IN DELHI GOODS AND SERVICES TAX APPELLATE TRIBUNAL, GST BHAWAN, DELHI

APPEAL NO. 1111/2025

In the matter of: -

YADAV ASSOCIATES Vs. COMMISSIONER, DGST, NEW DELHI

I N D E X

Filed by: -

Date:-

Place: Delhi

V. S. YADAV, Advocate
D-2431/2006
(Counsel for the appellant)
215, II Floor, Capital Tower, Inder Enclave, Paschim Vihar,
New Delhi-110087
adv.vsyadav@gmail.com
Mob.9810030851

Form GST APL-05

[See rule 110(1)]

Appeal to the Appellate Tribunal

1. GSTIN/Temporary ID/UIN -**111114445555**

2. Name of the appellant -**YADAV ASSOCIATES**

3. Address of the appellant -**Moti Nagar, New Delhi**

4. Order appealed against DIN - **33333444455555** Date-**19.02.2025**

5. Name and Address of the Authority passing the order appealed against **-Jt. Commissioner (Appeals), Zone-6, DGST Dept New Delhi**

6. Date of communication of the order appealed against -**19.02.2025**

7. Name of the representative – **Adv. V. S. Yadav**

8. Details of the case under dispute:

(i) Brief issue of the case under dispute**: First Appellate Authority Exercised Excess Jurisdiction U/s Section 107(11) by remanding the matter back to the original Adjudicating Authority for a fresh Adjudication**.

(ii) Description and classification of goods/services in dispute**: N.A**

(iii) Period of dispute:**2022-23**

(iv) Amount under dispute:

Description	Central tax	State/UT tax	Integrated tax	Cess
(a) Tax/Cess	-	-	-	-
(b) Interest	-	-	-	-
(c) Penalty	-	-	-	-
d) Fees	-	-	-	-
(e) Other charges	-	-	-	-

(v) Market value of seized goods:N.A.

9. Whether the appellant wishes to be heard in person? **Yes**

10. Statement of facts: **As per Annexure Attached**

11. Grounds of appeal: **As per Annexure Attached**

12. Prayer: **As per Annexure Attached**

13. Details of demand created, disputed and admitted

Particulars of demand	Particulars		Central tax	State/UT tax	Integrated Tax	Cess	Total amount	
	Amount demanded/ rejected >, if any (A)	(a) Tax/Cess	NIL	NIL				
		(b) Interest						
		(c) Penalty						
		(d) Fees						
		(e) Other charges						
	Amount under dispute (B)	(a) Tax/Cess	NIL	NIL				
		(b) Interest						
		(c) Penalty						
		(d) Fees						
		(e) Other charges						
	Amount admitted (C)	(a) Tax/Cess	NIL	NIL				
		(b) Interest						
		(c) Penalty						
		(d) Fees						
		(e) Other charges						

14. Details of payment of admitted amount and pre-deposit:

(a) Details of amount payable:

Particulars		Central tax	State/UT tax	Integrated tax	Cess	Total amount	
(a) Admitted amount	Tax/Cess	NIL	NIL	NIL	NIL		
	Interest						
	Penalty						
	Fees						
	Other charges						
[4][(b) Pre- deposit (10% of disputed tax /cess but not exceeding Rs. 20 crore each in respect of CGST, SGST, cess, and not exceeding Rs. 40 crore in respect of IGST)]	Tax/Cess	NIL-	NIL	NIL	NIL		

[5][(b) Details of payment of admitted amount and pre-deposit of 10% of the disputed

tax and cess but not exceeding Rs. 20 crore each in respect of CGST, SGST, cess and not exceeding Rs. 40 crore in respect of IGST.**]**

Sr. No.	Description	Tax payable	Paid through Cash/Credit Ledger	Debit entry no.	Amount of tax paid			
					Integrated tax	Central tax	State/UT tax	CESS
1	2	3	4	5	6	7	8	9
1.	Integrated tax		Cash Ledger					
			Credit Ledger					
2.	Central tax	-	Cash Ledger	-		-	-	
			Credit Ledger					
3.	State/UT tax	-	Cash Ledger	-		-		
			Credit Ledger					
4.	CESS		Cash Ledger					
			Credit Ledger					

(c) Interest, penalty, late fee and any other amount payable and paid :

Sr. No.	Description	Amount payable				Debit entry no.	Amount paid			
		Integrated tax	Central tax	State/UT tax	CESS		Integrated tax	Central tax	State/UT tax	CESS
1	2	3	4	5	6	7	8	9	10	11
1.	Interest									
2.	Penalty									
3.	Late fee									
4.	Others (specify)									

[3][15. Place of supply wise details of the integrated tax paid (admitted amount only) mentioned in the Table in sub-clause (a) of clause 14 (item (a)), if any

Place of Supply (Name of State/UT)	**Demand**	**Tax**	**Interest**	**Penalty**	**Other**	**Total**
1	**2**	**3**	**4**	**5**	**6**	**7".**
	Admitted amount [in the Table in sub-clause (a) of clause 14 (item (a))]					
						]

Verification

I**, Kamal Yadav S/o Shri P. S. Yadav, proprietor of M/s Yadav Associates** >, hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Place**: Delhi**

Date :**15.05.2025**

Name of the Applicant: **Kamal Yadav**

Designation/Status: **Proprietor**

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NOTES:-

1.	Substituted vide Notification No. 03/2019-Central Tax dated 29-01-2019 **w.e.f. 01-02-2019** before it was read as "(20% of disputed tax)"
2.	Substituted vide Notification No. 03/2019-Central Tax dated 29-01-2019 **w.e.f. 01-02-2019** before it was read as "(pre-deposit 20% of the disputed admitted tax and cess)"
3.	Inserted vide Notification No. 03/2019-Central Tax dated 29-01-2019 **w.e.f. 01-02-2019**
4.	Substituted vide Notification No. 20/2024 – Central Tax dated 08-10-2024 **w.e.f. 01-11-2024** before it was read as, "(b) Pre-deposit **[1][**(20% of disputed tax/cess but not exceeding ₹ 50 crore each in respect of CGST, SGST or cess or not exceeding ₹ 100 crore in respect of IGST and ₹ 50 crore in respect of cess)**]**"
5.	Substituted vide Notification No. 20/2024 – Central Tax dated 08-10-2024 **w.e.f. 01-11-2024** before it was read as, "(b) Details of payment of admitted amount and pre-deposit **[2][**(predeposit of 20% of the disputed tax and cess but not exceeding ₹ 50 crore each in respect of CGST, SGST or cess or not exceeding ₹ 100 crore in respect of IGST and ₹ 50 crore in respect of cess)**]**"

IN THE GOODS AND SERVICE TAX TRIBUNAL, DELHI

APPEAL NO……. OF 2025

IN THE MATTER OF:

YADAV ASSOCIATES
NEW DELHI
GST TIN….111114445555 **…….**
APPELLANT

VERSUS

COMMISSIONER, **……. RESPONDENT**

ZONE-6
DELHI DGST
NEW DELHI

APPEAL UNDER SECTION 112(1) OF THE DGST ACT AGAINST THE IMPUGNED ORDER OF JOINT COMMISSIONER (APPEAL) DATED 19.02.2025 FOR A.Y. 2022-23 SETTING ASIDE AND REMANDING AFRESH ADJUDICATION AGAINST IMPUGNED ORDER OF ADJUDICATING AUTHORITY DATED 24.10.2025.

HON'BLE PRESIDENT OF GST TRIBUNAL AND HIS COMPANION MEMBERS,

The most respectfully showeth:

1. The appellant is a proprietorship concern under the style and title M/s Yadav Associate, (hereinafter referred as the concern), Moti Nagar, operating its business activities from, Moti Nagar, Delhi through its proprietor shri Kamal Yadav. It deals in trading of electric relays used for electrical equipment and for railway braking system in the country for last many years and has complied all its statutory compliances and had filed all the returns in time and paid the due taxes as per provisions of law.

2. The present appeal has been filed within limitation periods; the appeal is being filed by the Proprietor of the concern Shri. Kamal Yadav.

3. This appeal involves a question of law exercising excess jurisdiction by first Appellate Authority. Therefore, there is no ten percent pre-deposit requirement for maintainability of this appeal.

4. The appeal has been filed within the limitation period. The impugned order was received and communicated to appellant on 19.02.2025 and the appeal is being filed on dated 15th May 2025.

