GOODS AND SERVICES TAX APPELLATE TRIBUNAL

BENGALURU BENCH

DIVISION BENCH – COURT NO. 3

APL/103/BUR/2026

M/s Gajanan Nagesh Pai **……..Appellant**

Versus

The Commissioner of Commercial Taxes, Karnataka **…….Respondent**

Counsel for Appellant	**Counsel for Respondent**
Shri A. Shiva Rao	Shri Jaideep Gaonkar
Chartered Accountant	Deputy Commissioner of Commercial Taxes

Hon'ble Shri Prabhakaran P.M., Judicial Member

Hon'ble Shri Ravi Jesuraj S., Technical Member (State)

Form GST APL-04A

[See rules 113(1) & 115]

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

Whether Remand Order: Yes

1.	GSTIN	29AKAPP0361M1ZY
2.	Appeal Case Reference No.	APL/103/BUR/2026
	Appeal Date	25-04-2026

3.	Name of the Appellant	M/s Gajanan Nagesh Pai, 112, Katagal, Kumta, Uttara Kannada District, Karnataka – 581 362. Through Shri A. Shiva Rao, Chartered Accountant, Authorised Representative
4.	Name of the Respondent	The Commissioner of Commercial Taxes, Karnataka, Gandhinagar, Bengaluru – 560 009. Through Shri Jaideep Gaonkar, Deputy Commissioner and Departmental Representative
5.	Order Appealed Against	Order-in-Appeal No. ZD290326089836N in Appeal No. APL/GST-303/2025-26 passed by the Joint Commissioner of Commercial Taxes (Appeals), Dharwad Division, Hubballi.
	Order Type	Order-in-Appeal under Section 107(11) of the CGST Act, 2017 dismissing the appeal against the order No. ZD290925019177Z dated 29.08.2025 in Form GST DRC-07 passed under Section 73(9) by the

		Commercial Taxes Officer, Local GST Office-375, Kumta.
	Reference No	ZD290326089836N
	Order Date	17.03.2026
	Tax Period	2021-22 (April 2021 to March 2022)
6.	Personal Hearing	22-09-2026, 08-10-2026 and 04.11.2026
7.	Order in Brief	The appeal is disposed of by way of remand. The Order-in-Appeal and the Form GST DRC-07 order are set aside. The show cause notice dated 25.06.2025 is restored to the file of the proper officer, Local GST Office-375, Kumta, for fresh adjudication in terms of the directions in paragraph 61 of the order.
Summary of Order		
8.	If Demand order then whether Demand Quantified	Demand after this order: Not quantified. The demand is set aside and is to be determined afresh on remand.
9.	For Other Orders and Demand Orders which are Not Quantified	See the table below.

	Issues as Raised by Proper Officer	Issues as determined by Appellate/ Revisional Authority	Issues as determined by Order by GST Appellate Tribunal
	Input tax credit of Rs. 10,72,000 claimed in Form GSTR-3B in excess of Form GSTR-2A for 2021-22 demanded under Section 73, with interest under Section 50 and penalty under Section 73(9).	Appeal dismissed for non-appearance and want of evidence, without deciding it on merits.	Order-in-Appeal and Form GST DRC-07 order set aside. Show cause notice restored to the proper officer for fresh adjudication after invoice-wise verification under Section 16, rule 36(4) and Circulars No. 183/15/2022-GST and 193/05/2023-GST. Interest only on credit wrongly availed and utilised (rule 88B(3)).
10.	If remanded with directions	Yes. Remanded to the proper officer, Local GST Office-375, Kumta, with the directions in paragraph 61 of the order.	

Place: Bengaluru **Date: 12.11.2026**

FINAL ORDER

Per: Shri Ravi Jesuraj S., Technical Member (State)

Introduction

1. The question involved in this appeal is whether a demand for reversal of input tax credit can be confirmed on the difference between Form GSTR-3B and Form GSTR-2A alone, without verifying the documents against the conditions of section 16 of the Central Goods and Services Tax Act, 2017, as the Circulars of the Board require. The issue pertains to the period April 2021 to March 2022. A connected question is whether the first appellate authority may dismiss an appeal without deciding it on merits when the appellant does not appear.

