IN THE GOODS AND SERVICES TAX APPELLATE TRIBUNAL
KOLKATA BENCH
COURT NO.1
Appeal No. APL/13/KLK/2026

Atanu Mondal
For the Commissioner
CGST & CX, Kolkata North Commissionerate
GST Bhawan, 180, Shantipally,
Rajdanga Main Road, Kolkata-700107

..... Appellant

VERSUS

Director
Optival Health Solutions Private Limited
Flat No.301, Aditya Elegence Apts
Jubilee Hills, Hyderabad-500034
Telengana

..... Respondent

AND

Appeal No. APL/16/KLK/2026

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For the Commissioner
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GST Bhawan, 180, Shantipally,
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..... Appellant

VERSUS

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..... Respondent

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In appearance :
For the appellant : Shri Niranjan Mondal, Superintendent, CGST
For the respondent : Mr. Pavan Inani, CA

CORAM :

Shri Satya Gopal Chattopadhyay : Hon'ble Judicial Member
Shri Anindya Mitra : Hon'ble Technical Member

FINAL ORDER

Date of Hearing : 14/10/2026
Date of Order : 23/11/2026

Per S.G. Chattopadhyay (JM):

[1]. Since both the appeals arise from the same lis and resolve around substantially similar facts and questions of law, they are taken up together for disposal by a common order with the consent of the parties for the sake of convenience and to avoid multiplicity of proceedings.

[2]. The appellant is hereinafter referred to as 'the revenue'. The respondent, hereinafter referred to as the 'taxpayer' is engaged in retail trading of pharmaceutical products and other related products across multiple states/union territories. In West Bengal, the respondent is carrying out its business from 147, Nilgunge Road, Belgharia, North 24 Pgs. WB-700056 under GST Identification No.19AAACO7727M1ZW effective from 01.07.2017.

[3]. In APL/13/KLK/2026 the proceedings were drawn up against the taxpayer by way of issuing show cause-cum-demand notice dated 21.04.2023 invoking Sections 73 of the Central Goods and Services Act, 2017 (hereinafter called 'the CGST Act, 2017'). In the said show cause notice, the following demands were made against the taxpayer :

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"3.2 M/s. Optival Health Solutions Pvt. Ltd., GSTIN:19AAACO7727M1ZW are hereby called upon to show cause before The Assistant Commissioner of CGST & CX, Khardah Division, 18/2, Ghoshpara Road, 3rd Floor, Barrackpore, 24 Pgs(N), Kolkata-700120 within 30 (thirty) days of receipt of this notice as to why -

i) The ineligible Transitional Credit availed in Tran-2 amounting to Rs.65,90,636/-(Rupees Sixty five lakh ninety thousand six hundred thirty six only) shall not be disallowed and recovered from them in terms of Rule 121 of the said Rules read with Sec 73 of the said Act.

ii) Interest at the appropriate rate on the amount under demand shall not be charged and recovered from them under Section 50 of the said Act.

iii) Penalty shall not be imposed upon them under Section 73 of the said Act.

3.2 ***M/s. Optival Health Solutions Pvt. Ltd., GSTIN:19AAACO7727M1ZW****, are also asked to produce, at the time of showing cause, all the evidences upon which they intend to rely in support of their defence, and should also specify whether they wish to be heard in person through their authorized representative before adjudication of the case.*

3.3 If no cause is shown against the action proposed to be taken in this notice within the stipulated period of thirty (30) days and / or they fail to appear before the adjudicating authority on the date and time fixed for personal hearing, fixed if any, the case may be decided on the basis of the evidences available with the department without making any further reference to them.

3.4 The department reserves the right to amend/modify/ supplement this notice at any time on the basis of further evidence on the same issue covering the same period before the case is adjudicated.

3.5 In case the amount of tax demanded in the notice and interest payable thereon are paid within 30 (thirty) days of issue of this notice, the present proceedings shall be deemed to be concluded in terms of Section 73(1) of the said Acts.

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3.6 This notice is issued without prejudice to any other action that may be initiated against M/s. Optival Health Solutions Pvt. Ltd., GSTIN:19AAACO7727M1ZW on availability of further evidence on other issue covering the same period, under the said Acts, the said Rules, or any other law for the time being in force."