5. The digitally signed copy of impugned of first appellate authority is annexed as **ANNEXURE-A/1**

6. The prescribed court fees have duly been duly deposited as per law.

STATEMENT OF FACTS

1. That the appellant is engaged in the aforementioned business activities as trading of relays of equipment and used for railways braking systems and is registered with Department of Delhi Goods and Services Taxes Department vide GSTIN 11111444555.
2. That all the items procured/purchased by appellant and lying as stock in hand of the concern were taxable at the rate 28% as per the tariff rate of Goods and Services tax notifications. But, w.e.f. 1st June 2022, the government had reduced the rate of tax to 18% as per recommendation of GST Council.
3. That the Ld. Proper officer, the Assistant Commissioner, Zone- 6 had thereby issued a show cause notice on 19.09.2024 regarding determination of demand for A.Y. 2022-23 under section 73 of CGST Act 2017 and seeking the reply to be filed on or before 30.09.2024 and reversal or payment of excess ITC claimed on closing stock as per statement in Annexure-A reported by me and my CA amounting of Rs. 14,35,000/- as on 31.05.2022 taxable at rate of 28%. **(Annexure-A/2 and A/3)**
4. That the appellant had filed the reply of show cause notice on 25.09.2024 mentioning all the details of the transactions accordingly. Copy of Reply Annexed as **Annexure-4**

5. That the appellant vehemently denied all allegations of the Ld. Adjudicating Authority in the reply of SCN and submitted inter alia that there was no such provision of reversal of excess 10% claim of ITC on closing stock due to reduction from 28% to 18% in the rate of tax for the registered regular dealer under provisions of the GST Law.

6. That the adjudicating proceeding under section 73 was proceeded by the Ld. AA and determined a demand amounting Rs.1,43,500/- /- vide order DIN. 23242422566 Dated 24.10.24 without considering the submission of reply be filed and arguments placed before the Ld. AA through personal DIN NO. 33333444455555 hearing by Sh. V. S. Yadav, my appointed legal counsel.

7. That being aggrieved by the impugned adjudication, appellant preferred an appeal before the Ld. Joint Commission (Appeal) DGST, Delhi, the first Appellate Authority under GST Law.

8. That vide his order reference dated 19.02.2025, Ld. Joint Commissioner (Appeals) decided the matter in two parts. The impugned order of Adjudicating Authority was partly set aside and reminded the matter to adjudicating authority to conduct for the afresh adjudication by considering the relevant law provisions and judgments in the interest of justice.

9. Feeling aggrieved with the second part of order dated 19.02.2025 passed by the Ld. First Appellate Authority, the appellant has filed the present

appeal. Copy of Vakalatnama of Sh. V. S. Yadav, Adv is **annexure A/5**.

GROUNDS OF APPEAL

"The question of law that this Hon'ble Tribunal may have to decide is whether the Appellate Authority may have power under Sec.107(11) to remand the matter to the original Adjudicating Authority for fresh adjudication?"

1. The Ld. First Appellate Authority has set aside the impugned order of Ld. Proper Officer. It is admitted fact from the order of Ld. First Appellate Authority that Ld. PO did not apply his mind by non-considering the legal provision and judgment in this regard.
2. The Ld. Appellate Authority has erred in law and on facts in not appreciating legal provision of section 17, 18 and section 107(11) exclusively which did not empower to this Appellate Authority to remand the matter to his lower authority, by remanding the matter to decide afresh.
3. The Ld. Appellate Authority has erred in law and on facts that impugned order of Adjudicating Authority was partly set aside and remand the matter for fresh adjudication vide order dated 19.02.2025 is highly arbitrary and unjust in the interest of the justice and against the provisions of law. The provision of law Section .107(11) be read as below: -

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

order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order: Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74."

In the case **M/S Kronos Solutions India Private Limited Vs. Union of India and Others 2024 AHC 16550-DB,** it was held that it is clarified by the legislature itself by stating that the appeal authority shall not refer back the matter to the adjudicating authority. Once the appeal authority is seen to have failed to exercise its jurisdiction in accordance with law, such an order may never be sustained. Annexure-A/

4. The appellant craves leave to add, amend, and alter any or more grounds of appeal before or at the time of hearing of the appeal.

PRAYER: -

The appellant respectfully prays that this Hon'ble Tribunal may be pleased to set aside the first Appellate Authority's order dated 19.02.2025 passed by Joint Commissioner, Zone-6 and the case be remanded back to appellate Authority to exercise its jurisdiction correctly, making a fresh decision after hearing the parties. Appellant

Verification: -

Verified on this day of 15th May 2025, that the contents of the above appeal

petition are true to the best of my knowledge and belief and nothing material has been concealed therefrom.

Appellant

BEFORE THE JOINT COMMISSIONER(APPEALS) ZONE 6 DGST DEPTT NEW DELHI

IN THE MATTER OF:

YADAV ASSOCAITES
MOTI NAGAR
NEW DELHI

GST TIN….111114445555

DIN NO. 33333444455555 19.2.25

APPELLATE ORDER UNDRE SECTION 107 OF THE DGST ACT 2017

The above appellant has filed an appeal against the adjudicate order passed under section 73 of the DGST Act 2017 for the assessment year 2022-23. He has deposited 10 percent of the demand created as a pre- condition. The appeal is filed within the limitation period.

The short question in the matter is whether the appellant was required to reverse input tax credit or pay the same to the Government when the inputs that he had purchased and held in stock as on 31.5.22 were taxable at the rate of 28% and from 1.6.22 the tax rate was reduced to 18 percent? The proper officer was of the view that the appellant must be reversing 10 percent of the input tax credit to ensure there is no unjust enrichment on the art of the appellant in so far as he would be paying 18 percent and not 28 percent to the government when taxable supplies are made of such stocks that he held on 31.5.22.

Mr Yadav has vociferously argued that the order passed by the pope officer is without recording his contentions and judgments that he refused to take on record. He has placed a list of judgments on record with an affidavit that he argued the same before the proper officer. I have also called for the ward records and see these papers on record.

Admittedly the proper officer should have gone into the law laid down in these judgments and decided whether these judgments were relevant for the adjudication of the issue before him; but he did not apply his mind.

Under the circumstances it would be difficult for me to adjudicate the matter when the proper officer has not applied his mind to the law laid down in those judgments.

Hence, in the interest of the justice I accept the contentions of the counsel and grant him an opportunity before the proper office who shall take these judgments or any other judgments that the counsel may like to bring on record and pass a reasoned order on the issue before him**. The order as passed by the proper officer on dated 19.9l.24 are hereby set aside and I direct him to pass fresh order in terms of directions in this order**. It is ordered accordingly.

Digitally signed
Joint Commissioner (Appeal)

BEFORE THE ASSISTANT COMMISSIONER, ZONE 6, DGST DEPARTMENT, NEW DELHI

DRC 07

IN THE MATTER OF:

YADAV ASSOCAITES
MOTI NAGAR
NEW DELHI

GST TIN….111114445555

DIN NO. 23242422566 24.10.24

PRESENT SHRI V S YADAV, ADVOCATE FOR THE TAXPAYER

In response to show cause notice dated 19.9;24 served on the tax payer for the year 2022-23 Shri V S Yadav has appeared to day without any documents or books of accounts or any representative of the firm.

Mr Yadav has forcefully has argued that there is no provision under which such an ITC needs to be reversed but has not conveyed any provision where it is not required.

There is no other argument placed on record or argued.

Hence, in view of the above reply which is not acceptable to me, I hereby adjudicate the matter and direct the appellant to pay a sum of Rs 143500/- within a period of 25 days from the date of this order which is being put on the portal today itself. No interest is charged under section 50 of the DGST Act.

It is ordered accordingly.

DIGITALY SIGNED
ASSTT COMMISSIONE ZONE 6

BEFORE THE ASSISTANT COMMISSIONER, ZONE 6, DGST DEPARTMENT, NEW DELHI

IN THE MATTER OF:

YADAV ASSOCAITES
MOTI NAGAR
NEW DELHI

GST TIN….111114445555

DIN NO. 23242422566 19.09.24

SHOW CAUSE NOTICE UNDER SECTION 73 OF THE DGST ACT 2017 FOR THE AY 2022-23

While scrutinising your returns it has been found that you have claimed excess input tax credit on the following grounds:

1) That you are dealing in electric relays used for electrical equipments and for railways breaking system. These items were taxable at 28 percent and now with effect from 1.6.22 the tax rate on these items was reduced to 18 percent.

