HC-KAR

NC: 2026:KHC:51335-DB
WA No. 966 of 2026

CNR: KAHC010214922026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT APPEAL NO. 966 OF 2026 (T-RES)

BETWEEN:

1. THE COMMISSIONER OF CENTRAL TAX
BENGALURU NORTH-WEST COMMISSIONERATE
2ND FLOOR, BMTC BUS STAND COMPLEX
SHIVAJINAGAR
BENGALURU – 560 051

2. THE ADDITIONAL COMMISSIONER OF CENTRAL TAX
BENGALURU NORTH-WEST COMMISSIONERATE
2ND FLOOR, BMTC BUS STAND COMPLEX
SHIVAJINAGAR
BENGALURU – 560 051

3. THE ADDITIONAL COMMISSIONER OF
CENTRAL TAX (APPEALS-II)
BENGALURU NORTH WEST COMMISSIONERATE
2ND FLOOR, BMTC BUS STAND COMPLEX
SHIVAJINAGAR
BENGALURU - 560 051

4. CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
MINISTRY OF FINANCE
GOVERNMENT OF INDIA
REPRESENTED BY ITS CHAIRMAN
NORTH BLOCK, NEW DELHI – 110 001

5. UNION OF INDIA
MINISTRY OF FINANCE
REPRESENTED BY ITS

SECRETARY
NORTH BLOCK
NEW DELHI - 110 001

…APPELLANTS

(BY SRI ARAVIND V. CHAVAN., CGC)

AND:

1. M/S. JEANS KNIT PRIVATE LIMITED
NO.21/E1, 2ND PHASE
PEENYA INDUSTRIAL AREA
BENGALURU – 560 058
REPRESENTED BY ITS DIRECTOR
MR. LAXMINARAYAN GAUR
S/O. NEMICHAND SHARMA
AGED ABOUT 66 YEARS

…RESPONDENT

(BY SRI B.G. CHIDANANDA URS, ADVOCATE)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED BY THE LEARNED SINGLE JUDGE IN WRIT PETITION NO.8128/2020 DATED 11/11/2025 & ETC.

THIS APPEAL, COMING ON FOR PRELIMINARY HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The Revenue has filed the present appeal impugning an order dated 11.11.2025 [**impugned order**] passed by the learned Single Judge in W.P No.8128/2020 (T-RES) c/w W.P

No.16372/2022 (T-RES). The present appeal arises from the impugned order insofar as it relates to W.P No.8128/2020.

2. The respondent [**assessee**] had filed W.P No.8128/2020 challenging the constitutional validity of Rule 89(4) of the Central Goods and Services Tax Rules, 2017 [**CGST Rules**]. The assessee also impugned an order dated 27.02.2020 [hereafter '**the appellate order**'] passed by the Additional Commissioner of GST (Appeals-II) [**Commissioner (Appeals)**] as being barred by limitation.

3. Pursuant to the order dated 27.02.2020, appellant No.2 (Additional Commissioner of Central Taxes) issued show cause notice calling upon the assessee to show cause why the amount as refunded not be demanded along with penalty. Thereafter, the Additional Commissioner had passed an order dated 01.08.2022 confirming the demand. This order was impugned by the assessee in W.P No.16372/2022 which was allowed on the ground that the order dated 01.08.2022 was passed as a consequence of the directions issued under the appellate order dated 27.02.2020 which

is impugned in W.P No.8128/2020. The Revenue has filed a separate appeal against the said order dated 01.08.2022.

4. The learned Single Judge held that the impugned order was passed beyond the period of limitation as provided under Section 107 of the CGST Act[1]/KGST Act[2]. Thus, the only question that arises for consideration is whether the appeal preferred by the Revenue before the Commissioner (Appeals) was barred by limitation and thus, was rightly set aside by the impugned order.

5. The relevant facts necessary to address the said question are set out hereafter:

5.1 The assessee is a company incorporated under the Companies Act, 1956 and claims that it is an 100% Export Oriented Unit (EOU). The assessee is registered under CGST/KGST. It is engaged in manufacturing and exporting garments. The assessee claims that it had imported certain capital goods during the period 01.07.2017 to 13.10.2017 and paid Integrated Goods and Services Tax [**IGST**] under Section 3(7) of the Customs Tariff Act, 1975.

