GSTAT

State Bench Hyderabad

Division Bench Court No. Court II

APL/51/HYD/2026

INNOMINDS SOFTWARE PRIVATE LIMITED **.....Appellant**

Versus

THE COMMISSIONER OF STATE TAX, COMMISSIONER , COMMISSIONER OF COMMERCIAL TAXES DEPARTMENT C.T COMPLEX NAMPALLY HYDERABAD-500 001 & ORS. **.....Respondent**

Quorum

Hon'ble A P Ravi, Member(Judicial)
Hon'ble Duvvuri Krishna Srinivas, Member (Technical)

Counsel for Appellant
LAKSHMAN KUMAR KADALI
VENKAT PRASAD PASUPULETI
SUDHIR V.S.

Counsel for Respondent
SHRI SRINIVASULU AND SHRI NARENDER REDDY

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. : ZA360361026000469H **Date of order :** 30/10/2026

1.	GSTIN/Temporary ID/UIN - 36AAACI7214F2ZU	
2.	Appeal Case Reference no. - APL/51/HYD/2026	Date - 27/03/2026
3.	Name of the appellant - Innominds Software Private Limited , finance@innominds.com , 7893266300	

4.	Name of the respondant - 1. NV Satyanarayana Assistant Commissioner State Tax , ac-genl@tgct.gov.in , 9121629255 2. The Commissioner of State Tax
5.	Order appealed against - AD360324003013V
	(5.1) Order Type - Demand Order
	(5.2) Ref Number - ZD361124022639G | Date - 22/11/2024
6.	Personal Hearing - 30/10/2026 01/10/2026 17/09/2026 10/09/2026 13/07/2026
7.	Status of Order under Appeal - Reject - Order under Appeal is annulled
8.	Order in brief - It is alleged that the tax payer had availed ineligible credit. The IGST credit has been availed as CGST and SGST equally. The Department contends that the appellants ought to have taken as IGST credit only. Therefore, proposed to disallow the credit. After hearing both the sides, the Bench was of the view that the credit can not be denied on account of the availment under wrong Heads. Consequently, the appeal is allowed with consequential relief and thereby setting aside the impugned order.

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	3426127	0	3426127	0	0	0	0	0	6852254	0

(b) Interest	0	0	0	0	0	0	0	0	0	0
(c) Penalty	344207	0	344207	0	0	0	0	0	688414	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

Section-II

Place of Supply/Name of State/UT	Demand	Tax	Interest	Penalty	Other	Total
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Amount in dispute	0	0	0	0	0
	Amount Determined	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	68,52,254	

ORDER

FINAL ORDER No.26/COURT-II/HYD/2026

Per: A P Ravi, Judicial Member **Date of hearing: 01/10/2026**
Date of pronouncement: 30/10/2026

1.0 This appeal has been filed by M/s Innominds Software Private Ltd., a registered taxpayer bearing Registration No. 36AAACI7214F2ZU (the Appellant), under Section 112 of the Central Goods and Services Tax Act, 2017, against the Order-in-Appeal (OIA) No. ZD361124022639G dated 22.11.2024 passed by the First Appellate Authority (the FAA). By the said order, the FAA dismissed the appeal preferred by the Appellant under Section 107 of the Act, to the extent of the Input Tax Credit (ITC) availed which was not reconciled with the Appellant's Form GSTR-9.

1.1 In this order, the expressions "Act" and "Rules" shall mean and include the Central Goods and Services Tax Act, 2017 and the State Goods and Services Tax Rules, 2017, respectively, since the provisions of both the Acts and both the sets of Rules are common and the same shall apply equally and concomitantly.

2.0 Shri Sudhir, the Ld. CA, appeared for the Appellant, and Shri Shri. Srinivasulu and Shri. Narender Reddy, the Ld. DRs, appeared for the Respondent.

3.0 The facts, as they emerge from the record, are as follows.

3.1 The Appellant is engaged in providing software services, files periodical returns within the stipulated time frame, and avails ITC on eligible input services.

3.2 It is the case of the department that, during the period July 2017 to March 2018, the Appellant availed ITC on input services which was not reconciled with the figures available in its Form GSTR-9, in other words, there was an alleged mismatch of ₹68,52,253/-, between the ITC availed in Form GSTR-3B and the figures in Form GSTR-9.