2. The Appellant, M/s Gajanan Nagesh Pai, challenges the Order-in-Appeal No. ZD290326089836N dated 17.03.2026 passed in Appeal No. APL/GST-303/2025-26 by the Joint Commissioner of Commercial Taxes (Appeals), Dharwad Division, Hubballi ("the Appellate Authority"). That order dismissed his appeal against the order No. ZD290925019177Z dated 29.08.2025 in Form GST DRC-07 passed by the Commercial Taxes Officer, Local GST Office-375, Kumta ("the proper officer") under section 73(9) of the Central Goods and Services Tax Act, 2017 and the Karnataka Goods and Services Tax Act, 2017 for the tax period 2021-22. The demand under challenge is as follows:

Particulars	CGST (Rs.)	SGST (Rs.)	Total (Rs.)
Tax (section 73(1))	5,36,000	5,36,000	10,72,000
Interest (section 50)	3,24,067	3,24,067	6,48,134
Penalty (section 73(9))	53,600	53,600	1,07,200
Total	**9,13,667**	**9,13,667**	**18,27,334**

3. The provisions of the two Acts are the same on every point that arises here. A reference to a provision of the Central Goods and Services Tax Act, 2017 ("the CGST Act") or the Central Goods and Services Tax Rules, 2017 ("the CGST Rules") includes the matching provision of the Karnataka Goods and Services Tax Act, 2017 and the Rules made under it.

Facts

4. The Appellant is a civil contractor. He executes works for the Public Works Department and carries on business at Kumta. He is registered under GSTIN 29AKAPP0361M1ZY.

5. For 2021-22, the Appellant claimed input tax credit of Rs. 28,02,000 in his Form GSTR-3B returns. His Form GSTR-2A showed Rs. 17,30,000. The difference was Rs. 10,72,000, that is, Rs. 5,36,000 each under CGST and SGST.

6. The proper officer issued a scrutiny notice in Form GST ASMT-10 on 15.10.2022. A pre-show cause intimation followed on 13.02.2023 and an

endorsement on 19.10.2023. The show cause notice in Form GST DRC-01 was issued on 25.06.2025. The order in Form GST DRC-07 records that the Appellant did not file a satisfactory reply at any of these stages.

7. On 29.08.2025, the proper officer passed the order of adjudication. He confirmed the difference of Rs. 10,72,000 as tax under section 73(1). He levied interest under section 50 at 1.5 per cent per month and a penalty under section 73(9) equal to ten per cent of the tax. The total came to Rs. 18,27,334. The order sets out the two figures, the difference and the arithmetic. It does not examine any invoice or any supplier.

8. The Appellant filed a first appeal on 03.11.2025. He paid the pre-deposit of Rs. 53,600 each under CGST and SGST. The Appellate Authority called for parawise remarks on 13.11.2025. It issued hearing notices on 05.12.2025, 20.12.2025 and 22.01.2026, for hearings on 16.12.2025, 06.01.2026 and 03.02.2026. The Appellant did not appear on any of these dates and filed no documents.

9. On 17.03.2026, the Appellate Authority dismissed the appeal. It held that the Appellant had produced no evidence and had not attended the hearings. It relied on the decision of the Hon'ble Allahabad High Court in M/s Laxmi Telecom v. State of U.P., Writ Tax No. 2160 of 2024, (2024) 25 Centax 323 (All.). The order does not frame any point for determination and does not discuss the merits of the demand.

10. The Appellant then filed this appeal. Along with his written submissions dated 03.11.2026, he has filed a reconciliation, invoices, e-way bills, supplier declarations, bank statements, a copy of his Form GSTR-2B for April 2022 and copies of his electronic credit ledger from 2019-20 to 2025-26.