2) Information was sought from you with a CA certificate as to the stocks that you held on 31.5.22 that were purchased by you when the tax rate was 28 percent.

3) That a statement as in (Annexure A) has been received duly certified by you and your CA that you were holding total stocks of the above items for Rs 14,35,000/- that was taxable at 28 percent. Now since the rate has been reduced to 18 percent, you are required to show cause as to why you should not reverse 10 percent of ITC on the stocks you are holding at a higher rate of 28 percent to protect the government revenue - if it is not done yo would claim ITC @ 28 percent and you would output tax only @ 18%

THIS WOULD AMOUNT TO WRONGFUL INPUT TAX CREDIT AT YOUR END AND YOU WOULD UNJUSTLY ENRICH YOURSELF AT THE COST OF THE GOVERNMENT REVENUE WHICH IS NOT LEGALLY PERMISSIBLE.

You are required to file your reply to this show cause notice latest by 30.9.24 failing which it shall be presumed you have nothing to say in the matter and further

proceedings shall be initiated. Also, on that day you have to appear for physical personal hearing also.

Digitally signed
Assistant commissioner zone 6

BEFORE THE ASSISTANT COMMISSIONER, ZONE 6, DGST DEPARTMENT, NEW DELHI

IN THE MATTER OF:

YADAV ASSOCAITES

MOTI NAGAR

NEW DELHI

GST TIN….111114445555

DIN NO. 23242422566 19.09.24 for A.Y. 2022-23

Reply to Show Cause Notice issued under Section 73 for Alleged Wrongful Availment of Input Tax Credit by 10% excess held stock in hand as on 31.05.2022 taxable @ 28% Due to Change in Tax Rate @ 18% w.e.f. 01.06.2022 during the assessment year 2022-2023.

Respected Sir,

It is respectfully submitted as under: -

1. That I, Kamal Yadav, Proprietor of M/s Yadav Associates, is running its all-business activities from the aforementioned address of business premises.
2. That the M/s Yadav Associates (hereinafter it is called as the concern) deals electric relays used for electrical equipment's and for railways braking system.
3. That all the items as procured by our concern were taxable at the rate 28% as per the tariff rate of Goods and Services tax notifications. But 1st June 2022, the government had reduced the rate of tax to 18% as per recommendation of GST Council.
4. That a statement as in (Annexure A) had been send to your goodself during the scrutiny of our returns duly certified by my concern and my CA that I was holding total stocks as on 31.05.20222 of the above items for Rs 14,35,000/- that was taxable at the rate of 28%.
5. That the concern had claimed all its eligible input tax credits at rate of 28% on total stocks hold as on the 31.05.20222 as per the provisions CGST Act 2017 payments to the suppliers have already made before the tax change.
6. That from 01.06.2022 outward supply of our materials was charged at rate of 18% as per reduction in the tax rate by way of notification as your goodself had already mentioned in the show cause notice.
7. That there is no provision of reversal of input tax credit as genuine and Bonafide claims in respect of holding stocks as on the specific date where

the business is running as per regular dealer as per the provisions of chapter V of Central Goods and Services Act 2017 and its rules accordingly.

8. That there is no question of government revenue loss or unjust enrichment where there is no specific provision of law in the GST Statutes. This principle is supported by the Kerala High Court in the case of **Rejimon Padickapparambil Alex v. State of Kerala** [2024] 130 taxmann.com 182 and the Madras High Court in **F1 Auto Components P Ltd v. State Tax Officer** [2021] TS-339-HC(MAD)-2021, where it was held that the appellant shall not be seen as having availed excess credit for the purposes of initiating proceedings under Section 73 of the GST Act and it is unwarranted in revenue neutral situation.

Therefore, in view of above submission it is prayed and pleaded to your goodself to withdraw this show cause notice and no demand be raised for the alleged wrongful availment of input Tax credit on stocks in hand as on 31.05.2022.

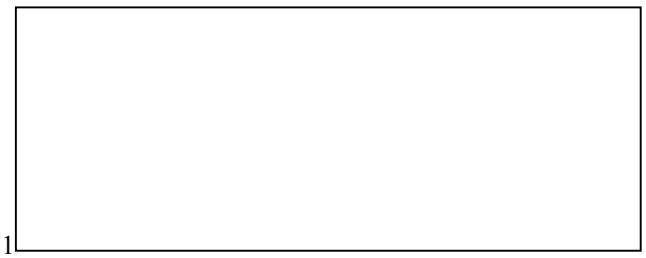
Thanking you in the anticipation.

(Kamal Yadav)

Proprietor

Place: New Delhi

Date.25.09.2024



IN THE COURT OF HON'BLE GST APPELLATE TRIBUNAL, DGST, DELHI

Suit /Appeal No./CWP 1111 DELHI JURISDICTION of 2025

In re: **YADAV ASSOCIATES**

Plaintiff /Appellants/ **Petitioner**/ Complainant

V E R S U S

COMMISSIONER, DGST, DELHI

Defendant/**Respondent/** Accused

KNOW ALL to whom these presents shall come that I **Kamal Yadav, Proprietor of M/s Yadav Associates, Moti Nagar, Delhi**

the above named **The Appellant** do hereby appoint Shri:

V. S. YADAV, Advocate, D/2431/2006
Off:215, Capital Tower, Inder Enclave, Paschim Vihar, Delhi
Email: adv.vsyadav@gmail.com
Mobile:9810030851

(herein after called the advocate/s) to be my/our Advocate in the above noted case authorized him: -

To act, appear and plead in the above-noted case in this Court or in any other Court in which the same may be tried or heard and also in the appellate Court including High Court subject to payment of fees separately for each Court by me/ us.

To sign, file verify and present pleadings, appeals cross objections or petitions for execution review, revision, withdrawal, compromise or other petitions or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages.

To file and take back documents to admit and/or deny the documents of opposite party.

To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case.

To take execution proceedings.

The deposit, draw and receive money, cheques, cash and grant receipts thereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint and instruct any other Legal Practitioner, authorizing him to exercise the power and authority hereby conferred upon the Advocate whenever he may think it to do so and to sign the Power of Attorney on our behalf.

And I/We the undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by me/us to all intents and purposes.

And I/We undertake that I / we or my /our duly authorized agent would appear in the Court on all hearings and will inform the Advocates for appearance when the case is called.

And I /we undersigned do hereby agree not to hold the advocate or his substitute responsible for the result of the said case. The adjournment costs whenever ordered by the Court shall be of the Advocate which he shall receive and retain himself.

And I /we the undersigned do hereby agree that in the event of the whole or part of the fee agreed by me/us to be paid to the Advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court. I/We hereby agree that once the fee is paid. I /we will not be entitled for the refund of the same in any case whatsoever. If the case lasts for more than three years, the advocate shall be entitled for additional fee equivalent to half of the agreed fee for every addition three years or part thereof.

IN WITNESS WHEREOF I/We do hereunto set my /our hand to these presents the contents of which have been understood by me/us on this 20th day of May 2025.

Accepted subject to the terms of fees.

(V. S. Yadav)
Advocate

Client

(Kamal Yadav)
Client

Relevant Provisions of CGST ACT and Judgement are relied upon for advancing the petitioner's Arguments

Section 107. Appeal to Appellate Authority

(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

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

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

(5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.

(6) No appeal shall be filed under sub-section (1), unless the appellant has paid—
(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order [1][subject to a maximum of [3][twenty] crore rupees], in relation to which the appeal has been filed.
[5][Provided that in case of any order demanding penalty without involving demand of any tax, no appeal shall be filed against such order unless a sum equal to ten per cent. of the said penalty has been paid by the appellant.]
(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.
(8) The Appellate Authority shall give an opportunity to the appellant of being heard.
(9) The Appellate Authority may, 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.
(10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.
(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:
Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:
Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74 [4][or section 74A].
(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.
(13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:

Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.
(14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.
(15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.
(16) Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be final and binding on the parties.

