GSTAT

State Bench Bengaluru

Division Bench Court No. Court II

APL/36/BUR/2026

NAGAMANGALAMURTHY GANESH KUMAR **.....Appellant**

Versus

HARJI ENGINEERING WORKS PRIVATE LIMITED, MANAGING DIRECTOR, S 569 3RD FLOOR GREATER KAILASH PART 2 DLSOD 110048 **.....Respondent**

Quorum

Hon'ble Sudha Koka, Member (Technical)
Hon'ble Srikanth Venkatraman, Member(Judicial)

Counsel for Appellant
NONE
M. C. VENUGOPAL NAIDU, ASSISTANT COMMISSIONER
M. C. VENUGOPAL NAIDU, ASSISTANT COMMISSIONER, CGST AR
BALKESHWAR PRASAD, CGST AR

Counsel for Respondent
NONE

Form GST APL-04A

[See rules 113(1) & 115]

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

whether remand order : No

Order reference no. : ZN570171026000157H **Date of order :** 29/10/2026

1.	GSTIN/Temporary ID/UIN -	
2.	Appeal Case Reference no. - APL/36/BUR/2026	Date - 07/05/2026
3.	Name of the appellant - NAGAMANGALAMURTHY GANESH KUMAR , ganeshkn.c028801@gov.in , 9448827072	
4.	Name of the respondant - 1. HARJI ENGINEERING WORKS PRIVATE LIMITED , hewpl@yahoo.com , 9910396721	
5.	Order appealed against -	

	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - BGM-JJ-ADC-29-2023-24-GST	Date - 20/06/2023
6.	Personal Hearing - 29/10/2026 14/10/2026 07/10/2026 29/09/2026 15/09/2026 31/08/2026 17/08/2026	
7.	Status of Order under Appeal - Reject - Order under Appeal is annulled	
8.	Order in brief - Main Legal Question: Whether proceedings under Section 76 of the CGST Act, 2017 can be lawfully invoked against a registered person for failing to deposit self-assessed tax declared in Form GSTR-1, and whether the First Appellate Authority erred in setting aside the demand/penalty by holding that Section 76 only applies to unregistered persons or collections made without authority of law. 3. Tribunal's Analysis & Findings Ex-Parte Proceedings: Despite notices being issued on multiple dates and proper panchanama/affixation carried out on the Respondent's address, the Respondent chose not to appear or contest. The Tribunal proceeded ex-parte based on unrefuted evidence and binding legal principles (Sangram Singh v. Election Tribunal). Scope of Section 76: Section 76(1) opens with a sweeping non-obstante clause targeting "every person who has collected from any other person any amount as representing the tax... irrespective of whether the supplies... are taxable or not". The Tribunal held that this is an expansive, all-encompassing provision applying universally to anyone who collects tax under color of law and retains it. Evidentiary Proof of Collection: Bank verification reports from Punjab & Sind Bank confirmed that the Respondent actually collected over ?3.24 Crores from recipients (such as $\text{M/s. Corrtech International Limited}$) against invoices containing explicit tax components, passing on ITC while withholding the public revenue. Denial of ITC: The Adjudicating Authority was fully justified in rejecting time-barred ITC of ?63,84,836/- under Section 16(4). 4. Final Order Departmental Appeal: ALLOWED. Appellate Order: The Order-in-Appeal setting aside the Section 76 demand and penalty is SET ASIDE. Original Order Restored: The original Order-in-Original dated 11.10.2021 (confirming the tax demand, interest, ITC disallowance under Section 16(4), and the equivalent penalty of ? 1,19,04,300/- under Section 76(2)) is RESTORED in its entirety.	
Summary of Order		
9.	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	3708376	0	2136460	0	540000	0	0	0	6384836	0
(b) Interest	0	0	0	0	0	0	0	0	0	0
(c) Penalty	5682150	5682150	5682150	5682150	540000	0	0	0	11904300	11364300
(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	0	0	0	0	0

10.	For Other orders and Demand orders which are not quantified:	
Issues as raised by proper officer	Issues as determined by Appellate/Revisional authority	Order by GST Appellate Tribunal
Short or non-payment of tax	"The Additional Commissioner (Appeals), Belagavi, passed OIA No. BGM-JJ-ADC-29-2023-24-GST on 20.06.2023, setting aside the OIO. The OIA held that Section 76 applies to specific cases (e.g., taxes collected by unregistered persons or at higher rates). Since the taxpayer was registered and supplies were taxable, the demand should have been raised under Section 73 or 74, not Section 76. The Appellate Authority had Struck down the tax demand and penalty under Section 76 due to ""inapplicable section of the Act."" The OIA held that while the Section 76 demand failed, interest under Section 50 remains payable. The OIA also validated the ITC mentionting that ""the ITC restriction under 16(4) could not be enforced via an invalid Section 76 order"". "	Revenue appeal allowed

