GOODS AND SERVICES TAX APPELLATE TRIBUNAL
ERNAKULAM BENCH
Division Bench :: Court No. I
(e-hearing)

APPEAL NO: APL/23/ERN/2026

AUGUSTAN TEXTILE COLOURS **.............Appellant**
(UNIT OF AUGUSTAN KNITWEAR PVT LTD)

Versus

THE COMMISSIONER OF STATE TAX,
KERALAM STATE, THIRUVANANTHAPURM **.............Respondent**

Counsel for Appellant
Padmanathan K.V, Advocate

Counsel for Respondent
Anil Gopinath, AR

CORAM:
Hon’ble Shri Subramanya Rayaprol, Vice-President
Hon’ble Shri Ramamoorthi Sriram, Member (Technical)

...

FINAL ORDER NO: 02/EKM/KERALAM/2026

Date of Hearing: 10-8-2026
Date of Order: 08-09-2026

Per: Shri Ramamoorthi Sriram, Member (Technical)

1.0 The present Appeal (APL/23/ERN/2026) has been preferred by M/s Augustan Knitwear Pvt Ltd ('Appellant') against Order-in-Appeal No. AD320522007724I (GSTA-259P/2022) dated 31.10.2023 /14.02.2024 passed by the Joint Commissioner (Appeals), SGST Department, Thrissur to the extent that it sustains the rejection of refund on unutilized Input Tax Credit (ITC) to the tune of Rs.7,07,173/-.

2.0 Question of Law to be decided:

Whether an application for refund under section 54(3) of the CGST / KGST Act 2017 can be rejected on the grounds of ineligible Input Tax Credit, in the absence of an order under section 73 / 74 of the CGST / KGST Act determining that the said ITC was wrongly availed or utilized.

3.0 Brief Facts of the Case:

3.1 The appellant is a Private Limited Company engaged in the manufacture of garments and is registered under the Goods and Services Tax laws bearing GSTIN 32AABCM4119Q1ZD. The appellant's inputs are taxable at a higher rate of 18%, whereas the output supplies are taxable at a concessional rate of 5%, resulting in accumulation of input tax credit on account of an inverted duty structure.

3.2 The Appellant, claimed an inverted duty structure refund under Section 54(3) of the CGST/KSGST Act, 2017 read with Rule 89(5) of the CGST/KSGST Rules, 2017 for the period July 2019 to September 2019 amounting to Rs. 18,41,280/- (IGST).

3.3 The adjudicating authority passed an order dated 28-01-2022 partially rejecting the refund claim to the extent of Rs.9,72,027/- and sanctioning the balance amount of Rs.8,69,253/-

3.4 Aggrieved by the said order, the appellant preferred an appeal before the First Appellate Authority on 28- 05-2022, challenging the rejection of refund to the extent of Rs.9,72,027/-.

3.5 The First Appellate Authority, after considering the submissions, passed Order-in-Appeal No. AD320522007724I dated 31/10/23 / 14-02-2024 modifying the order under appeal, by granting partial relief of Rs.2,64,860/-, sustained rejection of balance Rs.7,07,173/-

3.6 Being aggrieved by the rejection of refund to the extent of Rs.7,07,173/-, the appellant is filing the present appeal before this Tribunal.

4.0 Grounds of Appeal / Submissions of the Appellant:

4.1 The show cause notice issued is vague, non-specific and devoid of material particulars. The notice merely alleges that the refund claim is inadmissible on account of wrong ITC claim without furnishing any invoice-wise details, nature of ineligibility, or computation of the amount proposed to be rejected. In the absence of such essential particulars, the entire proceedings are vitiated.

4.2 The adjudication order passed is equally nonspeaking and does not contain any specific findings or reasoning to justify the partial rejection of refund. The order does not provide any invoice-wise particulars, or demonstrate how the alleged ineligible ITC forms part of the refund claim. The rejection has been made in a summary manner without proper application of mind, rendering the order arbitrary, violative of principles of natural justice and liable to be set aside.

4.3 The First Appellate Authority, while passing the impugned order, has sustained partial rejection of refund on an entirely different ground, namely that certain inputs are not used in the course or furtherance of business on the basis that such inputs are not essential for the purpose of making outward supply. The aforesaid reasoning was never part of the show cause notice nor the adjudication order. Therefore, the impugned appellate order, to the extent it introduces a new ground for rejection, is legally unsustainable and requires to be set aside.

