during 2017-18. Insurance record is also not available for the vehicle during the said period.

4.2.3 In the case of M/s Diamond Enterprises, verification of the five vehicles mentioned in the disputed e-way bills raise serious questions on the veracity of the transport vehicle particulars and buttress the argument that goods indeed may not have travelled from supplier to appellant. The most glaring egregious data is where vehicle number with a carrying capacity of only 1,690 kg was preposterously shown carrying 19,215 kg as declared in the e-way bill. Curiously in one case, no vehicle was traceable in the RTO records and in another, no corresponding RTO record was found. As per one report the vehicle claimed to have carried goods did not have the requisite national permit. Similarly, in the case of M/s Raj Trade Link Corporation, the vehicles mentioned in the e-way bills were found to have material discrepancies, including invalid permits, absence of insurance/fitness records and, in one case, evidence that the vehicle bearing no. UP-65-AR-2178 had already been sold in 2012. Evidently the reports from RTOs submitted by the Respondent are damning evidence and the facts cited in the said report were not countered by the appellant at any stage of hearing before the Tribunal excepting bald assertions that largely drew attention to the case laws rather than disproving the counter submissions of the respondent. As regards examination of the case laws, we shall come to those in a bit.

4.3 Ld DR tendered a copy of SCN issued under Section 127 read with Section 122 (i) (ii) of CGST Act, 2017 to M/s Raj Trade Link Corporation, Ghaziabad (GSTIN 09ALZPA7694L1Z0), one of the suppliers of the appellant, for the period July 2017 to

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March 2018 for issuing invoices without actual supplies and fraudulently claiming ITC. The proper officer adjudicated the SCN giving his findings that M/s Raj Trade Link Corporation, Ghaziabad was non-existent and was a bogus firm. Ld DR informed in writing that the registration of firm was cancelled in April 2018.

4.4 The Ld DR also furnished copies of orders in original issued to M/s Diamond Enterprises (GSTIN: 23EMUPK7804L1ZF) House No G 2 Vinayak Parisar, Bagmugaliya, Arvind Vihar, Bhopal declaring that they are non-existent and bogus and no commercial activity was carried out in the said premises. The order also states that the said M/s Diamond Enterprises had not affected any supplies but claimed ITC against bogus bills. The order goes on to indict that the taxpayer used such ineligible ITC to effect adjustment against outward supply tax liability. The orders in original raising demand under Section 74 of CGST Act, were passed by the proper office for F.Ys 2017-18 (July 2017 to March 2018), 2018-19 and 2019-20.

4.5 In the cases of both, M/s Diamond Enterprises as well as M/s Raj Trade Link Corporation, it has come to light that the supplies were from firms that were bogus and non-existent. The reports of RTOs too appear to confirm that there was no movement of goods. The weight of evidence or, in other words the preponderance of probability appears to validate the counter by the respondent that there was no physical supply of goods by these two suppliers to the appellant.

4.6 Ld Counsel for the appellant has not refuted these aforesaid orders that have declared the two suppliers of the appellant i.e. M/s Diamond Enterprises as well as M/s Raj Trade Link Corporation bogus and non-existent, thus it appears evident that the appellant do not have any facts to counter the sham existence of M/s Diamond Enterprises as well as M/s Raj Trade Link Corporation.

4.7 We come to the reports of the RTOs that have been tendered by the respondent. It is in the case of alleged movement of goods from M/s Diamond Enterprises that the vehicle details and reports give credence to allegation that the movement of goods was only on paper and not on *terra firma*. Para 4.2.3 above reveals the sham and fraudulent nature of the transaction convincing us that the condition stipulated vide Rule 16 (2) (b) was evidently not fulfilled in respect of goods claimed to have been supplied by M/s Diamond Enterprises as well as M/s Raj Trade Link Corporation to the appellant.

4.8 Once goods have not travelled it is apparent that the whole exercise was a travesty trumped up merely to avail of ITC on the strength of paper transactions only. Ordinarily, the payment of tax as prescribed under section 16 (2) (c) of CGST Act is contingent on the fulfilment of the precursor condition outlined in Section 16 (2) (b). From the evidence

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presented before us the entire exercise is thus, a fraudulent scheme that was undertaken to deprive the Government of its fair share of tax revenue.