3.3 The department further alleged that the Appellant had under-declared its outward supply to the extent of ₹4,03,520/-, on a comparison of Form GSTR-1 and Form GSTR-9, and had under-declared inadmissible ITC to the extent of ₹2,48,914/-.

3.4 A Show Cause Notice (SCN) No. ZD3611210193230 dated 13.11.2021 was accordingly issued under Section 73 of the Act, proposing to demand ₹75,04,688/- along with interest and penalty.

3.5 The Respondent states that the SCN was issued in Form GST DRC-01 dated 13.11.2021, and that the amount proposed comprised tax on under-declared outward supplies (₹4,03,520/-), excess ITC on non-reconciliation of Form GSTR-9 with Form GSTR-3B (₹68,52,254/-) and ineligible ITC (₹2,48,914/-).

3.6 By Order-in-Original (OIO) No. ZD361223014309P dated 08.12.2023, the Adjudicating Authority (the AA) dropped the demands relating to the

under-declaration of outward supply and the under-declaration of inadmissible ITC, and confirmed the demand of ₹68,52,254/-.

3.7 According to the Respondent, the AA confirmed that demand for want of reconciliation and verification certificates.

3.8 The Appellant preferred an appeal under Section 107(1) of the Act, within the time prescribed, before the FAA, who, by OIA No. ZD361124022639G dated 22.11.2024 dismissed the appeal.

3.9 The Appellant states that the FAA rested her decision solely on the non-production of the certificates contemplated by Circular No. 183/15/2022-GST (the Circular), and the Respondent likewise states that the FAA upheld the demand for want of a supplier's Chartered Accountant's certificate under the Circular.

3.10 The Appellant is before this Tribunal assailing the confirmation, under Section 73 of the Act, of a demand of ₹68,52,254/- with interest and penalty, for alleged excess availment of ITC in Form GSTR-3B vis-à-vis Form GSTR-2A.

4.0 The Ld. CA, on behalf of the Appellant, makes the following submissions.

4.1 Section 16(2) of the Act exhaustively enumerates the conditions for ITC, and none of them requires reflection in Form GSTR-2A.

4.2 Under Section 41, credit was availed on a self-assessed, provisional basis, and the matching mechanism under Sections 42 to 43 and Rules 69 to

70 never became operative, Forms GSTR-2 and GSTR-3 having been omitted with effect from 01.10.2022.

4.3 Rule 36(4) applies only from 09.10.2019 (Circular No. 123/42/2019-GST), and clause (aa) of Section 16(2) only from 01.01.2022, and a substantive condition cannot operate retrospectively, reliance being placed on *Union of India v. Martin Lottery Agencies Ltd.*, 2009 (14) S.T.R. 593 (S.C.).

4.4 A bona fide recipient cannot ensure that the supplier remits the tax, and the law does not compel the impossible (*lex non cogit ad impossibilia*), as held in *Commissioner of Customs v. Hico Enterprises*, 2008 (228) E.L.T. 161 (S.C.).

4.5 The Appellant paid the full consideration, inclusive of tax, as evidenced by its bank statements, and the remedy of the Revenue lies against the defaulting supplier, reliance being placed on *Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi*, 2018 (10) G.S.T.L. 182 (Del.), and *Suncraft Energy Pvt. Ltd. v. Assistant Commissioner*, 2023 (117) G.S.T.L. 78 (Cal.), affirmed, 2024 (121) G.S.T.L. 230 (S.C.).

4.6 A circular issued under Section 168(1) cannot add to or supplant the statute, and the requirement of a Chartered Accountant's or a supplier's certificate finds no place in Section 16, reliance being placed on *Commissioner of Central Excise v. Ratan Melting and Wire Industries*, 2008 (12) S.T.R. 416 (S.C.), and *Shivaco Associates v. Joint Commissioner*, 2022 (59) G.S.T.L. 389 (Cal.).

4.7 The Appellant inadvertently availed CGST and SGST, instead of IGST, on Invoice Nos. IMSEZ484MAR1718 and IMSEZ502MAR1718 dated 30.03.2018, issued by M/s. Innominds Software SEZ India Private Limited, while IGST was actually discharged and stood reflected in Form GSTR-2A, and ITC of ₹32,59,790/- each was consequently availed under CGST and SGST.