Place :BENGALURU

Date : 29.10.2026

Signature

BENGALURU Sudha Koka

Designation : Member

Jurisdiction :Bengaluru

ORDER

Order Per: Sudha Koka, Member Technical (Centre)

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1. **INTRODUCTION**

1.1 This appeal has been filed by the Department (Commissioner of Central Tax & Central Excise, Belagavi) under Section 112(3) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") read with Rule 111 of the CGST Rules, 2017.

1.2 The Department challenges the Order-in-Appeal No. BGM-JJ-ADC-29-2023-24-GST dated 20.06.2023 (hereinafter referred to as the "impugned OIA") passed by the Additional Commissioner (Appeals), Belagavi. By the impugned OIA, the Appellate Authority allowed the appeal filed by the Respondent-taxpayer and set aside the Order-in-Original No. BEL-CGST-000-BLY-AC-KSKN-01-2021-22 dated 11.10.2021 passed by the Assistant Commissioner, Central Tax & Central Excise, Ballari Division.

1.3 The primary legal issue before this Tribunal is whether proceedings under Section 76 of the CGST Act, 2017 could be lawfully invoked against a registered person for non-payment of self-assessed tax declared in Form GSTR-1 returns, and whether the First Appellate Authority erred in setting aside the demand and penalty under Section 76 on the ground that the notice ought to have been issued under Section 73 or Section 74 of the CGST Act.

2. **BRIEF FACTS OF THE CASE**

2.1 The Respondent, M/s Harji Engineering Works Pvt. Ltd., Ballari, is a registered taxpayer under GST engaged in the supply of taxable goods/services.

2.2 During verification of GSTR-1 and GSTR-3B returns for the period March 2019 to November 2019, the Department observed that the Respondent had filed GSTR-1 returns duly declaring its outward supplies and tax liability amounting to ?1,19,04,300/- (IGST: ?5,40,000/-; CGST: ?56,82,150/-; SGST: ?56,82,150/-), but failed to file the corresponding monthly GSTR-3B returns or deposit the tax into the exchequer.

2.3 Subsequently, the GST registration of the Respondent was cancelled *suo motu* by the proper officer on 20.11.2019 under Section 29(2)(c) of the CGST Act for continuous non-filing of GSTR-3B returns.

2.4 A Show Cause Notice (SCN) No. 05/2020-21 AC dated 20.10.2020 was issued to the Respondent under Section 76(1) of the CGST/SGST Act, 2017, proposing demand of the unpaid tax amount of ?1,19,04,300/- along with applicable interest under Section 50 read with Section 76(4) and penalty under Section 76(2) of the Act.

2.5 The SCN was adjudicated vide Order-in-Original dated 11.10.2021. The Adjudicating Authority:

- Confirmed the GST demand of ?1,19,04,300/- under Section 76(1);

- Appropriated an amount of ?55,19,464/- discharged by the taxpayer through Electronic Cash Ledger;

- Disallowed and held as irregular an amount of ?63,84,836/- debited through Electronic Credit Ledger towards ITC on the ground that the GSTR-3B returns were filed beyond the time limit prescribed under Section 16(4) of the CGST Act;

- Confirmed applicable interest under Section 50; and

- Imposed an equivalent penalty of ?1,19,04,300/- under Section 76(2) of the CGST Act.

2.6 Aggrieved by the OIO, the taxpayer preferred an appeal before the Additional Commissioner (Appeals), Belagavi, who vide Order-in-Appeal dated 20.06.2023 allowed the taxpayer's appeal and set aside the OIO. The First Appellate Authority held that Section 76 applies only to instances where amounts are collected without authority of law (e.g., composition dealers, unregistered persons, exempted supplies, or higher tax rates), whereas non-payment of self-assessed tax by a registered taxable person falls under Section 73 or Section 74.

2.7 The Principal Commissioner, Belagavi, examined the OIA under Section 112(3) of the CGST Act and passed Order-in-Review dated 18.12.2023, directing the filing of the present departmental appeal before this Tribunal.

3. **CHRONOLOGY OF EVENTS**

Date	Event / Proceeding
03/2019 to 11/2019	Tax periods during which GSTR-1 returns were filed declaring tax liability of ? 1,19,04,300/-, but corresponding GSTR-3B returns were not filed.
20.11.2019	GST registration of the Respondent cancelled *suo motu* by the Department under Section 29(2)(c) of the CGST Act.

