GSTAT

Division Bench Court No. Court II

APL/7/LCK/2026

R R INFRASTRUCTE PROJECTS **.............Appellant**

Versus

SHASHI BHUSHAN SINGH, ADDITIONAL COMMISSIONER, GRADE II APPEAL & ORS. **.............Respondent**

Counsel for Appellant **Counsel for Respondent**

CMA MANOJ KUMAR MISHRA **SHRI RAJESH KUMAR SINGH, DEPUTY COMMISSIONER, SGST**

Hon'ble Narendra Kumar, Member (Judicial)

Hon'ble Alok Chopra, Member (Technical)

ORDER

BRIEF FACTS

1. This appeal has been filed by M/s R R Infrastructure Projects, GSTIN 09AAJFR3675F1ZV, against Order-in-Appeal No. GST/181/24 dated 30.12.2024, passed by the Additional Commissioner, Grade-II (Appeals), State GST, Lucknow.

1.1 The impugned appellate order arises out of Order-in-Original Reference No. ZD091223218172R dated 14.12.2023, passed pursuant to Show Cause Notice Reference No. ZD0909232455880 dated 22.09.2023.

1.2 The dispute relates to the period July 2017 to March 2018, i.e. Financial Year 2017-18, and principally concerns alleged excess availment of Input Tax Credit on account of difference between ITC availed in FORM GSTR-3B and ITC reflected in FORM GSTR-2A. The original proceedings were initiated under Section 73 of the CGST/UPGST Rules, the principal tax in dispute is Rs.6,35,288.54, comprising CGST – Rs.3,17,644.27 & SGST – Rs. 3,17,644.27/-.

GROUNDS OF APPEAL

2. The appellant has challenged the impugned order on several grounds, principally contending that the authorities erred in treating the difference between GSTR-3B and GSTR-2A as excess/ineligible ITC without examining the underlying transactions and reconciliation. It was submitted that ITC pertaining to Reverse Charge Mechanism was not properly considered; discrepancies in GSTR-2A arose due to supplier-side reporting errors; and certain suppliers had incorrectly reported transactions as B2C instead of B2B, resulting in non-reflection of otherwise genuine ITC in the appellant's GSTR-2A. The appellant further submitted that certain ITC was available in GSTR-2A but was not claimed in GSTR-3B and that certain ITC was subsequently reversed in FY 2018-19. It was contended that the appellant's case is covered by CBIC Circular No. 183/15/2022-GST dated 27.12.2022 and that the reconciliation and supporting documents were required to be duly examined before determining any alleged excess or ineligible ITC.

2.1 The appellant has further contended that the proceedings were completed without granting an effective opportunity of hearing, thereby violating the principles of natural justice, and that the service of notices and communications requires examination in the light of Section 169 of the CGST Act. It was also submitted that the consequential demand of interest and penalty is unsustainable.

On these grounds, the appellant has prayed that the impugned order be set aside and the matter be remanded to the adjudicating authority for fresh adjudication after providing an effective opportunity of hearing and after proper examination and verification of the GSTR-2A/GSTR-3B reconciliation, RCM-related ITC, supplier-side reporting errors, B2C/B2B reporting discrepancies, subsequent reversal of ITC and the supporting documentary evidence.

QUESTION OF LAW-

i. Whether the ex parte orders are sustainable in law without affording an effective opportunity of hearing?

ii. Whether ITC can be disallowed solely on the basis of GSTR-3B and GSTR-2A mismatch without proper verification?

iii. Whether the matter requires remand for fresh adjudication after considering the appellant's reconciliation and supporting documents?

Since question of law is involved in the present case, the subject appeal was heard by the Division Bench.

APPELLANT'S CONTENTION

4. During the course of hearing, the learned appellant reiterated the grounds of appeal and submitted that the demand had essentially been created on the basis of a mechanical comparison of GSTR-3B with GSTR-2A.