Petitioner / Applicant	KRONOS SOLUTIONS INDIA PRIVATE LIMITED
Respondent	UNION OF INDIA AND OTHERS
Court	Allahabad High Court
State	Uttar Pradesh
Date	Jan 31, 2024
Order No.	Writ Tax No. - 1417 of 2023
Neutral Citation	2024 AHC 16550-DB

ORDER
1. Heard Sri Shubham Agrawal, holding brief of learned counsel for the petitioner, Sri Anant Kumar Tiwari, learned counsel for the Union of India and Sri Gaurav Mahajan, learned counsel for the Revenue.
2. The present petition has been filed to assail the order dated 21.2.2023 passed by the Joint Director (CGST) (Appeals), Noida.
The operative portion of the order reads as below:-
"10. In view of my above discussion & findings I, hereby partially allow the instant appeal having no.102/GST/APPL-NOIDA/NO1/2020-21 dated 12.01.2021 filed by M/s Kronos Solutions India Private Limited, Floor 4,5 & 6, Plot No.5, Block-B, Tower-4, Okaya Centre, Sector 62, Noida - 201301 and remand back the matter to the original adjudicating authority for de novo adjudication after giving natural justice and chance to be heard to the appellant. The appellant is also directed to use the opportunity as and when called for the

hearing."

3. Solitary submission advanced by the learned counsel for the petitioner is, the above order at least operative portion has been passed in defiance to the provisions of Section 107(11) of CGST Act, 2017. For ready reference, that provision of law reads as below:-

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

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

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74."

4. On the other hand, learned counsel for the Revenue has raised a preliminary objection as to maintainability of the writ petition. He would submit, the impugned order is appealable under Section 112 of the Act. Therefore, no interference may be made.

5. A counter affidavit has also been filed on behalf of respondent nos. 3 and 5 to dispute the case of the petitioner, on merits.

6. Having heard learned counsel for the parties and having perused the record, the preliminary objection as to availability of statutory appeal is not sustained as the Tribunal has not yet been constituted. In any case, in face of complete failure on part of appeal authority to exercise its jurisdiction in accordance with law, the writ court may not hold itself to offer the necessary corrections required, at this initial stage itself.

7. Undeniably, the appeal authority may either confirm or modify or annul the order under appeal. In face of statutory prescription allowing for only three above-described options to the appeal authority, no inherent power may remain be exercised by the appeal authority to set aside the order under appeal and remand the proceedings to the original authority. Any doubt in that regard has been clarified by the legislature itself by stating that the appeal authority shall not refer the matter back to the adjudicating authority.

8. Accordingly, no other issue is required to be adjudicated at this stage. **Once the appeal authority is seen to have failed to exercise its jurisdiction in accordance with law, such an order may never be sustained**. It is accordingly set aside and the matter is remanded to the appeal authority to pass a fresh order

after hearing the parties afresh.
9. The writ petition stands allowed.

Section-17. Apportionment of Credit and Block Credit

(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

[1][Explanation.—For the purposes of this sub-section, the expression ‘‘value of exempt supply’’ shall not include the value of activities or transactions specified in Schedule III, [3][except,—

(i) the value of activities or transactions specified in paragraph 5 of the said Schedule; and

(ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule.]]

(4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:

Provided further that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

[2][(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:—

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used—

(i) for making the following taxable supplies, namely:—

(A) further supply of such vessels or aircraft; or

(B) transportation of passengers; or

(C) imparting training on navigating such vessels; or

(D) imparting training on flying such aircraft;

(ii) for transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available—

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged—

(I) in the manufacture of such motor vehicles, vessels or aircraft; or

(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

(b) the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall

be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.]
(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;
(d) goods or services or both received by a taxable person for construction of an immovable property (other than [6][plant and machinery]) on his own account including when such goods or services or both are used in the course or furtherance of business.
[7][Explanation 1].—For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;
[8][Explanation 2.—For the purposes of clause (d), it is hereby clarified that notwithstanding anything to the contrary contained in any judgment, decree or order of any court, tribunal, or other authority, any reference to "plant or machinery" shall be construed and shall always be deemed to have been construed as a reference to "plant and machinery"];
(e) goods or services or both on which tax has been paid under section 10;
(f) goods or services or both received by a non-resident taxable person except on goods imported by him;
[4][(fa) goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013]
(g) goods or services or both used for personal consumption;
(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and
(i) any tax paid in accordance with the provisions of [5][section 74 in respect of any period up to Financial Year 2023-24].
(6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.
Explanation.—For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—
(i) land, building or any other civil structures;
(ii) telecommunication towers; and
(iii) pipelines laid outside the factory premises.

Section-18. Availability of Credit in special circumstances
(1) Subject to such conditions and restrictions as may be prescribed—
(a) a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted

such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;

(b) a person who takes registration under sub-section (3) of section 25 shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;

(c) where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed;

(d) where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed.

(2) A registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.

(3) Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

(4) Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, where the goods or services or both supplied by him become wholly exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption:

Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

(5) The amount of credit under sub-section (1) and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed.
(6) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher:
Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

2025 INSC 231

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2212 OF 2024

STATE OF PUNJAB & ORS. APPELLANT(S)

Versus

TRISHALA ALLOYS PVT. LTD. RESPONDENT(S)

With

CIVIL APPEAL NO. 2213 OF 2024
With
CIVIL APPEAL NOS. 2214-2216 OF 2024
With
CIVIL APPEAL NO. 2217 OF 2024
With
CIVIL APPEAL NO. 2218 OF 2024
And
CIVIL APPEAL NO. 2219 OF 2024

J U D G M E N T

UJJAL BHUYAN, J.

This judgment and order will dispose of Civil Appeal Nos. 2212, 2213, 2214-2216, 2217, 2218 and 2219 of 2024.

2. Details of the Civil Appeals are as under:

Sl. No.	Civil Appeal No(s).	SLP (C) No(s).	Cause Title
1.	2212 of 2024	35263 of 2015	State of Punjab & Ors. Vs. Trishala Alloys Pvt. Ltd.

2.	2213 of 2024	35269 of 2015	State of Punjab Vs. Prime Steel Processors.
3.	2214-2216 of 2024	35265-35267 of 2015	State of Punjab Vs. JREW Engineering Ltd. Etc. Etc.
4.	2217 of 2024	35790 of 2015	State of Punjab Vs. District Taxation Bar Association (Sales Tax), Ludhiana.
5.	2218 of 2024	904 of 2016	State of Punjab Vs. LSR Forge Pvt. Ltd.
6.	2219 of 2024	2407 of 2016	State of Punjab vs Jalandhar Iron and Steel Merchants Association (Regd.).

3. Since parties have advanced their arguments in Civil Appeal No. 2212 of 2024 (*State of Punjab Vs. Trishala Alloys Pvt. Ltd.*), the same is taken as the lead appeal and for the sake of convenience, facts stated in the said appeal would be referred to hereunder.

4. This appeal by special leave is directed against the order dated 20.05.2015 passed by the High Court of Punjab and Haryana at Chandigarh (briefly 'the High Court' hereinafter) in CWP No. 7951/2014 (*Trishala Alloys Private Ltd. Vs. State of Punjab*) whereby the High Court has allowed the writ petition filed by the respondent by following its judgment and order of

even date passed in CWP No. 5625/2014 (*Jalandhar Iron and Steel Merchants Association Vs. State of Punjab*).

5. State of Punjab has filed the related petition for special leave to appeal (civil) No. 35263/2016 assailing the order dated 20.05.2015.

6. Question for consideration is whether Rule 21(8) of the Punjab Value Added Tax Rules, 2005 (Punjab VAT Rules) could have been introduced during the period between 25.01.2014 to 01.04.2014 when there was no enabling provision in the parent statute i.e. the Punjab Value Added Tax Act, 2005 (Punjab VAT Act)? The above issue has arisen in the following factual backdrop.

7. Respondent is a manufacturer of iron and steel goods. For manufacturing such goods, it purchases raw material of iron and steel from within the State of Punjab as well as from outside the State of Punjab.

8. Punjab VAT Act came into force from 01.04.2005. As per the scheme of Punjab VAT Act, value added tax (VAT) paid or payable under the said Act by a taxable person on the purchase of taxable goods for resale or for use by him in the manufacture

or processing or packing of taxable goods in the State of Punjab would be termed as input tax. The credit of input tax available to a taxable person under the Punjab VAT Act is referred to as input tax credit (ITC). There is a concept called reverse input tax credit which means the amount of input tax credit which is required to be reversed by a taxable person on account of credit note for output tax received from the previous seller of goods on purchase in respect of which input tax credit (ITC) is claimed etc. Output tax in relation to a taxable person means the tax charged or chargeable or payable in respect of sale and/or purchase of goods, as the case may be, under the Punjab VAT Act.

