IN THE GOODS AND SERVICES TAX APPELLATE TRIBUNAL KOLKATA BENCH

COURT NO.1

Appeal No. APL/40/KLK/2026

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

…… Appellant

VERSUS

Director
M/s D.R.Steel Construction Co. Pvt. Ltd.,
FD-40, Salt Lake City, Sector-III,
Bidhan Nagar, WBNRP-700106

…… Respondent

In appearance :

For the appellant : Mr. Shiv Kumar Mukim, Asst, Commissioner, CGST
Mr. Tapas Kumar Mondal, Superintendent, CGST
For the respondent : Mr. Subham Tulsian, Chartered Accountant

CORAM :

Hon'ble Shri S.G. Chattopadhyay : Judicial Member
Hon'ble Shri Bijoy Kumar Kar : Technical Member

Final Order

Date of Hearing : 21.07.2026
Date of Order : 18.08.2026

<u>Per S.G. Chattopadhyay (JM)</u>:

[1]. We have heard Mr. Shiv Kumar Mukim, Assistant Commissioner, CGST & CX of Kolkata North Commissionerate appearing along with Mr. Tapas Kumar Mondal, Superintendent on behalf of the appellant. We have

also heard Mr. Subham Tulsian, Chartered Accountant who is representing the respondent before us.

[2]. The only question which arises for our consideration in this appeal is whether the respondent (hereinafter called the 'taxpayer') has defaulted in reversing the Excess Input Tax Credit (in short 'ITC') to the tune of Rs.53,95,795/- wrongly availed by him with the applicable interest and penalty pertaining to financial years 2018-19, 2019-20 & 2020-21.

[3]. The Authorised Representatives of the Revenue in their brief submission have contended that although the demand was initially for Rs.53,95,795/-, a sum of Rs.13,03,063/- was found already reversed by the appellant along with interest and penalty for the year 2017-18 and the same having been appropriated by the revenue, the reduced demand now stands at Rs.38,84,673/- pertaining to 2018-19 and 2020-21. With regard to the contention of the taxpayer that the whole amount of excess ITC availed by him has been voluntarily reversed before issuance of the demand order, the submission of the Revenue is that the taxpayer did not adduce any proof to map the reversal to the demand.

[4]. The learned counsel of the taxpayer, on the other hand, has claimed that there is no merit in the contention of the revenue. The taxpayer had voluntarily reversed the entire amount of ITC availed by him along with applicable interest and penalty based on self-assessment before the demand was issued but the revenue has refused to appropriate the amount in dispute on flimsy grounds. It is contended on behalf of the

taxpayer that after the demand was made, the taxpayer submitted reconciliation statement with all material information supported by invoice DRC-04,DRC-05 etc. to map the reversal to the demand in question. The same was also discussed by the first appellate authority and the contention of the taxpayer was accepted by the first appellate authority. Thereafter, pursuant to the order of the first appellate authority the taxpayer also deposited Rs.2,08,058.90 as residuary of the excess ITC without challenge. According to learned counsel of the taxpayer, the present appeal under Section 112 of the CGST Act, 2017 is, therefore, devoid of merit.

[5]. Now, we may have a look into the factual context of the case and evaluate the evidence adduced by the parties in order to examine the merit of the contentions of the parties. The facts of the case may be summarised as follows :

[6]. The taxpayer is engaged in works contract services under the name and style of M/s D.R. Steel Construction Company Pvt. Ltd. He is registered under the CGST Act, 2017 with GSTIN No.19AAACD9832GIZ. To carry out his business in Kolkata, the taxpayer has set up his office at the Second Floor, 11 Gems Hicky Sarani, Kolkata, West Bengal under the Jurisdiction of this Tribunal.

[7]. The revenue served a show cause-cum-demand notice vide No.85/AE/Kol-North/CGST&CX/2023-24, dated 29.12.2023 on the taxpayer in terms of Section 73(1) of the CGST Act, 2017 asking him either

to pay the excess ITC availed by him within 30 days of receiving the said notice or to show cause as to why the sum of Rs.53,95,795/- as ineligible ITC availed by him shall not be recovered from him in terms of the law applicable in this regard along with applicable interest and penalty.