Submissions of the appellant

11. It was submitted by the learned Authorised Representative, Shri A. Shiva Rao, Chartered Accountant, that both the authorities below decided the matter ex parte. The notices were placed on the common portal. The Appellant is a small civil contractor who manages his affairs without an in-house compliance team. The consultant who handled the Appellant's affairs had no access to the portal and did not see them. The Appellant came to know of the demand only when he received a physical copy of the order, and he then filed the first appeal. He does not contend that service through the portal is invalid. He says that his default was not a decision to abandon the proceedings.

12. It was submitted that the decision in Laxmi Telecom does not help the Revenue. In that case the taxpayer had filed replies and documents, and the adjudicating authority had accepted part of its explanation. The High Court declined to interfere in writ jurisdiction because a statutory appeal was available. Here no evidence has been examined at any stage. The Appellant has invoked that very statutory appeal.

13. It was submitted that the reconciliation now filed identifies invoices carrying credit of Rs. 4,30,958.06, as set out below:

Supplier and invoice	Date	CGST (Rs.)	SGST (Rs.)	Ground stated
U. R. Nayak, invoice 215	01.04.2021	16,816.00	16,816.00	Reported as B2C
Panchajanya Enterprises, invoice 665	23.04.2021	48,279.66	48,279.66	Reported as B2C
Panchajanya Enterprises, invoice 668	28.04.2021	48,279.66	48,279.66	Reported as B2C
Laxmi Oil Depot, invoice 15463	10.11.2021	122.01	122.01	Wrong recipient GSTIN
Panchajanya Enterprises, invoice 999	08.01.2022	55,460.97	55,460.97	In April 2022 GSTR-2B
Panchajanya Enterprises, invoice 1025	15.01.2022	46,520.73	46,520.73	In April 2022 GSTR-2B
Total		**2,15,479.03**	**2,15,479.03**	**Rs. 4,30,958.06**

14. It was submitted that the balance of Rs. 6,41,041.94 still has to be reconciled. The Appellant needs about eight weeks to examine his records and obtain

confirmations from his suppliers. He does not admit the demand and does not give up any part of the credit.

15. It was submitted that Circular No. 183/15/2022-GST dated 27.12.2022, read with Circular No. 193/05/2023-GST dated 17.07.2023, lays down how such differences must be verified for the period up to 31.12.2021. The Circulars apply to pending adjudication and appeal proceedings. The Appellant accepts that the certificate procedure does not extend to the invoices of January 2022 and that the limit under rule 36(4) applies.

16. It was submitted that the Appellant may be allowed to produce the documents under rule 112 of the CGST Rules, with an opportunity to the Revenue to verify them. Reliance was placed on two decisions of the Hon'ble High Court of Karnataka: M/s 24 X 7 Total Water Solutions v. Assistant Commissioner, W.P. No. 13942 of 2026, decided on 25.09.2026, and R.S. Marketing and Logistics Pvt. Ltd. v. Commercial Tax Officer, (2024) 20 Centax 11 (Kar.).

17. It was also submitted that interest under section 50(3) is payable only on credit that is wrongly availed and also utilised. The Appellant's electronic credit ledger carried sufficient balances throughout. No interest can be levied without a date-wise finding on utilisation. Reliance was placed on Pratibha Processors v. Union of India, 1996 (88) E.L.T. 12 (S.C.); M/s Eureka Forbes Ltd. v. Union of India, W.P. No. 6869 of 2020 (Kar.), decided on 13.11.2025;

Bangalore International Airport Ltd. v. Union of India, (2025) 37 Centax 227 (Kar.); and M/s Manoja Kumar Nayak v. Commissioner, (2026) 42 Centax 49 (Ori.).

18. It was submitted that the penalty follows the tax and must fall to the extent the credit is allowed. The Appellant prayed that the Tribunal decide the appeal on merits or, in the alternative, refer the matter back to the proper officer under section 113(1) with directions.

Submissions of the respondent

19. It was submitted by the learned State Representative, Shri Jaideep Gaonkar, Deputy Commissioner, that the impugned orders are correct and call for no interference. The Appellant received a scrutiny notice, a pre-show cause intimation, an endorsement, a show cause notice and three hearing notices over more than three years. He answered none of them.