4.4 Without prejudice to the above, the learned Appellate Authority has erred in law in interpreting the expression “in the course or furtherance of business” in a narrow manner as confined only to such inputs without which outward supply cannot be effected. The expression “in the course or furtherance of business” appearing in Section 16(1) of the Act read with section 2(17) of the Act has to be interpreted in a broad and commercial sense. The said expression encompasses not only inputs directly used in manufacture but also all goods and services that facilitate, support, or are integrally connected with the business operations.

4.5 The input tax credit disallowed pertains to items such as consumables, maintenance materials, and safety equipment, all of which are procured and used in the ordinary course of its business. These items, though not forming part of the final product, are essential for ensuring continuity of production, upkeep of machinery, workplace safety, and compliance with statutory requirements. Such procurements are integrally connected with and incidental to the business of the appellant and therefore squarely fall under the expression “in the course or furtherance of business.” The denial of input tax credit on the ground that such items are not essential ingredients for purpose of business overlooks the functional and operational role of these inputs in the business.

4.6 Appellate Authority has erred in effectively substituting its own understanding of what constitutes necessary or essential inputs for the business of the appellant. It is a settled principle that tax authorities cannot sit in the armchair of the assessee and decide the commercial expediency or necessity of business expenditure. Once it is demonstrated that the inputs are procured and used in the course of business, it is not open to the authorities to question their necessity for business. The impugned finding, therefore, is contrary to settled legal principles and liable to be set aside.

4.7 Adv. Padmanathan K.V appeared on behalf of the Appellant and made a forceful plea reiterating the above submissions and requested that the OIA to the extent it seeks to deny ITC refund may be set aside and the Appellant may be sanctioned the refund which has been denied to them.

5.0 The appellant vide additional written submissions dated 27/8/2026 submitted as follows:

5.1 The eligibility and lawful availment of input tax credit fall for determination under sections 16 and 17 of the CGST Act. Once such credit has been availed in the statutory returns and has not been challenged through proceedings under sections 73 or 74, the refund proceedings under section 54(3), read with rule 89(5), cannot be converted into collateral proceedings for re-adjudicating the very eligibility of that credit. The adjudicating authority may verify the quantum of “Net ITC”, the relevant period, the turnover and other conditions prescribed by section 54 and rule 89; however, it cannot, without a specific notice and proceedings under the applicable provisions, declare the underlying credit inadmissible for the first time while deciding the refund application. Paragraphs 20 and 21 of Circular No. 8 125/44/2019-GST dated 18-11-2019 also recognize this distinction by requiring that, where rejection of refund is founded upon ineligibility of ITC, notice must be issued under section 54 read with sections 73 or 74 and the inadmissible credit must be recovered through the prescribed statutory mechanism.

5.2 Reliance to this extent is placed on the following decisions:

a. CST, Delhi v. Convergys India Pvt. Ltd., 2009 (16) S.T.R. 198 (Tri.-Del.)

b. CST v. Convergys India Pvt. Ltd., 2010 (20) S.T.R. 166 (P&H)

c. Morgan Stanley Advantage Services Ltd. v. CST, Mumbai-II, 2015 (37) S.T.R. 639 (Tri.-Mum.)

d. ADP Pvt. Ltd. v. CST, Hyderabad-II Commissionerate, 2020- TIOL-11-CESTAT-HYD

e. BNP Paribas India Solutions Pvt. Ltd. v. CST-II, Mumbai, 2022-TIOL-785-CESTAT-MUM

f. Capgemini Technology Services India Ltd. v. CCE & CST, Bangalore, 2022-TIOL-162-CESTAT-BANG

g. Qualcomm India Pvt. Ltd. v. CC, CE & ST, 2020 (43) G.S.T.L. 402 (Tri.-Hyd.)

5.3. Although rendered under the CENVAT regime, the principle applies with equal force to the corresponding structure of the CGST Act. In the present case, there being no allegation or proceeding under sections 73 or 74 challenging the impugned ITC on the ground of absence of business use, personal use or section 17(5), its eligibility could not lawfully have been reopened for the first time while adjudicating the refund claim.

6.0 Submissions of the Respondent / Revenue

6.1 The Appellant contends that SCN in Form GST RFD-08 was vague and lacked invoice details. It is submitted that RFD-08 specifically put the taxpayer on notice that the refund claim of Rs. 9,72,027/- included ineligible credit (capital goods, input services, and mismatched periods). The Appellant submitted detailed invoice lists in response, demonstrating full understanding of the allegations. Furthermore, complete invoice-by-invoice verification was conducted, and partial relief of Rs. 2,64,860/- was already extended by the First Appellate Authority. No prejudice whatsoever was caused to the Appellant.

