GOODS AND SERVICES TAX APPELLATE TRIBUNAL
PUNE BENCH

APL/3/PUN/2026

M/s RELIANT BUILDUP, SANGLI **…….Appellant**

Versus

THE COMMISSIONER OF STATE TAX, MAHARASHTRA **…….Respondent**

Quorum:

Hon'ble Shridhar Mahadeo Bhosale, Member (Judicial)

Hon'ble Dr. Nirmal Kumar Soren, Member (Technical)

Counsel for Appellant	**Counsel for Respondent**
Shri Prashant Kumar Chipare, GST Practitioner	Shri Prakash V. Kulkarni, Deputy Commissioner

FINAL ORDER

Date of Last Hearing: 23.10.2026
Date of Order: 05.11.2026

Per: Dr. Nirmal Kumar Soren, Technical Member:

The Appeal

1. This appeal has been preferred under Section 112(1) of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 (hereinafter together referred to as "the CGST Act") against the Order-in-Appeal dated 13.10.2025 passed by the Deputy Commissioner of State Tax (Appeals), Kolhapur, as the first appellate authority. By the said order, the first appellate authority partly allowed the Appellant's appeal against the order-in-original dated 15.01.2024 ("the OIO") passed by the State Tax Officer, Sangli, as the proper officer, under Section 73(9), for the period April 2018 to March 2019.

Brief Facts

2. The Appellant, a partnership firm carrying on business at Sangli as a Government contractor and builder, is registered under the CGST Act. During 2018-19 it executed works contracts for four

co-operative spinning mills, namely, Loknete Gopinath Mundhe Sahkari Soot Girani, Kej; Matoshri Triveni Bonde Magasvargiya Sahkari Soot Girani, Morshi; Govind Magasvargiya Sahkari Soot Girani, Majalgaon; and Shri Swami Samarth Soot Girani, Igatpuri (together, "the societies"), and levied tax at 12% on those supplies.

3. Following an audit for 2018-19, the State Tax Officer, Sangli issued under Section 73(1) a show cause notice in FORM GST DRC-01, No. STO/SAN-VAT-C-007/Audit Finding/2018-19/B-989 dated 18.10.2023 ("the SCN"). On the rate, the SCN states that "The taxpayer has levied the Tax @12% instead of 18% as these are not the Government entities", and proposes a penalty under Section 122(1)(iii) and (x). It further proposes the disallowance of "Excess ITC claimed in GSTR 3B/9 which is not confirmed in 2A/8A of GSTR-9", the difference shown in its table being Rs. 4,19,476/-, and of input tax credit of Rs. 1,29,81,687/- availed after the time limit in Section 16(4), and differential tax of Rs. 36,720/- between FORM GSTR-9 and FORM GSTR-3B. It calls upon the Appellant "to show cause as to why the above tax should not be levied along with applicable interest and penalty as mentioned above". In its reply in FORM GST DRC-06 dated 04.12.2023, the Appellant contended, on the rate, that "the said entities are not Govt. Entities by its constitutional Status, however, the entity's all activities are totally controlled by the Department of Co-operation, Marketing and Textile, Maharashtra", and that it had "not collected GST more than 12% from these entities"; and, on the credit, that "The difference is due to the supplier of goods / service party has not shown the bills on our GST Number on GSTN Portal".

4. By the OIO, issued under No. STO/SANGLI_705/GST AUDIT/DRC-07/2018-2019/B-22, the proper officer confirmed the demands on the rate, on the excess credit and on the credit availed after the time limit in Section 16(4), with interest. It imposed a penalty under Section 122 on the rate head and penalties under Section 73(9) on the two heads of credit. The differential tax of Rs. 36,720/- was "accepted and closed", having been paid in FORM GST DRC-03 on 27.10.2020 "along with applicable interest". On the rate, the OIO records that the letter of the Textile Department dated 20.12.2016 relied upon by the Appellant was "only an approval of budgetary provisions submitted by Soot girani itself",

and that the letter "directs that all the agreements with the contractor and further related activities are to be completed by the Soot Girani itself"; and it holds: "Sine these are private firms the woks Contract done has to be taxed at 18%, irrespective of other facts such as who is governing or sanctioning the work." It adds: "Merely saying that the customer has not accepted 18% tax and given only 9% is not sustainable and further not justified, since such things are not provided in the statute." The proper officer put the receipts from the societies for the year at Rs. 14,41,20,812/-, the tax on them at 12% at Rs. 1,54,41,516/- and at 18% at Rs. 2,19,84,531/-, a difference of Rs. 65,43,015/-, and demanded Rs. 65,43,016/- (CGST Rs. 32,71,508/- and SGST Rs. 32,71,508/-). On the credit of Rs. 4,19,476/-, the OIO holds that the excess claim "is required to be disallowed as per the provision under section 16(2)(C) and section 42(1) of CGST Act 2017", and records that the Appellant "was at the option to produce Ledger Confirmation as required as per circular No. 183/15/2022-GST dated 27/12/2022. But no any confirmations documents are produced."

5. The Appellant appealed against the OIO to the first appellate authority on 13.04.2024. As recorded in the impugned order, it contended on the rate that "The activities of above entities are controlled by Department of Co-operation, marketing and textile, Maharashtra. Hence, they are treated these entities as Government Entities". It also contended that "All the above tenders are issued by the Department of Textile, Government of Maharashtra". On the credit, it stated that "We will be providing the declarations from our suppliers confirming the ITC claimed by us and paid by them", and that "The said confirmations are being taken in conformity with CBIC Circular No. 183/15/2022-GST dated 27th Dec 2022". On the credit availed after the time limit, it contended that the credit "may be allowed considering the provisions of sec 16(5)". By an additional ground against the penalty under Section 122, it contended that "Mere difference of opinion on tax rate cannot be equated with deliberate evasion". The Appellant was heard on 22.08.2025 and 03.10.2025.

6. By the impugned order, No. DCST/APP/GST/1072/24-25/DRC-07/A.O./25-26/No.251, the first appellate authority held, "After analysing tender document, work order and payments for the

F.Y. 2018-19 submitted by appellant", that the Textile Department "is mere the controlling and regulatory body who provided funds as per budgetary provisions". It further held that "The agreement and other related activities are completed by Co- oprative Soot Giranis which are the nongovernment entities hence the works contract service provided to them is taxable at the rate 9% under CGST ACT". On the credit, it held: "The contention of the appellant is not accepted as they have not submitted any ledger confirmations during the appeal proceedings".

7. The first appellate authority reduced to nil the demand of Rs. 1,29,81,687/- raised under Section 16(4), applying Section 16(5). It held the penalty under Section 122 "nullified". The tax, interest and penalty levied by the OIO were otherwise "modified accordingly": tax of Rs. 69,62,492/- (CGST Rs. 34,81,246/- and SGST Rs. 34,81,246/-), interest of Rs. 65,05,878/- and penalty under Section 73(9) of Rs. 6,96,250/-; in all Rs. 1,41,64,620/-. The tax comprises Rs. 65,43,016/- on account of the difference between tax at 18% and tax at 12% on the works contracts executed for the societies. The balance of Rs. 4,19,476/- is on account of input tax credit disallowed. The interest comprises Rs. 60,25,718/- under Section 50(1) and Rs. 4,80,160/- under Section 50(3). It held that the balance part payment of IGST of Rs. 95,840/- made at that stage "is eligible for refund after recovery of Tax, interest, and penalty".

Proceedings before the Tribunal

8. The appeal was filed on 12.01.2026 and registered on 22.07.2026. The Appellant filed Additional Grounds of Appeal, with Annexures I to XXIII, on 26.08.2026 and, on 22.10.2026, the bye-laws and the certificate of registration of the Igatpuri society, with an English translation ("the Igatpuri bye-laws"). The appeal was heard on 06.08.2026, 27.08.2026, 08.09.2026 and 05.10.2026, and finally on 23.10.2026.