20. It was submitted that service through the common portal is a mode of service recognised by section 169(1)(d) of the CGST Act. The Appellant cannot rely on the failure of his own consultant.

21. It was submitted that the credit claimed in Form GSTR-3B exceeded the credit reflected in Form GSTR-2A by Rs. 10,72,000. The burden to prove eligibility for that credit lay on the Appellant. He did not discharge it before either authority. The documents now filed were never placed before the

authorities below and have not been tested. The Appellate Authority rightly followed Laxmi Telecom and dismissed the appeal.

Issues for consideration

22. The following issues arise for decision:

(i). Whether the Appellate Authority could dismiss the appeal without deciding it on merits.

(ii). Whether the proper officer could confirm the demand on the bare difference between Form GSTR-3B and Form GSTR-2A, without verifying the conditions of section 16 in the manner the Board's Circulars require.

(iii). Whether the interest under section 50(3) and the penalty under section 73(9) can stand on the present record.

(iv). What course this Tribunal should adopt.

Discussion and findings

23. We have heard both sides and gone through the record. We take up the issues in turn.

Issue (i): Dismissal of the first appeal without a decision on merits

24. The powers and duties of the Appellate Authority are found in sub-sections (8), (11) and (12) of section 107. They read:

"(8) The Appellate Authority shall, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

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

(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision."

25. These provisions leave no room for a dismissal for default. Section 107(8) permits the Appellate Authority to adjourn the hearing for sufficient cause, but not more than three times to a party. Here the Appellant sought no adjournment. He simply did not appear on any of the three dates fixed. It was then open to the Appellate Authority to proceed with the appeal. To proceed, however, is to decide. Sub-sections (11) and (12) require it to confirm, modify or annul the order under appeal, and to state the points for

determination, its decision and its reasons. The Appellant's absence closed his chance to be heard. It did not close the appeal.

26. The Appellate Authority had before it the order in Form GST DRC-07, the grounds of appeal and the parawise remarks it had called for. That material was enough to test whether the demand had a lawful basis. Section 107(11) also allowed it to make such further inquiry as it found necessary. It did neither. It recorded the Appellant's absence and dismissed the appeal.

27. It was held by the Hon'ble Supreme Court in Kranti Associates Pvt. Ltd. v. Masood Ahmed Khan, (2010) 9 SCC 496, that a quasi-judicial authority must record reasons in support of its conclusions. Reasons show that the authority applied its mind. They also allow a higher forum to test the decision. An order without reasons fails on both counts.

28. The reliance on Laxmi Telecom does not save the order. It was held by the Hon'ble Allahabad High Court in that case that a writ petition need not be entertained where the taxpayer had replied, the authority had considered the reply and granted part relief, and a statutory appeal was available. The decision leaves the merits to the appellate forum. The Appellate Authority was that forum. It had to do what the High Court left to it.

29. The order has other defects. It describes the period as assessment year 2022-23, while the demand is for 2021-22. It says that the parawise remarks are

set out “as below”, but sets none out. These slips are small. Still, an appellate order calls for greater care.

30. We do not excuse the Appellant’s default. Section 169(1)(d) makes service through the common portal a valid mode of service. A registered person who leaves his portal to a consultant remains answerable for what is placed there. The explanation is also hard to accept for the first appeal. The Appellant filed that appeal on the common portal, yet says he did not see the hearing notices placed on the same portal. In all, the Appellant left seven communications unanswered over more than three years. That conduct cost him every chance to be heard below. Default has its consequences. It does not, however, turn an unverified difference into tax due. Whether tax is due depends on the law and the facts, and those had to be examined.

31. We hold that the Appellate Authority erred in dismissing the appeal without deciding it on merits. The order is contrary to section 107(11) and (12) and cannot stand.

