GOODS AND SERVICES TAX APPELLATE TRIBUNAL

ERNAKULAM BENCH

Division Bench :: Court No. I

APPEAL NO: APL/48/ERN/2026

[Arising out of OIA CLT-GST-000-APP-113-2025-26-JC dated 26/8/2025 passed by the Joint Commissioner (Appeals), Central Tax, Central Excise & Customs, Kochi]

HOME SOLUTIONS, PALAKKAD .....**Appellant**

Vs

COMMISSIONER OF CENTRAL TAX & CENTRAL EXCISE, KOZHIKODE .....**Respondent**

for Appellant	**for Respondent**
KV Padmanathan, Advocate	Shri Baiju Daniel, AR

CORAM:

Hon'ble Shri Subramanya Rayaprol, Vice President

Hon'ble Shri Ramamoorthi Sriram, Member (Technical)

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FINAL ORDER NO: 22/EKM/KERALAM/2026

Date of Hearing: 06-10-2026

Date of Order 30-10-2026

Order per: Shri Ramamoorthi Sriram, Member (Technical)

1.0 The present Appeal (APL/48/ERN/2026) has been preferred by M/s Home Solutions (GSTIN 32AAFFH8776F1Z8) (Appellant) against Order-in-Appeal No. OIA CLT-GST-000-APP-113-2025-26-JC dated 26/8/2025 passed by the Joint Commissioner (Appeals), Central Tax, Central Excise & Customs, (Appellate Authority).

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2.0 Brief Facts of the Case:

2.1 On scrutiny of the returns of the Appellant the following discrepancy was noticed: (i) Ineligible ITC availed in respect of invoices/debit notes issued by suppliers who have not filed their GSTR-3B returns – GST to the tune of Rs.1,42,398/- (CGST-Rs.32,447/-, SGST-Rs.32,447/- and IGST-Rs.77,504/-). After due process of law, vide Order-in-Original No. 12/2024-25/GST-PNR dated 15.04.2024 passed by the Superintendent of Central Tax and Central Excise, Palakkad North Range ("Respondent" for short), the demand of Rs.1,42,398/- (CGST-Rs.32,447/- , SGST-Rs.32,447/- and IGST-Rs.77,504/-) was confirmed for recovery u/s 73(9) of the CGST/KSGST Act, 2017, read with Section 20 of the IGST Act, 2017. The Respondent had appropriated an amount of Rs.20,538 (CGST- Rs.10,269/- and SGST- Rs.10,269/-) paid by the Appellant. Further, the Respondent had confirmed the demand for interest u/s 50(3) ibid on the amount confirmed and appropriated an amount of Rs.19,464/- (CGST9,732/- and SGST- 9,732/-) paid towards interest and imposed a penalty of Rs.40,000/- (CGST-Rs.10,000/-, SGST-Rs.10,000/- and IGST-Rs.20,000/-) u/s 73(9) of the Act ibid.

2.2 Being aggrieved by the said Order, the Appellant preferred an appeal before the Appellate Authority who vide the impugned order allowed partial relief with respect to certain suppliers certificates produced and

(i) confirmed the demand of 78,548/- (CGST-Rs.522/-, SGST-Rs.522/- and IGST-Rs.77,504/-) under Section 73(9) of the CGST/KSGST Act, 2017 read with Section 20 of the IGST Act,

(ii.) confirmed the demand of interest under Section 50(3) of the CGST/KSGST Act, 2017, read with Section 20 of the IGST Act, 2017

(iii) confirmed the penalty of Rs.40,000/- (CGST-Rs.10,000/-, SGST-Rs.10,000/- and IGST-Rs.20,000/-) under Section 73(9) CGST/KSGST Act, 2017, read with Section 20 of the IGST Act, 2017 for wrong availment of ITC .

2.3. Aggrieved by the portion of the order confirming the demand of tax, interest and penalty, the appellant has filed this appeal before the Tribunal.

3.0 Grounds of Appeal / Submissions of the Appellant:

3.1 The Appellate Authority erred in confirming the demand of Rs.522/- each under CGST and SGST, without appreciating that the Appellant had already discharged the said liability together with applicable interest. Having taken note of the payment already made and having appropriated substantial portions thereof, the authorities below ought to have appropriated the balance amount of Rs.522/- each under CGST and SGST as well, instead of confirming the same once again, resulting in duplication of demand and recovery.

