GOODS AND SERVICES TAX APPELLATE TRIBUNAL

BENGALURU BENCH

Division Bench: Court No. III

PRABHAKARAN P M, Member (Judicial), RAVI JESURAJ, Member (Technical)

APPEAL NO: APL/8/BUR/2026

RODMAN TECHNOLOGIES PVT LTD ....Appellant

Versus

COMMISSIONER OF KARNATAKA STATE GST, BENGALURU ....Respondent

....

FINAL ORDER NO: 01/GSTAT BLR/DB 3/2026 Dated 25th August 2026

....

Represented by: Adv Vinayak B D, Counsel for Appellant

Dr Ramya Dy Commissioner, DR for the Respondent

Per: Prabhakaran P M, Member (Judicial)

1.0 The present appeal is preferred under sub-section (1) of Section 112 of the Karnataka State Goods and Services Act, 2017 (hereinafter referred to as the 'KGST Act') /Central Goods & Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act') against the Order in Appeal No: ZD290126117051U dated 20/01/2026 passed by the Joint Commissioner of Commercial Taxes (Appeals-IV) Bengaluru.

Questions of Law involved:

2.1 Whether, on the facts and circumstances of the case, the Appellant is entitled to the benefit of the waiver of interest and penalty contemplated under Section 128A of the Central Goods and Services Act (CGST Act)/Karnataka State Goods and Services Act (KGST Act) in respect of the demand arising from the excess Input Tax Credit availed in FORM GSTR-3B for the month of December 2020, on the contention that the said ITC related to transactions/debit notes pertaining to the financial year 2018-19?

Brief Facts of the case:

3.1 The Appellant was engaged in the business of trading in garments manufacturing with GSTIN: 29AAACR4984R1ZD under the provision of the KGST Act, 2017 and is deregistered effective from 31.03.2021.

3.2 Based on the scrutiny of the Returns for the year 2020-21, the Appellant was served with a notice u/s 61 of KGST Act, 2017/CGST Act, 2017 in Form GST ASMT-10 dated: 08.02.2024 bringing out an excess availment of Input Tax Credit of IGST of Rs 68,573, CGST of Rs 2,46,747 and SGST of Rs 2,46,747 as per the Form GSTR 3B filed for the period December 2020 pertaining to the year 2020-21as against the ITC available as per Form GSTR 2A for the relevant period. The ASMT-10 followed by an intimation in Form GST DRC-01A on 02.07.2024.

3.3 Thereafter a Show Cause Notice in Form DRC-01 vide no. ACCT/LGSTO-16/2A Vs 3B/M2-20-21/2024-25 dated 15.11.2024 was issued under Section 73 of CGST and KGST Acts, 2017, proposing to demand and recover the excess ITC of IGST of Rs 68,573, CGST of Rs 2,46,747 and SGST of Rs 2,46,747 along with Interest of Rs 3,23,753 under the provisions of Section 50 and also Penalty of Rs 69,350. The Notice was stated to be uploaded on 25.11.2024.

3.4 The disputed excess availment of ITC totalling Rs 5,62,067/- was paid by the Appellant vide Form DRC 03 on 09/01/2025. No interest on the disputed amount or penalty as proposed was paid.

3.5 Upon hearing the Appellant and considering the payment made by them towards excess ITC an order in Form DRC-07 issued U/s 73 (9) of the Act by the Adjudicating Authority vide Order no. ZD290225118412N dated 28.02.2025 confirming the interest and penalty as proposed in the Notice on account of Excess availment of ITC in GSTR 3B as compared to GSTR-2A for the year 2020-21.

3.6 Being aggrieved by the Order passed by the learned Adjudicating Authority, an appeal was preferred by the Appellant before the First Appellate Authority seeking waiver of the interest levied and the penalty imposed in the Order in Original (OIO) on the ground that though the excess availment of ITC was reported for the year 2020-21, the same was pertaining to the period 2018-19 and therefore eligible to avail the benefit of waiver of interest and penalty under Section 128 A of the Act.

3.7 The First Appellate Authority after hearing the Appellant and after the due process of law, has dismissed the Appeal holding that:

The appellate jurisdiction under Section 107 of the CGST/KGST Acts, 2017 is circumscribed by the scope of the order appealed against. The appellate authority is empowered to examine the legality, propriety, and correctness of the impugned order, but is not vested with original jurisdiction to adjudicate issues or tax periods not forming part of the impugned proceedings.