9. The Grounds of Appeal state two grounds. The first is that the State Tax Officer "erred in making aadition by considering that the taxpayer has short declared or concealed the outward tax liability and charging interest u/s.50(1) and penalty u/s.122 of the Act". The second is that he "erred in disallowing the ITC claimed by the taxpayer u/s.16(2) (c) of the CGST Act and charging interest

u/s.50(1) and penalty u/s.73(9) of the Act". On the rate, it is contended that the orders below are "not in accordance with law as the Outward Liability declared and paid by taxpayer is clearly matched with the books of accounts of FY2018-19". The societies, it is said, "have paid to the taxpayer either 12% of the Works Contract Service Amount or less than 12% as GST", while the Appellant "has totally discharged the tax liability to the Government @12%". The Appellant reiterates that "The activities of above entities are controlled by Department of Co-operation, marketing and textile, Maharashtra. Hence, they are treated these entities as Government Entities". It states that, in the work order of the Igatpuri society, "the entity has accepted to pay GST liability separately up to 9% only out of 12%". It further states that "the Architect Engineer appointed by the Soot Girani who finalizes each and every bill, has recommended to pay GST on the said bills @ 9% out of 12% and not 18%", and that it has "not collected GST more than 12% from these entities". It contends that "All the above tenders are issued by the Department of Textile, Government of Maharashtra. Therefore, all above tenders are applicable for GST Rate @ 12% as per Notification No. 11/2017- Central Tax (Rate)". The Grounds also take exception to the OIO's reliance on the auditor's Note 4 to FORM GSTR-9C. They further state that "the department have not deduct TDS under GST Act because of the department had transfer the fund to Co-Operative Sootgirani Account and amount received by the taxpayer from Co-Operative Sootgirani". This, it is said, is "only accounting effect but actual this contract is totally Governed by Government". On the credit, the Grounds contend that the conditions of Section 16 are satisfied. The check whether the tax charged has been paid, it is said, "seems impossible as there is no invoice level linkage with GSTR-3B of the supplier". The credit is said to have been availed "provisionally under Section 41", and it is stated that "section 43A of CGST Act is not yet notified to be effective". Reliance is placed on *Suncraft Energy*. The Grounds pray that the impugned order be set aside, with "The confirmation of GST demand Rs.69,62,492/-", the interest under Sections 50(1) and 50(3) and the penalty under Section 73(9).

10. The Appellant has also filed Additional Grounds of Appeal on the rate of tax ("Additional Ground No. 1" and "Additional Ground No. 2") and on the input tax credit ("Point No. 2"). Additional Ground No. 1 states that the period of supply "falls wholly prior to 01.01.2022", from which Notification No. 15/2021-Central Tax (Rate) restricted the entry. It states that the notification "has no application, retrospective or otherwise, to the present dispute". The Appellant, it is said, "accordingly remained, throughout the disputed period, entitled to claim the concessional rate of 12% as available to supplies made to a Government Entity under the unamended Sl. No. 3(vi) of Notification No. 11/2017-Central Tax (Rate)". It states that in the audit the proper officer "thoroughly examined the books of account, records, and all supporting documents produced by the Appellant". This verification, it is said, "has been specifically recorded in Form GST DRC-07, particularly at Point No. 1, and has also been acknowledged in the Appellate Order". It contends that the documents "clearly establish that the works contract relates to the construction of the Sut Girani (Textile Mill) Building, which was undertaken pursuant to the Scheme of the Department of Textiles, Government of Maharashtra, and was financed through Government grants sanctioned by the said Department". It further contends that the "Government Orders, sanction letters, and other official communications issued by the Directorate of Textiles, Government of Maharashtra, expressly prescribed the applicable GST rate of 12%". The Appellant, it is said, charged and discharged tax at that rate "strictly in accordance with the Government directions".

11. It is further contended that the Government documents "specifically governed the execution of the project and formed the contractual foundation between the parties". A meeting is said to have been convened by the Minister of Textiles "in the presence of the Principal Secretary of the Finance Department, wherein specific instructions were issued regarding the applicable GST rate". The Appellant states that it has "relied upon and enclosed copies of all relevant correspondence exchanged with the Finance Department in this regard". According to the Appellant, the Architect "was appointed by the Directorate of Textiles, Government of

Maharashtra, for and on behalf of the Department". The agreements with the societies, it is said, were executed in his presence as the Architect "representing the Directorate of Textiles, Government of Maharashtra". The three work orders produced are said to have "clearly mentioned that the tender was approved and monitored by the State-Level Monitoring Committee". The original agreement for the Morshi mill, it is said, "could not be traced and is therefore unavailable".

12. On the entry itself, Additional Ground No. 1 contends that "both limbs of this entry are satisfied on the facts of the present case". It contends that "The entrustment condition under the proviso to Sl. No. 3(vi) is accordingly squarely met". It also contends that *Vijai Electricals* and the ruling concerning "TSIICL" are "distinguishable on facts". According to it, the societies "are entities specially created under a State Government scheme for the socio-economic upliftment and employment generation of designated backward-class communities". The contract, it is said, "is a one-time capital construction contract for creation of the underlying civil structure", while "The subsequent operation of the completed mill, if and when it commences commercial production, is a distinct activity carried out by the cooperative society in its own right". It further contends that the non-business question "was never examined or recorded as a finding in the impugned order at all". It adds that "The demand cannot be sustained on a ground never put to the Appellant or considered by the Adjudicating Authority in the first instance".

13. Additional Ground No. 1 further contends that the impugned order proceeds "without recording any finding as to the applicability or otherwise of the relevant entries" of Notification No. 11/2017-Central Tax (Rate). It contends that the impugned order "completely ignores" the Government Letters and Minutes of Meetings issued by the Department of Textiles. These, it is said, "legitimately formed the basis for determining the applicable GST rate". The ground states that the impugned order is "therefore contrary to the provisions of" Sections 9, 50 and 73 and of Notification Nos. 11/2017, 20/2017 and 24/2017-Central Tax (Rate), with their subsequent amendments. It invokes the presumption under illustration (e) to Section 114 of the Indian

Evidence Act, 1872 ("corresponding to Section 119 of the Bharatiya Sakshya Adhiniyam, 2023") that judicial and official acts have been regularly performed. It contends that the Respondent "has neither challenged the validity of these documents nor produced any evidence to rebut the statutory presumption". Additional Ground No. 2 contends that, as to these documents, the impugned order "neither discusses nor records any finding regarding their evidentiary value". The impugned order is said to be "a non-speaking order insofar as it ignores the material Government records and documentary evidence produced by the Appellant".

14. On interest and penalty, Additional Ground No. 1 contends that "The dispute involved is purely one of classification and interpretation of the applicable rate notification". It contends that there is "neither suppression of facts, fraud, wilful misstatement nor any intention to evade payment of tax", and that "All facts relating to the contract, invoices, turnover and GST payment were fully disclosed in the books of account and statutory GST returns". Interest, it is said, is unsustainable as the Appellant "discharged the entire tax collected from the recipient in accordance with a bona fide interpretation of the applicable notification and Government directions". The penalty under Section 73 is said to be "wholly illegal". It pleads promissory estoppel and legitimate expectation, relying on *Indo-Afghan Agencies* and *Motilal Padampat*, on the footing that the rate of 12% was "expressly and repeatedly prescribed, in writing, by the Department of Textiles, Government of Maharashtra". It states that the doctrine "does not permit a private party to override a statutory rate of tax where none was legally available". It invokes the doctrine instead "for the distinct and narrower purpose of demonstrating the complete absence of culpability, wilful default or lack of bona fides on the part of the Appellant". Culpability, wilful default or lack of bona fides, it says, are "the very foundation on which interest under Section 50 and penalty under Section 73 rest". As the Appellant acted on the written direction of the Department of Textiles, said to be "also the recipient of the supply", it contends that interest and penalty "ought accordingly to be waived in full even if the primary rate classification is decided against the Appellant".

15. In the alternative, Additional Ground No. 1 reiterates the prayer that "the benefit of cum-tax value be extended to the Appellant", since the Appellant "has at no stage collected any amount from the recipient beyond GST @ 12%". The Appellant prays that it be held to have "rightly discharged GST at 12% on the impugned works contract", that the demand of differential tax at 18% be set aside, and that interest and penalty be deleted.