07.10.2020	Respondent commenced delayed filing of GSTR-3B returns for the impugned periods.
20.10.2020	Show Cause Notice No. 05/2020-21 AC issued under Section 76(1), proposing tax demand, interest, and equivalent penalty under Section 76(2).
11.10.2021	Order-in-Original passed confirming tax demand, appropriating ?55,19,464/- cash payment, disallowing ?63,84,836/- ITC under Section 16(4), and imposing ?1,19,04,300/- penalty under Section 76(2).
28.02.2022	Taxpayer filed appeal against OIO before the Commissioner (Appeals), Belagavi.
20.06.2023	Order-in-Appeal No. BGM-JJ-ADC-29-2023-24-GST passed, setting aside the OIO and holding Section 76 non-applicable.
18.12.2023	Order-in-Review passed by Principal Commissioner, CGST Belagavi under Section 112(3).

4. **DEPARTMENT'S GROUNDS OF APPEAL**

4.1 The Appellant-Department has challenged the impugned OIA on the following main grounds:

- **Statutory Scope of Section 76:** The First Appellate Authority erred in restricting the application of Section 76 to narrow illustrative categories. Section 76(1) opens with a non-obstante clause— *"Notwithstanding anything to the contrary contained in any order or direction... every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount..."*

- **Absolute Liability on Collection:** Section 76 applies to *all* cases where any amount representing tax is actually collected from another person and retained without depositing it with the Government, irrespective of whether the transaction is taxable or whether the person is registered.

- **Proof of Actual Collection (Department's Submissions dated 14.10.2026):** Pursuant to instructions from the Bench, the Department conducted verification of the Respondent's banking channels and customer accounts.

- The Respondent issued 5 tax invoices to M/s Corrtech International Limited (GSTIN: 29AAACC0134G1Z5) totaling ?6,31,35,000/- taxable value + ?1,13,64,300/- tax (CGST + SGST) and 1 invoice to Sri Jitesh Kumar Sanmukhlal Shah (Arham Construction) for ?5,40,000/- IGST, totaling ? 1,19,04,300/- tax.

- Verification of the Respondent's cash credit/OD bank accounts with Punjab & Sind Bank, Greater Kailash-1, New Delhi confirmed payments received directly from recipient M/s Corrtech International Limited amounting to over ?3.24 Crores upto 2022

- By issuing tax invoices containing explicit tax components, passing on Input Tax Credit to the recipients through GSTR-1, and collecting amounts representing tax, the Respondent retained Government dues.

- **Legality of Section 76 Notice:** Since tax was passed on and collected from buyers but withheld from the exchequer, Section 76 is directly attracted, and the OIA erroneously set aside the SCN as legally defective.

5. **TRIBUNAL ANALYSIS AND FINDINGS**

5.1 We have carefully considered the records of the case, the grounds of appeal, the bank verification reports placed on record on 14.10.2026, and the oral and written submissions presented by the Department.

5.2 **Non-Appearance of the Respondent:**

At the outset, we record that despite notice being issued to the Respondent on four separate occasions on 17/8/2026 , 29/9/2026 , 7/10/26 and 14/10/2026 and a notice is affixed on the address given by the respondent in the record through panchanam by the department officials on 22.9.2026 on the direction of the Bench, Respondent chose not to appear or present any defense before this Tribunal. As reported by the Department on 14.10.2026, efforts to contact the taxpayer and its former advocate confirmed that the unit has shut down, registration stands cancelled, and the Respondent has abandoned proceedings. It is a well-settled principle of law that natural justice requires providing a reasonable opportunity of being heard, but it does not extend to accommodating an unpursuing or willfully absent litigant.

As laid down by the Hon'ble Supreme Court in ***Sangram Singh v. Election Tribunal [AIR 1955 SC 425]*** and ***Collector of Customs v. K.A. Anwar [1998 (104) E.L.T. 3 (S.C.)]***, where a respondent fails to appear despite

repeated notices, the Tribunal is fully competent to proceed *ex-parte* and decide the appeal on merits based on the Appellant's pleadings, grounds of appeal, and the unrefuted evidentiary material available on record.

5.3 **Statutory Mandate and Scope of Section 76:**

Section 76(1) of the CGST Act opens with a sweeping non-obstante clause:

"Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, ***every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.***"

5.4 **Critical Errors in the Impugned Order-in-Appeal and Application of Jurisprudential Principles:**

Upon examining Paragraph 11 of the impugned OIA, we find that the First Appellate Authority committed grave legal errors in reading down the scope of Section 76:

- **A. Unwarranted Narrowing of Section 76:**

- The First Appellate Authority held that Section 76 is restricted only to illustrative instances such as composition dealers, unregistered persons, or exempt supplies. This narrow interpretation runs contrary to the plain text of the statute. The phrase "*every person who has collected from any other person any amount as representing the tax*" is expansive, absolute, and all-encompassing.