9. A taxable person shall be entitled to input tax credit in such manner and subject to such conditions as may be prescribed in respect of input tax on taxable goods including on capital goods purchased by him from a taxable person within the State during the tax period. However, such goods must be for sale in the State of Punjab or in the course of inter-state trade, commerce or in the course of export or for use in the manufacture, processing or packing of taxable goods for sale within the State of Punjab or in the course of inter-state trade or commerce or in the course of export.

9.1. Taxable person has been defined to mean a person who is registered for the purpose of paying value added tax under the Punjab VAT Act and tax period means the period for which a person is required to pay tax under the Punjab VAT Act or the rules framed thereunder.

10. Section 13(1) of the Punjab VAT Act read with the first proviso thereto, as it stood prior to amendment, provided that a taxable person shall be entitled to input tax credit in respect of input tax on taxable goods purchased by him from a taxable person within the State during the tax period if such goods are for further sale etc or for manufacture etc of taxable goods.

10.1. After amendment with effect from 01.04.2014, the mandate of the provision undergoes a change in that input tax credit would be available only if the goods are sold or are used in manufacture etc.

11. In exercise of the powers conferred by sub-section (1) of Section 70 of the Punjab VAT Act, the Punjab VAT Rules have been framed.

11.1. Rule 18 deals with conditions for input tax credit whereas input tax credit on capital goods is dealt with in Rule 19.

11.2. Rule 21 is relevant. It provides for inadmissibility of input tax credit in certain cases, such as, no input tax credit shall be admissible to a person for tax paid on purchase of goods if such goods are lost or destroyed or damaged beyond repair etc. Calculation of input tax credit is dealt with in Rule 22.

12. Government of Punjab in the Department of Excise and Taxation issued notification bearing No.G.S.R.5/P.A.8/ 2005/S.70/Amd.(53)/2014 dated 25.01.2014 making the Punjab Value Added Tax (First Amendment) Rules, 2014 ('First Amendment Rules' hereinafter) to further amend the Punjab VAT Rules. It is mentioned therein that the amendments would come into force with effect from 01.02.2014. As per the First Amendment Rules, after sub-rule (6) of Rule 21 of the Punjab VAT Rules, sub-rules (7) and (8) were added. Sub-rule (8) as inserted in Rule 21 *vide* the First Amendment Rules reads as under:

> (8) where some goods as input or output are lying in the stock of a taxable person and where rate of tax on such goods is reduced from a particular date, then from that date, input tax credit shall be admissible to the taxable person on the sale of goods lying in stock or on using the goods as

input for manufacturing taxable goods, at the reduced rate.

13. Government of Punjab in the Excise and Taxation Department issued a revised public notice/clarification drawing the attention of taxable persons, advocates, chartered accountants and cost accountants that the rate of tax on iron and steel goods stood reduced from 4.5 per cent to 2.5 per cent. It was mentioned therein that input tax credit (ITC) on stock held as on 31.01.2014 would be restricted to the new rate of tax plus surcharge. It was further clarified that the new tax regime would come into effect from 01.02.2014.

14. Punjab Government in the Department of Excise and Taxation also issued notification bearing No. S.O.9/P.A.8./2005/ S.8/2014 dated 25.01.2014 making amendment in Schedule 'E' appended to the Punjab VAT Act mentioning that the same was being done in exercise of the powers conferred by sub-section (3) of Section 8 of the Punjab VAT Act dispensing with the condition of previous notice. As per the amendment, serial No.21 was added to Schedule E whereby iron and steel goods as enumerated in Clause IV of Section 14 of the Central Sales Tax Act, 1956 except non-cenvat paid iron and steel scrap would attract tax at

2.5 per cent whereas non-cenvat paid iron and steel scrap would attract tax at 1 per cent.

15. Respondent filed CWP No. 7951 of 2014 before the High Court for a declaration that Rule 21 (8) of the Punjab VAT Rules as inserted *vide* the notification dated 25.01.2014 was *ultra vires* the Constitution and the Punjab VAT Act. Contention of the respondent was that credit for the tax already paid by the taxable person on goods kept as stock in trade would be reduced by virtue of Rule 21 (8) which is illegal and unconstitutional.

16. By the impugned judgment, High Court allowed the writ petition holding that on the date of introduction of sub-rule (8) in Rule 21 of the Punjab VAT Rules, the State did not possess any power traceable to the Punjab VAT Act to confine the rate of input tax credit to the reduced rate of tax on the stock in trade i.e. on those concluded transactions where the taxable person had already earned input tax credit at the previous higher rate of tax.

17. Aggrieved thereby, the State is in appeal.

18. Learned counsel for the appellant submits that the High Court was not at all justified in allowing the writ petition

filed by the respondent holding that on the date of introduction of sub-rule (8) in Rule 21 of the Punjab VAT Rules, the State did not possess any power to confine availing of input tax credit (ITC) to the reduced rate of tax on the stock in trade i.e. in respect of transactions that stood concluded with the taxable person already earning input tax credit at the previous higher rate of tax. Judicial intervention in such a case was not warranted.

18.1. Referring to Section 2(o) of the Punjab VAT Act, he submits that input tax is the tax paid or payable in the course of business on the purchase of any goods made from a registered dealer of the State. It is a tax in relation to a taxable person which is paid or is payable by him on the purchase of taxable goods for resale or for further use by the taxable person in the manufacture or processing or packing of taxable goods in the State. Output tax which is the tax charged or chargeable or payable under the Punjab VAT Act extends the benefit of ITC subject to fulfilment of certain conditions. Learned counsel submits that High Court has completely misread Rule 21(8) of the Punjab VAT Rules holding that there would be retro-active application of the said Rule whereas no such intent is decipherable therefrom.

18.2. ITC is not a privilege but merely a facility to avoid the cascading effect of tax. State government introduced the scheme of ITC under Section 13 of the Punjab VAT Act to minimise the effect of VAT and to reduce the burden of tax on the ultimate consumer. Every dealer (taxable person) calculates the output tax liability and reduces the tax paid on purchases to reach the quantum of tax payable. Therefore, the state government has the power to impose tax at the stage of sale and in certain cases, no ITC may be available. A dealer would be entitled to ITC on the stock in trade held as on 31.01.2014 equal to the new rate of tax plus surcharge effective from 01.02.2014. The goods purchased prior to 31.01.2014 and not sold or utilised till 31.01.2014 would be eligible to ITC at the new rate enforced till further sale. Thus, he would not be entitled to credit at the same rate of tax which was applicable at the time of procurement.

18.3. High Court has failed to appreciate that amendment to the Punjab VAT Rules applies only to the rate of tax prevailing on the date of sale of the stock in trade and, therefore, does not affect the rights of a dealer or the ITC on the transaction which stood concluded.

18.4. Learned counsel has referred to the rule making provision in the Punjab VAT Act i.e. Section 70. He submits that as per sub-section (2) of Section 70, the rules under the Punjab VAT Act may be made either with prospective effect or with retrospective effect. However, he concedes that as per the proviso thereto, the rules shall be made with retrospective effect only if the same are required to be made in public interest.

18.5. He finally submits that State has a larger affirmative responsibility towards the society. Therefore, the impugned provision may be examined from that perspective also.

19. *Per contra,* learned counsel for the respondent submits that the High Court had rightly observed that on the date of introduction of sub-rule (8) in Rule 21, the State did not possess any power emanating from the Punjab VAT Act to confine the availing of input tax credit (ITC) to the reduced rate of tax on the stock in trade i.e. on the transaction which stood concluded with the dealer already earning input tax credit at the previous higher rate of tax. He submits that a perusal of the amendment in the first proviso to Section 13(1) of the Punjab VAT Act would reveal that the said provision is not retrospective but applies to transactions after 01.04.2014. The amendment in the said Rule

which came into effect prior to the amendment in the Punjab VAT Act could therefore not be enforced by the appellant before 01.04.2014 to take away a vested right already determined and accrued to the respondent without any statutory sanction.

19.1. Based on the above submission, learned counsel for the respondent contends that the limited issue in this appeal is whether Rule 21(8) of the Punjab VAT Rules could have been introduced and made applicable during the period between 25.01.2014 to 01.04.2014.