16. Under "Point No. 2", it is contended that the disputed transactions are "genuine business transactions supported by original physical tax invoices". It is also contended that "the alleged mismatch is substantially attributable to supplier-side reporting in FORM GSTR-1". The Appellant submits that the fact that a supplier has not furnished the "ledger confirmation/certificate" contemplated by Circular No. 183/15/2022-GST ("the Circular") "cannot, by itself, be treated as conclusive evidence that the underlying purchase transaction is bogus". It submits that the requirements of Section 16(2) "relating to the possession of valid tax invoices and the actual receipt of goods and/or services, have been duly satisfied". Where credit is denied only because a supplier has not furnished a confirmation or an invoice does not appear in FORM GSTR-2A, the department, it is said, "ought to undertake appropriate verification of the supplier and the underlying transaction rather than shifting the entire consequence of supplier-side reporting failure upon a bona fide recipient". Reliance is placed on *Suncraft Energy*, *D.Y. Beathel Enterprises* and *Arise India*. Copies of the relevant invoices, GSTN portal printouts stated to evidence the filing status of FORM GSTR-3B by the suppliers, and details of payment of the consideration to the suppliers are stated to be enclosed as Annexure I. The Appellant further submits that there is "no allegation or finding in the impugned order that the purchases were fictitious, that the suppliers were non-existent, that the goods were not received, that the consideration was not paid, that the invoices were fabricated, or that the Appellant had colluded with the suppliers for wrongful availment of ITC". It states that it "is willing to place before the Hon'ble Tribunal" the invoice-wise reconciliation and supporting records. It also "craves leave" to submit the portal-generated records. If further verification is considered necessary, it asks for an opportunity to produce further

documents and that "the matter may be restored for limited verification". It prays that the disputed credit be allowed and the consequential demand of tax, interest and penalty deleted. Alternatively and without prejudice, it prays that "the matter may be remanded for invoice-wise verification".

17. In a written submission dated 02.09.2026, the Appellant states that the State-Level Committee "constituted by the Government" negotiated the tendered rates. The Committee, it says, offered the work "at a negotiated rate of 35% above the estimated tender cost, plus GST (As per Rule)", and "the negotiated amount accepted by the Appellant was exclusive of applicable taxes". It states that the Committee "communicated/represented that GST would be applicable at the rate of 12% in respect of the work". It adds that, "in the subsequent billing/payment arrangement, GST to the extent of 9% was reflected/considered by the concerned authorities and the balance 3% was required to be borne by the Appellant". The submission states that the Appellant "accepts that a statutory rate of tax, if otherwise applicable under the GST law, cannot be altered merely by a private understanding between the parties". The reliance upon the Government directions, it says, is made "for the limited and distinct purpose of establishing the Appellant's bona fides and absence of culpable conduct". Relying on *P. Venugopal Naidu*, it states that the High Court "directed the competent authorities to examine whether the actual works satisfied the notification conditions". Here, it says, the authorities must likewise examine the project "rather than proceeding merely on the assumption that the standard rate of 18% is applicable". It prays that the concessional rate be allowed. Without prejudice, it prays that the Appellant's "bona fide conduct and reliance upon express Government directions be accepted", and that "the allegation of wilful default, suppression or intention to evade tax be held unsustainable". It also prays that "the penalty proposed/imposed upon the Appellant be dropped in full", and that the interest demand "be deleted/waived to the extent permissible in law".

18. The Respondent supports the impugned order. Its reply, filed on 05.09.2026, states that, "Upon a detailed review of the tender documents, work orders, and payment terms", the Textile Department "acted strictly as a controlling and regulatory body

providing budgetary funds". It states that "The actual execution of agreements and related operational activities was performed directly by the Co-operative Soot Giranis, which operate as non-government entities". It concludes that, "because the contracting party is a non-governmental entity, the concessional rate is inapplicable, and the services are legally taxable at the standard rate of 9% CGST (total 18% GST)". On the credit, it states that the Appellant "failed to submit the mandatory supplier ledger confirmations or reconciliation documentation to substantiate the credit claimed". It adds that "In the absence of verifiable third-party evidence to reconcile the mismatch, the contention of the appellant cannot be accepted". The reply does not deal with the Additional Grounds or the Annexures. No further reply by the Respondent is on record.

19. In its rejoinder to the reply, dated 03.09.2026 and filed on 05.09.2026, the Appellant contends that the reply itself acknowledges that the Textile Department "acted as the controlling and regulatory authority and provided budgetary support to the projects". It contends that "The transaction must be examined as a whole". It also contends that the State-Level Committee "constituted a Government authority responsible for the sanctioning and implementation of the concerned projects". It contends that later amendments "cannot be invoked retrospectively", and relies on *P. Venugopal Naidu v. Union of India*. On the credit, it contends that the difference "cannot automatically lead to the conclusion that the underlying purchases were fictitious". It states that "the only discrepancy was that the suppliers had not uploaded the corresponding invoices in their GSTR-1 returns, although the respective suppliers had duly filed their GSTR-3B returns". It contends that the principles of natural justice require "a meaningful opportunity to reconcile the disputed credit". It adds that recovery on the basis of FORM GSTR-2A "would result in double taxation". It states that the Appellant "has duly fulfilled the conditions prescribed under Section 16(2)(a)(b)(c)(d) of the CGST Act, 2017 except section 16(2)(aa)".

20. In an Additional Rejoinder dated 01.10.2026, the Appellant contends that the Government "exercised Substantive control over the project"; that the Government machinery was involved

"commencing from the formulation and implementation of the scheme" through sanction, funding, tendering and negotiation to completion; and that the work orders and agreements, though executed by the societies, "were executed pursuant to and within the framework of the Government-sanctioned project". It relies on *Bagalkot Nirmithi Kendra* for the principle that the Governmental character of an entity is to be examined on its actual framework, while stating that the Appellant "does not submit that the Bagalkot Nirmithi Kendra judgment mechanically determines the GST rate applicable to the contracts involved in the present appeal". It relies on three Government documents of 07.02.2018, 21.04.2018 and 03.12.2018, which, it says, "are not relied upon as an independent source of exemption", and, on the strength of *Shapoorji Pallonji*, contends that the Respondent "cannot, by interpretation, read the expression "or" as "and"" in the expression "equity or control". It contends that GST liability "cannot be determined merely from the nomenclature or legal status of the ultimate recipient", and that the Respondent "cannot introduce conditions which are not expressly contained in the notification". It prays that the rate be determined upon "the complete factual matrix" rather than "merely on the basis of the co-operative society status of the ultimate recipient".

21. At the final hearing on 23.10.2026, the learned Authorised Representatives of both parties appeared, and the learned Authorised Representative for the Appellant was heard. The entry at Sl. No. 3(vi), relied upon in Additional Ground No. 1, was discussed with him. "It was pointed out to him that the end use of the buildings constructed may not be in line with that provided in the said entry, namely, original works "meant predominantly for use other than for commerce, industry, or any other business or profession"". The learned Authorised Representative "agreed with the same, while submitting that the construction was broadly for the purpose of the socio-economic upliftment and employment generation of the designated backward-class communities". As regards the input tax credit, he submitted "that the invoices, proof of payment and ledgers have been furnished; that the suppliers have filed their returns in FORM GSTR-3B; that ledger confirmations could not be obtained from the suppliers; and that the denial of the credit would result in double taxation". Asked whether the

Appellant had any grievance with regard to the calculation, and whether it had been done on a net basis, he "stated that it was on a net basis only". The matter was reserved for final order.

The Legal Framework

22. Section 9(1) of the CGST Act levies tax on all intra-State supplies of goods or services or both "on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council". The rates for services are notified in Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017.

23. Item (vi) against Sl. No. 3 of that notification, as substituted by Notification No. 24/2017-Central Tax (Rate) dated 21.09.2017 and amended by Notification No. 31/2017-Central Tax (Rate) dated 13.10.2017, read, during the period in dispute, as follows (central tax at 6%):

> (vi) Services provided to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of —
>
> (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
>
> (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or
>
> (c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.

24. With effect from 27.07.2018, Notification No. 17/2018-Central Tax (Rate), issued under Section 11(3) of the CGST Act "for the purpose of clarifying the scope and applicability" of the notification, inserted in item (vi) the following Explanation: "For the purposes of this item, the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities." Item (vi) was not otherwise amended during the period in dispute.

25. Notification No. 31/2017-Central Tax (Rate) also inserted paragraph 4(x), which defines the expression:

> (x) "Government Entity" means an authority or a board or any other body including a society, trust, corporation,
>
> i) set up by an Act of Parliament or State Legislature; or
>
> ii) established by any Government,
>
> with 90per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.

26. Supplies not covered by any of the preceding items fall under item (xii) against Sl. No. 3, as substituted by Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018: "Construction services other than (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x) and (xi) above", at central tax of 9%. With effect from 01.01.2019, Notification No. 27/2018-Central Tax (Rate) inserted after "(xi) above" the words "and serial number 38 below".

27. As to value, Section 15(1) provides that the value of a supply "shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply".