[4]. Upon adjudication of the issues, the adjudicating authority by his order dated 14.12.2023 (hereinafter 'the OIO') passed the following order in para 5 :

"5. DISCUSSION & FINDINGS:-

5.1 I have carefully gone through the case records and submission in response to the instant notice.

5.2 I find that the required natural justice has been meted out to the said Noticee by way of granting opportunity of being heard before taking up the adjudication proceedings in the instant case.

5.3 I find that the issue involved in the instant case is excess availment of ITC amounting to Rs.65,90,636/- during the period 2017-18. Thus, the total tax evasion as alleged in the SCN is Rs.65,90,636/- for 2017-18. The SCN also alleges for recovery of applicable interest and penalty from the noticee.

5.4 I find that the said taxpayer has submitted three replies to the Show Cause Notice before personal hearing in where they stated that it is very much difficult to produce all the documents as those are very much voluminous in nature and requested to give some another extra-time to reconcile the same. Later on dated 15/11/2023 through mail they have sent some purchase & sale invoices but which are not sufficient to quantify the credit amount of the instant case.

5.5 I find that the noticee have taken excess ITC through TRAN-1 as well as in electronic credit Ledger and subsequently utilized the same in payment of their Tax liability which is to be required to reverse. Once tax

liability has been established; interest cannot detached from such liability. As the said Noticee is liable for payment/reversal of ineligible input tax credit taken in their electronic credit ledger, they are also liable for payment of interest under Section 50 of the CGST Act, 2017.

5.6 Further, as per the provisions of Section 73(9) of the CGST Act, 2017-The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determining the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order. Here, the tax liability has already been established in the foregoing paras and once tax liability has been established, the Taxpayer is bound to pay 10% of the tax as penalty, which arrives at Rs.6.59,064/-.

5.7 In view of the above observations, I pass the following order as per the provisions of Section 73(9) of the CGST Act, 2017:

O R D E R

(i) I confirm the demand of Inadmissible/Irregular ITC totaling, to Rs.65,50,536/ (Rupees Sixty five lakh ninety thousand six hundred thirty six only) for the period 2017-18 to 2018-19 under Section 73(9) of the CGST Act, 2017;

(ii) I confirm the demand of interest under Section 50 of the CCST Act, 2017 for the amount as demanded in Sl. No. (i) above;

(iii) I impose penalty of Rs.6.59,064/ (Rupees Six lakh fifty-nine thousand sixty-four only) equivalent to 10% of the tax as demanded in Sl. No. (i) above, under Section 73(9) of the CGST Act, 2017.

This order is passed without prejudice to any other action which may be taken against the Noticee under any other law for the time being in force."

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[5]. Apparently, this is a claim of the taxpayer for ITC under the transitional arrangements provided under Section 140 CGST Act, 2017. The amount claimed by the taxpayer in APL/13/KLK/2026 is Rs.65,90,636/- pertaining to the period from 2017-2018 to 2018-2019. As discussed hereinabove, the adjudicating authority after receiving the reply of the taxpayer and hearing him in person, declined to accept the reply of the taxpayer and confirmed the demand of inadmissible ITC to the tune of Rs. 65,90,636/- in terms of section 73(9) CGST, Act along with interest under Section 50(3) and penalty equivalent to 10% of the demand.

[6]. The aggrieved taxpayer challenged the Order in Original (OIO) in appeal before the first appellate authority in terms of Section 107(1), CGST Act, 2017. The Order in Appeal (OIA) dated 14.06.2024 demonstrates that in paragraph 6 of the OIA, the appellate authority recorded its findings. In paragraph 6.1, the appellate authority viewed that the taxpayer filed the appeal within the period of limitation prescribed under the statute. In paragraph 6.2 of his order, the first appellate authority formulated the point to be decided by him which runs as follows :

> *"…… the core issue to be decided in this case is whether the grounds on which the adjudicating authority has disallowed the transitional credit of Rs. 65,90,363/- are valid."*

[7]. The appellate authority then proceeded to examine Section 140(3) CGST Act, 2017 and at the outset, he reproduced the statutory provisions provided under Section 140(3), CGST Act, 2017. The appellate authority also quoted the entire paragraph 5 of the OIO in which the findings of the adjudicating authority were recorded.

