GSTAT

State Bench Prayagraj

Division Bench Court No. I

APL/69/ALB/2026

M/S ANIL STEELS **.....Appellant**

Versus

JAI SINGH YADAV, DEPUTY COMMISSIONER SECTOR-5 STATE TAX PRAYAGRAJ, DEPUTY COMMISSIONER SECTOR-5 STATE TAX PRAYAGRAJ & ORS. **.....Respondent**

Quorum

Hon'ble Mahtab Ahmad, Member(Judicial)
Hon'ble Ashish Varma, Member (Technical)

Counsel for Appellant
AJAY KUMAR YADAV
AYUSH KUMAR MISHRA
MAMTA PANDEY

Counsel for Respondent
SMT. VIBHA MISHRA, DC/SR
SHRI SUNEEL KUMAR NIRMAL, AC/ASR

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. : ZA090411126000076H **Date of order :** 23/11/2026

1.	GSTIN/Temporary ID/UIN - 09ABQPJ1078E1ZI	
2.	Appeal Case Reference no. - APL/69/ALB/2026	Date - 19/06/2026
3.	Name of the appellant - M/S ANIL STEELS , anilsteels780@gmail.com , 9335187666	
4.	Name of the respondent - 1. Himanshu , himanshu.2381979@gov.in , 7235001296	

	2. JAI SINGH YADAV 3. COMMISSIONER STATE TAX	
5.	Order appealed against - AD0905241018460	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - ZD090425106002Y	Date - 16/04/2025
6.	Personal Hearing - 23/11/2026 03/11/2026	
7.	Status of Order under Appeal - Reject - Order under Appeal is annulled	
8.	Order in brief - The appeal is allowed.	
	Summary of Order	
9.	If demand order then whether demand quantified: No	

Place :PRAYAGRAJ
Date : 23.11.2026

Shri Pankaj Yadav
Designation : Stenographer/Legal Assistant
Jurisdiction :Prayagraj

www.taxcode.in

JUDGEMENT

Per: Ashish Varma, Member (Technical)

These two appeals under section 112 of the CGST/UPGST Act, 2017 are by M/s Anil Steels, a Prayagraj trader in iron and steel. They relate to FY 2018-19 (APL/69/ALB/2026) and FY 2019-20 (APL/73/ALB/2026), and challenge the orders of the Additional Commissioner (Appeals) dated 16.04.2025 and 24.03.2025, which confirmed under section 73 the demand of input tax credit, interest and penalty raised by the Deputy Commissioner, State Tax, Sector-5, Prayagraj. The question in both is common. With the consent of both sides the appeals were heard together on 03.11.2026 and are decided by this order.

2. The facts are simple and, for the purposes of this order, undisputed. The Appellant's inward supplies carried integrated tax (IGST) as well as central and State tax, and its GSTR-2A showed the credit accordingly. While filing GSTR-3B, however, the Appellant entered part of the IGST credit under the CGST and SGST columns. Compared head-wise with GSTR-2A, the CGST and SGST credit claimed for FY 2018-19 was more by ₹3,21,416 each (₹6,42,832 together), but the IGST credit claimed was less than GSTR-2A by ₹6,42,468.60. Across all heads the Appellant claimed ₹363.64 more than the department's own figures show as available. For FY 2019-20 the CGST and SGST excess was ₹1,81,596 each (₹3,63,192 together), against IGST credit left unclaimed of ₹3,63,193.22; across heads, the claim was lower by ninety paise. These residues are negligible against credit of over ₹2.15 crore and have not been made a ground of demand by any authority.

3. On these differences show cause notices under section 73 were issued on 16.12.2023 (FY 2018-19) and 30.05.2024 (FY 2019-20). The Appellant

explained that its accountant had mis-entered IGST credit in the CGST and SGST columns. The adjudicating authority confirmed the demand by orders of 29.04.2024 and 28.08.2024, and the first appellate authority upheld it so far as it concerns this credit. What survives before us is, for FY 2018-19, tax of ₹3,21,416 each under CGST and SGST with interest of ₹2,90,859 and penalty of ₹32,142 on each head, and, for FY 2019-20, tax of ₹1,81,596 each with interest of ₹1,60,570 and penalty of ₹18,159 on each head. No authority has said that the supplies were not received, that the invoices are not genuine, that the suppliers did not pay the tax, or that the credit is barred by section 17(5). No fraud, wilful misstatement or suppression is alleged; the proceedings are under section 73, not section 74.