19.2. In that context learned counsel contends that on the date when Rule 21(8) of the Punjab VAT Rules was introduced i.e. on 25.01.2014 there was no enabling provision in the Punjab VAT Act that empowered the State to reduce the rate of input tax credit already earned by reference to the sale of goods lying in stock. The statutory position is clear in that input tax credit (ITC) would be earned on the date of purchase in accordance with Section 13 of the Punjab VAT Act as it stood on that date i.e. on the date of purchase. Amendment to the Punjab VAT Act empowering the State to notify such a rule came into effect only on 01.04.2014 when the first proviso to Section 13(1) of the Punjab VAT Act was amended. The words 'are for sale' appearing

in the first proviso to Section 13(1) were deleted and substituted with the words 'are sold'. Similarly, the words 'for use in the manufacture' were replaced by the words 'are used in the manufacture'. Effect of this amendment was to limit the input tax credit earned on the goods already sold or used in manufacture. This amendment therefore enabled the State to reduce the input tax credit already earned on the stock in trade by reference to the reduced rate of taxation.

19.3. State of Punjab introduced Rule 21(8) in the Punjab VAT Rules *vide* the notification dated 25.01.2014, the effect of which was that though the respondent would have paid tax at the existing higher rate on the purchase of raw material used as input, it would not be in a position to recover the whole of it from the customers because of subsequent reduction in the rate of tax.

19.4. Learned counsel vehemently argued that the State did not have the legislative competence to reduce the input tax credit already earned by inserting sub-rule (8) in Rule 21 before making amendment in the corresponding enactment i.e. Section 13 of the Punjab VAT Act. Amendment in the Punjab VAT Act having come into effect from 01.04.2014, the amendment in Rule 21(8) of the Punjab VAT Rules could not have come into force prior thereto.

19.5. Learned counsel for the respondent submits that there is no error or infirmity in the view taken by the High Court. Appeal filed by the State lacks merit and, therefore, should be dismissed.

20. Submissions made by learned counsel for the parties have received the due consideration of the Court.

21. At the outset, let us refer to and analyse the relevant statutory provisions. Section 2 of the Punjab VAT Act is the definition section. Section 2(o) deals with *input tax.* It says that input tax in relation to a taxable person means the value added tax (VAT), paid or payable under the Punjab VAT Act, by a person on the purchase of taxable goods for resale or for use by the taxable person in the manufacture or processing or packing of taxable goods in the State. *Input tax credit* has been defined in Section 2(p) to mean the credit of input tax (ITC) available to a taxable person under the Punjab VAT Act. On the other hand, *output tax* as defined in Section 2(s) in relation to a taxable person means the tax charged or chargeable or payable in respect of sale and/or purchase of goods, as the case may be. *Reverse input tax credit* as per Section 2(ze) means the amount of input tax credit (ITC) which is required to be reversed by a taxable

person on account of the four situations enumerated thereunder including one where credit note for output tax is received from the seller of goods on purchase in respect of which input tax credit is claimed. While *tax period* has been defined in Section 2(zm) to mean the period for which a person is required to pay tax under the Punjab VAT Act or under the Punjab VAT Rules, *taxable person* has been defined in Section 2(zn) to mean a person who is registered for the purpose of paying VAT under the Punjab VAT Act.

22. Section 13 of the Punjab VAT Act deals with input tax credit. Sub-section (1) of Section 13 of the Punjab VAT Act alongwith the first proviso thereto, as it stood prior to the amendment, reads as under:

> **S-13. Input tax credit.**
>
> (1) A taxable person shall be entitled to the input tax credit, in such manner and subject to such conditions, as may be prescribed, in respect of input tax on taxable goods, including capital goods, purchased by him from a taxable person within the State during the tax period:
>
> Provided that such goods are for sale in the State or in the course of inter-state trade or commerce or in the course of export or for use in the manufacture, processing or packing of

> taxable goods for sale within the State or in the course of inter-state trade or commerce or in the course of export.

23. The aforesaid provision says that a taxable person shall be entitled to ITC in respect of input tax on taxable goods, including capital goods, purchased by him from a taxable person within the State during the tax period. As per the unamended first proviso, such goods should be for sale in the State or in the course of inter-state trade or commerce or in the course of export or for use in the manufacture, processing or packing of taxable goods for sale within the State or in the course of inter-state trade or commerce or in the course of export.

23.1. Sub-section (9) of Section 13 provides that a person shall reverse input tax credit availed by him on goods which could not be used for the purposes specified in sub-section (1) of Section 13 or which remained in stock at the time of closure of the business.

24. Section 70 is the rule making provision. While sub-section (1) empowers the state government to make rules for carrying out the purposes of the Punjab VAT Act, sub-section (2) on the other hand provides that rules made under the Punjab

VAT Act may be either with prospective effect or with retrospective effect. As per the proviso to sub-section (2), the rules shall be with retrospective effect only if the same are required to be made in public interest.

25. While Rule 18 of the Punjab VAT Rules mentions the conditions for input tax credit, Rule 19 on the other hand deals with input tax credit on capital goods.

26. Rule 21 deals with inadmissibility of input tax credit in certain cases. At the relevant point of time, Rule 21 had six sub rules, sub-rule (7) having been omitted. Input tax credit would not be admissible to a person for the tax paid on purchase of goods if such goods are lost or destroyed or damaged beyond repair etc.

27. By notification dated 25.01.2014, Government of Punjab made the Punjab VAT (First Amendment) Rules, 2014 declaring that the amended provisions would come into force with effect from 01.02.2014. By the First Amendment Rules, Rule 21 of the Punjab VAT Rules was amended in the sense that after sub-rule (6), sub-rules (7) and (8) were added.

28. We have already extracted sub-rule (8) of Rule 21. It says that where some goods as input or output are lying in the stock of a taxable person and where the rate of tax on such goods is reduced from a particular date, then from that date, input tax credit shall be admissible to the taxable person on the sale of goods lying in stock or on using the said goods as input for manufacturing taxable goods etc at the reduced rate from that particular date.

29. What therefore the newly inserted provision of Rule 21(8) contemplates is that goods which were already purchased at a higher rate of tax and forming part of the stock in trade would be entitled to input tax credit of the taxable person on the further sale of such goods or use of such goods as input for manufacturing taxable goods etc at the reduced rate with effect from 01.02.2014.

30. It has come on record that by another notification dated 25.01.2014, Schedule E to the Punjab VAT Act was amended by insertion of serial No.21 reducing the rate of tax in respect of iron and steel goods.

31. Punjab VAT Act was amended the second time by the Punjab Value Added Tax (Second Amendment) Act, 2013 (Punjab

Act No. 38 of 2013). Though as per Section 1(2) of the Second Amendment Act, the same was to come into force at once, the proviso thereto mentioned that amendment of sub-section (1) of Section 13 shall come into force on and with effect from the first day of April, 2014 i.e. from 01.04.2014. Section 5 of the Second Amendment Act deals with amendment to Section 13 of the Punjab VAT Act. As per the amendment, the first proviso to sub-section (1) of Section 13 was amended and post amendment, the said proviso reads as under:

> Provided that the input tax shall not be available as input tax credit unless such goods are sold within the State or in the course of inter-state trade or commerce or in the course of export or are used in the manufacture, processing or packing of taxable goods for sale within the state or in the course of inter-state trade or commerce or in the course of export.

32. As already noticed above, this provision came into the statute book on and with effect from 01.04.2014. Before proceeding further, it would be apposite to examine the said provision as it existed prior to the amendment and compare the same post amendment. Prior to amendment, the first proviso mentioned that a taxable person would be entitled to input tax

credit in respect of input tax on taxable goods purchased by him from a taxable person within the State during the tax period if such goods are for sale in the State or in the course of inter-state trade or commerce or in the course of export or for use in the manufacture, processing or packing of taxable goods for sale within the State or in the course of inter-state trade or commerce or in the course of export. Post amendment, the first proviso says that input tax shall not be available as input tax credit unless such goods are sold within the State or in the course of inter-state trade or commerce or in the course of export or are used in the manufacture, processing or packing of taxable goods for sale within the State or in the course of inter-state trade or commerce or in the course of export.

33. The difference in language in the said provision as it stood prior to amendment and post amendment is unmistakable. Prior to amendment, the first proviso permitted availing of input tax credit in respect of goods which are for sale etc. or are for use in manufacture etc. Post amendment, the requirement is that input tax would not be available as a credit unless the goods are sold within the State etc. or are used in the manufacture etc. of taxable goods. Post amendment, it is clear that no input tax

would be available unless the goods are sold etc. or used in the manufacture etc. In other words, input tax credit would be available on and from the date of further sale or use in manufacture.