[8]. It would appear from the OIA that the appellate authority accepted the contention of the taxpayer that it would be quite cumbersome for the taxpayer to produce all the invoices and related documents before the appellate authority since those were

voluminous and as a retailer of medicine the taxpayer had a business across the whole State of West Bengal. In paragraph 6.(V), the appellate authority recorded the contention of the taxpayer in this regard which reads as under :

> *It transpires that the Appellant deals in retail business of medicine from several outlets scattered in different geographical part of West Bengal. Naturally there must be huge number of sale invoices during 6 months' material period from June 2017 to December 2017. The Appellant has submitted a few invoices bundled in 17 spiral file cover which covers sale invoices pertaining to only a few days of a few outlets of the Appellant. The photo of such bundled invoices is inscribed below:*

[9]. Therefore, the appellate authority verified the randomly selected sample copy of sale invoices of the goods shown in the stock of the taxpayer on the appointed date and sold out during the GST regime w.e.f.01.07.2017 to 31.12.2017 and recorded the following observations in paragraph 6.(VII) :

> *(VII) After verification of sample copy the sale invoices of the goods shown in stock on the appointed day and the goods sold during 01/07/2017 to 31/12/2017 it appears that the claim of the Appellant is genuine. Value of stock shown at appointed day is 24,58,75,288/-, The value of remaining unsold stock after 31 December 2017 is ₹ 46,75,156/- Hence, the impugned order is not sustainable on this point too. Summary of quantity sold during the material period is inscribed below:*

	CGST		
Month	***Quantity***	***SALE***	***Closing Stock***
Jul-17	*2,67,320*	*1,31,57,896*	*1,35,60,424*
Aug-17	*1,35,60,424*	*51,28,576*	*84,31,848*
Sep-17	*81,31,848*	*17,51,399*	*66,80,449*
Oct-17	*66,80,449*	*9,23,302*	*57,57,147*
Nov-17	*57,57,147*	*5,86,067*	*51,71,080*
Dec-17	*51,71,080*	*4,95,924*	*46,75,156*

[10]. This apart, the first appellate authority also examined randomly selected sample invoices of the taxpayer which have been listed along with all the particulars in tabular form at pages 7 to 12 in the OIA.

[11]. On the basis of his verification of records, the first appellate authority came to the view that the adjudicating authority erred in disallowing transitional credit to the taxpayer. Resultantly, the first appellate authority discarded the OIO and allowed the claim of the taxpayer and ordered as follows :

> *"In view of the above discussion hereinbefore I find the merits of the claim of Transitional Credit have been ignored and thus Authority has erred in disallowing Transitional Credit in this instant case on a frivolous ground and confirming the demand. Taking submission of both the respondent as well as the Appellant, grounds of Appeal in wake of GST Act & Rulings, and Circulars and verdicts of different cases mentioned above under consideration I proceed to pass the following order under Section 107 of GST Act2017.*
>
> ***O R D E R***
>
> *I allow the Appeal and set aside Order No. 28/OPTIVAL-GST/CGST&CX/KDH/Kol(N)/2023-24 dated 14.12.2023 passed by the Assistant Commissioner, Khardah Division CGST & CX, Kolkata North Commissionerate and allow the credit."*

[12]. We have heard the authorised representatives appearing for the parties in both the appeals at length.

[13]. Mr. Niranjan Mondal, Superintendent, CGST while arguing on behalf of the revenue has contended that there is no illegality in the action of the revenue in charging the taxpayer under Section 73, CGST Act, 2017 for recovery of the sum of Rs.65,90,636/- in APL/13/KLK/2026 which has been illegally availed and utilised by the taxpayer as transitional credit. Mr. Mondal has further contended that the Revenue repeatedly argued before the first

appellate authority that the transitional credit under Section 140(3), CGST Act, as claimed for, cannot be allowed to the taxpayer without properly verifying the documents of procurement of goods which is a sine-qua-non under Rule 117(4)(b)(ii), CGST Rules, 2017. This apart, the appellate authority has also overlooked the non-compliance of rule 117(2)(b), CGST Act, on the part of the taxpayer. Mr. Mondal argues that the first appellate authority has only examined some randomly selected invoices and that too on the lower side of the price value whereas as per the taxpayer himself as many as 14,16,000 sale transactions took place which generated 94,500 purchase invoices. According to Mr. Mondal the method adopted by the first appellate authority in allowing the transitional credit availed by the taxpayer is completely erroneous and against the procedure prescribed under the statute. Mr. Mondal, therefore, urges this Tribunal to turn down the findings of the first appellate authority.