4. For the Appellant it is submitted that the error is purely one of head and that the demand is revenue-neutral, as IGST credit is freely available against CGST and SGST under section 49(5) and the electronic credit ledger is a single pool. It relies on the Division Bench of the Kerala High Court in ***Rejimon Padickapparambil Alex v. Union of India*** **(W.A. No. 54 of 2024, decided on 26.11.2024)**, on ***Lucknow Test House v. Shashi Bhushan Singh*** **(APL/36/LCK/2026, GSTAT, Lucknow)** and on the order of the Supreme Court in ***CBIC v. Aberdare Technologies Private Limited*** **(SLP (C) Diary No. 6332 of 2025, order dated 21.03.2025; 2025 (4) TMI 101)**. For FY 2018-19 it further submits that the adjudicating authority uploaded a hearing notice on 09.04.2024 fixing the hearing for 10.04.2024, in breach of section 75(4), and relies on ***Videocon D2h Ltd. v. State of U.P.*** **(Writ Tax No. 243 of 2016) and on *Bambino Agro Industries Ltd. v. State of U.P.* (Writ Tax No. 2701 of 2025, 2025:AHC:93844-DB, decided on 30.05.2025)**.

5. The learned State Representative supports the orders below and reiterates the written record: that credit can be taken in GSTR-3B only in the head in which the tax has been paid, so that CGST and SGST credit beyond GSTR-2A is wrongly availed under section 16(2)(c); that the CGST and SGST accrue to different Governments, and the State loses where SGST credit is used without a matching receipt; and that interest and penalty follow the tax.

6. The points for determination are:

i. whether IGST credit, shown as such in GSTR-2A but entered under CGST and SGST in GSTR-3B, where the aggregate credit claimed does not exceed the aggregate credit available, is credit "wrongly availed or utilised" within section 73(1); and what follows for interest and penalty; and

ii. whether the order for FY 2018-19 was passed in breach of section 75(4).

Discussion and findings

7. **Point (i): Nature of the error.** Section 73(1) applies where tax has not been paid or short paid, or where input tax credit "has been wrongly availed or utilised". The words speak of credit that the person was not entitled to take, not of credit entered in the wrong column. Entitlement is governed by sections 16 and 49, and on that the record is clear. The Appellant's entitlement to the credit is accepted; the IGST was charged by its suppliers, appears in GSTR-2A and, as the Revenue does not say otherwise, has been paid to the Government, so section 16(2)(c) is satisfied. The only complaint is that the credit was entered under CGST and SGST rather than IGST.

8. The first appellate authority, in the reasoning that the Revenue adopts, said that credit is available only in the head in which tax has been deposited, because “transfer of funds from one head to another is possible only when cross-utilization of credit is made”. That reasoning does not carry the demand. Section 49(5) itself provides for cross-utilisation: integrated tax credit may be applied first against integrated tax and then, as to the balance, against central tax and State tax. The legislature has thus made integrated tax credit usable across all heads. The sub-section prescribes the order in which credit is applied against liability. It does not govern entitlement to the credit, and no part of section 73(1) makes a departure from that order a ground for treating credit as wrongly availed or utilised. The Revenue has not alleged that the Appellant’s integrated tax liability for either year was left unpaid, or that the demand rests on any breach of the order of utilisation. If there was such a departure, its effect would be only to shift payment between heads, more IGST being paid in cash and less CGST and SGST, without changing the aggregate tax paid. That is a matter between the two Governments, dealt with in paragraph 11, and not a liability of the Appellant. A person entitled to ₹X of IGST credit who enters ₹X under CGST and SGST has therefore not taken credit beyond his entitlement.