4.8 IGST, CGST and SGST are fungible under Sections 2(62), 2(63) and 49(5) of the Act and Rule 88A of the Rules, and the error is purely technical and revenue neutral, reliance being placed on *Rejimon Padickapparambil Alex v. Union of India*, 2024 (25) Centax 108 (Ker.) (*Rejimon*), and *Maruthengal Moideen v. State Tax Officer*, 2025 (27) Centax 102 (Ker.).

4.9 A forced reversal would result in double taxation, contrary to Article 265 of the Constitution, reliance being placed on *Nirlon Ltd. v. Commissioner*, 2015 (320) E.L.T. 22 (S.C.).

4.10 The demand is founded on the auto-populated Tables 8A and 8B of Form GSTR-9, which are merely informational as per the Press Release dated 03.07.2019.

4.11 The findings on ineligible ITC (Rs. 53,260/-) transcend the scope of the appeal, the proposal having been dropped in the OIO, and are *coram non judice* i.e., it was not before the FAA to decide as the same was already concluded.

4.12 The impugned order is non-speaking and unsigned, and ignores the reconciliation and the precedents, reliance being placed on *Dharampal Satyapal Ltd. v. Deputy Commissioner*, 2015 (320) E.L.T. 3 (S.C.).

4.13 The SCN was issued in Form GST DRC-01 without a prior Form GST ASMT-10, contrary to Section 61 of the Act and Rule 99 of the Rules, which vitiates the proceedings *ab initio*.

4.14 Interest and penalty cannot survive the failure of the principal demand, Rule 88B came into force only on 05.07.2022, and penalty is unwarranted for a bona fide, technical lapse, reliance being placed on *Hindustan Steel Ltd. v. State of Orissa*, 1978 AIR 1970 (S.C.).

4.15 In reply to the submissions of the Respondent, the Appellant states that the Respondent itself concedes that the supplier discharged the tax under IGST, and that in *Rejimon* the Hon'ble High Court of Kerala found the lapse to be technical.

4.16 The Appellant further states that Section 77 of the Act and Section 19 of the Integrated Goods and Services Tax Act, 2017 (the IGST Act) govern tax paid under a wrong head by the person paying it, which was not the case here, and that the Circular cannot prescribe conditions beyond Section 16.

4.17 The Appellant also states that the assertion that the suppliers "reported the transaction differently" is unsupported by any record, and that the alleged loss of revenue is neither quantified nor shown, the IGST of the SEZ supplier having been duly paid to the Government.

4.18 The Appellant prays that the impugned order be set aside, and that it be held that no ITC was wrongly availed and that interest and penalty are not leviable.

5.0 *Per contra*, the Ld. DRs, on behalf of the Respondent, makes the following submissions.

5.1 Of the demand of ₹75,04,688/- proposed in the SCN in Form GST DRC-01 dated 13.11.2021, only the head of Rs. 68,52,254/- was confirmed by the OIO dated 08.12.2023, for want of reconciliation and verification certificates, and the FAA, by order dated 22.11.2024, upheld that demand for want of a supplier's Chartered Accountant's certificate under the Circular.

5.2 The requirement under Section 16(2)(c) of the Act, that the tax charged be actually paid to the Government, is "absolute and non-negotiable".

5.3 Form GSTR-2A, though system-generated, is the representation of supplier-reported invoices under Section 37, and, upon a mismatch, the burden under Section 155 lies on the Appellant to prove payment of tax by its suppliers.

5.4 The Circular is a binding and beneficial administrative relaxation, requiring a certificate from the supplier's Chartered or Cost Accountant where the mismatch exceeds ₹5,00,000/- per supplier per year, and a supplier's declaration where it is lesser.

5.5 In the absence of the certificate, the Proper Officer has no tool to verify compliance with Section 16(2)(c), and the unmatched credit must be

disallowed, and the challenge of the Appellant to the Circular is termed "paradoxical".

5.6 The Respondent records the admission of the Appellant that ₹45,18,802/- each under CGST and SGST was availed on two invoices raised by M/s. Innominds Software SEZ India Pvt. Ltd., an SEZ unit.

5.7 CGST, SGST and IGST are distinct levies under separate enactments, and supplies to or by an SEZ unit are deemed inter-State supplies under Section 7(5)(b) of the IGST Act, so that the availment of CGST and SGST thereon is a substantive contravention.

5.8 The plea of revenue neutrality cannot override Sections 16(2) and 49 of the Act, and the remedy lies under Section 77 of the Act and Section 19 of the IGST Act, namely payment of the correct tax and refund of the wrong one.