▪ *Entertaining the appellant's contention relating to FY 2018-19 would require fresh examination of facts, verification of debit notes, and determination of liability for a different financial year, which is beyond the statutory mandate of this appellate authority under Section 107.*

▪ *As regards the appellant's request for benefit under Section 128A, it is observed that such benefit, though beneficial in nature, cannot be extended by traversing beyond the* *scope of the impugned order or by re-characterizing the tax period under appeal. Jurisdictional limitations under Section 107 cannot be diluted even in the context of an amnesty provision.*

▪ *In the absence of any infirmity demonstrated within the confines of FY 2020-21 and the findings recorded in the impugned order, and in view of the settled legal position that appellate proceedings cannot travel beyond the order appealed against, the appeal is devoid of merit.*

3.7 Aggrieved by the above decision of the First Appellate Authority the Appellant has filed the present appeal before this Tribunal.

Submissions by the Appellant:

4.0 The Counsel for the Appellant Adv Vinayak B D appeared and submitted as follows:

4.1 Though the Liability was declared and Tax paid in the month of December 2020, the transaction relates to FY 2018-19. This fact was also declared in GST annual returns for the period 2019-20, upon discovery of the error while finalizing the books for FY 2019-20. Since there was no option to go back and change the Returns for the FY 2018- 19, the details were declared in Annual Return of 2019-20 and the Liability was discharged in the month of Dec-2020. Accordingly, the said liability on excess claim of ITC also ought to be considered as pertaining to the FY 2018-19 in which the transaction occurred and not in the FY 2020-21 in which transaction was declared in the GST Returns in order to discharge the applicable Tax liability.

4.2 The very fact that the Company has discharged its Tax liability on *suo motu* basis upon discovering the error, according to the Appellant, substantiates that there was no intention to evade Tax and that it was missed only due to gaps in the accounts department. However, the debit note that was issued in the 2018–19 fiscal year and recorded in the GSTR-1 of that period was again recorded in the GSTR-1 of December 2020 while the liability was being paid. The Appellant submits that the repeated declaration of the same transaction in GSTR-1 of December 2020 resulted in a duplicate declaration of liability.

4.3 Therefore, though the Taxes were paid and returns were filed in FY 2020-21 to which the notice relates to the actual transaction was pertaining to FY 2018-19 and accordingly pleaded to consider the liability for FY 2018-19 and also to grant waiver of interest and penalty under Section 128A of the CGST Act.

Contentions by the Respondent:

5.1 The Ld Deputy Commissioner, Dr Ramya, appearing as Authorised Representative on behalf of the Respondent, submits that during the course of Scrutiny of Returns U/s 61 of the Acts for the tax period(s)/financial year 2020-21, on comparison of the ITC available in GSTR 2A and Input credit claimed in GSTR-3B, the Tax payer has availed the excess input credit. It is also submitted by the Ld DR that the excess ITC as confirmed in the order of the Adjudicating Officer pertains to the year 2020-21 which was also ascertained from the GSTR 3B Returns filed by the Appellant. The benefit under Section 128 A is available only for the period 1st July 2017 to 31st March 2020. Therefore, the Appellant could not have availed the benefit under Section 128 A in respect of the repayment of excess ITC availed for the year 2020-21. The Tax payer has admitted the excess ITC claimed and remitted vide DRC- 03 vide ARN – AD290125016015J dated: 09/01/2025 through cash ledger; accordingly, the Respondent submitted that the interest and penalty confirmed in the order are also payable.

Findings and decision:

6.1 We have heard Shri Vinayak B D Advocate appearing on behalf of the Appellant before us. We have also heard Dr Ramya Deputy Commissioner KGST, who is representing the Respondent in this appeal.

6.2 The main contention of the Counsel appearing on behalf of the Appellant is that the alleged excess ITC relates to FY 2018-19, notwithstanding that the corresponding amount was reported and paid in December 2020. According to the Appellant, the liability should therefore be treated as pertaining to an eligible period for the purposes of Section 128A of the CGST Act. The question, however, is whether, on the facts and records of the present case, the demand confirmed under Section 73 pertains to FY 2018- 19 or to the tax period December 2020.