[14]. Appearing for the respondent-taxpayer, Mr. Pawan Inani, Chartered Accountant has vehemently argued that a demand under Section 73, CGST Act, 2017 to nullify the entitlement of the taxpayer of transitional credit under Section 140(3) is absolutely against the law laid down under the CGST Act, 2017. Having referred to the provisions laid down under Section 73, CGST Act, 2017, the representative of the respondent-taxpayer submits that Section 73, CGST Act, 2017 shall apply only when the tax has not been paid or short paid or where the tax has been erroneously refunded or where ITC has been wrongly availed or utilised. The authorised representative of the taxpayer, therefore, contends that a notice under Section 73, CGST Act, 2017 for alleged contravention of sub-Section (3) of Section 140, CGST Act, 2017, is not permissible under the statute.

[15]. We have examined the merit of the contentions of the learned representatives of the parties. The contention of Mr. Inani, CA that the demand under Section 73 cannot be raised to defeat

the claim of transitional credit under Section 140(3), CGST Act, 2017, is inconceivable. Rule 121, CGST Rules, 2017 in chapter XIV relating to transitional provisions has unambiguously provided that amount credited under sub-Rule (3) of Rule 117, CGST Rules, 2017 may be verified and proceedings under Section 73 or Section 74 or Section 74A, CGST Act, 2017, as the case may be, shall be initiated in respect of any credit wrongly availed whether wholly or partly.

[16]. Now, turning to sub-Rule(3) of Rule 117, CGST Rules, 2017 in Chapter-XIV, CGST Rules, 2017 dealing with the transitional provisions, we find that sub-Rule (3) of Rule 117 has clearly stipulated that the amount of credit specified in the application in Form GST TRAN-01 shall be credited to the electronic credit ledger of the applicant maintained in Form GST PMT-02 on the common portal. Therefore, Rule 117(3) read conjointly with Rule 121, CGST Rules, 2017 makes it abundantly clear that the contention of the taxpayer that the demand for transitional credit under Section 140(3), CGST Act, cannot be raised under Section 73, CGST Act, 2017, is devoid of merit.

[17]. Therefore, the only question remains is as to whether the first appellate authority applied the appropriate method in allowing the transitional credit to the taxpayer to the tune of Rs.65,90,636/-. Admittedly, the first appellate authority arrived at the conclusion based on some randomly selected invoices whereas there is no dispute from any quarter that as many as 14,16,000 sales transactions generated 94,500 purchase invoices in the present case. There is, therefore, no doubt that in order to ascertain the veracity of the claim, the first appellate authority should have made a fair and reasonable verification of those invoices of the taxpayer and collated the same with the details of the returns, stocks of the relevant period, ledgers, trial balance and other related documents/financial documents filed by the taxpayer during the concerned financial year besides ensuring that the

conditions laid down under sub-section (3) of Section 140, CGST Act, 2017 were satisfied. The OIA does not indicate that the Appellate Authority followed such statutory method in allowing the claim of the taxpayer. Therefore, in our view, this is an appropriate case for remanding the matter back to the original adjudicating authority.

[18]. Similar issue has been raised by the revenue in Apl/16/KLK/2026 except the amount in dispute and period being different. In APL/16/KLK/2016 the disputed amount is Rs.36,88,297/- which is pertaining to F.Y.2018-2019. Similar arguments are placed on behalf of the parties.

[19]. It is also manifested from the order of the Adjudicating Authority that the Adjudicating Authority mechanically denied the ITC claim of the taxpayer without verifying the underlying documents, which is not permissible.

[20]. Resultantly, the adjudicating orders as well as both the impugned orders passed by the Appellate Authority stand dismissed. The cases are referred back to the adjudicating authority with the following directions for fresh adjudication:

> [i]. The adjudicating authority shall make a reasonable and fair examination of the invoices to be produced by the taxpayer and colllate the invoices to the periodical returns, stocks, and sales of the relevant period, ledger, trial balance and other related documents/financial documents pertaining to the concerned financial year and record a reasoned and speaking order in the light of our observation made in the preceding paragraphs. The original adjudicating authority shall provide fair opportunity to the taxpayer to produce the invoices and all other documents he wants to produce in support of his claim and make all endeavours to decide the matter, preferably within a period of 04 months.

Communicate the certified copy of the order to the parties including the adjudicating authority. Both appeals of the revenue are, thus, disposed off. We make no order as to costs. Order is pronounced in open Court in presence of the authorised representatives of the parties. The Registry is directed to upload the Final Order on GSTAT Portal immediately.

S.G. Chattopadhyay
Judicial Member

Anindya Mitra
Technical Member