5.9 Relying on Section 18 of the IGST Act and Rules 4 and 5 of the Goods and Services Tax Settlement of Funds Rules, 2017 (Forms GST STL-01.01, 01.03, 02.01 and 02.02), the Respondent submits that cross-utilisation and apportionment are effected on the basis of the recipient's Form GSTR-3B.

5.10 Had IGST credit been utilised against SGST liability, the amount would have been apportioned to the State of Telangana, and since SGST credit was availed instead, the State has suffered a loss of revenue.

5.11 In *Rejimon* (W.A. No. 54 of 2024 dated 26.11.2024), the Hon'ble High Court of Kerala treated the lapse as inadvertent and technical, but overlooked the adverse impact on State revenue and the settlement rules.

5.12 A decision of a High Court is only persuasive outside its territorial jurisdiction, as stated in *CIT v. Thana Electrical Supply Ltd.*, (1994) 206 ITR 727 (Bom.).

5.13 Section 61 is directory and facilitative, and neither Section 73 nor Section 74 makes Form GST ASMT-10 a condition precedent to an SCN, the Proper Officer being entitled to issue Form GST DRC-01 directly upon observing mismatches, reliance being placed on *Nkas Services Pvt. Ltd. v. State of Jharkhand* (Jharkhand High Court).

5.14 The plea that the order in Form GST DRC-07 is unsigned is hyper-technical, orders uploaded on the common portal being validly served under Section 169, and the Appellant, having downloaded the order and appealed, has suffered no prejudice.

5.15 As to the amount recoverable, the confirmed tax is ₹68,52,254/-, with confirmed penalty of ₹3,44,207/- each under CGST and SGST (₹6,88,414/- on the whole).

5.16 The Respondent acknowledges the pre-deposit of 10 per cent made by the Appellant, ₹6,85,226/-, paid on 26.03.2026 (Debit Entry No. 2061473156), leaving ₹61,67,028/- recoverable with interest under Section 50 and penalty under Section 73.

5.17 The Respondent prays that the appeal be dismissed, the OIA upheld and recovery of the demand confirmed.

6.0 During the course of hearing, the Ld. CA and the Ld. DRs addressed the Bench principally on the decision of the Hon'ble High Court of Kerala in *Rejimon*.

6.1 The Ld. CA, apart from reiterating the grounds of appeal and placing reliance on the decisions of various appellate fora, contended that the facts of *Rejimon* are identical to the facts of the case on hand, and drew our attention to paragraph 9 of that decision.

6.2 He pleaded that the ratio of the said decision squarely applies to the case of the Appellant, so that the impugned order is liable to be set aside and the appeal allowed.

6.3 The Ld. DRs drew our attention to the concluding paragraph of the decision in *Rejimon*, and submitted that the Hon'ble High Court had considered the apprehension of the Government, which, according to him, shows an inherent problem for the State in getting its share of revenue.

6.4 He submitted that the apprehension raised in that case was genuine, and that in the present case also the State Government would suffer a loss of revenue if the appeal is allowed.

6.5 He further submitted that the decision of the Hon'ble High Court of Kerala has only persuasive value and is not a binding precedent, relying on *CIT v. Thana Electrical Supply Ltd.*, (1994) 206 ITR 727 (Bom.), and pleaded that the appeal be dismissed and the impugned order upheld.

7.0 Heard both sides. The short matter to be decided in the appeal instituted by the taxpayer is whether the FAA was right in denying the IGST credit to the tune of ₹68,52,254/- availed equally as CGST and SGST.

8.0 We confine our decision only to the extent of the issue contested before us and we are not dwelling into the aspect of the FAA discussing the issues that have already been settled or allowed by the adjudicating authority. In fine, this order confines itself only to the alleged mis-match between the ITC availed as per the GSTR-3B and GSTR-9 / GSTR-2A. We have considered the record and the submissions of the Ld. CA and the Ld. DR, and we shall deal with the matter in the following sequence.

8.1 We shall first examine the conditions on which ITC is allowed under Section 16(2) of the Act, next the Circular on which the denial of credit rests, and then the head under which the credit was availed, before dealing with the consequential relief.