6.3 In this respect we would like to examine the provisions of Section 128 A of the CGST Act as inserted by the Finance (No. 2) Act, 2024, w.e.f. 1-11-2024. The Section 128A reads thus:

> *128A. (1) Notwithstanding anything to the contrary contained in this Act, where* ***any amount of tax is payable by a person chargeable with tax in accordance with,—***
>
> ***(a) a notice issued under sub-section (1) of section 73 or a statement issued under sub-section (3) of section 73, and where no order under sub-section (9) of section 73 has been issued; or***
>
> ***(b) an order passed under sub-section (9) of section 73, and where no order under sub-section (11) of section 107 or sub-section (1) of section 108 has been passed; or***
>
> ***(c) an order passed under sub-section (11) of section 107 or sub-section (1) of section 108, and where no order under sub-section (1) of section 113 has been passed,***
>
> ***pertaining to the period from 1st July, 2017 to 31st March, 2020,*** *or a part thereof, and the said person pays the full amount of tax payable as per the notice or statement or the order referred to in clause (a), clause (b) or clause (c), as the case may be, on or before the date, as may be notified by the Government on the recommendations of the*

Council, no interest under Section 50 and penalty under this Act, shall be payable and all the proceedings in respect of the said notice or order or statement, as the case may be, shall be deemed to be concluded, subject to such conditions as may be prescribed:

Provided that where a notice has been issued under sub-section (1) of section 74, and an order is passed or required to be passed by the proper officer in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court in accordance with the provisions of sub-section (2) of section 75, the said notice or order shall be considered to be a notice or order, as the case may be, referred to in clause (a) or clause (b) of this sub-section:

Provided further that the conclusion of the proceedings under this sub-section, in cases where an application is filed under sub-section (3) of section 107 or under sub-section (3) of section 112 or an appeal is filed by an officer of central tax under sub-section (1) of section 117 or under sub-section (1) of section 118 or where any proceedings are initiated under sub-section (1) of section 108, against an order referred to in clause (b) or clause (c) or against the directions of the Appellate Authority or the Appellate Tribunal or the court referred to in the first proviso, shall be subject to the condition that the said person pays the additional amount of tax payable, if any, in accordance with the order of the Appellate Authority or the Appellate Tribunal or the court or the Revisional Authority, as the case may be, within three months from the date of the said order:

Provided also that where such interest and penalty has already been paid, no refund of the same shall be available.

(2) Nothing contained in sub-section (1) shall be applicable in respect of any amount payable by the person on account of erroneous refund.

(3) Nothing contained in sub-section (1) shall be applicable in respect of cases where an appeal or writ petition filed by the said person is pending before Appellate Authority or Appellate Tribunal or a court, as the case may be, and has not been withdrawn by the said person on or before the date notified under sub-section (1).

(4) Notwithstanding anything contained in this Act, where any amount specified under sub-section (1) has been paid and the proceedings are deemed to be concluded under the said sub-section, no appeal under sub-section (1) of section 107 or sub-section (1) of section 112 shall lie against an order referred to in clause (b) or clause (c) of sub-section (1), as the case may be.

[Emphasis supplied in bold]

6.4 Eligibility under Section 128A is not determined merely by the fact that tax has been paid. The statutory conditions must be satisfied cumulatively. The demand must arise from a notice, statement or order covered by sub-section (1) of Section 128A and must pertain to the period from 1st July 2017 to 31st March 2020 (or a part thereof). Further, the full amount of tax payable under the relevant notice, statement or order must have been paid within the prescribed time and the procedural requirements for filing the prescribed application must also be complied with.

6.5 It is very clear from the Scheme as introduced *supra* that the Scheme is available only in respect of the tax payable for the period 1st July 2017 to 31st March 2020.

6.6 The mere fact that the notice under Section 73 was issued on the basis of the GSTR-3B filed for December 2020 is not, by itself, conclusive of the period to which the demand pertains. The material question is the nature of the tax/ITC demand actually determined in the notice and order. We have therefore examined the returns and other documents placed before us to determine whether the disputed excess ITC of Rs. 5,62,067/- represents an ITC availed in an eligible period with reference to Section 128A or an ITC availed for the first time in December 2020.

6.7 We find that the decisive fact is not merely the financial year in which the debit notes were originally issued, but the point of time at which the disputed ITC was actually availed became the subject matter of the Section 73 proceedings. The records show that the excess ITC forming the subject matter of the demand was claimed in GSTR-3B for December 2020. It was not an ITC availed in FY 2018-19 and carried forward through the subsequent monthly returns. Accordingly, the demand confirmed in the impugned order pertains to the ITC claim made in December 2020 and does not constitute a demand pertaining to the period 1st July 2017 to 31st March 2020 for the purposes of Section 128A.