Issue (ii): Demand founded only on the difference between Form GSTR-3B and Form GSTR-2A

32. The right to input tax credit rests on section 16. The relevant part of sub-section (2) reads:

"(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;

(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;

(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: …"

33. Clause (aa) came into force on 01.01.2022. The year in dispute therefore falls under two regimes. For April to December 2021, clause (aa) did not apply. Credit on an invoice missing from Form GSTR-2A was governed by rule 36(4) as it then stood, which read:

"(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using the invoice furnishing facility shall not exceed 5 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility."

34. With effect from 01.01.2022, rule 36(4) was substituted. As substituted, it read:

"(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under sub-section (1) of section 37 unless,— (a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and (b) the details of input tax credit in respect of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60."

35. The Board has explained how a proper officer should deal with such differences. Paragraph 4 of Circular No. 183/15/2022-GST dated 27.12.2022 directs:

> "4. The proper officer shall first 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. He shall then ascertain fulfillment of the following conditions of Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person: i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents; ii) that he has received the goods or services or both; iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier."

36. Paragraph 4.1 then provides for a certificate as proof that the supplier paid the tax. Where the difference for a supplier exceeds Rs. 5 lakh in the year, the certificate must come from a Chartered Accountant or Cost Accountant (paragraph 4.1.1). Where the difference is up to Rs. 5 lakh, a certificate from the supplier will do (paragraph 4.1.2).

37. Circular No. 193/05/2023-GST dated 17.07.2023 extends this procedure to the period from 01.04.2019 to 31.12.2021, subject to the limits of rule 36(4). For the calendar year 2021, paragraph 4(iv) reads:

> "(iv) Further, for the period from 01.01.2021 to 31.12.2021, when rule 36(4) of CGST Rules allowed additional credit to the tune of 5% in excess of that reported by the suppliers in their FORM GSTR-1 or IFF, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable, for verification of the condition of clause (c) of sub-section (2) of Section 16 of CGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using the IFF shall not exceed 5 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the IFF."

38. Paragraph 5 of the same Circular states that no credit shall be allowed from 01.01.2022 unless the supply is reported by the supplier and communicated

in Form GSTR-2B. Paragraph 6 states that the limit under rule 36(4) applies cumulatively for April to June 2021. Paragraph 8 reads:

> "8. These instructions will apply only to the ongoing proceedings in scrutiny/audit/investigation, etc. for the period 01.04.2019 to 31.12.2021 and not to the completed proceedings. However, these instructions will apply in those cases during the period 01.04.2019 to 31.12.2021 where any adjudication or appeal proceedings are still pending."

39. The Board issued these Circulars under section 168(1). They bind the officers of the department. The proceedings for 2021-22 were pending when the Circulars were issued. The show cause notice itself came later, on 25.06.2025. For April to December 2021, the proper officer was bound to follow the procedure. He had to call for the invoice-wise details and test each condition of section 16(2). He did neither.

40. Form GSTR-2A is a statement generated from the returns of the suppliers. It helps the officer to match the credit claimed. A difference between Form GSTR-2A and Form GSTR-3B is where the enquiry starts. It is not where the enquiry ends. The officer must call for the explanation, examine the material and record a finding. It was held by the Hon'ble Kerala High Court in Diya Agencies v. State Tax Officer, W.P.(C) No. 29769 of 2022, decided on 12.09.2023, that where the recipient offers material in support of the

credit, the authority must examine it before confirming a demand on such a difference. The question before us is not whether the credit is admissible. It is whether the demand could be confirmed without that examination. It could not.

41. The burden, however, lies on the person who claims the credit. It was held by the Hon'ble Supreme Court in State of Karnataka v. Ecom Gill Coffee Trading Pvt. Ltd., Civil Appeal No. 230 of 2023, decided on 13.03.2023, in the context of section 70 of the Karnataka Value Added Tax Act, 2003, that a dealer who claims input tax credit must prove the genuineness of the transaction. Production of invoices and proof of payment alone may not be enough. The dealer may have to prove the actual movement of goods and the identity of the supplier. The same rule is enacted in section 155 of the CGST Act, which reads: *"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."*

42. Both sides have thus fallen short. The proper officer did not verify. The Appellant did not produce. Neither lapse cures the other. A demand cannot rest on a difference that no one has examined. Equally, a credit cannot be allowed on documents that no one has tested.