8.2 The Respondent contends that the requirement of Section 16(2)(c) is "absolute and non-negotiable", and the Hon'ble Supreme Court, by its order dated 24.07.2026 in Special Leave Petition (C) No. 23931/2026 (*Bhandari Scrap Traders v. Union of India*), dismissing the petitions against the judgment dated 01.05.2026 of the Hon'ble High Court of Gujarat, observed as follows:

> *"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."*

8.3 We respectfully follow that order, and we proceed on the footing that the condition in Section 16(2)(c) is a condition of the Act which is required to be satisfied.

8.4 In that view, the plea of the Appellant that the law does not compel the impossible is not necessary for the disposal of the appeal, and we refrain from examining it.

9.0 Section 16(2) of the Act, as set out in the judgment of the Hon'ble High Court of Calcutta in the case of *Suncraft Energy Private Limited v. Assistant Commissioner, State Tax, Ballygunge Charge* (MAT 1218 of 2023, judgment dated 02.08.2023), provides that no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless:

> *"(a) he is in possession of tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;*
>
> *(b) he has received the goods or services or both;*
>
> *(c) subject to the provisions of Section 41 or Section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of such supply; and*
>
> *(d) he has furnished the return under Section 39."*

9.1 Clause (aa) of Section 16(2) was inserted only with effect from 01.01.2022, and Rule 36(4) of the Rules only from 09.10.2019, as noted by the Bengaluru Bench of this Tribunal in *M/s Peekay Industries v.*

Commissioner of Commercial Taxes, Karnataka (APL/34/BUR/2026, order dated 03.09.2026).

9.2 Neither of them governs the period July 2017 to March 2018 with which we are concerned, and the conditions applicable to that period are accordingly the following:

(a) possession of a tax invoice, debit note or other prescribed tax paying document;

(b) receipt of the goods or services or both;

(c) actual payment to the Government of the tax charged in respect of the supply; and

(d) furnishing of the return under Section 39.

9.3 As regards conditions (a) and (b), the Respondent does not contend that the Appellant was not in possession of the two invoices, which it records as having been raised by M/s. Innominds Software SEZ India Pvt. Ltd., or that the services were not received.

9.4 As regards condition (d), the demand itself arises from the returns in Form GSTR-3B filed by the Appellant, and no default in furnishing returns is alleged.

9.5 Condition (c) is the point of contest, and the Respondent relies on Section 155 of the Act, which, as reproduced in the judgment dated 01.05.2026 of the Hon'ble High Court of Gujarat in Special Civil Application No. 18080 of 2023 and connected matters, reads:

> *"Section 155 – Burden of proof: Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person."*

9.6 The burden thus lay on the Appellant, and we proceed on that footing.

9.7 The Appellant has pointed to the reflection of the IGST on the two invoices in Form GSTR-2A, to the payment of the full consideration inclusive of tax as evidenced by its bank statements, and to its reconciliation.

9.8 The Respondent has not placed any material to show that the supplier did not pay the tax, and its submission on loss of revenue proceeds, on its own showing, on the premise that the tax on these invoices was IGST.

9.9 In these circumstances, we find that the burden cast by Section 155 has been discharged on the record before us.

9.10 The Hon'ble Supreme Court in *Union of India v. Bharti Airtel Ltd.*, (2022) 4 SCC 328, is recorded in *Suncraft* to have held that:

> *"Form GSTR-2A is only a facilitator for taking a confirm decision while doing such self-assessment."*

9.11 A difference between Form GSTR-3B and Form GSTR-2A may therefore justify verification, but it cannot, without more, be treated as proof that the condition in Section 16(2)(c) has not been satisfied.

10.0 The Circular dated 27.12.2022 was issued by the Board in exercise of its powers under Section 168(1) of the Act, to clarify the manner of dealing with the difference between the ITC availed in Form GSTR-3B and that available in Form GSTR-2A for the Financial Years 2017-18 and 2018-19.

10.1 Paragraphs 4 and 5 of the Circular, as extracted in the judgment of the Hon'ble High Court of Kerala in *Faizal Traders Pvt. Ltd. v. Deputy Commissioner, Central Tax and Central Excise* (WP(C) No. 24810 of 2023, judgment dated 07.02.2024), read as follows:

> *"4. The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfilment of the following conditions of Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person:*
>
> *i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;*
>
> ii) *that he has received the goods or services or both;*
>
> iii) *that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier.*
>
> *Besides, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of section 16 of CGST Act.*
>
> *4.1.1 In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. […]*
>
> *4.1.2 In cases, where the difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of*

a supplier for the said financial year is upto Rs 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

5. It may also be noted that the clarifications given hereunder are case specific and are applicable to the bonafide errors committed in reporting during FY 2017-18 and 2018-19. Further, these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law."