6.8 At this juncture it is also brought to our notice by the Appellant, the decision of Hon'ble Karnataka High Court in the case of **Wipro India Ltd. Versus Assistant Commissioner of Central Tax Writ Petition No.16175 OF 2022(T-RES) dated the 6th Day of January, 2023** wherein it was held that the circular regarding the mismatch of input tax credit (ITC) is applicable for 2019–2020 in the case of identical errors. The Hon'ble High Court in para 8 of the judgement observed that:

> *"it would be just and proper to dispose of this petition directing the respondents 1 to 3 – revenue to follow the procedure prescribed in the Circular and apply the said Circular to the facts of the instant case of the petitioner, 5th respondent and their transactions for the years 2017-18, 2018-19 and 2019-20. It is also necessary to state that though the Circular refers only to the years 2017-18 and 2018-19, since there are identical errors committed by the petitioner not only in respect of the assessment years 2017-18 and 2018-19 but also in relation to the assessment year 2019-20 also, I am of the view*

that by adopting a justice oriented approach, the petitioner would be entitled to the benefit of the Circular for the year 2019- 20 also"

6.9 We have considered the decision of the Hon'ble High Court of Karnataka *supra* and find that the same is distinguishable on facts and in law. The decision concerned the application of a CBIC circular dealing with reconciliation of ITC mismatch, whereas the present appeal concerns the statutory conditions governing the waiver under Section 128A. The circular cannot be read as enlarging the period expressly specified by Legislature in Section 128A equally, however, the fact of payment before the prescribed date is not, by itself, a ground to deny the benefit if the underlying demand otherwise satisfies the statutory requirements.

6.10 We are of the concerted view that the statutory period specified in Section 128A cannot be enlarged by an adjudicating or appellate authority beyond the period expressly prescribed by the Legislature. The principle that where the law requires a thing to be done in a particular manner, it must be done in that manner, is well settled by a catena of decisions rendered by the Hon'ble Supreme Court. The waiver contemplated under Section 128A is a limited statutory relief and, in the absence of any statutory provision extending its operation, cannot be applied to a tax liability pertaining to a period outside the prescribed period. The scheme under consideration as introduced under Section 128A is a relief extended for a limited-period under the GST framework, therefore cannot be extended for the period thereafter unless the Legislature intended to do so.

6.11 It is, further, evident from the documents produced before us like GSTR 1 and GSTR 3B for the Month December 2020, GSTR 9 for the year 2020-21 that CGST liability of Rs 6,47,120 and SGST liability of Rs 6,47,120 was declared towards an outward supply totalling to Rs 2,58,84,795, and also reported the Eligible ITC of Rs 68,573 of IGST, Rs 3,10,236 of CGST and Rs 3,10,236 of SGST under the Table 4C of the GSTR 3B. The output tax liability for the month of December 2020 was paid by utilising the entire ITC reported above and the remaining from the Cash Ledger. Pursuant to the scrutiny of Returns the State GST authorities noticed a difference between the ITC claimed in GSTR-3B and that available in GSTR-2A to the extent of Rs. 5,62,067/-, which culminated in a notice under sub-section (1) of Section 73 of the Act. The same was accepted and paid by the Appellant leaving the interest and penalty under dispute and subject matter of this appeal.

6.12 It is therefore beyond doubt that the notice issued by the State GST Authorities, demand paid by the Appellant, the pending litigation of non-payment of interest and penalty is pertaining only to the tax period December 2020.

6.13 In this regard it is submitted by the Appellant that the liability pertains to a Debit note (and corresponding excess claim of ITC) of period 2018-19 which is the subject matter of dispute and is already declared in the Annual Returns of 2018-19. The year for which the Order was issued (2020-21) contains absolutely no commercial transactions such as Sale or Debit note on which Tax liability arises. It is also submitted that the output tax liability as declared for the month of December 2020 was actually arose out of Debit notes issued for the month of February 2019. The Appellant further submitted as below:

> *"It is most respectfully submitted that the Applicable Tax, being excess claim of ITC of Rs. 5,62,067/- was discharged vide DRC-3 bearing ARN : AD290125016015J on 09-01-2025, well in advance of passing of the order U/s 73 by the Learned AO and well in advance of the due date to have filed an application U/s 128A of the CGST Act for waiver of Interest and Penalty. It is only due to the denial by the Learned AO to consider this tax liability as pertaining to the period of 2018-19 and instead concluding the order as pertaining to period 2020-21 that the Taxpayer was unable to make an application U/s 128A of the CGST Act. Attention of your Honour is again sought here to the fact*

that due to a Procedural / Technical limitation, the Taxpayer was unable to file the application for waiver of Interest and penalty U/s 128A of the CGST Act."