[1] Central Goods and Services Tax Act, 2017
[2] Karnataka Goods and Services Tax Act, 2017

The assessee claimed that it was either entitled to claim a refund of custom duty paid under Section 3(7) of the Customs Tariff Act or in the alternative the Input Tax Credit [**ITC**] under Section 16(3)(a) of the Integrated Goods and Services Tax Act, 2017 [**IGST Act**] read with Section 54 (3) of the CGST Act.

5.2 The assessee claimed refund of the accumulated and unutilised ITC lying in its Electronic Credit Ledger for the month of July 2017 to December 2017 claiming that the supplies were Zero-rated supplies. It filed applications for refund (6 in number) electronically before the Deputy Commissioner of Central Taxes for the period from July 2017 to December 2017.

5.3 The said applications were processed and the Deputy Commissioner of Central Taxes [**the Adjudicating Authority**] passed orders sanctioning refund. A tabular statement setting out the orders sanctioning refund for various months is set out below:

Months	Sanction order No.	Dated	Amount of refund sanctioned
July, 2017	16-18/2017	12.01.2018	7,19,95,684/-
Aug, 2017	37-39/2017	25.01.2018	10,01,69,059/-
Sep, 2017	40-42/2017	25.01.2018	11,45,05,408/-

Oct, 2017	45-47/2017	08.02.2018	3,48,85,682/-
Nov, 2017	167-169/2017	26.03.2018	72,99,420/-
Dec, 2017	189-191/2017	28.03.2018	99,85,479/-
Total			33,88,40,732/-

5.4 The said sanction orders were reviewed by the Commissioner of Central Tax under Section 107 (2) of the CGST Act. The Commissioner found that the orders were erroneous as the assessee had wrongly availed of the ITC on capital goods. According to the Commissioner, the amount as claimed were not covered within the meaning of Input tax as defined under Rule 89 of the CGST Rules.

5.5 The details of the review orders are as under:

Case No.	Date of order	Months
IV/03/121/2019 Rev NW	06.02.2019	July, 2017
IV/03/172/2019 Rev NW	26.02.2019	August, 2017
IV/03/173/2019 Rev NW	27.02.2019	September, 2017
IV/03/174/2019 Rev NW	27.02.2019	October, 2017
IV/03/175/2019 Rev NW	27.02.2019	November, 2017
IV/03/176/2019 Rev NW	27.02.2019	December, 2017

5.6 Pursuant to the aforesaid authorisations, the Additional Commissioner of Tax preferred appeals before the Commissioner

(Appeals) impugning the orders sanctioning refund. It also filed an application seeking condonation of delay in filing the said appeals. The assessee objected to the said appeals as being barred by limitation and in addition, also contested the appeals on merits.

5.7 The learned Commissioner (Appeals) held in favour of the Revenue and rejected the contention that the appeals were barred by limitation and also held that the delay in filing the appeal could be condoned under Sub-section (4) of Section 107 of the CGST Act/KGST Act. The Commissioner (Appeals) also held that the Revenue could independently initiate proceedings for recovery of refund that was erroneously granted and the orders sanctioning the refunds would not preclude the Revenue from recovering the amount so refunded. The Commissioner (Appeals) also found merit in the Revenue's appeal and held that refund of ₹29,61,78,425/- has been erroneously granted. The Commissioner (Appeals) observed that Rule 89 of the CGST Rules refers to net ITC, which means ITC availed on inputs and input services. The appellate order also referred to the definitions of 'input' under Section 2(59) of the CGST Act which define the 'input' to mean any

goods excluding capital goods. Thus, the Commissioner (Appeals) concluded that the assessee was not entitled to seek refund of the ITC in respect of capital goods. Accordingly, the Commissioner (Appeals) allowed the appeals, quashed the refund sanction orders, and directed recovery of ₹29,61,78,425/- along with interest under Section 50 of the CGST Act.