28. As to interest and penalty, Section 50(1) provides:

> (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council. …

29. Section 50(3), as substituted by section 111 of the Finance Act, 2022 with effect from 01.07.2017, provides:

> (3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.

30. Sub-sections (8) and (9) of Section 73 read:

> (8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.
>
> (9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

31. As to input tax credit, Section 16(2), as it stood during the period in dispute, provides, so far as material:

> (2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—
>
> (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
>
> (b) he has received the goods or services or both. …
>
> (c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and
>
> (d) he has furnished the return under section 39: …

32. Section 155 provides:

> Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

33. Circular No. 183/15/2022-GST dated 27.12.2022 states, in its opening paragraph, that "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". Para 4 sets out the steps for the proper officer: to "seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A", and then to ascertain the fulfilment of the conditions of Section 16. Para 4.1 and its sub-paragraphs then set out:

> 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. …
>
> 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.

34. By para 6, the instructions "will apply in those cases for FY 2017-18 and 2018-19 where any adjudication or appeal proceedings are still pending".

35. As to advance rulings, Section 103(1) provides:

> (1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—
>
> (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;
>
> (b) on the concerned officer or the jurisdictional officer in respect of the applicant.

36. As to the powers of this Tribunal, Section 113(1) provides that the Appellate Tribunal may, after giving the parties an opportunity of being heard, "pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the Appellate Authority, or the Revisional Authority or to the original adjudicating authority, with such directions as it may think fit, for a

fresh adjudication or decision after taking additional evidence, if necessary".

Points for Determination

37. Having heard the learned Authorised Representative for the Appellant, and considered the reply of the Respondent and the record, we find that the following points arise for determination:

(i) Whether the Additional Grounds of Appeal and the Appellant's later filings are to be taken on record;

(ii) Whether the supplies to the societies were liable to tax at the concessional rate of 12% under Sl. No. 3(vi) of Notification No. 11/2017-Central Tax (Rate);

(iii) Whether the interest under Section 50(1) and the penalty under Section 73(9) call for interference, and whether the ground against the penalty under Section 122 survives;

(iv) Whether the differential tax calls for recomputation on a cum-tax basis; and

(v) Whether the disallowance of input tax credit of Rs. 4,19,476/-, with interest under Section 50(3), calls for interference.

Discussion and Findings

Point (i)

38. The Additional Grounds were filed with Annexures running to over a thousand pages. They do not set up a new case on facts: they elaborate the grounds already taken against the rate and the disallowance of credit, and the principal documents relied upon (the tender documents, work orders and the Textile Department's letters) were in substance before the authorities below, which refer to them. The Respondent's reply does not object to their being taken on record. In the interest of justice we take the Additional Grounds and the Annexures on record, together with the Appellant's written submission, its Additional Rejoinder, the two decisions filed with it and the Igatpuri bye-laws, all of which the Appellant relies upon and none of which the Respondent has opposed. Point (i) is answered in the affirmative.

Point (ii)

39. The Appellant's case is that the supplies were made to a Government Entity; it does not claim that the societies are a Governmental Authority. The burden lies on the Appellant, which claims the concession, to bring the supply within the terms of the entry. The concession under Sl. No. 3(vi) turns on two conditions: the status of the recipient, and the use for which the works are meant. We take first the documents on which the Appellant relies and the identity of the recipient, and then each condition.

40. With Additional Ground No. 1 the Appellant has placed on record Annexures II to XXIII. The case built on them is set out in that ground. The Respondent's reply does not deal with the documents individually; it states that, upon a review of "the tender documents, work orders, and payment terms", the Textile Department "acted strictly as a controlling and regulatory body providing budgetary funds". We have examined the documents with that case in view. They may be taken in groups.

41. *Minutes of the State-level Monitoring Committee and covering letters (Annexures III to VI).* These documents are in Marathi; the Appellant has filed certified English translations of them, and we have read them in those translations. As translated, the minutes for the Kej, Morshi and Igatpuri mills record that the State-level Monitoring Committee was constituted under the Government Resolution dated 15.06.2006, and those for the Majalgaon mill that it was constituted "by the Directorate vide letter dated 1/06/2018". For each mill, the meeting that approved the tender was held under the chairmanship of the Minister (Textiles), and the Committee negotiated with the Appellant as the lowest tenderer and approved its tender. The covering letters for the Majalgaon and Morshi mills forward the minutes to the society with the direction that "an agreement shall be executed with the contractor" (Majalgaon) and that "necessary further action may be taken by entering into an agreement with the contractor" (Morshi). What the Committee approved in each case was the contract price, expressed as a premium over the Schedule of Rates or the e-tender price, with a stated component of GST: in the translation of the minutes for the Morshi mill, "35% above + 9% GST (Out of 12%)".

For the Majalgaon mill the approved value, as carried into the work order, is “Rs. 6,23,22,454/- plus G.S.T. @ 6% extra”.

42. A decision on how much tax a co-operative society would bear within an approved contract price is a decision on price, not a determination of the rate at which the supply is exigible to tax. That rate is fixed by notification issued under Section 9(1) of the CGST Act on the recommendations of the GST Council; no department of the State can alter it by administrative decision, and the minutes do not purport to examine whether the supply fell within Sl. No. 3(vi).

43. It is contended in Additional Ground No. 1 that the Textile Department’s letters and minutes “constitute contemporaneous official documents issued by the competent Government authority and legitimately formed the basis for determining the applicable GST rate”. The difficulty is with the description of the authority as “competent”. A department of the State that sanctions and supervises a project is not competent to determine the rate at which a supply is taxed, and the Monitoring Committee did not claim to do so. The letter of 20.12.2016, relied upon before the authorities below, sanctioned the Kej tender some six months before GST came into force. The Additional Rejoinder relies on three of the Government documents while stating that they “are not relied upon as an independent source of exemption”. That accords with our reading of them: they settle the GST component of the contract price, not the rate at which the supply is taxed. As to the contention that instructions regarding the applicable GST rate were issued at a meeting in the presence of the Principal Secretary of the Finance Department, the minutes of one meeting of the Monitoring Committee under the Minister record that a “Finance Department representative” was present; but, like the other minutes, they settle only the GST component of the price. We find on record no correspondence of the Finance Department recording instructions on the rate; and no department of the State can alter the rate notified under Section 9(1).

44. Additional Ground No. 1 also invokes the presumption that official acts have been regularly performed. Section 119(1) of the Bharatiya Sakshya Adhiniyam, 2023, a copy of which the Appellant has itself filed, provides that the Court “may presume the existence

of any fact which it thinks likely to have happened", and illustration (e) is that "judicial and official acts have been regularly performed": the presumption is discretionary, of fact, and rebuttable. Its subject is the regularity of an official act, not the legal effect a party attributes to it. The Respondent does not question that the letters and minutes were regularly issued, and we proceed on that footing; but no presumption can give a departmental minute on contract price the force of a notification under Section 9(1). The contention that the impugned order is contrary to Sections 9, 50 and 73 and to the notifications identifies no particular contravention.

45. *Appointment of the Architect (Annexures VII to X).* The Appellant's case is that M/s Shrikant Patil & Associates, Kolhapur, were appointed by the Directorate "for and on behalf of the Department". The letters say otherwise. Each refers to the mill's own letter (for example, "Reference: Mill's letter dated 28/12/2015") requesting approval for the Architect's appointment, and grants the approval subject to a ceiling on the fee, payable from the provision for construction in the mill's approved project report. The Appellant's own Grounds of Appeal describe him as "the Architect Engineer appointed by the Soot Girani". The Architect was engaged by each society, with the Directorate's approval given in its supervisory role.

46. *Work orders and agreements (Annexures XII to XIV).* Each work order and each agreement on record is issued or signed by the Chairman or the Executive Director of the society concerned. The agreement for the Igatpuri mill, for instance, is made "BETWEEN THE CHAIRMAN, SHREE SWAMI SAMARTH ANUSUCHIT JATI MAHILA SAHAKARI SOOT GIRNI LTD., IGATPURI", "hereinafter referred to as the 'owner'", and the Appellant, and fixes the contract sum at "35% above the estimated cost of tender of Rs.7,37,57,714/-+ G.S.T. @ 9%". The Directorate appears only as the authority that sanctioned the tender. The work order for the Kej mill is dated 24.12.2016, before the levy of GST, and provides that the tenderer "shall be entitled to receive service tax reimbursement after payment". The agreement for the Morshi mill is stated to be untraceable.