4.1 The learned counsel submitted that the difference does not represent wrongful availment of ITC in its entirety. As per the detailed reconciliation submitted by the appellant, the total ITC claimed in GSTR-3B was CGST – ₹7,52,924.56 and SGST – ₹7,52,924.56, aggregating to ₹15,05,849.12. The appellant separately identified RCM-related ITC of CGST – ₹80,506 and SGST – ₹80,506, aggregating to ₹1,61,012, and accordingly arrived at net ITC against inward supplies of CGST – ₹6,72,418.56 and SGST – ₹6,72,418.56, aggregating to ₹13,44,837.12.

4.2 The appellant explained the difference under several identifiable categories, including supplier reporting errors, incorrect reporting under IGST instead of CGST/SGST, B2C reporting instead of B2B, ITC available but not claimed, RCM and subsequent reversal. The appellant further submitted that B2C reporting differences amounted to CGST – ₹2,33,547 and SGST – ₹2,33,547, aggregating to ₹4,67,094, while ITC of ₹1,33,584.22 was available but not claimed and ₹20,344 was subsequently reversed in FY 2018-19.

4.3 The appellant relied upon CBIC Circular No. 183/15/2022-GST dated 27.12.2022, submitting that the conditions prescribed therein were fulfilled. The Circular specifically addresses differences between ITC availed in GSTR-3B and ITC reflected in GSTR-2A for FY 2017-18 and FY 2018-19 and recognises that supplier-side errors during the initial GST period could result in such discrepancies. It was therefore submitted that the reconciliation and supporting invoices ought to have been examined and verified before confirming the demand.

4.4 Further, the appellant submitted that the partners of the appellant firm were during the very period of the passing of the Order-in-Original and the Order-in-Appeal placed in circumstances of grave personal distress. A fire broke out on 05.09.2022 at the premises of the sister concern of the appellant carrying on business under the trade name "Levana Suites", in consequence whereof the partners of the appellant firm remained in judicial custody for a period of about three months. The affairs of the appellant firm, including the monitoring of the GST portal and compliance with departmental notices, consequently stood wholly disrupted for reasons entirely beyond the appellant's control.

4.5 The appellant relied upon the principles of natural justice and prayed that the impugned order be set aside and the matter be remanded for fresh adjudication.

RESPONDENT'S CONTENTION

5. Shri Rajesh Kumar Singh, Learned Deputy Commissioner of SGST appeared as respondent and stated that the appellant had availed ITC in GSTR-3B in excess of the ITC reflected in GSTR-2A and that the resulting difference was recoverable under Section 73.

5.1 The respondent submitted that the date for filing of additional ground of appeal, will always be deemed to be the date of filing the appeal where in the present case is 19.01.2026. The additional ground of appeal cannot be based on the documents received after the filing of appeal, because the appeal is based on Circular No. 183/15/2022-GST dated 27.12.2022 that calls for production of certificates, which were not available till the date of filing the appeal before this Tribunal. In fact the certificates were issued on 22.03.2026 & 01.04.02026.

5.2 The respondent submitted that the certificates produced before this Tribunal were issued subsequent to the order of the First Appellate Authority and therefore, are liable to be barred from consideration.

5.3 To the personal distress reasoning cited by the tax payer, the Ld. Respondent objected and submitted that the FIR was filed in the year 2022 and DRC 01 was issued on 22.09.2023, the appellant did not appear before the adjudicating authority and the First Appellate Authority to present the case. It was also submitted that the contention of the appellant that sufficient opportunity was not granted is not sustainable as the First Appellate Authority had granted numerous opportunities to appear before them as mentioned in para 5 of the order of the First Appellate Authority.

5.4 Further, the Ld. respondent reiterated that the order passed by the Adjudicating authority and the First Appellate Authority are proper and the present appeal should be dropped.