6. At the outset it is relevant to refer to Section 107 of the CGST Act. The relevant extract of the said Section is set out below:

> **"107. Appeals to Appellate Authority**.—
>
> (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.
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> (2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the

determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

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(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or

> utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under Section 73 or Section 74 [or Section 74-A]."

7. As apparent from the plain reading of Sub-section (2) of Section 107 of the Act, it empowers the Commissioner to either *suo motu* or on the request of the Commissioner of State Tax or Commissioner of Union Territory Tax, to examine the legality or propriety of any decision or order made by adjudicating authority and may direct any officer subordinate to him to apply to the appellate authority *"within six months from the date of communication of the said decision or order for the determination of points arising therefrom."* It is thus clear that any direction to file an appeal is circumscribed with the requirement that it be filed within the period of six months from the date of communication of the said decision or the order.

8. Under Sub-section (4) of Section 107 of the Act, the appellate authority can condone the delay in filing the appeal *albeit* for a period of one month. Thus, the appellate authority also does

not have the power to condone the delay beyond the period of one month.

9. In the present case, the orders sanctioning refund for the month of July 2017 was passed on 12.01.2018 and for the months of August 2017 and September 2017 were passed on 25.01.2018. The order sanctioning refund for the month of October 2017 was passed on 08.02.2018 and the sanction orders for refund for the months of November 2017 and December 2017 were passed on 26.03.2018 and 28.03.2018, respectively. The review order for the month of July 2017 was passed on 06.02.2019 which was beyond the period of one year from the date of the sanction order. Similarly, the review orders in respect of the orders sanctioning the refund for the month of August 2017, September 2017 were passed on 26.02.2019 and 27.02.2019 which were also beyond the said period. Each of the orders for the remaining three months, that is October 2017, November 2017 and December 2017 were passed on 27.02.2019. Thus, none of the review orders could direct filing of appeals within the stipulated period of six months from the date of the communication of the orders.

10. However, the Commissioner (Appeals) rejected the assesse's objection regarding limitation on three grounds. First that the appeals were filed after the post-audit was conducted and according to the Revenue, the same were within the period of seven months after the audit was conducted regarding legality and correctness of the amounts sanctioned. Second, the Commissioner (Appeals) found that under Section 73(1) of the CGST Act, any amount erroneously refunded could be recovered by the proper officer by issuing a notice atleast 3 months prior to the expiry of 3 years from the date of erroneous refund. Third that the appeals were within the period which could be condoned under Sub-section (4) of Section 107 of the CGST Act. The relevant extract of the Commissioner (Appeal)'s order, which reflects the aforesaid reasonings is reproduced below:

> "13. Needless to say that these very appeal has been arisen out such post audit exercise of the government. Hence the contention of the respondent that the appeal is time barred is not sustainable and unfounded. Further, their contention is not having any impact on the recovery of the erroneously refunded amount on the ITC availed on Capital Goods. In any case, irrespective of the appeal proceedings, the recovery of the erroneously refunded amount are still can be done by issuing notice under Section 73 (1), of the Act. Moreover since the appeals are filed within condonable period, the same is condoned as per the

Sub-section (4) of Section 107 of the CGST Act, 2017."

11. A plain reading of Sub-sections (1), (2) and (4) of Section 107 of the Act indicates that none of the said reasons are sustainable. The limitation for filing an appeal by any person who is aggrieved by the said decision is stipulated as 3 months from the date of which the said decision is communicated "to such person". Thus, for any person other than the department, the period within which an appeal can be filed is stipulated as 3 months. In case of an appeal by the Revenue, the period is increased to 6 months from the date of communication of the said decision. The date on which the audit is conducted or on date when any observations are made by the audit department is not relevant for determining the period of limitation. The same would start running from the date of communication of the said order and not the audit objections/observations.