47. *Tender documents (Annexure XV).* The tender documents were issued on behalf of each society. The work is described as "Construction of Main Factory Building and Allied Works"; the Employer is "The Chairman" of the society; clause 2.1 of the Instructions to Bidders, "Source of Funds", states that "The expenditure on this project will be met from the budget of Spinning Mill"; and the rates quoted are "deemed to be inclusive of the sales and other taxes that the Contractor will have to pay for the performance of this Contract".

48. *Invoices and running-account bills (Annexure XI).* The invoices are raised on each society as buyer. On their face they charge CGST and SGST at 6% each on the contract receipts and then deduct an amount described as "Reduction in GST - Soothgirani"; the running-account bills certified by the Architect add "G.S.T. @ 9%" to the value of work done. This accords with the Appellant's own statement in its Grounds of Appeal that, in the work order of the Igatpuri society, "the entity has accepted to pay GST liability separately up to 9% only out of 12%". The written submission is to similar effect: "in the subsequent billing/payment arrangement, GST to the extent of 9% was reflected/considered by the concerned authorities and the balance 3% was required to be borne by the Appellant".

49. Read as a whole, the documents establish that the four projects were sanctioned, monitored and supervised under a scheme of the Government of Maharashtra for co-operative spinning mills, and that tender approvals passed through a Committee chaired by the Minister. That much is not in dispute. They do not bear out the case built on them. First, each society, and not the Government or the Directorate, invited the tender, was named as the Employer, entered into the agreement as the "owner", and was billed for the work. The Appellant's own Grounds of Appeal bear this out: no tax was deducted at source under Section 51 because the funds were transferred to the societies' accounts and the amounts were "received by the taxpayer from Co-Operative Sootgirani". Secondly, the tender documents state that the expenditure was to be met from the budget of the spinning mill. Thirdly, no document purports to fix the rate of tax under the notification: the references to 12% record the rate assumed in settling the GST component of

an approved contract price. The State-level Monitoring Committee and the Directorate of Textiles sanctioned the tenders and supervised the projects; they did not receive the supply. The description of the Committee in the rejoinder, as "a Government authority responsible for the sanctioning and implementation of the concerned projects", may be accepted; it does not make the Committee the recipient of the works. The recipient of each supply was the society concerned.

50. We turn to the first condition, that the recipient be a "Government Entity". The first limb of the definition is not attracted. The certificate filed on 22.10.2026 shows that the Igatpuri society was registered on 04.08.2001 under Section 9(1) of the Maharashtra Co-operative Societies Act, 1960, and classified under Section 12(1) of that Act as a processing society; it is not suggested that the other three societies were constituted any differently. A body so registered is not, for that reason, "set up by an Act of Parliament or State Legislature". The Supreme Court in *Commissioner of Customs, Central Excise and Service Tax, Patna v. Shapoorji Pallonji and Company Pvt. Ltd.*, Civil Appeal No. 3991 of 2023, decided on 13.10.2023, relied upon in the Additional Rejoinder, construing the corresponding definition of "governmental authority" in the service tax exemption notification, held (para 24):

> 24. In the present case, the word "or" between sub-clauses (i) and (ii) indicates the independent and disjunctive nature of sub-clause (i), meaning thereby that "or" used after sub-clause (i) cannot be interpreted as "and" so as to tie it with the condition enumerated in the long line of clause 2(s) which is applicable only to sub-clause (ii).

51. The decision thus enables a body set up by statute (there, the Indian Institute of Technology, Patna and the National Institute of Technology, Rourkela, established under their own Acts) to qualify under the first limb without the ninety per cent condition attached to the second. The societies were not set up by any statute, and the first limb is not available to them. The Additional Rejoinder relies on the decision for a different proposition, that the Respondent cannot read "or" as "and" in the expression "equity or control". That reading may be accepted. It does not, however, dispense with

the requirement of the second limb that the body be "established by any Government".

52. The second limb requires that the body be "established by any Government", with ninety per cent or more participation by way of equity or control, to carry out a function entrusted by the Government. None of the Grounds of Appeal, the Additional Grounds or the rejoinder pleads ninety per cent participation by way of equity or control; the case pleaded is one of sanction, supervision and budgetary support and, in Additional Ground No. 1, entrustment of the works. The same ground describes the societies as "entities specially created under a State Government scheme"; but a society formed under a scheme and registered under the general law of co-operative societies is not, for that reason, established by the Government. The Additional Rejoinder goes further and pleads Government control; but the control it pleads is control over the projects, and it points to no document showing that any society was established by the Government. Of the societies' own constitutive documents, only the Igatpuri bye-laws have been filed. Bye-law 5.1 provides for share capital to be raised from members and from "the Government, co-operative societies, and autonomous bodies sanctioned by the Registering Authority", and bye-law 5.3 fixes the authorised share capital at Rs. 25.00 crore; neither discloses the extent of any Government holding. The Board of Directors consists of fourteen directors elected from constituencies of the members, with power to co-opt expert directors and functional directors, the latter being officers in the service of the mill (bye-law 8). Nothing has been filed for the other three societies. The Appellant's own translations of two Government Resolutions dated 07.06.2023, concerning the Kej and Igatpuri mills and filed with Additional Ground No. 1, do record that those mills were "selected for Government financial assistance" under "the 5:45:50 pattern" by the Government Resolution dated 18.11.2015, that the ratio of members' share capital to Government share capital is to be 1:9, and that an amendment of 2016 to the Maharashtra Co-operative Societies Act, 1960, providing for the appointment of two Government members on co-operative societies, is binding on them. That material bears on participation by way of equity or control. The Appellant has not relied on it for

that purpose, and the parties have not addressed it. We do not decide whether the Government's participation in any society, by way of equity or control, meets the ninety per cent test.

53. The second limb is not satisfied in any event, because it also requires that the body be "established by any Government". The Igatpuri society was registered under the Maharashtra Co-operative Societies Act, 1960 in 2001, and was selected for Government financial assistance only by the Government Resolution of 18.11.2015. Where the Monitoring Committee minutes speak of financial assistance "for establishment of the Spinning Mill", they refer to the setting up of the mill as a project, not to the constitution of the society. As to the other three societies, nothing has been placed on record to show how they came to be constituted, and the burden on that question lay on the Appellant. The Appellant's case on the second limb has not been made good.

54. The Appellant has also placed on record the decision of the High Court of Karnataka in *M/s Bagalkot Nirmithi Kendra v. Union of India*, 2025 SCC OnLine Kar 21240. There a society registered pursuant to a Government Order of 1990, whose governing body consisted of the Deputy Commissioner of the District as Chairman and other *ex officio* officers of the State and the Zilla Panchayat, was held to be a Government Entity. The High Court observed:

> 11. … The petitioner is headed by the Chairman, the Chairman is the Deputy Commissioner. Therefore, the petitioner is completely controlled by the government. …
>
> … It is again a matter of record that the Society is controlled by the State Government and funded inter alia by the State Government. Therefore, undoubtedly the petitioner fits into the definition of Clause (zfa) - a 'Government Entity'. …

55. The decision turned on facts established from the society's memorandum and rules, under which it was headed by the Deputy Commissioner and governed by officers of the Government. On the composition of the governing body, the only material before us, the Igatpuri bye-laws, points the other way: the Board of that society consists of directors elected by its members. The Additional Rejoinder relies on the decision only for the principle that the Governmental character of an entity is to be examined on its actual

framework, and states that it does not submit that the decision "mechanically determines the GST rate". We have examined the framework on the record. The decision, of another High Court and on a different entry (a supply made *by* a Government Entity), does not assist the Appellant.

56. The broader submission in the rejoinder is that "The transaction must be examined as a whole" and not by isolating the identity of the "operational recipient" from the Government-sponsored nature of the projects. The entry, however, makes the status of the recipient a condition of the concession, and the definition prescribes how that status is to be tested; Government sponsorship, however strongly established, cannot take the place of those tests. The Additional Rejoinder develops the same submission: the work orders and agreements were executed "pursuant to and within the framework of the Government-sanctioned project", and GST liability "cannot be determined merely from the nomenclature or legal status of the ultimate recipient". The test the notification lays down is not one of nomenclature; it is one of establishment and of equity or control, and it is applied to the body that receives the supply.