[8]. The said show cause notice contains 02 tables viz. Table 1 and Table 2 which demonstrates the computation of excess ITC availed by the taxpayer. The said tables are extracted hereinbelow :-

TABLE 1

FY	ITC claimed in GSTR-3B during the month [as per table 4A(4)=4A(5)=4B(1)=4B(2)]			ITC auto-drafted in GSTR-2A/2B during the month [as peer PART-A, PART-B] (Excluding RCM suppliers)			Shortfall(-)/Excess(+) in ITC (GSTR-3B-GSTR-2A/2B)		
	IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST
2018-19	15479	14462874	14462874	14287	14312830	14312830	1192	150044	150044
2019-20	698983	16099385	16099385	694063	13644152	13644152	4921	2455233	2455233
2020-21	65556	10360109	10360109	67867	10270544	10270544	2311	89564	89564
2021-22	0	3623697	3623697	297	4446653	4446653	-297	-822956	-822956

TABLE 2

FY	Excess ITC availed			
	IGST	CGST	SGST/UTGST	Total
2018-19	1192	150044	150044	301280
2019-20	4921	2544233	2544233	4915387
2020-21	-	89564	89564	179128
	6113	2694841	2694841	**5395795**

[9]. Based on such computation, the revenue issued the SCN and asked the tax payer either to pay the sum of Rs.53,95,795/- as in Table 2 within 30 days of receiving notice to avail the benefit under Section 73(8), CGST Act or to show cause as to why the excess ITC availed by him along with applicable interest and penalty shall not be recovered from him. For the

sake of clarity it would be appropriate to reproduce paragraph 3 to 8 of the show cause notice dated 29.12.2023 which reads as under :-

> *3. Now, therefore, M/s D.R Steel Construction Co. Pvt. Ltd. (GSTIN-19AAACD9832G1Z1), having registered Principal place of business at 2ND FLOOR, 11 JAMES HICKEY SARANI, Kolkata, West Bengal, 700069 are hereby called upon to show cause under Section 73 of the Central Goods and Services Tax Act, 2017 read with Rule 142 of Central Goods and Services Tax Rules, 2017 to the Assistant Commissioner, CGST and CX, BBD Bag-I Division, Kolkata North Commissionerate having office at 180 Shantipally, Rajdanga Main Road, Kolkata-700107, within 30 (thirty) days of receipt of this notice, as to why:*
>
> *i. Ineligible Input Tax Credit of Rs.53,95,795/- (Fifty Three Lakh Ninety Five Thousand only) [IGST R5,6,113/- + CGST Rs.26,94,841/- + SGST Rs.26,94,841/-) availed and utilised by them during the financial years 2018-19 to 2020-21 should not be disallowed for violation of Section 16 of the CGST Act, 2017 read with Rule 36 of the Central Goods and Service Tax Rules, 2017 and the corresponding provisions of the WBGST & IGST Act, 2017;*
>
> *ii. Ineligible Input Tax Credit of Rs.53,95,795/- (Fifty Three Lakh Ninety Five Thousand only) [IGST Rs,6,113/- + CGST Rs.26,94,841/- + SGST Rs.26,94,841/-] availed and utilised by them during the financial years 2018-19 to 2020-21 should not be demanded and recovered from them in terms of Section 73 of the CGST Act, 2017 read with the corresponding provisions of the WBGST & IGST Act, 2017;*
>
> *iii. Interest at the applicable rate, on the above amount of Input Tax Credit (irregularly availed and utilized by them) should not be paid by the Noticce in terms of Section 50 of the Act read with the corresponding provisions of the WBGST & IGSTAct, 2017;*
>
> *iv. Penalty at the applicable rate on the above amount of Input Tax Credit (irregularly availed and utilized by them) should not be paid by the Noticee in terms of Section 73 of the Act;read with the corresponding provisions of the WBGST & IGSTAct, 2017;*
>
> *4. The said Noticee is also required to produce at the time of showing cause all the evidences upon which he intends to rely in support of his defense. He is also required to indicate whether he would like to be heard in person before the case is adjudicated.*

5. The said Noticee is further directed to note that as per Section 73(8) of CGST ACT, 2017 "Where any person chargeable with tax under sub-section (1) or sub- section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded"

6. If no cause is shown against the action proposed to be taken within the stipulated period as mentioned above and/or the noticee fails to appear before the adjudicating authority when the case is posted for hearing, the case shall be decided ex-parte on the basis of evidence(s) available with the Department.