6. Issues to be Determined before this Bench -

i. Whether there are sufficient grounds in the appeal filed by the appellant to remand the case?

ii. Whether the appellant is entitled to any relief on merits?

FINDINGS OF THE BENCH

7. This Bench is of the considered view that the appellant did not have a proper opportunity to appear before the adjudicating authority and the First Appellate Authority. The reason stated by the appellant is that an FIR was lodged against one of the proprietors whose office was not working properly under his guidance and direction.

7.1 It has also been submitted by the appellant that the proprietor who was accused in the FIR remained in judicial custody for three months, due to which the appellant could not appear before the adjudicating authority.

7.2 The appellant has further submitted that, due to grave personal distress, appellant could not attend the proceedings before the First Appellate Authority, and the order was passed in absentia without affording the appellant an opportunity of being heard.

7.3 However, the First Appellate Authority, while passing the order in the first appeal filed by the appellant, mentioned in paragraph 5 of its order that sufficient opportunities had been granted to the appellant. Notices were issued on 25.04.2024, 03.05.2024, 22.05.2024, 23.07.2024, 25.07.2024, 19.10.2024, 19.11.2024, 28.11.2024, and 06.12.2024, requiring the appellant to appear/represent the case, or file an application for adjournment. Thereafter, a final opportunity was granted to the appellant on 30.12.2024 to represent the case. However, even on that occasion, the appellant failed to appear to the First Appellate Authority, due to personal distress.

7.4 We have perused the records and found that the fire incident occurred in the year 2022 while the DRC-01 was issued vide Reference No. ZD090923245588Q dated 22.09.2023, and DRC-07 was issued/passed on 14.12.2023 vide Order No. ZD09122321872R. It seems that the show cause notice was issued after one year of the fire incident and adjournment was rejected by the Adjudicating authority. It is also pertinent to mention that although the appellant filed an appeal before the First Appellate Authority the appellant himself thereafter failed to appear before the said authority despite being granted several opportunities. The First Appellate Authority passed the order on 30.12.2024. Since the appellant could not appear before the lower authorities hence, in the interest of natural justice, an opportunity to present the case before the Adjudicating Authority needs to be granted.

7.5 Therefore, in view of the documents available on record and the circumstances discussed above, the grounds stated by the appellant are found to be sufficient to warrant remand of the case. Accordingly, the prayer of the appellant for remand of the matter is liable to be accepted.

7.6 This bench holds that the burden under Section 155 remains upon the appellant and ITC cannot be allowed merely on the existence of an invoice or merely because the mismatch is attributable to the supplier. At the same time, the entire difference between GSTR-3B and GSTR-2A cannot be treated as ineligible ITC without examining the appellant's reconciliation and supporting evidence. The adjudicating authority is therefore required to undertake a category-wise and invoice-wise verification of the documents and evidence furnished by the appellant and determine the eligibility of ITC in accordance with Sections 16 and 155 of the CGST Act, 2017 and corresponding provisions of Uttar Pradesh Goods and Services Tax Act, 2017.

8. This bench holds that the appellant has furnished a detailed reconciliation covering RCM, supplier reporting errors, B2C reporting, unclaimed ITC and subsequent reversal. We observed that though the appellant has submitted the copy of the invoices/certificates, in which 04 certificates were issued after the order was passed by the First Appellate Authority, but the issue of those certificates is of the same financial year i.e. 2017-2018 and the invoices were also issued in the disputed years to claim the benefit under Circular No. 183/15/2022-GST. The appellant produced transaction-wise supporting documents, as hereunder –