6.2 The Appellant alleges that the Appellate Authority travelled beyond the SCN by invoking Section 2(59) and 2(60). This contention is misdirected. Under Section 107(11) of the CGST Act, the Appellate Authority has the statutory mandate to pass such order as he thinks just and proper, confirming, modifying or annulling the decision. Examining whether the items claimed as 'Inputs' in Annexure-B meet the legal definition of 'Inputs' under Section 2(59) for computation of 'Net ITC' under Rule 89(5) is an inherent duty of the Appellate Officer.

6.3 Section 54(3) proviso (ii) clearly provides that refund of unutilized ITC accumulated on account of inverted duty structure shall be allowed ONLY for credit accumulated on 'inputs'. Rule 89(5) prescribes the formula where 'Net ITC' means input tax credit availed on inputs during the relevant period other than the input tax credit availed for input services and capital goods. As per Section 155 of GST Act the burden of proving that the claim of input tax credit is eligible and admissible lies on the person claiming such credit.

6.4 The Apex Court in VKC Footsteps India Pvt Ltd [2021] 52 GSTL 513 (SC) upheld the validity of Rule 89(5) and affirmed that refund under inverted duty structure is a statutory privilege restricted strictly to inputs, excluding input services and capital goods.

6.5 Item-wise Justification of Disallowed Credit (Rs. 7,07,173/-)

The disallowance of Rs. 7,07,173/- sustained by the Appellate Authority comprises procurements that are either Capital Goods (capitalized/capital nature), Input Services, or general operational expenses not falling under the definition of 'Inputs' under Section 2(59).

a. Vehicle Parts & Automobile Procurement (Annur Motors): Motor vehicle parts have no direct nexus with the core manufacturing of textile garments. Further, Section 17(5)(a) specifically blocks ITC on motor vehicles and related repair/maintenance unless used for specified transport services.

b. Electrical Fittings, PVC Pipes & Building Infrastructure (Bharath Electricals, General Industrial Suppliers, Three Star Traders): These items represent electrical installations and civil/plumbing works. Under Section 17(5)(c) and (d), credit on goods/services received for construction of immovable property or general plant setup is blocked, and in any event, they constitute capital assets/infrastructure rather than raw inputs.

c. Nickel Screens & Heavy Equipment (Screen-O-Tex India Pvt Ltd): Nickel screens represent capital plant accessories used in textile printing machinery having an extended useful life. Under Section 2(19) of CGST Act, capital goods are goods capitalized in the books of accounts. They cannot be camouflaged as 'Inputs' in Annexure-B to inflate 'Net ITC'

6.6 The following judicial decisions were also cited by the Revenue in support of their contentions:

a. Union of India v. VKC Footsteps India Pvt. Ltd. (2021) 52 GSTL 513 (SC): The Hon'ble Supreme Court categorically held that refund under Section 54(3)(ii) is a statutory entitlement confined strictly to 'inputs' as defined under Section 2(59), and explicitly excludes capital goods and input services from the purview of Net ITC.

b. Maruti Suzuki Ltd. v. Commissioner of Central Excise (2009) 240 ELT 641 (SC): The Supreme Court established that for an item to qualify as an input in manufacturing, there must be a direct nexus with the integral manufacture of final commercial products.

c. TVS Motor Company Ltd. v. State of Tamil Nadu (2018) 19 GSTL 182 (SC): The Apex Court affirmed that credit/refund is a statutory concession provided by the legislature, subject to strict statutory conditions and limitations.

6.7 Shri Anil Gopinath, learned Joint Commissioner / Authorized Representative appeared for the respondent /Revenue and reiterated the above submissions and contended that in view of all of the above, the Appeal may be dismissed and the Order in Appeal sustaining the rejection of refund to the extent of Rs. 7,07,173/ may be upheld.

7.0 Discussion and findings.

7.1 We have carefully considered the submissions made by both sides and perused the records. The core issue to be decided is whether the order of the first Appellate Authority is right to the extent that it sustains the rejection of refund on unutilized Input Tax Credit (ITC) to the tune of Rs. 7,07,173/-.

7.2 We reproduce underneath the relevant portion of the SCN:

"On examination it appears that the refund application is liable to be rejected on account of the following reasons: Ineligible refund on account of wrong ITC claim - Rs 972027".