57. Three subsidiary contentions may be disposed of here.

(a) It is urged that Notification No. 15/2021-Central Tax (Rate), which restricted the entry with effect from 01.01.2022, cannot apply retrospectively. That is correct but not in issue: no authority has invoked the amended entry, and we have examined the claim under the entry as it stood in 2018-19.

(b) It is urged that the books were examined in the audit. Verification of records in an audit is not an acceptance of the rate at which tax was paid; it was the audit itself that gave rise to the SCN.

(c) The Grounds of Appeal take exception to the reliance in the OIO on the auditor's Note 4 to FORM GSTR-9C. The note, as reproduced by the Appellant, records that the taxpayer charged 12% on the basis of the Textile Department's letter dated 20.12.2016, that "the 12% GST

rate on Works Contract is applicable only on Govt. Contracts", and that "due to above information the taxpayer has applied the 12% GST rate and we also accepted the same". The OIO's paraphrase, that the auditor "recommended that it should be levied @18 %", goes further than the note. But the auditor accepted the rate on the footing of the Textile Department's letter dated 20.12.2016, and on the premise that "the 12% GST rate on Works Contract is applicable only on Govt. Contracts"; that letter is the sanction of the Kej tender, issued before GST and followed by an agreement providing for "Service tax as applicable"; and the impugned order does not rest on the note. Nothing turns on it.

58. We turn to the second condition, the use of the works. Even where the recipient is a Government Entity, item (a) of Sl. No. 3(vi) does not extend the concessional rate to every work: it covers only works "meant predominantly for use other than for commerce, industry, or any other business or profession". The condition is part of the very entry under which the concession is claimed, and the burden of satisfying it lies on the Appellant. It is contended that the question "was never examined or recorded as a finding in the impugned order at all". The authorities below did rest on the status of the recipients; but the Appellant raised the condition itself, contending that "both limbs of this entry are satisfied"; the Respondent has had notice of the Additional Grounds; and the point was put to the learned Authorised Representative for the Appellant at the hearing on 23.10.2026, when he "agreed with the same, while submitting that the construction was broadly for the purpose of the socio-economic upliftment and employment generation of the designated backward-class communities". The general submission in the Additional Rejoinder that the Respondent "cannot introduce conditions which are not expressly contained in the notification" does not touch a condition in the words of the entry itself.

59. The test is the use for which the structure is meant. It is to be judged objectively, from what the works are and the purpose for which they were contracted, and not from the status of the person who owns them or the social purposes for which it was formed. Every tender and agreement on record is for the "Construction of Main Factory Building and Allied Works" of a co-operative

spinning mill. Bye-law 4.1 of the Igatpuri society states its objects. Item 2 reads: “The object of the Mill is mainly to produce yarn of different counts”. By item 5, cotton is to be purchased from the members and, after ginning and spinning, “the finished goods produced shall be sold”; by item 4, the Mill may purchase machinery “for the efficient working of the Mill and for its allied industries and businesses”. A factory building in which cotton is spun into yarn for sale is meant for industry and commerce. Additional Ground No. 1 itself speaks of the operation of the completed mill “if and when it commences commercial production”. Nor does the Explanation inserted by Notification No. 17/2018-Central Tax (Rate) bear on the question: it excludes from “business” only an activity of the Central Government, a State Government or a local authority “in which they are engaged as public authorities”, and the societies are none of these. We do not rest on the concession recorded on 23.10.2026; the record bears it out.

60. The Appellant’s answer is twofold. It is said, first, that the societies were created under a State scheme “for the socio-economic upliftment and employment generation of designated backward-class communities”. That is a statement about the owner and its purpose, not about the use of the building. Item (a) asks what the structure is meant to be used for; the beneficent objects of the person who owns or operates it do not change the character of a factory building, and an industry carried on for the benefit of a disadvantaged community remains an industry. It is said, secondly, that the contract is a one-time capital construction, distinct from the subsequent operation of the mill. Every construction contract is a one-time capital work; if that were enough, the words of item (a) would have no field of operation. The word “meant” directs attention to the use for which the structure is built, which is necessarily the use that follows its completion.

61. The Appellant has itself placed on record the ruling of the Appellate Authority for Advance Ruling, Andhra Pradesh in *Vijai Electricals Ltd.*, Order No. AAAR/AP/03(GST)/2019 dated 24.04.2019 (Annexure XVI), and refers to a ruling concerning “TSIICL” for which no citation is given. As the Appellant describes them, works for a power-distribution utility and for rentable

commercial warehousing were there held ineligible for the concessional rate "on the ground that the recipient's own activity was commercial in nature", and it distinguishes them on the ground that those recipients were ongoing commercial utilities. The distinction does not assist it: a mill which buys cotton and sells yarn is engaged in industry and commerce no less. We refer to these rulings only because the Appellant has placed them on record and seeks to distinguish them; under Section 103(1), an advance ruling is "binding only" on the applicant and on the concerned or jurisdictional officer in respect of the applicant.

62. Nor does *P. Venugopal Naidu v. Union of India*, W.P. No. 33250 of 2022 and batch, decided on 03.03.2026 (High Court of Andhra Pradesh), relied upon in the rejoinder and in the written submission, help the Appellant. Having held the Tirumala Tirupati Devasthanams Board to be a Governmental Authority and a Government Entity for the purposes of the notification, the High Court held that the reduced rate "would be available only if the works, which have been executed by these petitioners, are falling within the nature of works stipulated under the notifications", which was "a question of fact" (para 16), and remitted that question to the assessing authorities (para 17). Here the question of fact is answered by the record.

63. We accordingly hold that the societies are not shown to be a "Government Entity" within paragraph 4(x) of Notification No. 11/2017-Central Tax (Rate); and, independently, that the works were not meant predominantly for use other than for commerce, industry, or any other business or profession within item (a) of Sl. No. 3(vi). Either finding is sufficient. Since the societies are not shown to be Government Entities, the condition in column (5) that services supplied to a Government Entity "should have been procured by the said entity in relation to a work entrusted to it" does not arise, and we do not decide the contention that the works were so entrusted. The concessional rate under Sl. No. 3(vi) was not available, and the supplies were liable to central tax at 9% and State tax at 9% under item (xii) against Sl. No. 3. Subject to Point (iv), the differential tax of Rs. 65,43,016/- was rightly confirmed.

64. Additional Ground No. 2 remains. The OIO gave reasons for rejecting the reliance on the letter of 20.12.2016 and the tender documents, and the impugned order, after "analysing tender document, work order and payments", recorded findings on the role of the Textile Department and the status of the societies. The reasons are brief, but brevity is not absence of reasons, and an authority does not fail in its duty because it does not discuss each document separately where its reasons answer the case put to it. In any event, under Section 113(1) this Tribunal may itself confirm, modify or annul the order appealed against, and need refer the case back only where a fresh adjudication is necessary. All the documents are now on record and we have examined them above. A remand would serve no purpose, and none is sought on this issue. What we have said also answers the contention in Additional Ground No. 1 that the impugned order did not examine the applicable entries or the Government documents. Additional Ground No. 2 fails. Point (ii) is answered in the negative.

Point (iii)

65. Additional Ground No. 1 contends that the dispute is one of classification, that all facts were disclosed and there was no suppression, and that interest and penalty are therefore unsustainable. The authorities below proceeded under Section 73 and not Section 74, and the first appellate authority held the penalty under Section 122 "nullified", accepting that "no men's rea was present". The written submission prays that the Appellant's bona fide conduct be accepted and that the allegation of wilful default, suppression or intention to evade tax be held unsustainable. No such allegation is made: the proceedings are under Section 73, and the penalty under Section 122 is no longer in issue. The question is whether bona fides also displace interest and the penalty under Section 73(9).

66. Section 50(1) charges interest for the period for which tax payable "remains unpaid"; the provision makes no reference to the taxpayer's state of mind. The Supreme Court in *Pratibha Processors v. Union of India*, (1996) 11 SCC 101, explained the character of interest in a fiscal statute (para 13):

> 13. In fiscal Statutes, the import of the words -- 'tax', 'interest', 'penalty', etc. are well known. They are different concepts. Tax is the amount payable as a result of the charging provision. It is a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. Penalty is ordinarily levied on an assessee for some contumacious conduct or for a deliberate violation of the provisions of the particular statute. Interest is compensatory in character and is imposed on an assessee who has withheld of any tax as and when it is due and payable. The levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date. Essentially, it is compensatory and different from penalty — which is penal in character.