J1 This notice is issued without prejudice to any action that may be initiated against the noticee under the CGST Act, 2017/ the Rules formed there under or any other law for the time being in force.

8. The said Noticee is at liberty to examine or to take extracts of the original relied upon documents on making prior appointment with the Superintendent of Central Tax, Anti-Evasion, Kolkata North Commissionerate, GST Bhawan, 180 Rajdanga Main Road, Kolkata-700107, on any working day during office hours.

[10]. The Revenue also served an electronic summary of the SCN in Form GST DRC-01 in terms of Rule 142(1) of CGST Rules, 2017. In response, the taxpayer had submitted statement of reconciliation separately for each of the financial years from 2018-2021 along with relevant documents in proof of payment of excess ITC availed by him and requested the revenue to close the proceedings against him. At this stage, it would be appropriate to refer to the reply of the taxpayer which is as under :-

"Sub: Reply against Show Cause-Cum-Demand notice received u/s-73 of the CGST Act, 2017 in Form GST DRC-01 vide online Reference No. DRC-01 305293 Dated-23.01. 2024.

Dear Sir

Please note that we have received the above show cause notice in GST DRC-01 to be replied by 1/03/2024.

A) 'In reply to the above Shown Cause notice for the F.Y 2018-19 following documents are enclosed for your kind consideration.

1. Statement of reconciliation of ITC as per GSTR-3B vis-à-vis GSTR-ZA

2. GSTR-9 & GSTR-9C

3. DRC-03

4. GSTR-2A

Please find the same in order and close the case with an intimation to us."

B) 'In reply to the above Shown Cause notice for the F.Y 2019-20 following documents are enclosed for your kind consideration.

1. Statement of reconciliation of ITC as per GSTR-38 vis-à-vis GSTR-2A

2. GSTR-9 & GSTR-9C

3. DRC-03

4. GSTR-2A

Please find the same in order and close the case with an intimation to us.

C) 'In reply to the above Shown Cause notice for the F.Y 2020-21 following documents are enclosed for your kind consideration.

1. Statement of reconciliation of ITC as per GSTR-3B vis-à-vis GSTR-2A

2. GSTR-9 & GSTR-9C

3. GSTR-2A

Please find the same in order and close the case with an intimation to us."

[11]. The taxpayer was also given an opportunity of personal hearing. He appeared before the revenue for personal hearing on 03.12.2024 and raised his disagreement with the demand. In the course of personal hearing the taxpayer also contended that in view of the statement of reconciliation submitted by him, the demand order was liable to be set aside.

[12]. The matter was thereafter taken up for adjudication and after hearing the taxpayer, the adjudicating authority vide Order in Original (in short 'OIO') No.61/BBD BAG-I/AC/CGST&CX/2024-25 dated 18.04.2024 reiterated the correctness of the demand and passed the following order:

> *7. Therefore, on the basis of the above discussion and findings, the following order is passed.*
>
> *Order*
>
> *(i) I disallow Input Tax Credit amounting to **Rs.53,95,795/-** [Rupees fifty three lakh ninety five thousand seven hundred ninety five only (IGST- Rs.6,113/- + CGST-Rs.26,94,841/- + SGST- Rs. 26,94,841/-)], availed and utilized by the noticee during the financial year from 2018-19 to 2020-21, for violation of Section 16(2)(c) of the CGST Act read with Rule 36 of the CGST Rules and order for recovery of the same amount under Section 73(9) of the CGST Act;*
>
> *(ii) I appropriate the amount of ITC of **Rs.13,03,063/-** (Rupees thirteen lakh three thousand sixty three only (IGST-Rs.5,027/- CGST- Rs.6,49,018/ SGST-Rs.6,49,018/-)] already paid by them out of the amount of Rs.53,95,795/- (IGST-Rs.6,113/- + CGST- Rs.26,94,841/- + SGST-Rs.26,94,841/-), as discussed in Para 5.4 above;*
>
> *(iii) I order for payment of applicable interest at an appropriate rate under Section 50(3) of the CGST Act on the amount as confirmed in Sl. No. (i) above by the noticee and order for recovery of the same from him under Section 73(9) of the CGST Act;*
>
> *(iv) I also appropriate the amount of interest of **Rs.27,405/-** [Rupees twenty seven thousand four hundred five only*