9. The Kerala High Court has taken the same view. In ***Rejimon Padickapparambil Alex v. Union of India*** **(W.A. No. 54 of 2024)** the Division Bench held that the electronic credit ledger is "a pool of funds", a wallet with compartments for IGST, CGST and SGST, so that "the entire wallet has to be taken into consideration, not just individual compartments". Following it, the learned Single Judge in ***Kalleppuram Metals*** **(W.P.(C) No. 41980 of 2024, 2024:KER:92922)** held, in a case of CGST and SGST availed instead of IGST:

"Since the GST system treats the electronic credit ledger as a unified source, there cannot be a wrongful availing or utilization of input tax credit in the instant case. There cannot also be any loss of revenue as well, arising from the utilization of CGST/SGST instead of IGST." A co-ordinate Bench of this Tribunal at Lucknow in ***Lucknow Test House*** **(APL/36/LCK/2026)**, on like facts, found that "the department has not established that the appellant actually availed ITC in excess of its aggregate eligible entitlement" and allowed the appeal. These decisions are not binding on us, but we are in respectful agreement with them; they rest on the text of sections 16 and 49 and not on any peculiarity of facts, and the Revenue has pointed to no contrary decision. The principle voiced by the Supreme Court in ***Aberdare Technologies*** **(order dated 21.03.2025)**, when it dismissed the special leave petition, is also in point: a bona fide clerical error should not deprive a taxpayer of the benefit of tax already paid, because "he has to make double payment".

9.1. As regards **interest**, we find that the interest under section 50(3) is payable only where credit has been wrongly availed *and* utilised. As no wrongful availment is made out, no interest is payable. The same conclusion follows from Circular No. 192/04/2023-GST, which, though framed for IGST credit wrongly availed, directs that the total balance in the electronic credit ledger across IGST, CGST and SGST taken together is what has to be considered. ***Rejimon*** applied the same reasoning to a case like the present.

9.2. **Penalty** under section 73(9) falls with the tax. It would in any event be unwarranted, since the Appellant's error was a bona fide clerical mistake which caused no loss to the exchequer taken as a whole. Penalty is not to be imposed

for a technical breach, in the absence of deliberate defiance of the law (***Hindustan Steel Ltd. v. State of Orissa***, **AIR 1970 SC 253**).

10. **Rectification.** The time for correcting returns under section 39(9) has run, and the Appellant has prayed, in the alternative, for leave to rectify them. We do not extend that time; nor do we hold that a taxpayer may choose the head under which he takes credit. The Appellant ought to have noticed and corrected its entries earlier, and we do not condone the lapse; but a lapse in correcting a head-wise entry is not wrongful availment of credit. The question we decide is the antecedent one: whether the credit, as entered, was wrongly availed or utilised. For the reasons given, it was not.

11. **The matter is not neutral between the Governments.** It is urged, as the first appellate authority also reasoned in ***Lucknow Test House***, that an SGST credit with no matching SGST receipt hurts the State, while the IGST that the Appellant did not claim stays with the Centre, unsettled. We accept that, in the immediate accounting, the two Governments are not equally placed. But the point does not carry the demand. The credit legitimately belongs to the taxpayer. Because the IGST credit was entered under the CGST and SGST columns instead of the IGST column, the exact same amount remained unclaimed in the Central Government's IGST account—leaving an unapportioned receipt with the Centre and an equal shortfall with the State from a single reporting entry. Adjusting that revenue between the Centre and the State is an internal matter for the two Governments to resolve through the statutory settlement mechanism—and, if necessary, the GST Council—rather than by recovering the tax again from the taxpayer. It is not a liability that the Appellant must discharge a second time, which Article 265 of the Constitution does not permit.

12. **Point (i) is therefore answered in favour of the Appellant for both years.**

13. **Point (ii): Hearing for FY 2018-19.** Section 75(4) requires that an opportunity of hearing be granted where an adverse decision is contemplated. The opportunity must be a real one, and not a formality. The record for FY 2018-19 shows that the show cause notice fixed a hearing for 15.01.2024; the Appellant had filed its reply on 02.01.2024; no representative appeared on that date; and nothing further was done until 09.04.2024, when the adjudicating authority uploaded on the portal a notice giving "one last opportunity" on 10.04.2024, the very next day. No one appeared, and the order was passed on 29.04.2024.