- **B. Reliance on High Court Jurisprudence (*R.K. Transport*):**

- The expansive reach of Section 76 is well-settled. In **R.K. Transport Private Limited v. Union of India [2022 (64) G.S.T.L. 308 (Chhattisgarh HC)]**, it was clearly laid down that Section 76 is an independent, non-obstante statutory recovery mechanism. The moment any entity collects an amount under the representation or color of tax, it holds such funds in a fiduciary capacity for the exchequer and is under an absolute statutory obligation to deposit the same forthwith.

- **C. Uncontested Proposition on Tax Collection (*GAIL India* Principle):**

- As authoritatively observed by the High Court in **GAIL (India) Limited v. Commissioner of C.Ex. [2016 (44) S.T.R. 384 (MP HC)]**(reiterating the core principle that any amount representing tax collected under the statute is required to be remitted irrespective of technical categorization), there is no contest on the fundamental proposition that every act of collecting an amount representing tax seals its character as public revenue. Specifically, following the reasoning articulated in Paragraph 7.10 of *GAIL India*, where a show cause notice establishes that tax invoices were issued and amounts representing tax were collected under the statute ,and where the core statutory mandate requires remittance of such collected tax regardless of whether supplies were fully compliant or taxable, such proposition stands unassailable.

5.5 **Evidentiary Confirmation of Collection of Tax:**

The Department's written submissions and bank verification reports dated 14.10.2026 place the fact of actual collection beyond doubt. The Respondent issued tax invoices to M/s Corrtech International Limited and Sri Jitesh Kumar Sanmukhlal Shah, passing on ITC amounting to ?1,19,04,300/-. Banking records from Punjab & Sind Bank, GK-1, New Delhi (A/c No. 01651600200083) confirm direct customer remittances exceeding ? 3.24 Crores received by the Respondent against these very tax invoices.

5.6 Having collected the consideration inclusive of tax from buyers and passed on the ITC benefit, the Respondent's failure to deposit the tax into the exchequer directly attracted Section 76(1). The demand under Section 76(1), mandatory interest under Section 50 / Section 76(4), and equivalent penalty under Section 76(2) were rightly confirmed by the Adjudicating Authority.

5.7 **Denial of ITC under Section 16(4):**

Further, the Adjudicating Authority was fully justified in holding the debit of ?63,84,836/- through Electronic Credit Ledger as irregular. Under Section 16(4) of the CGST Act, the right to avail ITC is strictly time-bound. Delayed filing of GSTR-3B returns well beyond the statutory deadline does not grant a right to utilize time-barred credit.

5.8 Consequently, the findings in Order-in-Appeal No. BGM-JJ-ADC-29-2023-24-GST dated 20.06.2023 holding Section 76 is inapplicable are legally erroneous and cannot be sustained.

6. **CONCLUSION**

To conclude, the record establishes that the Respondent issued valid tax invoices, passed on Input Tax Credit, and collected amounts representing tax from its corporate recipients, yet willfully failed to deposit the public revenue into the exchequer. The First Appellate Authority erred fundamentally by reading down the absolute, non-obstante mandate of Section 76 of the CGST Act and treating it as inapplicable to registered taxpayers. Given the Respondent's absence despite four notices through daily orders in GSTAT portal and complete abandonment of the appellate proceedings, the Department's appeal stands fully substantiated by unrefuted evidence in GST Returns, bank statements, statutory provisions, and binding judicial precedents.

Accordingly, the impugned Order-in-Appeal cannot be sustained in law and deserves to be set aside, thereby restoring the Order-in-Original in its entirety.

ORDER

In light of the above findings, the Tribunal passes the following order:

1. The Appeal filed by the Department (Commissioner of Central Tax & Central Excise, Belagavi) is **ALLOWED**.

1. The Order-in-Appeal No. BGM-JJ-ADC-29-2023-24-GST dated 20.06.2023 passed by the Additional Commissioner (Appeals), Belagavi is **SET ASIDE**.

1. The Order-in-Original No. BEL-CGST-000-BLY-AC-KSKN-01-2021-22 dated 11.10.2021 passed by the Assistant Commissioner, Central Tax & Central Excise, Ballari Division is **RESTORED** in its entirety.

(Sudha Koka)

(Srikanth Venkatraman)

Dated: 29.10.2026