(IGST- Rs.1,309/- CGST Rs.13,048/ SGST-Rs. 13,048/-)) already paid by them, as discussed in Para 5.4 above;

(v) I impose a penalty amounting to ***Rs. 4,29,164/-*** *[Rupees four lakh twenty nine thousand one hundred sixty four only (IGST-Rs.20,000/- CGST- Rs.2,04,582/- + SGST-Rs.2,04,582/-)] upon the noticee in terms of Section 73(9) of the CGST Act for contravention of the provisions as mentioned above.*

8. 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.

[13]. The aggrieved taxpayer challenged the OIO dated 18.04.2024 before the first appellate authority which was registered as Appeal No.543/2024.

[14]. The taxpayer had taken resort to the following grounds before the first appellate authority :

i) The revenue did not conduct any enquiry and mechanically issued the notice on the ground of mismatch between GSTR-2A and GSTR-3B

ii) The adjudicating authority did not refer to any document on the basis of which the conclusion was raised against the taxpayer.

iii) The DRC-03 dated 22.06.2020 submitted by the taxpayer was not considered by the adjudicating authority.

[15]. The revenue contested the appeal mainly on the ground that the taxpayer could not adduce any proof to map the excess ITC reversed by him to the demand made by the Revenue.

[16]. The first appellate authority by rendering a detailed order on 06.05.2025 partly allowed the appeal in favour of the taxpayer. The first appellate authority examined the data furnished by the taxpayer for each of the three financial years of 2018-19, 2019-20 & 2020-21 including the

statement of reconciliation and various invoices submitted by the taxpayer and came to the conclusion that excess ITC availed by the taxpayer had already been reversed by the taxpayer. After computation, the first appellate authority found that the remaining dues was Rs.2,08,058/- only. The first appellate authority, therefore, asked the taxpayer to pay a sum of Rs.2,08,058.90 along with applicable interest and penalty. For the sake of clarity and convenience, we are reproducing paragraphs 5 to 5.10 of the Order-in-Appeal which reads as under :

"5. Discussion and Findings:

5.1. I have carefully gone through the Show cause cum demand notice, the Order-in-Original, submission of the appellant in the grounds of appeal and other relevant documents submitted by the said appellant.

5.2. I like to tabulate the entire ITC issues as below for the FY 2018-19, 2019-20 and 2020-21:

FY 2018-19	ITC available in Table 8A of GSTR-9	ITC availed from the previous year –(Add)	ITC kept for the next year Table 8C (Less)	ITC available but not claimed Table 8F (Less)	Net ITC available for the current year	ITC availed in GSTR-3B	Diff.
CGST	14289360	10078	1144350	217974	12937114	14462874	1525
SGST	14289360	10078	1144350	217974	12937114	14462874	1525760
IGST	14287	0	0	0	14287	15479	1192

The taxpayer submitted a DRC-03 under debit entry No. DC1906200082481 dated 22/6/20 from cash ledger wherein I find that they mentioned the reversal of Rs.13,89,473/- each under CGST & SGST in cash against ITC availed for FY 2018-19.

5.3. For the residual excess ITC of Rs.136,287/- (each under CGST & SGST] and Rs.1192/- [IGST] they submitted that, ITC to the tune of Rs.69,982/- (each under CGST & SGST] was reflected in GSTR-2A of 2018-19 and they availed the said ITC in the FY 2018-19.