12. It was contended on behalf of the Revenue that the sanction order for the month of July 2017 was communicated on 11.07.2018 and the orders for the remaining months were communicated on 30.07.2018 and thus, the appeals were within a period of 6 months

from the said date. However, the assessee had disputed the same. It was contended by the assessee that there was nothing on record to indicate as to how it took 5 to 6 months for delivery of the orders to the office of the Commissioner which was located on the same floor as that of the adjudicating authority which had passed the orders sanctioning the refunds. The Revenue, on the other hand, contended that there was a delay of less than a month and the Revenue had also filed applications seeking condonation of delay in 4 out of 6 appeals. The only reason recorded in the said applications was that the delay was on account of shortage of staff/administrative reasons. The Commissioner (Appeals) has not recorded the findings as to the dates on which the sanction orders were communicated, which would be the dates from which the limitation could commence. However, it does appears that the Commissioner (Appeals) had accepted that the orders had been communicated on the dates as indicated by the Revenue (which were 4 to 5 months after the date of the sanction orders) and found that the delay in filing the appeals was within the condonable period of one month. Thus, the key question is whether any time needs to be factored in for intra-departmental communication.

13. The aforesaid question was considered by a Division Bench of the Delhi High Court (of which one of us is a member) in **Grapes Digital Pvt. Ltd. vs. Principal Commissioner and Another**[3]. The Court after briefly examining the scheme of Section 107 of the CGST Act held that the expression "communication of the decision or order" as used in Sub-section (2) of Section 107 of the CGST Act in the context of intra-departmental communication must be construed as the date of issuance of the order. The relevant extract of the said decision is set out below:

> "22. The second reason, which we find more important, rests on the interpretation of the expression 'communication of the order' as used in Section 107 of the CGST Act. The said expression, when used to specify the period for the tax authorities to initiate any measure, is required to be interpreted in a narrow sense.
>
> 23. The scheme of Section 107 of the CGST Act clearly indicates the legislative intent to place a strict time frame within which the appeals can be preferred to the Appellate Authority. In terms of Sub-section (1) of Section 107 of the CGST Act, any person aggrieved by the said decision of the Adjudicating Authority can file an appeal to the Appellate Authority within a period of three months from the date on which the order is communicated to such person. In terms of Sub-section (2) of Section 107 of the CGST Act, the Revenue can apply to the Appellate Authority within a period of

[3] W.P (C) No.2918/2021 decided on 05.12.2023 (2023:DHC:8642-DB)

six months of communication of the order passed by the Adjudicating Authority. In terms of Sub-section (4) of Section 107 of the CGST Act, the Appellate Authority can condone the delay for filing an appeal beyond the period of six months, subject to maximum of one year. Further, Sub-section (13) of Section 107 of the CGST Act enjoins the Appellate Authority to, where it is possible to do so, hear and decide the appeal within a period of one year from the date on which it is filed.

24. It is also important to note that there is no provision which requires the Adjudicating Authority to communicate its orders intra-departmentally. In terms of Section 54(7) of the CGST Act the Proper Officer is required to issue the order of refund under Sub-section (4) of Section 54 of the CGST Act within sixty days from the date of receipt of the application, complete in all respect. In contradistinction, any order passed by the Appellate Authority under Section 107 of the CGST Act is required to be sent to the Jurisdictional Commissioner or any authority designated by him in this behalf. In the given statutory framework, where there is no statutory provision requiring the Adjudicating Authority to communicate its orders to the concerned jurisdictional commissioner (the Reviewing Authority), computing the period of limitation for filing an appeal on the contingency of receiving the order; would be destructive of the legislative intent to put in place a strict time frame for filing of the appeal. Plainly, no allowance can be made for extending the period of limitation on account of miscommunication of orders intra-departmentally. Thus, the expression 'communication of the decision or order' as used in Sub-section (2) of Section 107 of the CGST Act, in the context of intra-departmental communication must be construed as the date of issue of the order."

14. It is relevant to note that in **Grapes Digital Pvt. Ltd.** (*supra*), the Court had called upon the Revenue to file an affidavit disclosing the procedure adopted for communication of the order-in-original. In compliance with the said order, Revenue had filed an affidavit afforming that there is no specific procedure or timelines adopted for communication of the order-in-original. It was stated that different practices were followed by different field formations. It was a general practice that the orders-in-original were communicated to the Revenue branch and the Commissionerate by making an endorsement on the orders-in-original. However, in the present case, the learned counsel appearing for the parties referred to Instruction dated 14.06.2022 issued by the Central Board of Indirect Taxes and Customs[4]. The said instruction sets out the guidelines for conduct of audit and review of orders including the timelines within which the steps are required to be taken. The relevant extract of the said instruction is set out below:

> "2.2.2 Accordingly, **as per extant practice, all refund orders are required to be reviewed for examination of legality and propriety of the refund order and for taking a view whether an appeal to the appellate authority under provisions of sub-section (2) of section 107 of**

[4] Instruction No.03/2022-GST, F.No.CBEC-20/16/35/2019-GST

the CGST Act is required to be filed against the said refund order.