10.2 Paragraph 4.1 of the Circular introduces the certificates in the following words:

"4.1 In order to verify the condition of Section 16(2)(c) of CGST Act that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:"

The underlined portion of paragraph 4.1.2 of the circular reproduced above, empowers the proper officer to insist on a certificate either by a Chartered Accountant in case where the disputed ITC exceeds ₹5 Lakhs or a self-certificate by the supplier in case where the disputed ITC is less than ₹5 Lakhs.

10.3 Paragraph 3 of the Circular sets out four scenarios, namely, the failure of the supplier to file Form GSTR-1 for a tax period, the failure to report a particular supply in Form GSTR-1, the wrong reporting of a supply as a B2C supply, and the declaration of the supply with a wrong GSTIN of the recipient, and in each of them the difference is to be handled by following the procedure in paragraph 4.

10.4 The scheme of the Circular, resolved into its elements, is as follows:

(a) the proper officer is first to seek from the registered person the details of all invoices on which ITC has been availed in Form GSTR-3B but which are not reflecting in Form GSTR-2A;

(b) the proper officer is then to ascertain the fulfilment of the conditions of Section 16, namely, possession of the tax invoice, receipt of the goods or services, and payment to the supplier of the value of the supply along with the tax, and to check the position under Sections 17 and 18 and Section 16(4);

(c) for verifying the condition of Section 16(2)(c), the certificate of a Chartered Accountant or Cost Accountant, or of the supplier, as the case may be, is to be sought; and

(d) the clarifications are case specific, are applicable to bona fide errors in reporting during the Financial Years 2017-18 and 2018-19, are clarificatory in nature, and are not to be used in the interpretation of the provisions of law.

10.5 As regards element (a), the record placed before us does not disclose, and the Respondent has not pointed out, that the proper officer first sought the details of the invoices from the Appellant and ascertained the fulfilment of the conditions of Section 16 as the Circular requires.

10.6 Both sides agreed that the FAA rested solely on the non-production of the certificate. The Respondent, who contends that the Circular is binding, was itself bound by the first step which the Circular prescribes, and we record that the omission to take that step is attributable to the authorities below and not to the Appellant.

10.7 As regards elements (b) and (c), the certificate is a means of verification of the condition in Section 16(2)(c), and it is not a further condition of eligibility.

10.8 We are unable to subscribe to the submission of the Respondent that, in the absence of the certificate, the unmatched credit must be disallowed, for the Circular nowhere so provides.

10.9 The Bengaluru Bench of this Tribunal in *Peekay Industries* has observed as follows, and we respectfully concur:

> *"16.5.1……..The fact that the Appellant did not furnish the certificates contemplated by these Circulars may well be relevant to the verification process the Circulars prescribe. It does not, however, dispense with the need to determine the actual ITC liability by reference to the substantive statutory provisions applicable to the relevant period — a distinction the impugned orders do not draw."*

10.10 As regards element (d), the difference in the present case, according to the Appellant, does not arise from any failure of the suppliers to report the supplies, for the IGST on the two invoices stands reflected in Form GSTR-2A, but from the head under which the credit was availed. When the ITC stands reflected in the GSTR-2A the requirement to comply with the circular, in discussion, would automatically be ousted. Hence drawing parallel to the circular and insisting on the certificates by the proper officer as well as FAA in the order impugned is beyond the requirement of law.

10.11 The Respondent has not urged that any of the four scenarios in paragraph 3 of the Circular is attracted, and the mechanism of the certificates is therefore not engaged on the facts of the case.

10.12 Even if it were engaged, the non-production of the certificate would have called for verification of the conditions of Section 16(2), and not for the denial of the credit.

10.13 We do not find it necessary to decide whether the Circular is binding on the Appellant, or whether, as contended by the Appellant, a circular under Section 168(1) cannot add to Section 16, and we refrain from examining those questions.

11.0 We now turn to the head under which the credit was availed, and Section 7(5)(b) of the IGST Act provides:

> *"Supply of goods or services or both, to or by a Special Economic Zone developer or a Special Economic Zone unit shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce."*

11.1 It is not in dispute that the two invoices were raised by an SEZ unit, M/s. Innominds Software SEZ India Pvt. Ltd., and that the Appellant availed credit of ₹68,52,254/- equally under CGST and SGST thereon.