7.3 The appellant has assailed the SCN on the grounds that:

- The said notice did not furnish any invoice-wise details or specific break-up of the input tax credit proposed to be disallowed.

- The notice merely contained a general allegation that the refund claim included ineligible input tax credit, without identifying the particular invoices, nature of ineligibility, or the basis for such proposed rejection, thereby not indicating the precise extent or components of the disputed amount.

7.4 We observe that the objections of the appellant against are valid in as much as, other than making a bland statement to the effect that the refund is 'ineligible on account of wrong ITC claim' and also providing a consolidated amount of 972027 without any invoice wise break up, the show caused notice lacks specificity and is an epitome of vagueness. The SCN is silent on the grounds on which the ITC claim is declared to be ineligible.

7.5 In this connection we reproduce hereby extracts from the judgement dated 15/6/2007 of the honorable Supreme Court in the case of Commissioner of Central Excise, Bangalore Versus Brindavan Beverages (P) Ltd. 2007 (6) TMI 4 - Supreme Court

The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice.

7.6 The learned AR in response to the Appellant's contentions that SCN was vague has stated that the Appellant has submitted detailed invoice lists in response to the SCN demonstrating full understanding of the allegations. Furthermore, it is stated that complete invoice-by-invoice verification was conducted and therefore no prejudice whatsoever was caused to the Appellant.

7.7 However, we observe that the mere fact that the assessee produced detailed invoice lists cannot take away from the fact that the SCN, when read independently, is per se vague and has therefore caused enormous prejudice to the assessee in defending his case. As to the complete invoice by invoice verification, we find no narration / findings in the OIO to the effect that such verification was carried out and its result thereof.

7.8 We find that right at the outset, even at the SCN stage itself, the present proceedings are vitiated on account of being vague and lacking details, thus depriving the tax payer of a proper opportunity to meet the allegations indicated in the SCN.

8.1 Be that as it may, we next move on to the OIO, relevant portion of which it is reproduced as follows:

*Upon examination of your application/reply filed against RFD 08, **you have failed to prove why the claim should not be rejected.***

Refund amount inadmissible (ITC claim contains ITC of capital goods, Input Service and ITC from other months)- 972027

8.2 We find that once a tax payer has filed a refund claim, if for any reason, it appears to the Refund sanctioning Authority that a portion of the claim is ineligible, a specific / reasoned finding needs to be entered in the order sanctioning refund as to why the same is found to be ineligible. We find no such finding in the order. It is as vague as the SCN itself.

8.3 We next come to the Order in Appeal find that the relevant portion reads as follows:

The issue to be decided is whether the invoices produced by the appellant were related to the inputs or on put services used in furtherance of business. In furtherance of business can be interpreted as that without use of these items supply cannot be provided and that are essential ingredients for the purpose of business.

………………

ITC on the above invoices (IGST Rs 5,84,837.30, Rs 122330(CGST+SGST) cannot be allowed since those supply of goods / services were not related in furtherance of business as prescribed under section 2(59) and 2(60) of the Act.

8.4 The Appellant has vehemently contended that the appellate authority cannot improve the Revenue's case on a ground outside the show cause notice and order-in-original and therefore for this reason alone the order of the Appellate Authority needs to be set aside.

8.5 On perusal of the SCN and the order in Appeal we find that the grounds of rejection as contained in the order of the Appellate Authority viz "the supply of goods / services were not related in furtherance of business as prescribed under section 2(59) and 2(60) of the Act" is not a ground which has been set forth in the SCN and clearly the Appellate Authority has transgressed the boundaries of the SCN and has artfully insinuated grounds for rejection which are nowhere to be found in the SCN. This goes beyond all canons of natural justice and the order of the Appellate Authority also needs to be set aside for this reason alone.