5.4. The appellant submitted the statement of invoices issued by M/s Baba Bholanath Associates and M/s B. M. & Co. The invoices issued *by M/s Baba Bholanath, having ITC of Rs.34,612.77 (each under CGST & SGST), were not reflected in Table 8A of GSTR-9 for the FY 2018-19 oг 2019-20 or 2020-21, but duly reflected in GSTR-2A of 2018-19 for March-19. I find the GSTR-1 return was filed by the supplier on 31/12/2020 which was beyond the legal time limit of filing GSTR-3B for enabling the recipient to avail ITC with due reflection in table -8A of GSTR-9.*

5.5. The invoices pertained to M/s B.M & Co., having ITC amount of Rs.35,370/-were reflected in GSTR-2A for the FY 2018-19 against GSTR-1 of March-19 filed by the supplier on 06/01/20. The same were not available in the Table -8A of GSTR-9 for the FY 2018-19 or 2019-20. They have submitted relevant copy of GSTR-2A for the FY 2018-19, 2019-20 and 2020-21 for reference. I observed, they have duly availed the ITC in the relevant financial year and the returns were furnished after the due date for that respective period.

5.6. For the remaining amount of ITC of Rs.66,305/- [each under CGST & SGST] and Rs.1192/- [IGST] pertaining to mis-match of ITC availed, they could not submit any certificate prescribed under Circular No. 183/15/2022 dated 27/12/2022 from the proper person.

5.7. I find in the FY 2019-20, the appellant availed excess ITC of <u>Rs.699,551/-each under CGST & SGST</u> and <u>Rs.4381/- under IGST.</u> I find they have reversed <u>Rs.598,500/- each under CGST & SGST</u> vide credit ledger debit entry No. DI1906200124282 dated 22/6/2020 from credit ledger through DRC-03 dated 22/6/2020. The representation of ITC availment and available ITC along with difference thereof is reproduced in tabular form below:

FY 2019-20	ITC available in Table 8A of GSTR-9	ITC availed from the previous year –(Add)	ITC kept for the next year Table 8C (Less)	ITC available but not claimed Table 8F (Less)	Net ITC available for the current year	ITC availed in GSTR-3B	Diff.
CGST	14344647	1144350	0	88264	15400733	16100284	699,551
SGST	14344647	1144350	0	88264	15400733	16100284	699,551
IGST	694062	0	0	0	694062	698983	4381

5.8. IN this Financial Year of 2019-20, they had similar issues in respect of M/s Baba Bholanath Associates involving ITC of Rs.66,112.28/- each under CGST & SGST. I find the GSTR-2A reflected the invoices and the appellant taxpayer duly availed the ITC within due time. However, on further verification, I observed that, the supplier filed GSTR-3B after prescribed time of filing.

5.9. In the year 2020-21, I did not find any excess availment of ITC. The figures are given under in tabular form:

FY 2020-21	ITC available in Table 8A of GSTR-9	ITC availed from the previous year –(Add)	ITC kept for the next year Table 8C (Less)	ITC available but not claimed Table 8F (Less)	Net ITC available for the current year	ITC availed in GSTR-3B	Diff.
CGST	10383503	0	0	0	10383503	10360108	0
SGST	10383503	0	0	0	10383503	10360108	0
IGST	65738	0	0	0	65738	65556	0

5.10. The summarisation of demands and excess availment of ITC is tabulated below in a year-wise fashion:

Year	Excess ITC availed			
	IGST	CGST	SGST	Total
2018-19	1192	66304.23	66304.23	133,800.46
2019-20	4381	34938.72	34938.72	74258.44
2020-21	0	0	0	0
	5573	101243.95	101242.95	**208058.90**

In view of my discussions hereinbefore I proceed to pass the following order in terms of Section 107 of the CGST Act 2017.

ORDER

I allow the Appeal and modify the order as per Para 5.10 above and order the appellant to pay the GST of Rs.208,058.90 under Section 73 of the CGST/SGST Act, 2017 read with IGST Act, 2017 along with interest under Section 50 and penalty under Section 73 of the CGST/SGST Act, 2017 read with IGST Act, 2017."