4.9 The appellant argued that he does not have the wherewithal to verify the antecedents of the suppliers and whether his suppliers have paid the tax to Government given that he has paid his suppliers the dues and evidently returns are being filed by his suppliers. For a fraction of time we may appear to concede the argument cited by the appellant but his rationale falls on its leg of faux movement of goods meaning thereby that once goods have not travelled, or rather could not have been physically despatched by a bogus and non-existent supplier then how have goods been physically received by the appellant. This falsity reinforces the argument tendered by the Respondent that in fact there was no supply of goods to the appellant by these suppliers. With this background the subsequent bunch of papers tendered by the respondent i.e. invoices, e-way bills, transport / bilty documents, weighment slips, ledger with stock inventory and banking-channel payments are clearly fudged up transactions to give a legitimate colour to bogus and fake transactions.

5.0 Our attention is drawn to the case of Malik Traders vs State of UP WP 1237 of 2021 dtd oct 18, 2023, which appears to deal with a similar issue wherein Hon'ble High Court of Allahabad addressed the question whether tax invoices, e way bills, goods receipt (GR) documents as well as evidence of payments effected to supplier are sufficient proof to avail ITC. The petitioner, Malik Traders agitated before Hon'ble High Court of Allahabad that they had purchased goods and scrap from various suppliers and rested their case on availability of tax invoices, e-way bills, goods receipt (GR) records, and argued that they had made payments through banking channels and therefore were entitled to claim input tax credit. Their contention was that suppliers having failed to deposit the tax collected, it is the supplier and not Malik Traders who needed to be penalised.

5.1 Hon'ble Allahabad High Court carefully examined the arguments and the relevant legal provisions, ultimately affirming the denial of input tax credit in this case. The court highlighted that the burden of proof lay with the registered dealer (Malik Traders) to provide comprehensive evidence regarding the actual transaction, including the physical movement of goods and the genuineness of transactions.

5.1.2 The Allahabad High Court acknowledging the importance of documents like, tax invoices, e-way bills, GR records, and proof of payment held that these were insufficient to establish the legitimacy of the transactions. Specific details such as vehicle numbers used for transportation, payment of freight charges, acknowledgment of goods delivery, and other particulars were deemed necessary to support their claim for input tax credit.

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5.1.3 Para 16 of the judgment also drew attention to the decision of Hon'ble Supreme Court in the matter of M/s Ecom Gill Coffee Trading Private Limited reproduced hereunder:

"16. The Apex Court in the case of State of Karnataka Vs. M/s Ecom Gill Coffee Trading Private Limited (Civil Appeal No. 230 of 2023, decided on 13.03.2023), while considering the pari materia of section 70 of the Karnataka Value Added Tax Act, 2003, where the burden was upon the dealer to prove beyond doubt its claim of exemption and deduction of ITC, has observed as under: 9.1 Thus, the provisions of Section 70, quoted hereinabove, in its plain terms clearly stipulate that the burden of proving that the ITC claim is correct lies upon the purchasing dealer claiming such ITC. Burden of proof that the ITC claim is correct is squarely upon the assessee who has to discharge the said burden. Merely because the dealer claiming such ITC claims that he is a bona fide purchaser is not enough and sufficient. The burden of proving the correctness of ITC remains upon the dealer claiming such ITC. Such a burden of proof cannot get shifted on the revenue. Mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under section 70 of the KVAT Act, 2003. The dealer claiming ITC has to prove beyond doubt the actual transaction which can be proved by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. The aforesaid information would be in addition to tax invoices, particulars of payment etc. In fact, if a dealer claims Input Tax Credit on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods, genuineness of transactions by furnishing the details referred above and mere production of tax invoices would not be sufficient to claim ITC. In fact, the genuineness of the transaction has to be proved as the burden to prove the genuineness of transaction as per section 70 of the KVAT Act, 2003 would be upon the purchasing dealer. At the cost of repetition, it is observed and held that mere production of the invoices and/or payment by cheque is not sufficient and cannot be said to be proving the burden as per section 70 of the Act, 2003."

5.1.4 Hon'ble High Court of Allahabad observed that "In the said judgement Hon'ble the Apex Court has held that primarily burden of proof for claiming the input tax credit is upon the dealer to furnish the details of selling dealer, vehicle number, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. to prove and establish the actual physical movement of the goods. Further by submitting tax invoice, e-way bill, GR or payment details is not sufficient."

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5.1.5 Hon'ble High Court of Allahabad went on to cite similar judgments by the same court in the case of Commissioner Commercial Tax Vs. M/s Ramway Foods Ltd (Sales / Trade Tax Revision No. 26 of 2023) and also by Patna High Court in the case of M/s Aastha Enterprises Vs. State of Bihar (Civil Writ Jurisdiction Case No. 10395 of 2023).