9. We also note that the Appellant has made a strong plea on the question of law to the effect that:

a. The eligibility and lawful availment of input tax credit fall for determination under sections 16 and 17 of the CGST Act.

b. Once such credit has been availed in the statutory returns and has not been challenged through proceedings under sections 73 or 74, the refund proceedings under section 54(3), read with rule 89(5), cannot be converted into collateral proceedings for re-adjudicating the very eligibility of that credit.

c. The adjudicating authority may verify the quantum of “Net ITC”, the relevant period, the turnover and other conditions prescribed by section 54 and rule 89; however, it cannot, without a specific notice and proceedings under the applicable provisions, declare the underlying credit inadmissible for the first time while deciding the refund application.

d. Paragraphs 20 and 21 of Circular No. 8 125/44/2019-GST dated 18-11-2019 also recognize this distinction by requiring that, where rejection of refund is founded upon ineligibility of ITC, the notice must be issued under section 54 read with sections 73 or 74 and the inadmissible credit must be recovered through the prescribed statutory mechanism.

e. They also cited a plethora of decisions of higher judicial fora in support of their claim and contended that although these decisions were rendered in the context of the CENVAT regime, the principle applies with equal force to the corresponding structure of the CGST Act. In the present case, there being no allegation or proceeding under sections 73 or 74 challenging the impugned ITC on the ground of absence of business use, personal use or section 17(5), its eligibility could not lawfully have been reopened for the first time while adjudicating the refund claim.

10.1 We find considerable merit in these contentions of the Appellant. We find that under the statute, any determination of the eligibility or otherwise of an input tax credit is permissible only under section 73/ 74. There cannot be any disallowance of input tax credit dehors the above provisions. The natural corollary to the above statement is that until and unless an order has been passed under section 73 / 74 disallowing the input credit taken, the input credit is presumed to be in order. In the instant case, no such proceedings been initiated against the appellant. This being the case, the appellants contention that

"In the present case, there being no allegation or proceeding under sections 73 or 74 challenging the impugned ITC on the ground of absence of business use, personal use or section 17(5), its eligibility could not lawfully have been reopened for the first time while adjudicating the refund claim." is on a firm legal footing.

10.2 We find that in the instant case, the Revenue not having challenged the eligibility of input tax credit under section 73 / 74 of the Act, is estopped from denying refund to the appellant on the grounds that the said input credit was not eligible.

10.3 We find support for the above view in paragraphs 20 and 21 of Circular No.125/44/2019 – GST dated 18/11/2019 of CBEC (as it then was). The said paragraphs are reproduced below:

> *20. In case of rejection of refund claim of unutilized/accumulated ITC due to ineligibility of the input tax credit under any provisions of the CGST Act and rules*

made thereunder, the proper officer shall have to issue a show cause notice in FORM GST RFD-08, under section 54 of the CGST Act, read with section 73 or 74 of the CGST Act, requiring the applicant to show cause as to why: (a) the refund amount corresponding to the ineligible ITC should not be rejected as per the relevant provisions of the law; and (b) the amount of ineligible ITC should not be recovered as wrongly availed ITC under section 73 or section 74 of the CGST Act, as the case may be, along with interest and penalty, if any.

21. The above notice shall be adjudicated following the principles of natural justice and an order shall be issued, in FORM GST RFD-06, under section 54 of the CGST Act, read with section 73 or section 74 of the CGST Act, as the case may be.

10.4 In the light of the above circular, it is self-evident that any determination of eligibility of ITC has to be strictly in terms of section 73 /74 and the appellant's contention that "once ITC has been availed in the statutory returns and has not been challenged through proceedings under sections 73 or 74, the refund proceedings under section 54(3), read with rule 89(5), cannot be converted into collateral proceedings for re-adjudicating the very eligibility of that credit" is legally unimpeachable.

10.5 We find strong support for our findings in the following decisions of the higher judicial fora:

a. Decision of CESTAT Delhi dated 18/5/2009 in the case of Commissioner of Service Tax, Delhi *v.* Convergys India (P.) Ltd. [2009] 21 STT 67 (New Delhi - CESTAT)/[2009] 16 STR 198 (New Delhi - CESTAT) wherein the Tribunal determined that:

there cannot be two different yardsticks, one for permitting credit and the other for eligibility for granting rebate. Whatever credit has been permitted to be taken, the same are permitted to be utilized and when the same is not possible there is provision for grant of refund or as rebate. <u>Without questioning the credit taken, the eligibility to rebate cannot be questioned.</u>

b. Decision of CESTAT Mumbai dated 27/8/2014 in the case of Morgan Stanley Advantage Services Ltd vs Commissioner of Service Tax Mumbai II - 2014(12) TMI 330-CESTAT Mumbai wherein the Tribunal found as follows:

"….the department has not objected to the assessee – respondent taking the credit at the relevant time and the objection has been raised only at the time of filing of the refund claims. This Tribunal in the case of Commissioner of Service Tax Delhi vs Convergys India Pvt Ltd 2009(16) STR (Tri – Del) had taken the view that there cannot be two different yard sticks: one for the permitting of credit and the other eligibility for granting credit. Whatever credit has been permitted to be taken, the same are permitted to be utilized and it is not possible to have two provisions, one for grant of refund or as rebate. <u>Without questioning the credit taken, the eligibility of refund cannot be questioned."</u>

c. Decision of CESTAT Hyderabad dated 6/8/2019 in the case of ADP Pvt ltd vs Commissioner of Service Tax, Hyderabad II wherein the Tribunal found that:

…It is a well settled principle that availment of Cenvat Credit, its utilization and its

refund are different aspects dealt with under CCR 2004. Rule 5 of CCR 2004 provides for refund of Cenvat Credit in respect of goods /services exported out of India. No where in this Rule 5 is there a provision to determine whether availment of CENVAT credit in the first place is correct or otherwise. There is a separate provision for recovery of irregularly availed Cenvat Credit under Rule 14 of Cenvat Credit Rules 2004. There are also provisions for recovery of interest as well as imposition of penalties if any Cenvat credit is irregularly availed. Therefore we agree with the appellant that the rejection of refund of Cenvat credit partly on the ground that input services are not eligible for Cenvat credit at all is not correct in law.

d. Decision of Telangana High Court dated 28/9/2021 in the case of CCE Hyderabad IV vs Qualcomm India Pvt Ltd 2021(11)TMI 72 wherein the honorable High Court found as follows:

> *15. It is not in dispute that Rule 14 of the Rules provides that in case of irregular availment of Cenvat, credit or its utilization the authorities under the Finance Act are empowered to recover the same from the assessee. It is also an admitted fact that the said provisions have not been invoked by the appellant / revenue against the respondent / assessee.*
>
> *16. As the availment of Cenvat credit by the appellant under Rule 3 of the Rules is not called in question, the denial to grant refund under Rule 5 of the Rules without there being proceedings under Rule 14 of the Rules by seeking to deny the refund on the ground that the respondent / assessee availed credit on input services, which according to the appellant / revenue have no nexus with the output service, in our considered view, cannot be held to be justified.*

10.6 We are conscious of the fact that all the above said decisions have been rendered in the context of the erstwhile Cenvat regime. However we find that notwithstanding the above, the fundamental legal principle remains that when there are clear and distinct statutory provisions governing the determination of ITC eligibility and refund of unutilized ITC, refund of unutilized ITC cannot be denied on the ground of non-eligibility without a formal proceeding to disallow such ITC under the relevant provision. This has been the settled legal position at least since 18/5/2009 when the order in the case of Convergys was passed by CESTAT Delhi. We find that the ratio laid out in Convergys has been upheld / followed time and again by other judicial fora and continues to hold the field.

10.7 We find that the learned AR has made elaborate written submissions as to why the ITC on the said items is disallowed. However, in view of our categorical finding that the question of ITC eligibility can be determined only under a proceeding under section 73 / 74, the submissions of the learned AR are of no help to the Revenue in the instant case.

11.0 To sum up our findings:

a. On the aspect of natural justice, we find that:

The Show Cause case is vague and lacks details and does not pass the test as laid down by the honorable Supreme Court in the case of M/s Brindavan Beverages cited above and therefore hold that noticee was not given proper opportunity to meet the allegations indicated in the show cause notice. The proceedings against the assessee are liable to set aside on this ground alone. We further find that order of the Appellate Authority has transgressed the boundaries of the SCN and is based on extraneous grounds not contained in the SCN and therefore deserves to be set aside.

b. On merits, on the broader question of law as framed in paragraph 2.0 above, we find that:

An application for refund under section 54(3) of the CGST / KGST Act 2017 cannot be rejected on the grounds of ineligible Input Tax Credit, in the absence of an order under section 73 / 74 of the CGST / KGST Act determining that the said ITC was wrongly availed or utilized. In the instant case we find that the Revenue has not made any attempt to determine the correctness of ITC through proceedings under section 73 /74 and has sought to raise the ground of ineligibility of ITC only at then stage of processing of refund claim, which is clearly not permissible.

12. In view of the above findings, the following order is passed:

The appeal is allowed and the portion of the Order in Appeal which has upheld the denial of refund to the extent of Rs 7,07,173 is set aside with consequent relief.

(Order pronounced in open court on 08.09.2026)

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Vice-President

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Ramamoorthi Sriram
Member (Technical)

Dated: 08.09.2026