34. As we have already seen, by way of the first amendment to the Punjab VAT Rules, Rule 21(8) was inserted with effect from 01.02.2014 which made it abundantly clear that goods purchased earlier on which input tax was paid and which were lying in the stock of a taxable person would be available for input tax credit on further sale of such goods or using of such goods as input for manufacturing taxable goods etc. at the reduced rate if the rate on such tax is reduced from a particular date. We have also seen that the rate of tax on iron and steel goods was reduced with effect from 01.02.2014.

35. The question that the High Court posed for consideration was whether on 25.01.2024 when the notification was issued inserting sub-rule (8) in Rule 21, the Punjab VAT Act empowered the State to notify such a rule. High Court analysed the provision of Rule 21(8) of the Punjab VAT Rules in the following manner:

A perusal of Rule 21(8) of the Rules reveals that with respect to goods lying in stock the input tax credit already earned shall be admissible at the reduced rate i.e. the rate of taxation prevalent on the date of their sale. As referred to above, the rate of taxation was reduced from 4% to 2% from 25.01.2014. The input tax credit already earned would, therefore, be available with respect to goods lying in stock at 2%. The petitioner-members, as is apparent from the facts, had paid tax @ 4% while purchasing the goods and had earned input tax credit @ 4%.The goods having been purchased for resale within the State of Punjab, the right to avail input tax credit @ 4% per annum stood crystalised as a determinate right subject to availing this right during the return period or by carrying it forward. The State, however, by enacting Rule 21(8) of the Rules, has reduced the admissible amount of input tax credit already earned from 4% to 2%.We cannot possibly dispute the legislative competence of the State in the exercise of its power of delegated legislation to enact such a rule but the question, as we have also noticed, is not the legislative competence of the State but is whether on 25.01.2014 there was any provision in the statute that empowered the State of Punjab to notify Rule 21(8) of the Rules to provide that goods that have already earned input tax credit would avail input tax credit at the reduced rate of taxation applicable on the date of sale thereby reducing input tax credit

> already earned on goods lying in stock by reference to the reduced rate of tax prevalent on the date of their sale etc.

35.1. However, High Court noted that as on 25.01.2014, there was no provision in the statute that empowered the State to enact a rule to provide that input tax credit already earned on goods lying in stock could now be availed at the reduced rate as the rate of tax on the goods in question stood reduced in the *interregnum*. Such a power came to be conferred only after the first proviso to Section 13(1) was amended on and from 01.04.2014. It was in that context, High Court held as follows:

> The amendment in the first proviso to Section 13 of the Act introducing the words "are sold" etc. came into effect on 01.04.2014. The State of Punjab was, therefore, empowered in the exercise of its power of delegated legislation to notify a rule linking the availing of input tax credit already earned to their sale on 01.04.2014. Rule 21(8) of the Rules which resonates the first proviso to Section 13 of the Act by linking the availing of input tax credit to goods sold and thereby to the reduced rate of taxation, came into effect on 25.01.2014 on which date there was no statutory provision enabling the State, in the exercise of its power of delegated legislation, to notify a rule that input tax credit would be "availed" on the sale of goods lying in stock or their manufacture etc.

> by reference to the reduced rate of taxation prevalent at the time of "sale/manufacture" etc. of goods that had already earned a determinate amount of input tax credit.

35.2. Allowing the writ petition High Court held that in the absence of any provision in the statute enabling the State of Punjab to notify Rule 21 (8) with effect from 25.01.2014, the said provision would come into effect only from 01.04.2014 i.e. the date of coming into force of the amended provision of Section 13(1) along with the first proviso thereto. High Court further observed that the said provision i.e. amended first proviso to Section 13(1) was not retrospective and held as under:

> We, therefore, have no hesitation in holding that on the date of introduction of sub-rule (8) of Rule 21 of the Rules, the State did not possess any power, emanating from the Act, to confine the availing of input tax credit to the reduced rate of tax on the stock in trade i.e. transactions that had concluded with the dealer already earning input tax credit. A further perusal of the amendment in the first proviso to Section 13 of the Act reveals that it is not retrospective but applies to transactions after 25.01.2014. The amendment in the rule, which came into effect prior to the amendment of the Act could, therefore, not be enforced by the respondents before

> 01.04.2014 to take away a vested right already determined without statutory sanction.
>
> We, therefore, allow the writ petitions and hold that in the absence of any provision in the statute enabling the State of Punjab to notify Rule 21(8) of the Rules w.e.f. 25.01.2014, the said provision would come into effect from 01.04.2014.

36. According to us, view taken by the High Court is logical and correct. A taxable person who had stock in trade as on 25.01.2014 or as on 01.02.2014 had already paid the tax while making the purchase of such goods. In this case, the purchase was made by paying higher rate of tax on iron and steel goods to be used as input for the purpose of manufacture etc. of taxable goods. The taxable person who is otherwise entitled to avail input tax credit on the goods already purchased and lying in stock would suffer serious prejudice and loss if his entitlement to input tax credit are reduced by virtue of lowering of the rate of tax on such goods on a subsequent date. High Court has noted that the enabling provision in the statute came into effect on and from 01.04.2014 and, therefore, Rule 21(8) of the Punjab VAT Rules which permits application of the reduced rate of tax cannot be given effect to transactions which already stood concluded

prior thereto. It could only be applied to transactions on and from 01.04.2014.

37. In *Eicher Motors Limited Vs. Union of India*[1], a three-Judge Bench of this Court examined the challenge to the validity and application of the scheme as modified by way of introduction to Rule 57(F) of the Central Excise Rules, 1944 under which credit which was lying unutilised as on 16.03.1995 with the manufacturers stood lapsed in the manner set out therein. While examining the above issue, this Court held that if on the inputs, the assessee had already paid the taxes on the basis that when the goods are utilised in the manufacture of further products as inputs thereto then the tax on these goods gets adjusted which are sold subsequently. Thus, a right accrued to the assessee on the date when he paid the tax on the raw material or the input would continue until the facility available thereto gets worked out or until those goods existed. The impugned rule cannot be applied to the goods manufactured prior to the date it came into force i.e. 16.03.1995 on which duty had been paid and credit facility thereto has been availed of for the purpose of manufacture of further goods. This Court held as under:

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[1](1999) 2 SCC 361

> **6.** We may look at the matter from another angle. If on the inputs, the assessee had already paid the taxes on the basis that when the goods are utilised in the manufacture of further products as inputs thereto then the tax on these goods gets adjusted which are finished subsequently. Thus a right accrued to the assessee on the date when they paid the tax on the raw materials or the inputs and that right would continue until the facility available thereto gets worked out or until those goods existed. Therefore, it becomes clear that Section 37 of the Act does not enable the authorities concerned to make a rule which is impugned herein and, therefore, we may have no hesitation to hold that the Rule cannot be applied to the goods manufactured prior to 16.03.1995 on which duty had been paid and credit facility thereto has been availed of for the purpose of manufacture of further goods.

38. *Sedco Forex International Drill INC.Vs. Commissioner of Income Tax, Dehradun*[2], is a case where this Court reiterated the well settled principle of tax law that the law to be applied is that which is in force in the relevant assessment year unless otherwise provided expressly or by necessary implication. In so far an explanation to a statutory provision is concerned if it is

[2](2005) 12 SCC 717

clarificatory in nature then the explanation must be read into the main provision with effect from the time the main provision came into force. But if it changes the law, it is not to be presumed to be retrospective. Para 17 of the aforesaid decision reads as follows:

> **17.** As was affirmed by this Court in *CIT Vs. Goslino Mario*[3], a cardinal principle of the tax law is that the law to be applied is that which is in force in the relevant assessment year unless otherwise provided expressly or by necessary implication. (See also *Reliance Jute and Industries Ltd. Vs. CIT*[4]). An Explanation to a statutory provision may fulfil the purpose of clearing up an ambiguity in the main provision or an Explanation can add to and widen the scope of the main section (*See Sonia Bhatia Vs. State of U.P.*[5]). If it is in its nature clarificatory then the Explanation must be read into the main provision with effect from the time that the main provision came into force (*See Shyam Sunder Vs. Ram Kumar*[6], *Brij Mohan Das Laxman Das Vs. CIT*[7] and *CIT Vs. Podar Cement (P) Ltd.*[8]). But if it changes the law, it is not presumed to be retrospective, irrespective of the fact that the phrases used are "it is declared" or "for the removal of doubts".