43. Two more provisions bear on the order of the proper officer. Section 75(4) and section 75(6) read:

"(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision."

44. The order in Form GST DRC-07 does not record that a hearing was offered before the demand was confirmed. It sets out no facts beyond two annual figures. Those figures are in round sums of Rs. 28,02,000 and Rs. 17,30,000. The order does not say how they were drawn or how they are spread across the months. That matters here. Up to December 2021, rule 36(4) works month by month, but cumulatively for April to June 2021. From January 2022, section 16(2)(aa) and the substituted rule 36(4) apply. A single annual comparison cannot apply these different tests. The order does not meet section 75(6).

45. We have looked at the documents now filed. We do not propose to decide their worth ourselves. The reasons appear on the face of the record. The supplier declarations carry no place or date. Each declaration repeats all four alternative statements, though it asks the signatory to strike out those that do not apply. None is struck out, so the declaration does not say which situation applies. The submissions describe the U. R. Nayak invoice as No. 215, while

the supplier's declaration lists it as No. 235. The two Panchajanya invoices of January 2022 fall under section 16(2)(aa). They appear in the Appellant's Form GSTR-2B for April 2022. Whether the credit on them was taken in 2021-22, in 2022-23, or in both, can be seen only from the returns and the ledger. The Laxmi Oil Depot invoice was reported against a wrong GSTIN, which calls for the separate action set out in Circular No. 183/15/2022-GST. For the invoices of 2021, the five per cent limit under rule 36(4) must be worked out month by month. And credit of Rs. 6,41,041.94 remains unexplained even now.

46. Each of these points turns on facts. They need the supplier's returns, the Appellant's monthly returns and the ledger entries. The proper officer has access to the supplier data on the back-office system. He is the right authority to verify these facts at first instance.

47. We hold that the demand could not be confirmed on the bare difference between Form GSTR-3B and Form GSTR-2A. For April to December 2021, the proper officer had to follow the procedure in Circulars No. 183/15/2022-GST and No. 193/05/2023-GST. For the whole year, he had to apply section 16(2) and rule 36(4) as they stood in each month. He did not do so.

Issue (iii): Interest and penalty

48. Section 50(3) was substituted with retrospective effect from 01.07.2017. It reads:

"(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."

49. The manner of calculation is prescribed in rule 88B(3), which reads:

"(3) In case where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on the amount of input tax credit wrongly availed and utilised for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under sub-section (3) of section 50.

Explanation.—For the purposes of this sub-rule,—

(1) input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.

(2) the expression "balance in the electronic credit ledger" means the total balance of input tax credit available in the electronic credit ledger under the heads of integrated tax, central tax and State tax or Union territory tax and cess, taken together, of the registered person."

50. Interest under section 50(3) thus needs two findings. The credit must be wrongly availed, and it must be utilised. Utilisation is a question of arithmetic on the ledger. It arises only when the balance falls below the amount of credit wrongly availed, and only to that extent. Explanation (2) requires the balances under all heads to be taken together.

51. The proper officer charged interest on the whole of Rs. 5,36,000 under each Act. He made no finding on utilisation. The ledger copies now filed show running balances as well as debits towards output tax during the year. Whether, when and to what extent the balance fell below the credit wrongly availed has never been worked out. Interest cannot stand without that exercise.

52. It was held by the Hon'ble Supreme Court in Pratibha Processors v. Union of India, 1996 (88) E.L.T. 12 (S.C.), that interest is compensatory and is linked to the tax withheld and the period of delay. Section 50(3) and rule 88B(3) give effect to the same idea for wrongly availed credit. It was held by the Hon'ble Orissa High Court in *Manoja Kumar Nayak* that interest is

not exigible where sufficient balance remained in the ledger and the disputed credit was reversed. Here the credit has not been reversed. The principle on sufficiency of balance still applies. The decisions of the Hon'ble High Court of Karnataka in *Eureka Forbes* and *Bangalore International Airport* concern interest under section 50(1) on returns filed late. They do not bear directly on section 50(3), and we need not rest on them.