3.2 The Appellate Authority erred in sustaining penalty of Rs.10,000/- each under the CGST Act and KSGST Act, despite the admitted position that the tax and interest attributable to the said demand had been paid within thirty days of issuance of the show cause notice. In terms of section 73(8) of the CGST Act, 2017, no penalty is leviable where the tax along with interest is paid within thirty days from the date of issuance of notice and, therefore, the imposition of penalty under section 73(9) is wholly without jurisdiction and liable to be set aside.

3.3 The Appellate Authority failed to adjudicate the specific ground raised by the Appellant that the disputed IGST amount of Rs.77,504/- pertained to invoices reflected in GSTR-2A for financial year 2017-18, whereas the corresponding goods were actually received and accounted for only during financial year 2018-19 and, consequently, the input tax credit was availed only in financial year 2018-19 in accordance with section 16(2) of the Act.

3.4 The Appellate Authority failed to appreciate that the disputed IGST amount of Rs.77,504/- pertaining to invoices dated 27-03-2018 and 31-03-2018 were duly reflected in the Appellant's GSTR-2A pertaining to the financial year 2017-18 and, therefore, the genuineness of the underlying transactions and the corresponding tax paid by the suppliers stood established.

3.5 The authorities below erred in proceeding on the erroneous assumption that the input tax credit was wrongly availed merely because the invoices pertained to the previous financial year, without appreciating that the goods covered by the invoices

were actually received during April, 2018 and the credit was availed only in financial year 2018-19 upon satisfaction of the conditions prescribed under section 16(2)(b) of the Act.

3.6 The authorities below failed to appreciate that mere reflection of invoices in GSTR-2A for financial year 2017-18 does not mandate availment of credit in the same financial year and that the right to avail credit arises only upon receipt of goods and fulfilment of the statutory conditions.

3.7 The authorities below failed to appreciate that the disputed IGST credit of Rs.77,504/- formed part of the un-availed input tax credit of Rs.4,06,655/- reflected in the annual return in Form GSTR-9 for the financial year 2017-18 and, therefore, there was neither excess availment nor double availment of input tax credit.

3.8 The denial of credit on the sole ground that the invoices appeared in GSTR-2A of the previous financial year is arbitrary, hyper technical and contrary to the scheme of seamless flow of credit under the Act.

3.9 Without prejudice to the above, the authorities below failed to appreciate that no allegation of fake invoices, non-receipt of goods, loss to revenue or double availment of credit has been made and, therefore, denial of substantive input tax credit on procedural grounds defeats the object and purpose of the GST legislation.

3.10 Shri KV Padmanathan learned Advocate, appeared for the appellant and made a forceful submission on the above lines.

4.0 Submissions of the Respondent /AR

Shri Baiju Daniel , learned AR submitted as follows:

4.1 In connection with the issues arising in the above appeal, they had requested the jurisdictional Commissionerate to verify the documents and factual contentions raised by the appellant in the Additional Written Submission dated 02.10.2026, particularly with regard to the ITC of ₹77,504/- relating to invoices issued by M/s.

Finolex Industries Ltd. and the appropriation of the tax amount already paid through FORM GST DRC-03.

4.2 In response, the Assistant Commissioner (Review), Kozhikode Commissionerate, vide letter dated 15-10-2026, has forwarded the verification report dated 15.10.2026 received from the Assistant Commissioner, Palakkad Division, along with the report of the Superintendent, Palakkad North Range, and the relevant supporting documents. The verification confirmed that the invoices and the Chartered Accountant's certificate, including UDIN verification, support the disputed ITC of ₹77,504/-. It also confirmed that ₹10,792/- each towards CGST and SGST had already been paid, but only ₹10,269/- each was appropriated in the Order-in-Original.

4.3 After considering the payments made and the relief granted in the Order-in-Appeal, no tax remains due under these heads.

4.4 Further, the penalties of ₹10,000/- each under CGST and SGST are not sustainable, as the tax and interest were paid within the period prescribed under Section 73(8) of the CGST Act, 2017.