[17]. The revenue has challenged the said order-in-appeal (in short 'the impugned order') by filing the present appeal under sub-section (3) of Section.112 of the CGST Act. The appeal rests mainly on the following grounds :-

i) By submitting DRC 03 with Debit Entry No.DC1906200082481 dated 22.06.2020 the taxpayer has claimed to have reversed the excess ITC of Rs.13,89,473/- each under CGST and SGST for the year 2018-19. But there is no proof that the same has been paid by the taxpayer to discharge his present liability because the taxpayer in column 8 of DRC-03 has recorded no reason.

ii) Similarly with regard to reversal of Rs.5,98,500/- as excess ITC under CGST and Rs.5,98,500/- as excess ITC under SGST under debit entry No.D11906200124282 dated 22.06.2020 by the taxpayer from his credit ledger, the first appellate authority has wrongly held it as reversal of excess ITC by the taxpayer for the year 2019-2020 without proper verification, particularly when the taxpayer has not recorded any reason in column No.08 of DRC 03.

iii) The first appellate authority did not pay any heed to the non-payment of interest and penalty by the taxpayer.

Under the premises aforesaid, the Revenue has urged this Tribunal to dismiss the impugned order of the first appellate authority.

[18]. The contentions of the taxpayer projected through his cross-objections are mainly as follows :

i) The first appellate authority after proper appreciation of the facts of the case of the taxpayer and evaluation of the documents viz.

Form GST DRC-03, the invoices, statement of reconciliation and various returns submitted by the taxpayer rightly came to the conclusion that the taxpayer discharged his liability by reversing excess ITC availed by him. There is, therefore, no merit in the instant appeal.

ii) Excess ITC availed by the taxpayer has already been reversed by the taxpayer and the Revenue has also acknowledged the receipt of the same in Form GST DRC-04 and, therefore, no appeal lies against the taxpayer.

F I N D I N G S :

[19]. As we have gathered from the facts of the case, submissions of the parties and materials produced by them, the genesis of the case is the show cause-cum-demand notice dated 29.12.2023 issued to the taxpayer by the Revenue under Section 73(1) of the CGST Act, 2017. In the very first paragraph of the said show cause notice, the contention of the Revenue is that from a comparison between the self assessed return submitted by the tax payer in GSTR 3B and the information available in auto generated GSTR 2A, the Revenue came to notice that the taxpayer availed excess ITC to the tune of Rs.53,95,795/- during 03 financial years from 2018-2021.

[20]. In paragraph 2 of the said notice, the revenue in Table 1 has shown year-wise comparison between GSTR 3B and GSTR 2A and in Table 2 the actual amount of excess ITC availed by the taxpayer under IGST, CGST and SGST has been highlighted against the respective financial years.

[21]. In paragraph 03 of the SCN, the Revenue has asked the taxpayer to reverse excess ITC so computed in Table 1 and Table 2 with interest and penalty within 30 days of receiving the show cause notice or to show cause as to why the said amount along with interest and penalty shall not be recovered from him.

[22]. Now, turning to the OIO dated 18.04.2024, we have found that the statement of reconciliation of ITC of the taxpayer has been incorporated in paragraph 03 of the OIO. In the said statement of reconciliation the taxpayer has claimed that he carried forward his ITC from previous years. While discussing the statement of reconciliation, the adjudicating authority at page 7 of the OIO has noted that the taxpayer could not establish that he carried forward the ITC within the time specified under Section 16(4) of the CGST Act. The said finding of the adjudicating authority cannot be accepted by us in view of the sub-section (5) of Section 16 of the CGST Act, which reads as under :-

> ***Section 16. Eligibility and conditions for taking input tax credit.-***
> *(1) xxxxxxxx*

(2) xxxxxxxxxx

(3) xxxxxxxxxx

(4) xxxxxxxxxxx

[(5) Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in any return under section 39 which is filed up to the thirtieth day of November, 2021.

[23]. This apart, the logic of the adjudicating authority in para (ii) at page 7 of the OIO with regard to any confirmatory remarks in column 8 of Form GST DRC-03 is not also tenable because column 8 in DRC-03 is not a mandatory field for the taxpayer. Column 8 of DRC-03 reads "reasons, if any", meaning thereby the taxpayer is not required to fill in the column mandatorily unless he has reason to record under this column.