3(2000) 10 SCC 165
4(1980) 1 SCC 139
5(1981) 2 SCC 585
6(2001) 8 SCC 24
7(1997) 1 SCC 352
8(1997) 5 SCC 482

39. This Court in *Commissioner of Central Excise, Patna Vs. New Swadeshi Sugar Mills*[9], agreed with the interpretation given by the Customs Excise and Service Tax Appellate Tribunal to Rule 6 of the CENVAT Credit Rules, 2002 by holding that CENVAT credit which was already earned by the assessee could not have been taken away if the rigors of Rule 6 would be having only prospective effect.

40. Again in the case of *Jayam and Company Vs. Assistant Commissioner*[10], this Court in the context of Section 19(20) of the Tamil Nadu Value Added Tax Act, 2006, which was inserted in the statute *vide* the amendment brought about by the Amendment Act of 2010, held that the said provision was made for the first time to the detriment of the dealers lowering the rate of input tax credit on resale. Such a provision therefore cannot have retrospective effect more so when vested right had accrued in favour of the dealers in respect of purchase and sale made prior to insertion of the aforesaid provision.

41. Applying the principles culled out from the above decisions to the facts of the present case, we find that respondent

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9(2016) 1 SCC 614
[10](2016) 15 SCC 125

had earned input tax credit on purchase of iron and steel goods which it kept as its stock in trade to be used as inputs or raw materials in the manufacture etc. of taxable goods. State lowered the rate of tax with effect from 01.02.2014 on those goods. The related amendments in the rules i.e. Rule 21(8) of the Punjab VAT Rules were notified on 25.01.2014 to come into effect from 01.02.2014. There was however no corresponding provision in the parent statute i.e. Punjab VAT Act which permitted availing of input tax credit at the lower rate of tax on the existing stock in trade though the purchase of such input was already made at a higher rate of tax thereby reducing the quantum of credit. The enabling provision in the statute i.e. first proviso to Section 13(1) of the Punjab VAT Act came into force with effect from 01.04.2014.

41.1. The benefit of input tax credit is traceable to the statute. If the same has to be reduced, which will have an adverse civil consequence upon the beneficiary, it must have the requisite statutory sanction. In this case, the statutory sanction came on and from 01.04.2014 with the amendment of the first proviso to Section 13(1) of the Punjab VAT Act. Therefore, the High Court was justified in holding that prior to 01.04.2014,

there was no statutory sanction to allow applicability of Rule 21(8) on the stock in trade i.e. on inputs already purchased for which transactions stood concluded at a higher rate of tax.

41.2. This issue can also be looked at from another angle. As we have seen, under sub-section (9) of section 13, a person is under a mandate to reverse input tax credit availed by him on goods which could not be used for the purposes specified in sub-section (1) of Section 13 of the Punjab VAT Act or which remained in stock at the time of closure of business. If the interpretation sought to be given to Rule 21(8) of the Punjab VAT Rules by the State is accepted, the natural corollary would be that reversal of input tax credit would be at the lower rate of tax on the goods in question when those goods could not be used for the purposes specified in Section 13(1) or which remained as part of the stock in trade at the time of closure of business. Such an interpretation besides being fallacious, would also lead to revenue loss for the State exchequer.

42. Thus, having regard to the discussions made above we are of the unhesitant view that the interpretation given by the High Court to the applicability of Rule 21(8) of the Punjab VAT Rules read with the amended first proviso to sub-section (1) of

Section 13 of the Punjab VAT Act is legally sound and warrants no interference. Consequently, we find no merit in the appeal which is accordingly dismissed.

43. Resultantly, and in view of the above, all the appeals are dismissed. However, there shall be no order as to cost.

.....J.
[ABHAY S. OKA]

.....J.
[UJJAL BHUYAN]

NEW DELHI;
FEBRUARY 17, 2025.

IN DELHI GOODS AND SERVICES TAX APPELLATE TRIBUNAL, GST BHAWAN, DELHI

APPEAL NO. 1111/2025

In the matter of: -

YADAV ASSOCIATES Vs. COMMISSIONER, DGST, NEW DELHI

HON'BLE PRESIDENT OF GST TRIBUNAL AND HIS COMPANION MEMBERS,

Written Argument on behalf of Appellant

The most respectfully showeth:

I. Preliminary Statement

1. This appellant contests in the present appeal which emanates from the impugned order dated 19.02.2025 passed by Ld. Joint Commissioner (Appeals) DGST, Delhi wherein the first appellate authority partly set aside the adjudication order and remanded the matter back to the proper officer i.e. original adjudicating authority for fresh adjudication.
2. This said impugned order is ultra vires and beyond the intent of section 107(11) of Central Goods and Services Tax Act 2017 which expressly bars the appellate authority from remanding a matter back to the original adjudicating authority.

II. **Legal Issue for Consideration before Your Lordships: -** Whether the First Appellate Authority is empowered under section 107(11) to

remand the matter back to adjudicating authority for de novo adjudication?

III. **Arguments:** A specific provision under the chapter Appeal and Section 107(11) statutorily bars the remand of matter.

Section 107(11) which expressly states as under:

"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.

The language in this section is **specific, plain, mandatory and prohibitory in nature**. The special provision in appeal bars the remand using such words as 'shall not refer the case back" clearly imposes the jurisdictional bar on first appellate authority.

The same issue was settled in the case of **Kronos Solutions India Pvt. Ltd. v. Union of India, 2024 AHC 16550-DB**: - Held that the appellate authority has failed to exercise its jurisdiction as per Section 107(11) such an order cannot be sustained. (Annexed with petition).

Special provision will prevail over general provision in a statute is followed by supreme court in followings cases as settled law. Specific Central Board of Excise & Customs v. Sahu Ram Gupta [2006 (201) E.L.T. 3 (S.C.)], Commissioner of Income Tax v. Vatika Township Pvt. Ltd., (2003) 263 ITR 19 SC, Santosh Maize & Ind. Ltd. Vs. State of Tamil Nadu SC 2023)

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IV. **Legal Issue for Consideration was before First Appellate Authority:** Where is there any provision of law regarding reversal or payment of ITC on total stock on specific date, as claimed ITC if reduction in tax rate effective prospectively? Since the original adjudication authority demanded a tax on differential amount i.e. 10% on closing stock on 31.05.2022. The reduction of tax was effectuated from 01.06.2022. The allegation of adjudicating authority was not substantiated and relied on any provision of law on which such reversal was alleged in the SCN. Ld. Authorities was sought all provisions of chapter V section 17 and 18 of CGST Act and relied upon the judgment but Ld. Adjudicating showed dissatisfaction in this regard.

Ld. First Appellate Authority appreciated the legal provisions and judgments produced by the counsel and therefore set aside the impugned order.

The most relied upon provisions section 17(1) & 17(2) talks about reversal for effecting the exempt outwards supplies and blocked credit under section 17(5) was appreciated and section 18 which explains the circumstances where such restriction is imposed.

The judgment pronounced by apex court **State of Punjab & Ors.**

Vs. Trishla Alloys Pvt. Ltd. 2025 INSC 231 had been quoted and relied upon. It was held the reversal of ITC on stocks would not have retrospective effects due to change in rate of tax. **(Copy annexed with petition)**

V. The remand by first appellate authority is contrary to the legislative scheme which ensures the finalization of dispute efficiently. Such remands nullify this legislative intent and this leads to procedural delays in dispute resolutions.

VI. The lack of jurisdiction of first appellate authority invalidates its order inherently. Therefore, remand order should be set aside.

Prayer: -

In view of the above submissions, it is respectfully prayed that this Hon'ble Tribunal may be pleased to:

a) Set aside the order dated 19.02.2025 passed by Joint. Commissioner (Appeals), DGST, New Delhi to the extent it remands the matter to the adjudicating authority;

b) Direct the First Appellate Authority to exercise its jurisdiction under Section 107(11) and adjudicate the matter on merits by either confirming, modifying, or annulling the adjudication order;

c) Grant any other relief deemed just and proper in the facts and circumstances of the case.

V. S. Yadav, Advocate
Counsel for the Appellant