11.2 The supply was, by virtue of Section 7(5)(b), an inter-State supply, and the tax chargeable on it was integrated tax.

11.3 The objection of the Respondent, which itself relies on Section 7(5)(b), is directed to the head, CGST and SGST in place of IGST, under which the credit was availed, and not to the absence of a supply or of an invoice.

12.0 The demand has been confirmed under Section 73 of the Act, and the corresponding provision of the State enactment, as reproduced in the order of the Lucknow Bench of this Tribunal in *Sakhsham Knowledge Services Private Limited v. Nitin Bansal* (APL/54/LCK/2026, order dated 14.09.2026), reads:

"Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any willful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause […]"

12.1 The provision, resolved into its elements, requires that:

(a) tax has not been paid, short paid or erroneously refunded; or

(b) input tax credit has been wrongly availed or utilised; and

(c) the reason is other than fraud, wilful misstatement or suppression of facts to evade tax.

12.2 Element (a) is not alleged against the Appellant, and element (c) is not in issue, the proceedings having been initiated under Section 73.

12.3 The question is therefore confined to element (b), namely, whether credit of the integrated tax charged on an inter-State supply, availed under the heads of CGST and SGST, is input tax credit "wrongly availed".

13.0 That question arose before the Hon'ble High Court of Kerala in *Rejimon Padickapparambil Alex v. Union of India* (W.A. No. 54 of 2024, judgment dated 26.11.2024, Neutral Citation 2024/KER:88762).

13.1 The assessee there had received inter-State inward supplies on which the supplier had paid IGST, and, instead of showing the IGST in Form GSTR-3B, had shown it as nil and added the split CGST and SGST components to the existing CGST and SGST credit.

13.2 It was undisputed that the amount shown as IGST in Form GSTR-2A was what had been so split.

13.3 The Hon'ble High Court held as follows:

> *"The case before us clearly reveals that there has been no wrong availment of credit, and that the only mistake committed by the appellant was an inadvertent and technical one, where he had omitted to mention the IGST figures separately in Form GSTR 3A."*

13.4 The Hon'ble High Court accordingly quashed the order confirming the demand, and declared that the assessee "shall not be seen as having availed excess credit for the purposes of initiating proceedings under Section 73 of the GST Act".

13.5 We find that the facts before us are materially the same, in that the inward supplies were inter-State supplies, the IGST on them stands reflected in Form GSTR-2A, the credit was availed under CGST and SGST in place of IGST, and the resulting difference was treated as excess credit.

13.6 The status of the supplier as an SEZ unit does not distinguish the case from *Rejimon*, for Section 7(5)(b) of the IGST Act only fixes the inter-State character of the supply, and leaves unaffected the fact that the tax charged was IGST.

13.7 We are of the considered opinion that the credit of ₹68,52,254/- equally availed under CGST and SGST on the two invoices is not input tax credit wrongly availed within the meaning of Section 73, the inadvertent error in the

head of credit being an error of reporting and not an availment of credit to which the Appellant was not entitled.

14.0 We now deal with the objections of the Respondent to the application of *Rejimon*, beginning with the plea that the decision has only persuasive value.

14.1 We are of the view that *Rejimon* does bind this Tribunal, the Hon'ble High Court of Kerala being a higher judicial forum, especially when no decision of the Hon'ble High Court for the State of Telangana or of the Hon'ble Supreme Court taking a different view has been cited before us.

14.2 *Rejimon* was rendered in a writ appeal arising from a petition under Article 226 of the Constitution, whereas the jurisdiction of this Tribunal is statutory.

14.3 The holding of the Hon'ble High Court that no wrong availment of credit was disclosed for the purposes of Section 73 is, however, a reasoned construction of the very provision which we are called upon to apply, and we have independently found it to be correct on the text of Sections 49(5)(a) and 73 of the Act.

14.4 The reliance placed by both sides on *Rejimon* must be confined to what it actually held, and the Appellant contends that the error is revenue neutral, which the Hon'ble High Court did not hold.

14.5 The Hon'ble High Court recorded the anxiety and apprehension of the learned Government Pleader that the State might be deprived of its legitimate share of the IGST paid by the suppliers outside the State, and directed that, on the State producing a copy of the judgment along with a representation

before the GST Council, the GST Council shall issue necessary directions to resolve the issue.