Sl. No.	Name of Party	Taxable Value	CGST	SGST	Date of issuance of certificates
1)	M/S Zenevo Technologies Private Limited	8,06,480	72,583.20	72,583.20	27.03.2026
2)	Anita Srivastava	2,13,600	19,224.00	19,224.00	04.02.2026
3)	Otis Elevator Company India Limited	95,555.56	8,600.00	8,600.00	01.04.2026
4)	Ankur Talwar	2,07,000	18,360.00	18,360.00	22.01.2024
5)	Radha Bhargava	62,322.22	5,609.00	5,609.00	22.01.2024
6)	Kanika Agarwal	5,22,000	46,980.00	46,980.00	04.02.2026
7)	M.S Associates	1,99,155.56	17,924.00	17,924.00	22.01.2024
8)	Vijaytrade Path Link Private Limited	6,69,012	60,212	60,212	Appellant Claimed as CGST and SGST, but party deposited the tax head under IGST Head)

8.1 In respect of Sl. No. 1 the appellant uploaded the details of invoices, which were issued in the F.Y. 2017-18 but the certificates were issued by M/s Zenevo Technologis Pvt. Ltd. on 27.03.2026.

8.2 In respect of Sl. No. 2. the appellant uploaded the details of invoices, which were issued in the F.Y. 2017-18 but the certificates were issued by the proprietor, Ms. Anita Srivastava on 04.02.2026.

8.3 In respect of Sl. No. 3 the appellant uploaded the details of invoices, which were issued in the F.Y. 2017-18 but the certificates were issued by M/s Otis Elevator Company India Limited on 01.04.2026.

8.4 In respect of Sl. No. 4 the appellant uploaded the details of invoices, which were issued in the F.Y. 2017-18 and the certificates were issued by Dr. Ankur Talwar on 22.01.2024.

8.5 In respect of Sl. No. 5 the appellant uploaded the details of invoices, which were issued in the F.Y. 2017-18 and the certificates were issued by Ms.Radha Bhargava on 22.01.2024.

8.6 In respect of Sl. No. 6 the appellant uploaded the details of invoices, which were issued in the F.Y. 2017-18 but the certificates were issued by Ms. Kanika Agarwal on 04.02.2026.

8.7 In respect of Sl. No. 7 the appellant uploaded the details of invoices, which were issued in the F.Y. 2017-18 and the certificates were issued by M/s M.S Associates on 22.01.2024.

8.8 In respect of Sl. No. 8 issued by M/s Vijaytrade Path Link Private Limited, for the invoices no. VPR2017201808 dt. 01.10.2017, VPR2017201806 dt. 01.09.2017, VPR2017-2018104 dt. 01.08.2017 and CPR2017201802 dt.01.07.2017. The appellant availed ITC under the CGST and SGST heads, whereas the supplier inadvertently reported the tax under IGST. The tax has admittedly been paid to the Government, and the discrepancy is only with respect to the tax headings but there is no revenue loss. Since the supply relates to renting of immovable property, its place of supply is the location of the property under Section 12(3) of the IGST Act, 2017. As both the supplier and property are situated in the same State, the supply is intra-State under Section 8(2), attracting CGST and SGST. Accordingly, the appellant's availment of ITC under CGST and SGST is lawful, and the error lies solely with the supplier in reporting the tax under IGST.

9. Circular No. 183/15/2022-GST specifically addresses discrepancies between ITC claimed in GSTR-3B and ITC appearing in GSTR-2A for FY 2017-18 and FY 2018-19 is reproduced below -

"Section 16 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") provides for eligibility and conditions for availing Input Tax Credit (ITC). During the initial period of implementation of GST, during the financial years 2017-18 and 2018-19, in many cases, the suppliers have failed to furnish the correct details of outward supplies in their FORM GSTR-1, which has led to certain deficiencies or discrepancies in FORM GSTR-2A of their recipients. However, the concerned recipients may have availed input tax credit on the said supplies in their returns in FORM GSTR-3B. The discrepancies between the amount of ITC availed by the registered persons in their returns in FORM GSTR 3B and the amount as available in their FORM GSTR-2A are being noticed by the tax officers during proceedings such as scrutiny/ audit/ investigation etc. due to such credit not flowing to FORM GSTR-2A of the said registered persons. Such discrepancies are considered by the tax officers as representing ineligible ITC availed by the registered persons, and are being flagged seeking explanation from the registered persons for such discrepancies and/or for reversal of such ineligible ITC.