4.5 The jurisdictional Division has accordingly reported that the demand of tax, interest and penalty confirmed by the Order-in-Appeal is not sustainable on the basis of the records and has recommended that the taxpayer's appeal before the Hon'ble Tribunal may not be contested on merits.

4.6 In view of the aforesaid verification and the findings communicated by the jurisdictional authorities, the factual issues that necessitated further verification stand addressed. Consequently, no further written submission contesting the appeal on merits is considered warranted from the Department. The verified position and the Department's stand are accordingly placed before the Hon'ble Tribunal for kind consideration.

5 Discussions and Findings:

5.1 We find that basically the appellant is in appeal against para 11(i) to 11(iii) of the OIA which reads as follows:

11(i) I confirm the demand of 78,548/- (CGST-Rs.522/-, SGST-Rs.522/- and IGST-Rs.77,504/-) under Section 73(9) of the CGST/KSGST Act, 2017 read with Section 20 of the IGST Act, 2017 ……

(ii). I confirm the demand of interest under Section 50(3) of the CGST/KSGST Act, 2017, read with Section 20 of the IGST Act, 2017 ……..

(iii). I impose a penalty of Rs.40,000/- (CGST-Rs.10,000/-, SGST-Rs.10,000/- and IGST-Rs.20,000/-) under Section 73(9) CGST/KSGST Act, 2017, read with Section 20 of the IGST Act, 2017 for wrong availment of ITC …….

5.2 We find that in view of the submissions of the learned AR as detailed in para 4.2 and 4.3 above, the Revenue itself has conceded (on the basis of verification of documents produced by the appellant) that the demand of Rs 77504 as confirmed in the OIA is not sustainable.

5.3 It is also confirmed that ₹10,792/- each towards CGST and SGST had already been paid, but only ₹10,269/- each was appropriated in the Order-in-Original and therefore the demand of Rs 522 (CGST) and Rs 522(SGST) was purely on account of incomplete appropriation of the dues already paid, in the OIO. (as contended by the appellant – para 3.1 above). We therefore order appropriation of this amount from the amount of Rs 10792 already paid by the appellant.

5.4 As the Revenue itself has conceded (para 4.3 and 4.4 above) that no tax is due from the appellant, as a consequence, the demand of interest is also not sustainable.

5.5 With regard to penalty we take on record the submissions of the Revenue that the penalties of ₹10,000/- each under CGST and SGST are not sustainable, as the tax and interest were paid within the period prescribed under Section 73(8) of the CGST Act, 2017 (para 4.4). Though the submissions of the learned AR are silent on the penalty of Rs 20,000 under IGST, we find that the going by the same logic the above said penalty is also not sustainable. This is further confirmed by the submissions in para 4.5 that *"jurisdictional Division has accordingly reported that the demand of tax, interest and penalty confirmed by the Order-in-Appeal is not sustainable on the basis of the records and has recommended that the taxpayer's appeal before the Hon'ble Tribunal may not be contested on merits."*

5.6 In view of the above findings, we find that no other question survives in this case and all issues are resolved. We are heartened to note that this is one of those rare cases which has resulted in a happy denouement, wherein both the appellant and the respondent are on the same page. We commend the efforts of the revenue which have resulted in a quick verification of the facts and also the earnestness and grace with which the revenue has conceded the case based on the above

verification. This is in keeping with the true spirit of the national litigation policy which envisages avoidance of unnecessary litigation and eschewing of an adversarial approach towards the tax payer. We also place on record our appreciation of the assistance provided by Shri Baiju Daniel, learned AR, to the bench in enabling a quick resolution of all issues to the mutual satisfaction of both parties.

6.0 In view of the findings above, the following order is passed:

a. We order appropriation of balance amount Rs.522/- each under CGST and SGST, from the sum of Rs 10792 each towards CGST and SGST already paid by the appellant.

b. We allow the appeal of the appellant and set aside paras 11(i) to 11(iii) of the Order in appeal, with consequential relief.

Order pronounced in open court on 30/10/2026.

Subramanya Rayaprol
Vice President

Ramamoorthi Sriram
Member (Technical)

Date: 30-10-2026.

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