6.14 We have examined this submission with reference to the records available and rejected the same for two reasons. Firstly, there was no attempt on the part of the Appellant to file Form SPL 01 to claim the Scheme under Section 128A of the Act. Further it is not the case of the Appellant that they had filed the Form SPL 01 to avail the scheme but rejected by the authorities. Secondly, the ITC as claimed to be excess in the Notice issued by the Adjudicating Authority was not availed in 2018-19 and carried forward through Monthly Returns but availed by the Appellant for the first time in the month of December 2020. Therefore, on this count also the request for availing the waiver of interest and penalty by the Appellant under Section 128 A of the Act, available for the period 1st July 2017 to 31st March 2020, cannot be acceded.

6.15 The Appellant also referred to the **CBIC Circular No. 238/32/2024-GST** and the decision of Honourable High Court of Orissa in the case of **Samita Panda v. Commissioner of CT & GST, 2025 (2025) 33 Centax 34 (Ori.)** and argued that the Amnesty Scheme cannot be denied on technical or procedural grounds, particularly when the Taxpayer has acted bonafide and discharged Tax liability promptly. In this regard we would like to extract part of the para 6 and 7 of the Grounds of Appeal filed by the Appellant:

6. It is most respectfully submitted that the CBIC Circular No. 238/32/2024-GST has prescribed that Amnesty should be available wherein Tax has been paid by the Taxpayer. <u>It also prescribes that the Scheme should be applied substantively and not be defeated by Procedural or Technical interpretations</u>. …….

7. In the case of Samita Panda v. Commissioner of CT & GST, 2025 the Hon'ble Orissa High Court has <u>categorically held that benefits under the Amnesty Scheme cannot be</u>

denied on technical or procedural grounds, particularly when the Taxpayer has acted Bonafide and discharged Tax liability Promptly. ……..

[Emphasis supplied by underline]

6.16 We have gone through the Circular 238 (*supra*) and the decision of the Honourable High Court of Orissa in the matter of Samita Panda (supra). The circular does not dispense with the statutory requirement that the demand must pertain to the period specified in Section 128A. Further, the precise words attributed by the Appellant to the circular and the judgment, namely "*Amnesty Scheme cannot be denied on technical or procedural grounds, particularly when the Taxpayer has acted Bonafide and discharged Tax liability Promptly"*, are not found in the extracts placed before us. The Appellant ought to avoid attributing to a statutory circular or judicial decision, expressions which do not form part of the relevant text.

6.17 Considering the submissions made by the learned counsel for the Appellant and after going through the records, we found that, it was not procedural error wherein liability (and corresponding excess ITC Claim) of 2018-19 was filed in 2020-21 (Dec'20) but ITC was availed for the first time in December 2020, while declaring their output liability for the said period, which the Revenue found as excess and later on accepted by the Appellant.

6.18 One aspect on the record deserves to be stated plainly. If the Appellant's account is taken at face value, and the underlying liability truly traces back to the Debit Note of February 2019, then interest and penalty on that liability ought to have in principle, to run from FY 2018-19 onward. Neither the Show Cause Notice nor the Order-in-Original makes any attempt to compute interest or penalty from that earlier period.

6.19 With the aforesaid analysis of documents and submissions, we find that the Appellant failed to establish that the disputed demand of excess ITC, as confirmed under Section 73(9) of the Act, pertains to the period 1st July 2017 to 31st March 2020. The demand arose from the

ITC claim made in December 2020 and, therefore, falls outside the temporal scope of Section 128A of the CGST Act /KGST Act. Consequently, the Appellant is not entitled to waiver of interest and penalty under Section 128A of the Act.

7.0 In view of the foregoing discussion and findings, the appeal fails and is accordingly dismissed. The interest and penalty confirmed in the impugned order under Section 73(9) of the CGST/KGST Acts, 2017 are upheld.

Order pronounced in open court on 25th August 2026.

Prabhakaran P M

Member (Judicial)

Ravi Jesuraj S

Member (Technical)