53. The penalty under section 73(9) is ten per cent of the tax or ten thousand rupees, whichever is higher. It depends on the tax that is finally found due. Once the tax goes back for fresh determination, the penalty must go back with it.

Issue (iv): The course to be adopted

54. Section 113(1) sets out the powers of this Tribunal. It reads:

> "(1) The Appellate Tribunal may, after giving the parties to the appeal 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, as the case may be, after taking additional evidence, if necessary."

55. We have considered whether to admit the documents under rule 112 and decide the appeal ourselves. We do not think that is the right course. The documents raise questions of fact that need verification against records held by the department. No authority has yet found a single fact on the merits. If we decide them now, ours would be the first finding of fact, untested by any forum below.

56. Nor would it help to send the matter back to the Appellate Authority. Section 107(11) bars that authority from referring the case back to the proper officer. The verification can be done only by the proper officer. The matter must therefore go to the proper officer. The documents will then be part of the Appellant's reply to the show cause notice. Rule 112 governs evidence before the appellate forums and is not engaged at that stage.

57. The Hon'ble High Court of Karnataka has taken this course in like cases. In *R.S. Marketing and Logistics* (W.P. No. 7295 of 2024 (T-RES)), it was held that the adjudicating authority ought to have followed Circular No. 183/15/2022-GST even if the taxpayer had not raised it, and the matter was remitted, leaving the facts open. In *24 X 7 Total Water Solutions*, it was held that a taxpayer whose notices were only uploaded on the portal may be allowed to show the genuineness of the transactions under Circular No. 193/05/2023-GST, and the proceedings were restored on terms. The Appellant himself has asked for this relief in the alternative.

58. We send the matter back because neither authority below did what the statute requires. We do not do so to reward the Appellant's default. The Appellant has asked for eight weeks. We grant him that time and no more. If he fails, the proper officer may, after one notice of hearing, decide on the record before him.

59. Section 75(3) governs the time for the fresh order. It reads:

> "(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction."

60. The proper officer must pass the fresh order within that period. We expect him to do so well within it.

Conclusion

61. For these reasons, we pass the following order:

(a). The appeal is disposed of by way of remand.

(b). The Order-in-Appeal No. ZD290326089836N dated 17.03.2026 and the order No. ZD290925019177Z dated 29.08.2025 in Form GST DRC-07 are set aside. The show cause notice dated 25.06.2025 is restored to the file of the proper officer, Local GST Office-375, Kumta, for fresh adjudication.

(c). The Appellant shall file his reply to the show cause notice, with an invoice-wise reconciliation and all supporting documents, within eight weeks from the date of receipt of this order. The documents filed before this Tribunal shall form part of that reply.

(d). The proper officer shall verify the claim afresh, invoice by invoice, and pass appropriate orders in accordance with law.

(e). The proper officer shall levy interest, if any, only on credit found to be wrongly availed and utilised, computed under rule 88B(3), and shall show the computation in his order. He shall determine the penalty on the tax finally found due.

(f). The proper officer shall give the Appellant a personal hearing under section 75(4) and pass a reasoned order under section 75(6), within the time allowed by section 75(3).

(g). If the Appellant fails to file his reply within eight weeks from the date of receipt of this order, the proper officer may, after one notice of hearing, decide the matter on the material on record.

(h). We express no view on the eligibility of any invoice or on the quantum of tax, interest or penalty. All contentions of both parties are left open.

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

Pronounced in Open Tribunal on this the 12th day of November, 2026.

Prabhakaran P M

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(Prabhakaran P.M.)

Judicial Member

Ravi Jesuraj S

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(Ravi Jesuraj S.)

Technical Member (State)