5.2 Is ITC a vested right? Recently in the matter of Sumetco Alloys Pvt. Ltd. Vs. Union of India, D.B. CWP No. 9323/2026 dt. 13.08.2026, Hon'ble Jaipur High Court inter-alia examined the constitutionality of Section 16(2)(c), whether the provision should be read down to protect bona fide purchasers, and upheld the validity and mandatory nature of Section 16(2)(c) CGST Act. The Court held that ITC is a conditional statutory benefit and not a vested right. Hon'ble High Court ruled that Section 16(2) is a negatively worded, mandatory, cumulative set of conditions; failure of any one condition (including supplier tax payment) defeats entitlement and that clause (c) is linked to Section 41, which allows reversal and re-availment once the supplier pays; hence the scheme is not confiscatory. The re-availment condition is available to bona fide recipients where no fraud (case laws .Tripura High Court)

It would be appropriate to reproduce relevant sub-paras of para 15 of the judgment that deal with the four decisive features of the statutory scheme, viz.:-

"15.1. First, sub-section (1) of Section 16 does not create an unqualified right. It confers entitlement expressly "subject to such conditions and restrictions as may be prescribed". The entitlement is therefore conditional at its very source.

15.2. Second, sub-section (2) opens with a non obstante clause and is cast in the negative form. It says that no registered person shall be entitled to credit unless the enumerated conditions are met. In our view, being a negatively worded non-obstante provision, it is mandatory in nature. The conditions in clauses (a), (aa), (b), (ba), (c) and (d) are cumulative and not alternative. Thus, satisfaction of five of them does not dispense with the sixth. The submission that compliance with clauses (a), (aa), (b) and (ba) by itself establishes entitlement, therefore, runs against the plain reading of the provision. If that submission were accepted, clause (c) would be rendered otiose.

15.3. Third, clause (c) does not operate in isolation. It is expressly made "subject to the provisions of section 41". Section 41(2) requires reversal of credit where the supplier has not paid, and the proviso then permits the recipient to re-avail that very credit once the supplier discharges the liability. The denial under clause (c) is, therefore, contingent and reversible, not final and confiscatory.

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15.4. Fourth, Section 155 places the burden of establishing eligibility squarely on the person claiming the credit. The claimant must prove entitlement. The revenue is not required to disprove it in the first instance."

Hon'ble High Court then proceed to record their views on the rightful wisdom and legality of Parliament to allocate risk of availment of ITC as well as validity of Section 16 (2) (c) in paras 16 to 19 of their judgment, viz.,-

16. Taken together, the provisions, ibid, indicate a deliberate allocation of risk. Parliament has chosen to place the risk of supplier default on the recipient, while simultaneously providing a mechanism for restoration of the credit once the default is cured. Whether that allocation is wise or harsh is a question of legislative policy. Particularly, in light of the fact that benefit of Input Tax Credit is a contingent statutory entitlement, rather than a vested right, much less a constitutional right.

17. On the burden of proof, the position is equally well settled. In State of Karnataka v. Ecom Gill Coffee Trading Private Limited3, it has been held that the burden of proving the genuineness of a transaction for the purpose of claiming input tax credit lies on the purchasing dealer, and that mere production of invoices, or payment by cheque, is not by itself sufficient. The dealer must establish the actual physical movement of goods and the genuineness of the transaction.

18. Pertinently, the constitutional validity of Section 16(2)(c) engaged the attention of different High Courts, which took divergent views. The High Court of Gujarat, in Maruti Enterprise v. Union of India, R/Special Civil Application No. 18080 of 2023 and connected matters, decided on 01.05.2026 (High Court of Gujarat), upheld the provision and declined to read it down. That judgment was carried to the Supreme Court and has been duly upheld by way of dismissed the SLP.

19. Hon'ble the Supreme Court, in Bhandari Scrap Traders v. Union of India

3 (2023) 6 SCC 12 4 2026 SCC OnLine SC 1570 held that -

19(4) " In that view of the matter, the High Court was fully justified in holding that no grounds were made out to declare Section 16(2)(c) of the CGST Act as unconstitutional or read down the provisions thereof. We find ourselves in complete and respectful agreement with the views expressed by the High Court of Gujarat and affirm and uphold the impugned judgment." It operates only where the transaction is found to be bona fide. It expressly preserves the full rigour of Section 16(2)(c) where the transaction is found to be collusive or fraudulent, or designed to defraud the revenue.