67. The Appellant's formulation that it "discharged the entire tax collected from the recipient" misstates the measure: interest is computed on tax payable and not paid, not on tax collected. The Grounds of Appeal themselves state that the societies paid "either 12% of the Works Contract Service Amount or less than 12% as GST". The interest under Section 50(1), determined by the impugned order at Rs. 60,25,718/-, follows.

68. The only surviving penalty is under Section 73(9). Section 73 is the provision for cases in which there is no fraud, wilful misstatement or suppression; the circumstances the Appellant relies upon are what bring the case within it, and cannot also be a reason for not applying it. Within Section 73 the legislature has fixed the penalty at ten per cent of the tax or ten thousand rupees, whichever is higher, and, once the notice had issued, left sub-section (8) as the route to avoid it: payment of the tax with interest within thirty days of the notice, which the Appellant did not make. Sub-section (9) leaves no discretion to reduce or waive the penalty on a finding of bona fides. The penalty of Rs. 6,96,250/- (CGST Rs. 3,48,125/- and SGST Rs. 3,48,125/-) is ten per cent of the tax of Rs. 69,62,492/- (the differential tax and the input tax credit disallowed), computed head-wise, and accords with the statute.

69. The Appellant pleads promissory estoppel and legitimate expectation, relying on *Union of India v. Indo-Afghan Agencies Ltd.*, (1968) 2 SCR 366, and *Motilal Padampat Sugar Mills Co. (P) Ltd. v. State of Uttar Pradesh*, (1979) 2 SCC 409. The plea fails at three levels. First, no document purports to fix the rate of tax under the notification; any representation was as to the GST component of

the price. Secondly, any representation was made by the Textile Department as the authority that sanctioned and funded the projects, not by the authorities administering the tax, and could not bind them. Thirdly, the liability to tax at the notified rate, to interest under Section 50(1) and to the penalty fixed by Section 73(9) arises by force of the statute, and there can be no estoppel against it. In *Kasinka Trading v. Union of India*, (1995) 1 SCC 274, the Supreme Court, after referring to *Indo-Afghan Agencies* and *Motilal Padampat*, said:

> 13. It has been settled by the Court that the doctrine of promissory estoppel is applicable against the Government also particularly where it is necessary to prevent fraud or manifest injustice. The doctrine, however, cannot be pressed into aid to compel the Government or the public authority "to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make." …
>
> 16. In M.P. Sugar Mills case (supra) it was observed that the doctrine of promissory estoppel would not apply in the teeth of an obligation or liability imposed by law and that there can be no promissory estoppel against the exercise of legislative power.

70. The Appellant states that the doctrine "does not permit a private party to override a statutory rate of tax where none was legally available", and invokes it instead to show an absence of culpability, wilful default or lack of bona fides, which it describes as "the very foundation on which interest under Section 50 and penalty under Section 73 rest". Interest under Section 50(1) is compensatory, and the penalty under Section 73(9) is fixed by the statute for cases in which there is no fraud or suppression; culpability is the foundation of neither. The premise that the Textile Department was "also the recipient of the supply" is contradicted by the record: the supplies were received by the societies. The written submission takes the same position: the Appellant "accepts that a statutory rate of tax, if otherwise applicable under the GST law, cannot be altered merely by a private understanding between the parties", and relies on the Government directions only for its bona fides. Its prayer that interest "be deleted/waived to the extent permissible in law" finds no footing in Section 50(1), which makes no provision for waiver.

71. The ground in the original Grounds of Appeal against the penalty under Section 122 does not survive, that penalty having been held "nullified" by the impugned order. Point (iii) is answered in the negative.

Point (iv)

72. In the alternative, Additional Ground No. 1 prays that the differential liability be recomputed on a "cum-tax" basis, since the Appellant "has at no stage collected any amount from the recipient beyond GST @ 12%". The plea does not appear in the Grounds of Appeal or in the orders below; as it is a question of valuation on facts already on record, we have considered it. Under Section 15(1), the value is the transaction value, "the price actually paid or payable for the said supply". The Appellant asks, in substance, that the receipts be treated as inclusive of tax.

73. The plea proceeds on the premise that the receipts included the tax. The Appellant's own documents do not support that premise: its invoices state the "Contract Receipts (Exclusive of Taxes)" and charge CGST and SGST on them, and its sales register (Annexure XI) records the receipts of the year under the column "Exclusive", with nil under "Inclusive". Where the tax is charged over and above the price, there is no occasion to treat the price as inclusive of tax, and we do not enter upon any recomputation of the differential. Point (iv) is answered in the negative.

Point (v)

74. The Appellant claims the credit, and under Section 155 the burden of proving the claim is its own. Under the corresponding provision of the Karnataka VAT Act, the Supreme Court held in *State of Karnataka v. Ecom Gill Coffee Trading Pvt. Ltd.*, (2023) 18 SCC 809:

> 11. … unless and until the purchasing dealer discharges the burden cast under Section 70 of the KVAT Act, 2003 and proves the genuineness of the transaction/purchase and sale by producing the aforesaid materials, such purchasing dealer shall not be entitled to Input Tax Credit.

75. The Circular does not alter the conditions of Section 16(2). For a supplier-wise difference of up to Rs. 5 lakh, para 4.1.2 called

for a certificate from the supplier that the supplies had been made and the tax on them paid in its return in FORM GSTR-3B.

76. The Appellant has had ample opportunity to produce such certificates. Before the first appellate authority it stated that the declarations of its suppliers were "being taken in conformity with" the Circular, and produced none. Before us it filed Annexure I with Point No. 2. Nothing further has been filed, and at the hearing on 23.10.2026 the learned Authorised Representative for the Appellant submitted that ledger confirmations could not be obtained from the suppliers.

77. Annexure I comprises ledger accounts, some invoices, and printouts from the GST portal, dated August 2026, for ten suppliers. It does not establish the claim. First, there is no reconciliation identifying the invoices that make up the difference of Rs. 4,19,476/-; the credit in the ledgers exceeds that figure, and it cannot be ascertained which invoices are not reflected in FORM GSTR-2A, or why. Secondly, there is no certificate from any supplier or Chartered Accountant of the kind contemplated by the Circular. A printout showing that a supplier filed a return for a month says nothing about whether the supplies to the Appellant were declared in it and the tax on them paid, which is what Section 16(2)(c) requires. Thirdly, the Appellant's own pleading acknowledges the gap: it "is willing to place before the Hon'ble Tribunal" the invoice-wise reconciliation and supporting records, but has not done so.

78. The decisions relied upon do not assist the Appellant. *Suncraft Energy Pvt. Ltd. v. Assistant Commissioner, State Tax*, 2023 SCC OnLine Cal 2226, held that, absent action against the selling dealer and an exceptional case such as collusion or a missing supplier, the officer "was not justified in directing the appellant to reverse the input tax credit availed by them" (para 9). The special leave petition against it (SLP (C) Nos. 27827–27828 of 2023, decided on 14.12.2023) was dismissed without reasons, and such an order does not attract the doctrine of merger. In *Kunhayammed v. State of Kerala*, (2000) 6 SCC 359, the Supreme Court held (para 44):

> (iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

79. More importantly, this is not a mechanical reversal. The OIO records that the Appellant "was at the option to produce Ledger Confirmation as required as per circular", and before the first appellate authority the Appellant undertook to produce supplier declarations; it has not produced them. *D.Y. Beathel Enterprises v. State Tax Officer (Data Cell)*, 2021 SCC OnLine Mad 2108, was a remand on its own facts (para 16); and *Arise India Ltd. v. Commissioner of Trade & Taxes*, W.P.(C) No. 2106 of 2015, decided on 26.10.2017 (Delhi High Court), arose under the Delhi VAT Act and does not displace the express conditions of Section 16(2) or the burden under Section 155.

80. Nor is there substance in the submission that the denial of credit would result in double taxation. If a supplier has in fact paid the tax on a supply to the Appellant, that is the very fact which the certificate contemplated by the Circular would establish, and the credit would follow. The credit is denied because that fact has not been established, not because the same tax is levied twice.

81. The disallowance does not rest on a finding that the purchases were fictitious, that the suppliers did not exist or that the goods were not received, and the contentions to that effect in Point No. 2 and in the rejoinder answer a case that is not made. Nor does it rest on want of invoices or of receipt. The claim fails on clause (c) of Section 16(2) and on Section 155: it has not been shown that the tax charged on the supplies was paid to the Government. The difficulty urged in the Grounds of Appeal, that there is "no invoice level linkage" with the supplier's return in FORM GSTR-3B, is the very difficulty the Circular meets by the certificate it contemplates. The provisions of Sections 41 and 43A, on which the Grounds of Appeal also rely, do not relieve the Appellant of the burden under Section 155 of showing that the tax charged was paid. The opportunity sought in the rejoinder has been given, and has not been used.