2. It is mentioned that FORM GSTR-2A could not be made available to the taxpayers on the common portal during the initial stages of implementation of GST. Further, restrictions regarding availment of ITC by the registered persons upto certain specified limit beyond the ITC available as per FORM GSTR-2A were provided under rule 36(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") only with effect from 9th October 2019. However, the availability of ITC was subjected to restrictions and conditions specified in Section 16 of CGST Act from 1st July, 2017 itself. In view of this, various representations have been received from the trade as well as the tax authorities, seeking clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A during FY 2017-18 and FY 2018-19.

Besides, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of section 16 of CGST Act.

4.1 In order to verify the condition of clause (c) of sub-section (2) of Section 16 of CGST Act that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:

4.1.1 In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI website https://udin.icai.org/search-udin and that issued by CMAs can be verified from ICMAI website https://eicmai.in/udin/VerifyUDIN.aspx .

4.1.2 In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto Rs 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

4.2 However, it may be noted that for the period FY 2017-18, as per proviso to section 16(4) of CGST Act, the aforesaid relaxations shall not be applicable to the claim of ITC made in the FORM GSTR-3B return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR 1 for the month of March, 2019.

5. It may also be noted that the clarifications given hereunder are case specific and are applicable to the bonafide errors committed in reporting during FY 2017-18 and 2018 19. Further, these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

6. These instructions will apply only to the ongoing proceedings in scrutiny/audit/ investigation, etc. for FY 2017-18 and 2018-19 and not to the completed proceedings. However, these instructions will apply in those cases for FY 2017-18 and 2018-19 where any adjudication or appeal proceedings are still pending."

9.1 The certificates issued on 27.03.2026, 04.02.2026, 01.04.2026, 04.02.2026 do not appear to qualify the categorization as additional grounds of appeal but are documents, which can be taken into consideration according to the circular 183/15/2022-GST.

9.2 Therefore, this Bench finds that the case relied by the appellant in case of Hon'ble High Court of Kerala (Division Bench) in Rejimon Padickapparambil Alex v. Union of India, W.A. No. 54 of 2024, decided on 26.11.2024 is applicable to invoices of sl. No. 8 in respect of M/s Vijaytrade Path Link Private Limited.

10. This bench finds that the appellant has separately claimed RCM ITC amounting to Rs. 1,61,012. Since transactions liable to reverse charge operate under a different mechanism of tax payment and are not dependent upon the supplier reporting the transaction in the ordinary B2B return, the said component cannot be examined merely with reference to the GSTR-2A mismatch. The relevant RCM liability, payment of tax, corresponding documents and availment of ITC are required to be independently verified. Similarly, the appellant has pointed out instances of suppliers reporting tax

under an incorrect tax head and instances where B2B transactions were allegedly reported as B2C. Such discrepancies may affect the reflection of ITC in GSTR-2A without, by themselves, establishing that the underlying supplies were not received or that the tax was not duly accounted for. The same, therefore, requires examination with reference to the underlying records and the mechanism contemplated under the aforesaid Circular.

In the light of foregoing discussion, the certificates which were issued and covered through circular no 183/15/2022-GST of CBIC are admissible and therefore liable to be considered but need to be verified at the level of adjudicating authority.

ORDER

The Appeal is allowed. The Adjudicating Authority is directed to consider all the certificates mentioned in the findings above and verify these from records and other issues also be examined on merits by affording an opportunity of being heard to the appellant in the interests of justice. The Order in Original dt.14.12.2023 and Order in Appeal dt. 30.12.2024 are hereby set-aside.

The Order is pronounced in Open Court.

(Alok Chopra) **(Narendra Kumar)**

18.9.26

Date: 18.09.2026