2.2.3 As already mentioned in Circular No. 17/17/2017-GST dated 15.11.2017, refund claims shall not be subjected to pre-audit. However, the post-audit of refund claims may continue. Considering the large number of refund claims filed in GST, it has been decided that post-audit may henceforth be conducted only for refund claims amounting to Rs. 1 Lakh or more till further instructions.

2.2.4 The post-audit and review of the refund claims shall be conducted as per the following guidelines:

(a) All the refund orders passed should be immediately transmitted online to the review module after issuance of refund order in FORM GST RFD-06. The review and post- audit officers shall have access to all documents/ statements on ACES-GST portal pertaining to the said refund claims.

(b) For the purpose of post-audit of refund order, a **Post-Audit Cell** under a Deputy/Assistant Commissioner along with one/ two Superintendents and Inspectors as required, may be created in Commissionerate Headquarters.

(c) The **post-audit should be concluded within 3 months** from the date of issue of FORM GST RFD-06 order. The findings of the post-audit shall be communicated to the review branch within the said time period of 3 months.

(d) The **review of refund order shall be completed at least 30 days before the expiry of the time period allowed for filing appeal** under Section 107(2) of the CGST Act."

15. It is clear from the above, the post-audit and review has to be conducted within the period of 3 months from the date of the issue of Form GST RFD-06 order and the findings have to be communicated to the review branch within the said period. This is in conformity with the scheme in Section 107 of the CGST Act which provides an additional 6 months period for the Revenue to file an appeal vis-à-vis 3 months for any other person to file an appeal. Thus, factoring in the time required for any departmental procedures. The review of the refund orders is also required to be completed atleast 30 days prior to the time period required for filing an appeal.

16. All refund orders are required to be transmitted online to the review module. Thus, there is no time lag from the date of passing of the refund order and it is communicated in the online mode. It is thus not open for the Revenue to contend that the reviewing authority had communicated the order after a delay of 5 to 6 months.

17. It is also relevant to refer to Section 169 (1) of the CGST Act. The said Sub-section is set out below:

"169. Service of notice in certain circumstances.

(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:-

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice."

18. Clause (d) to Section 169(1) of the CGST Act makes it clear that the communication or any decision or order under the CGST Rules is to be served by making it available on the common portal.

19. Given the scheme of the CGST Act, we are unable to accept that the time period for communication of the order can be considered as indeterminate or left open-ended.

20. In the aforesaid view, we find no infirmity with the decision of the learned Single Judge in holding that the appeals were filed beyond the period of limitation as prescribed under Section 107(2) of the Act.

21. As noted above, the Commissioner (Appeals) had also rejected the assessee's contention that the appeal was beyond the period of limitation on the ground that the Revenue could, in any event, initiate proceedings for recovery of refund, which was erroneously granted under Section 73 of the CGST Act, till 3 months prior to 3 years, from the date of the refund. This reasoning is also flawed. The question whether the Revenue could otherwise initiate proceedings for recovery, is not relevant for determining

whether the appeals were filed within the period of limitation. The assumption that the period of limitation for filing an appeal under Section 107 of the CGST Act would stand extended by virtue of the provisions to Sections 73 and 74 of the Act is *ex facie* erroneous and without any basis.

22. The finding that delay in filing the appeals could be condoned under Sub-section (4) of Section 107 of the CGST Act is also *ex facie* erroneous. The said finding is premised on the basis that the delay in filing the appeal is less than one month. The Commissioner (Appeals) had no jurisdiction to condone the delay beyond the period of one month and in the present case, the delay in filing the appeal far exceeds the said period.

23. In view of the above, the present appeal is dismissed.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

AHB, List No.: 2 Sl No.: 17