14.6 The contention of the Respondent that the Hon'ble High Court overlooked the loss of revenue is therefore unfounded, for the concern was expressly before the Hon'ble High Court and was addressed by the direction aforesaid, while the demand was quashed.

14.7 We accordingly do not rest our decision on revenue neutrality, which has not been established, nor can the apprehension of loss, which has not been quantified or shown by the Respondent, sustain a demand under Section 73.

14.8 The Hon'ble High Court of Gujarat, in its judgment dated 01.05.2026 noticed above, has recorded the following proposition:

> *"In interpreting a taxing statute, equitable considerations are entirely out of place."*

14.9 *Aequitas sequitur legem*, and the Appellant succeeds on the text of the statute and not on hardship.

14.10 The Respondent submits that the remedy of the Appellant lies under Section 77 of the Act and Section 19 of the IGST Act, and Section 77(1) provides:

> *"A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed."*

14.11 The provision speaks of tax paid by a registered person on a transaction, whereas the Appellant, as the recipient, paid no tax on the supply and availed credit.

14.12 Nothing in the text of Section 77 or of Section 19 of the IGST Act addresses credit availed by a recipient or makes those provisions the exclusive remedy, and the submission is accordingly unable to displace the finding that the credit was not wrongly availed within the meaning of Section 73.

14.13 The Respondent has also relied on Section 18 of the IGST Act and on the Goods and Services Tax Settlement of Funds Rules, 2017, for the proposition that the State of Telangana has lost revenue.

14.14 No computation of the alleged loss has been furnished, and the Respondent has not shown that those Rules supply a ground for a demand under Section 73, and we therefore refrain from examining the operation of those Rules and leave the question open.

15.0 The Appellant has raised several further contentions, and the Respondent has joined issue on them.

15.1 Those contentions relate to Section 41 and the matching provisions of the Act, Rule 36(4) of the Rules, clause (aa) of Section 16(2), the character of the auto-populated Tables 8A and 8B of Form GSTR-9, the absence of Form GST ASMT-10 prior to the SCN, and the plea that the order of the FAA is unsigned and non-speaking.

15.2 Since the Appellant succeeds on the grounds recorded above, we refrain from examining these issues and leave the questions open.

15.3 As regards the contention concerning the ineligible ITC, the Respondent itself records that the AA dropped that head, and that only the head of ₹68,52,254/- was confirmed and upheld by the FAA, so that no demand on that head forms part of the demand before us.

16.0 Interest and penalty arise from, and are determined on, the tax of Rs. 68,52,254/-.

16.1 As that demand of tax does not survive, the interest and penalty confirmed on it cannot survive independently, and the contentions relating to Rule 88B of the Rules and to *Hindustan Steel Ltd. v. State of Orissa* do not call for examination.

17.0 The Respondent acknowledges that the Appellant has made a pre-deposit of Rs. 6,85,226/- on 26.03.2026 (Debit Entry No. 2061473156).

17.1 Section 115 of the Act provides that, where an amount paid under Section 107(6) or Section 112(8) is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under Section 56 shall be payable from the date of payment of the amount till the date of refund.

17.2 The Appellant has not specifically prayed for the refund of the pre-deposit with interest, but a benefit which the statute confers cannot be denied for want of a specific prayer, the demand to which the pre-deposit relates having been set aside by this order.

18.0 *In fine*, we are of the considered opinion that the credit of ₹68,52,254/- equally availed under CGST and SGST on Invoice Nos. IMSEZ484MAR1718

and IMSEZ502MAR1718 dated 30.03.2018, the IGST on which stands reflected in Form GSTR-2A, is not input tax credit wrongly availed within the meaning of Section 73 of the Act, and that the denial of credit by the FAA solely for want of the certificates contemplated by the Circular cannot be sustained.

18.1 The FAA was not right in denying the IGST credit to the tune of ₹68,52,254/- availed equally as CGST and SGST.

18.2 We accordingly set aside the order impugned for the reasons mentioned supra and allow the appeal filed by the taxpayer, with consequential relief.

18.3 The issue framed in paragraph 6.0 above is answered accordingly.

18.4 On the above terms, the appeal is allowed.

18.5 No order as to costs.

(Order pronounced in open court on 30.10.2026)

(**A P RAVI**)
JUDICIAL MEMBER

(**DUVVURI KRISHNA SRINIVAS**)
Member Technical

Place: Hyderabad
Date: 30th October, 2026