82. The alternative prayer that the matter be "remanded for invoice-wise verification", and the request that it be "restored for limited verification", must also be declined. A remand is ordered where a party has been denied the opportunity to place its evidence, or where the record cannot be completed without further enquiry below. Neither is the case. The evidence is in the Appellant's own hands or obtainable from its own suppliers, and the Appellant has had every opportunity to produce it. The disallowance of Rs. 4,19,476/- was rightly confirmed.

83. Interest under Section 50(3) has been confirmed at Rs. 4,80,160/- (CGST Rs. 2,40,080/- and SGST Rs. 2,40,080/-). Section 50(3) charges interest where input tax credit has been "wrongly availed and utilised". Asked at the hearing whether it had any grievance with regard to the calculation and whether the calculation had been done on a net basis, the learned Authorised Representative for the Appellant stated that it was on a net basis only. The challenge to the interest rests on the challenge to the disallowance itself, which has failed. The penalty under Section 73(9) on this head forms part of the penalty dealt with under Point (iii). Point (v) is answered in the negative.

Order

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

(a) The appeal is dismissed.

(b) The impugned order, Order-in-Appeal No. DCST/ APP/GST/1072/24-25/DRC-07/A.O./25-26/No.251 dated 13.10.2025, is upheld.

(c) The demand accordingly stands determined as follows: differential tax of Rs. 65,43,016/- (CGST Rs. 32,71,508/- and SGST Rs. 32,71,508/-) and interest under Section 50(1) of Rs. 60,25,718/- (CGST Rs. 30,12,859/- and SGST Rs. 30,12,859/-); penalty under Section 73(9) of Rs. 6,96,250/- (CGST Rs. 3,48,125/- and SGST Rs. 3,48,125/-); and input tax credit disallowed of Rs. 4,19,476/- (CGST Rs. 2,09,738/- and SGST Rs. 2,09,738/-) and interest under Section 50(3) of Rs. 4,80,160/- (CGST Rs. 2,40,080/- and SGST Rs. 2,40,080/-); in all Rs. 1,41,64,620/-.

(d) The proper officer shall adjust the amounts of CGST Rs. 9,49,289/- and SGST Rs. 9,49,289/- paid at the stage of the first appeal, and any further amount paid by the Appellant, against the demand so determined, and communicate to the Appellant the balance payable, if any. The impugned order's holding that the balance part payment of IGST of Rs. 95,840/- "is eligible for refund after recovery of Tax, interest, and penalty" is not disturbed.

(e) There shall be no order as to costs.

(Final Order pronounced in the open court on 05.11.2026)

NIRMAL KUMAR SOREN
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SHRIDHAR MAHADEO BHOSALE
Digitally signed by SHRIDHAR MAHADEO BHOSALE
Date: 2026.11.05 13:23:21 +05'30'

(Dr. Nirmal Kumar Soren)
Member (Technical)

(Shridhar Mahadeo Bhosale)
Member (Judicial)

FORM GST APL-04A

[See rule 113(2)]

Summary of the order and demand after issue of order by the Goods and Services Tax Appellate Tribunal

	Whether remand order	No
	Date of order	05.11.2026
1.	**GSTIN / Temporary ID / UIN**	27AAMFR5128G1Z0
2.	**Appeal Case Reference No. / Date**	APL/3/PUN/2026 dated 22.07.2026
3.	**Name of the appellant**	M/s RELIANT BUILDUP, SANGLI
4.	**Name of the Respondent**	THE COMMISSIONER OF STATE TAX, MAHARASHTRA
5.	**Order appealed against** **(a) Order Type** **(b) Ref. Number / Date**	(a) Demand (b) Order-in-Appeal No. DCST/APP/GST/1072/24-25/DRC-07/ A.O./25-26/No.251 dated 13.10.2025, passed by the Deputy Commissioner of State Tax (Appeals), Kolhapur (arising from the order dated 15.01.2024 passed under Section 73(9) by the State Tax Officer, Sangli)
6.	**Personal Hearing (all hearing dates)**	06.08.2026, 27.08.2026, 08.09.2026, 05.10.2026 and 23.10.2026
7.	**Status of Order under Appeal**	Confirmed

8. Order in brief

Facts: In 2018-19 the Appellant executed works contracts for the factory buildings of four co-operative spinning mills, charging tax at 12%. On a show cause notice dated 18.10.2023, the State Tax Officer, Sangli, by order No. STO/SANGLI_705/GST AUDIT/DRC-07/2018-2019/B-22 dated 15.01.2024 under Section 73(9), confirmed differential tax at 18% on those supplies, the societies not being Government entities, and disallowed input tax credit of Rs. 4,19,476/- availed in FORM GSTR-3B in excess of FORM GSTR-2A. By Order-in-Appeal No. DCST/APP/GST/1072/24-25/DRC-07/A.O./25-26/No.251 dated 13.10.2025, the first appellate authority reduced to nil the demand under Section 16(4), held the penalty under Section 122 nullified, and modified the demand to tax of Rs. 69,62,492/-, interest of Rs. 65,05,878/- and penalty of Rs. 6,96,250/-. Decision: The appeal is dismissed and the Order-in-Appeal is upheld. The societies are not shown to be a "Government Entity" under paragraph 4(x) of Notification No. 11/2017-Central Tax (Rate), not having been set up by statute or shown to have been established by any Government; and, independently, the works were not meant predominantly for use other than for commerce or industry (item (a) of Sl. No. 3(vi)); 12% was not available. Interest under Section 50(1) and the penalty under Section 73(9) follow; neither bona fides nor estoppel displaces them. No cum-tax recomputation arises, the receipts being tax-exclusive on the Appellant's own invoices. The disallowance of input tax credit of Rs. 4,19,476/- is upheld, the Appellant not having discharged the burden under Section 155 or produced the certificates contemplated by Circular No. 183/15/2022-GST, and interest under Section 50(3) follows. The demand stands determined as follows: differential tax Rs. 65,43,016/- and interest under Section 50(1) Rs. 60,25,718/-; penalty under Section 73(9) Rs. 6,96,250/-; input tax credit disallowed Rs. 4,19,476/- and interest under Section 50(3) Rs. 4,80,160/-; in all Rs. 1,41,64,620/-. The proper officer shall adjust the amounts of CGST Rs. 9,49,289/- and SGST Rs. 9,49,289/- paid at the stage of the first appeal, and any further amount paid by the Appellant, against the demand so determined, and communicate to the Appellant the balance payable, if any. The impugned order's holding that the balance part payment of IGST of Rs. 95,840/- "is eligible for refund after recovery of Tax, interest, and penalty" is not disturbed. No order as to costs.

9. If demand order, then whether demand quantified: Yes.

Disputed amounts are those confirmed by the Order-in-Appeal. Interest comprises Rs. 60,25,718/- under Section 50(1) and Rs. 4,80,160/- under Section 50(3).

Section-I

Particulars	Central tax		State/UT tax		Integrated tax		Cess		Total	
	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount
1	2	3	4	5	6	7	8	9	10	11
(a) Tax	34,81,246	34,81,246	34,81,246	34,81,246	0	0	0	0	69,62,492	69,62,492
(b) Interest	32,52,939	32,52,939	32,52,939	32,52,939	0	0	0	0	65,05,878	65,05,878
(c) Penalty	3,48,125	3,48,125	3,48,125	3,48,125	0	0	0	0	6,96,250	6,96,250
(d) Fees	0	0	0	0	0	0	0	0	0	0
(e) Others	0	0	0	0	0	0	0	0	0	0
(f) Refund	0	0	0	0	0	0	0	0	0	0

Section-II: Not applicable (no integrated tax is demanded).

10. For other orders and demand orders which are not quantified: Not applicable.

11. If remanded with directions: Not applicable.

Section-III (Anti-profiteering) — 12. Order in brief: Not applicable.

NIRMAL KUMAR SOREN

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Place: Pune
Date: 05.11.2026
Jurisdiction: GST Appellate Tribunal, Pune Bench

(Dr. Nirmal Kumar Soren)
Member (Technical)