[24]. We have gone through the annexures of the taxpayer available on the portal and found that the contention of the Revenue is not acceptable because DRC-03 dated 22.06.2020 annexed by the taxpayer to his cross objection demonstrates that a sum of Rs.5,98,500/- was debited from the credit ledger of the taxpayer under CGST vide debit entry No.D11906200124282 dated 22.06.2020 and an equal sum was also debited from the credit ledger of the taxpayer under SGST vide same debit entry dated 22.06.2020. Similarly, a sum of Rs.13,89,473/- was reversed by the taxpayer by debiting the same from his electronic cash ledger vide debit entry No.DC1906200082481. An equal sum stood debited from his electronic cash ledger under SGST by same debit entry dated 22.06.2020

which confirms that the amount in dispute was credited to the coffer of the revenue.

[25]. It would appear from page 9-10 of the OIO that the adjudicating authority categorically apportioned reversal of ITC of the sum of Rs.13,03,063/- along with interest of Rs.27,405/- and penalty of Rs.4,29,164/-. The order of the adjudicating authority in this regard reads as under :-

> *7. Therefore, on the basis of the above discussion and findings, the following order is passed.*
>
> *Order*
>
> *(i) I disallow Input Tax Credit amounting to **Rs.53,95,795/-** [Rupees fifty three lakh ninety five thousand seven hundred ninety five only (IGST- Rs.6,113/- + CGST-Rs.26,94,841/- + SGST- Rs. 26,94,841/-)], availed and utilized by the noticee during the financial year from 2018-19 to 2020-21, for violation of Section 16(2)(c) of the CGST Act read with Rule 36 of the CGST Rules and order for recovery of the same amount under Section 73(9) of the CGST Act;*
>
> *(ii) I appropriate the amount of ITC of **Rs.13,03,063/-** (Rupees thirteen lakh three thousand sixty three only (IGST- Rs.5,027/- CGST- Rs.6,49,018/ SGST-Rs.6,49,018/-)] already paid by them out of the amount of Rs.53,95,795/- (IGST-Rs.6,113/- + CGST- Rs.26,94,841/- + SGST- Rs.26,94,841/-), as discussed in Para 5.4 above;*
>
> *(iii) I order for payment of applicable interest at an appropriate rate under Section 50(3) of the CGST Act on the amount as confirmed in Sl. No. (i) above by the noticee and order for recovery of the same from him under Section 73(9) of the CGST Act;*
>
> *(iv) I also appropriate the amount of interest of **Rs.27,405/-** [Rupees twenty seven thousand four hundred five only (IGST- Rs.1,309/- CGST Rs.13,048/ SGST-Rs. 13,048/-)) already paid by them, as discussed in Para 5.4 above;*
>
> *(v) I impose a penalty amounting to **Rs. 4,29,164/-** [Rupees four lakh twenty nine thousand one hundred sixty four only (IGST-*

> *Rs.20,000/- CGST- Rs.2,04,582/- + SGST-Rs.2,04,582/-)] upon the noticee in terms of Section 73(9) of the CGST Act for contravention of the provisions as mentioned above.*
>
> *8. 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.*

[26]. By the order impugned, the first appellate authority also discussed the statement of reconciliation in para 5 of the order after tabulation of the entire ITC issue based on the documents submitted by the taxpayer and passed the following order :

ORDER

> *I allow the Appeal and modify the order as per Para 5.10 above and order the appellant to pay the GST of Rs.208,058.90 under Section 73 of the CGST/SGST Act, 2017 read with IGST Act, 2017 along with interest under Section 50 and penalty under Section 73 of the CGST/SGST Act, 2017 read with IGST Act, 2017."*

[27]. As per the SCN/Demand Order dated 29.12.2023 the Revenue demanded reversal of excess ITC availed by the taxpayer to the tune of Rs.53,95,795/- during the financial years 2018-19, 2019-20 & 2020-21. As discussed, the adjudicating authority in the OIO reiterated the same demand. In the appeal under Section 109 of CGST Act, 2017, the first appellate authority came to the conclusion that for the year 2018-19, the taxpayer credited Rs.13,89,473/- each under CGST and SGST by way of debiting the same from his cash ledger vide debit entry No.DC1906200082481 dated 22.06.2020. Similarly, for the financial year 2019-20, the taxpayer reversed ITC @ Rs.5,98,500/- each under CGST and SGST by way of debiting the same from his credit ledger vide debit