5.3 Further, Section 155 of the Act places the burden of proving eligibility for ITC upon the person claiming such credit. Consequently, the appellant was required to substantiate his claim by producing relevant and credible evidence demonstrating that the goods

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covered by the disputed invoices were actually supplied and received in the course of business. Under Section 155 the burden of proof lies upon the claimant that he has completed all the transactions. We note that the issue relating to actual receipt of goods under Section 16(2)(b) is distinct from the issue pertaining to payment of tax to the Government under Section 16(2)(c). The latter condition cannot be treated as a substitute for the former. For claiming ITC actual physical movement of the goods is imperative, is a necessary condition that has to be happen for the outcome to occur. The recipient has to prove the actual physical movement of goods, alleged to have been purchased from the respective suppliers. ITC is a form of concession extended to a dealer under the statutory scheme. The concession can be received by the beneficiary only as per the scheme of the statute. Whenever the concession is given by statute or notification etc., the conditions thereof are to be strictly complied with, in order to avail of any such concession. The Hon'ble High Court of Punjab and Haryana pronouncing the judgement on 1.10.2026 CWP – 34296-2024 (O&M other connected cases) has held that *"The burden under Section 155 of the Act 2017 lies upon the purchasing dealer to establish its eligibility to ITC. The purchasing dealer may discharge the burden by producing material such as the tax invoice; proof of receipt of goods or services, including e-way bills, transport receipts, weighbridge slips and stock and consumption records etc. The proper officer shall consider such material and deal with it in the order".*

5.4 At this juncture we note that the appellant has cited around 40 odd case laws to support their contention. Barring half a dozen of cited case laws where the appellant in 2 to 3 lines mentions in brief of how the said case law is applicable to his case, in the remaining two score and a half case law cited by the appellant only the name of the case is listed without giving a brief detail of the case and how it is relevant to the issue at hand. In fact, at the end of the long list of case laws the appellant asserts that, "In almost all cases, their lordship held that "No Liability can be fastened on the purchasing registered dealer on account of non-payment of tax by the selling dealer in the treasury, unless it is fraudulent, or collusion or connivance with the registered selling dealer or its predecessors with the purchasing registered dealer are established. ITC should not be denied to the bonafide purchasing dealer merely on fault of selling dealer. It should not be made the responsibility of the purchasing dealer to ensure that the tax is deposited by the selling dealer to the extent transaction is bonafide."

5.4.1 Evidently the case laws would not lend any sustenance to the case of the appellant for the plain reason that the case against the appellant stems from fraudulent transactions that are clearly fake, the goods never having travelled owing to the suppliers

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of the appellant having been proven to be bogus and non-existent as well as the indicting reports of the RTOs which tilt the scales of transport evidence against the appellant.

5.5 In sum, the deliberations as above have explicitly addressed and answered the issues raised in para 1.2 above and an *ad-seriatim* reply is not being laid down to avoid merely repeating the above arguments. The only issue that remains to be addressed is whether levy of penalty under Section 122 survives.

5.4.1 It appears that the First Appellate Authority has also increased the penalty imposed under section 122 read with section 74 of CGST Act, 2017 without following the principles of natural justice. We also notice that neither the order-in-original nor the order-in-appeal has discussed why penalty under Section 122 of CGST Act is being imposed given that Section 74 of CGST Act was invoked. Our attention is drawn to Section 75 (13) of the CGST Act that specifies, "*Where any penalty is imposed under section 73 or section 74 [or section 74A], no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act*" as well as Circular No. 171/03/2022-GST dated 06th July, 2022 that sheds light on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices. The orders issued by the adjudicating authority as well as the First Appellate Authority should have spelt out reasons for the same and absent any cogent argument we are inclined to disagree with the order-in-original as well as order-in-appeal imposing penalty under Section 122 read with Section 74 of the CGST Act, 2017.

Order

In view of the reasoning recorded above, we hold that the appeal filed by the appellant against order-in-appeal is hereby rejected and the order-in-appeal is partly upheld. The penalty amounts imposed in both the order-in-original as well as the order-in-appeal are set aside and the case is remanded to the adjudicating for redetermination of the penalty amount keeping in mind the provisions of Section 75(13) of CGST Act, 2017.

No order as to costs.

Pronounced in open court on 28th October 2026.

(Alok Chopra) (Narendra Kumar) 28.10.26

Date: 28.10.2026

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