14. We hold that this did not satisfy section 75(4).

First, a notice uploaded on 09.04.2024 for a hearing on 10.04.2024 gave the Appellant less than twenty-four hours. A taxpayer cannot be expected to watch the portal round the clock, still less to engage a representative and assemble his papers overnight. Section 169(1)(d) permits service by making a notice available on the portal, and section 169(2) fixes the date of service. Neither says that any period, however short, amounts to a reasonable opportunity. The question under section 75(4) is not whether the notice is deemed served but whether the time given was reasonable, and it was not.

Secondly, the Allahabad High Court has dealt with such haste in ***Videocon D2h Ltd. v. State of U.P. (Writ Tax No. 243 of 2016, 2016:AHC:51382-DB, Division Bench***, decided on 16.03.2016). There the notice was generated at 5:37 p.m. on 9 February for appearance on 10 February.

The Division Bench held that the proceedings were "done in haste and in gross violation of the principles of natural justice", that the direction to file a reply by the next day "was not possible", and that "[m]ere issuance and service of notice is not sufficient". It relied on two earlier Division Bench decisions. In ***Aroma Chemicals v. Union of India (2014 (310) E.L.T. 427 (All.))***, seven days for a reply to a show cause notice was held insufficient. In ***Rameshwaram Paper Mills v. State of U.P. (VSTI 2010-B-991)***, only 24 hours for a reply was held to violate natural justice, the Court observing: "It is not expected from the petitioner to file his reply in less than 24 hours… Undue haste and speed… should be discouraged." If seven days was too short, one day cannot be reasonable.

Thirdly, the pressure of time is no answer. The Appellant had filed its reply on 02.01.2024 and the first hearing date, 15.01.2024, had passed. The officer then took no step for almost three months and gave a single day's notice on 09.04.2024. The haste of April was of the department's own making. Videocon itself noted that some urgency might exist if limitation were about to expire; but an officer who delays cannot invoke the deadline that his own delay has created. A reasonable date could have been fixed on 09.04.2024 itself.

Fourthly, the first appellate authority did hear the Appellant, but that does not restore the opportunity that section 75(4) required at the stage of adjudication. In Videocon the Division Bench declined to relegate the assessee to the statutory appeal, holding that such haste called for interference. We follow the same view.

We therefore hold that the order for FY 2018-19 was passed without a reasonable opportunity of hearing under section 75(4). **Point (ii) is answered in**

favour of the Appellant. As the demand fails on the merits, there is no occasion to direct fresh adjudication for FY 2018-19.

16. Other minor points and additional points, which do not affect the decision, are not taken up for consideration.

Conclusion

17. IGST credit to which the Appellant was entitled, and which is shown in its GSTR-2A, was entered under the CGST and SGST heads. In aggregate, in substance, the Appellant claimed no more than it was entitled to. That is an error of head-wise entry and not wrongful availment of credit under section 73(1). The Appellant's failure to correct the entry earlier does not alter that conclusion, and the demand of tax, interest and penalty cannot stand. The order for FY 2018-19 is in addition vitiated by want of a reasonable opportunity of hearing under section 75(4).

Order

18. Accordingly:

i. Appeal No. APL/69/ALB/2026 (FY 2018-19) and Appeal No. APL/73/ALB/2026 (FY 2019-20) are allowed.

ii. The orders of the first appellate authority dated 16.04.2025 and 24.03.2025, and the orders in original dated 29.04.2024 and 28.08.2024, are set aside to the extent of the demand of input tax credit, interest and penalty on the CGST and SGST heads. The Appellant shall not be called upon to reverse or pay the credit, and the department shall make the

consequential adjustments in its records and provide for any consequential relief in accordance with law.

iii. The amount deposited by the Appellant as pre-deposit in these proceedings shall be refunded within sixty days of receipt of a certified copy of this order, with interest as admissible under section 115.

Pronounced in open court on this 23rd day of November, 2026.

(Ashish Varma)
MEMBER (TECHNICAL)

(Mahtab Ahmad)
MEMBER (JUDICIAL)

Dated: 23.11.2026

www.taxcode.in