entry No.D11906200124282 dated 22.06.2020. As discussed, the Revenue originally demanded Rs.53,95,795/- from the taxpayer towards discharge of reversal of excess ITC availed by him. But in the memo of appeal they have categorically stated that the demand now stands at Rs.38,84,673/- because a sum of Rs.13,03,063/- already paid by the taxpayer along with interest and penalty has been appropriated by the revenue. Although admittedly, the disputed amount has also been credited to the revenue's coffer, they have challenged the impugned order mainly on the ground that the taxpayer could not establish that he paid the said sum of money towards the discharge of his ITC reversal liability. Another point which has been raised by the appellant before us is that the appellate authority did not consider the liability of the taxpayer with regard to the payment of interest and penalty.

[28]. Insofar as the question of reversal of ITC by the taxpayer is concerned, we find no reason to disagree with the appellate authority that the taxpayer has reversed the excess ITC availed by him by paying Rs.13,89,473/- each under CGST and SGST by debiting the same from his electronic cash ledger vide debit entry No.DC1906200082481 dated 22.06.2020. Similarly, he has also paid Rs.5,98,500/- each under CGST and SGST by debiting the amount from his credit ledger vide debit entry No.D11906200124282 dated 22.06.2020. It covers the entire disputed amount. The logic of the revenue that there is no proof to the effect that the taxpayer paid the money towards discharging his ITC reversal liability

does not gain ground because the same has been acknowledged by the Revenue by issuing DRC-04. The contention of the revenue with regard to the absence of ARN Number in DRC-03 is devoid of merit because the appellate authority scrutinized the reconciliation statement (Annexure-III before us) and found it correct.

[29]. We have however found merit in the contention of the appellant that the appellate authority did not consider the liability of the taxpayer with regard to the payment of interest and penalty on the disputed amount in terms of law laid down in this regard. In this respect, we are taken to Circular No.238/32/2024-GST dated 15.10.2024 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs on the subject of Clarification of Doubts relating to Section 128A of the CGST Act, 2017. Section 128A of the CGST Act, 2017 was inserted in CGST Act, 2017 by way of amendment with effect from 01.11.2024 to provide for waiver of interest or penalty or both relating to demands under Section 73 of the CGST Act, 2017 pertaining to the period from 1st July, 2017 to 31st March, 2020, subject to certain conditions. Obviously, in this case, the demand is made under Section 73 of the CGST Act, 2017 and the period for which the demand is made is covered under Section 128A of the CGST Act, 2017. Therefore, in our view, the taxpayer is entitled to the relief provided

under Section 128A of the CGST Act, 2017 subject to compliance of the procedure laid down therein.

[30] As we have already discussed, the taxpayer has voluntarily reversed the excess ITC, wrongfully availed by him before the demand order was issued. Though the Revenue has taken the plea that the taxpayer could not map the said reversal made by him to the demand in dispute, the revenue is silent as to whether there is any other demand attributable to the taxpayer.

[31] Consequently, we find it appropriate to remand back the matter to the first appellate authority in terms of Section 113(1) of the CGST Act, 2017 with a direction to the appellate authority to compute the interest and penalty, if any, attributable to the taxpayer and for such computation the taxpayer shall be given an opportunity of hearing. During such computation, instructions contained in Circular No.192/04/2023-GST dated 17.07.2023 shall be kept in by mind. If after such fresh computation, any liability of interest and penalty is attributed to him, the taxpayer shall be at liberty to file appropriate application under Section 128A of the CGST Act, 2017 seeking waiver of such interest and penalty. If such application for waiver of interest and penalty is received from the taxpayer, the appropriate authority of the Revenue will consider such application in terms of Section 128A of the CGST Act, 2017 and the instructions contained in the said Circular dated 15.10.2024. The whole exercise must

be completed within a period of 03 months from the date of communication of this order.

[32]. With the direction aforesaid to the Revenue, the present appeal of the Revenue is decided and disposed off.

[33]. Order pronounced in open Court in presence of the authorised representatives of the parties.

[34]. The Registry is directed to upload the Final Order on GSTAT Portal immediately and also provide certified copies to the parties for compliance.

S.G.Chattopadhyay
(Judicial Member)

Bijoy Kumar Kar
(Technical Member)