GOODS AND SERVICES TAX APPELLATE TRIBUNAL

Bengaluru Bench,

DIVISION BENCH – COURT HALL NO. 3

APL/2/BUR/2026

M/s N. R. Builders **………..Appellant**

Versus

Commissioner of commercial taxes, Karnataka

Commercial Taxes Department, Government of Karnataka **……….Respondent**

Counsel for Appellant **Counsel for Respondent**

Shri. Sujay Subramanya Naidu, CA (Departmental Representative)

Coram

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

Order reference No.: Date of Order: 31-08-2026

1.	GSTIN/Temporary ID/UIN	29AIUPR5240H1ZN

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(Proprietor: Sri Attikatte Channingappa Rajashekar)</td></tr>
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<tr><td>Excess ITC availed/utilized</td><td>The Appellate Authority held that the Appellant had not satisfactorily explained the mismatch between GSTR-3B and GSTR-2A, and upheld the demand in full.</td><td>The matter is remanded for invoice-wise verification and a fresh, reasoned order after due hearing.</td></tr>
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	Remanded to	Adjudicating Authority - Commercial Tax Officer, LGSTO-170, Tumakuru.
	Directions subject to which remanded, if any	Please refer final order below.

Place : Bengaluru Bench

Date : 31-08-2026

FINAL ORDER

AP/2/BUR/202R

*(**Per: Sh. Ravi Jesuraj S., Technical Member, for the Bench**)*

A. Introduction

1. This appeal is filed under Section 112 of the Central Goods and Services Tax Act, 2017 ("the CGST Act"). It is also governed by the corresponding provisions of the Karnataka Goods and Services Tax Act, 2017 ("the KGST Act"). The Appellant is M/s. N. R. Builders, a proprietary concern of Sri Attikatte Channingappa Rajashekar, engaged in the business of quarrying and sale of crushed stones, registered under GST bearing GSTIN 29AIUPR5240H1ZN.

1.1 This appeal challenges the Order-in-Appeal No. GST/AP.No.403/2024-25 dated 07.11.2024, passed by the Joint Commissioner of Commercial Taxes (Appeals)-6, Bengaluru ("the First Appellate Authority"), under Section 107 of the CGST/KGST Act. The First Appellate Authority dismissed the Appellant's first appeal and upheld the order dated 20.04.2024 (Reference No. ZD290424050852A, Form GST DRC-07), passed under Section 73(9) of the

CGST/KGST Act by the Commercial Tax Officer, LGSTO-170, Tumakuru ("the Proper Officer").

1.2. This dispute relates to the tax period April 2018 to March 2019 (Financial Year 2018–19). The Revenue alleges that the Appellant availed excess Input Tax Credit ("ITC"). The alleged excess arises from a difference between the credit reflected in FORM GSTR-2A and the credit availed by the Appellant in FORM GSTR-3B.

1.3. According to the Revenue, the Appellant availed excess ITC of ₹2,33,502/- (CGST ₹1,16,751/- and SGST ₹1,16,751/-). This amount, along with interest of ₹2,03,730/- and penalty of ₹23,350/-, was confirmed under Section 73, aggregating to ₹4,60,582/-.

1.4. The Appellant disputes this. It contends that the difference is not an excess claim at all, but arises because ITC pertaining to Financial Year 2017–18 was availed in Financial Year 2018–19, within the time permitted under Section 16(4). The Appellant further contends that no personal hearing was granted before the demand was confirmed, and that the scrutiny leading to the demand was not preceded by a notice in FORM GST ASMT-10.

1.5. At the outset, we record that the CGST Act and the KGST Act are substantially the same in their provisions, except where the State legislation makes specific departures. Accordingly, in this Order, a reference to the CGST Act or the CGST Rules should also be read *mutatis mutandis* to the corresponding provisions of the KGST Act and the KGST Rules, unless the context requires otherwise.

B. Facts of the Case

2. Scrutiny of the Appellant's returns for Financial Year 2018–19 disclosed a difference between the ITC claimed in FORM GSTR-3B and the ITC auto-populated in FORM GSTR-2A. A pre-intimation in FORM GST DRC-01A was issued on 22.01.2024 under Section 73(5) read with Rule 142(1-A) of the KGST Rules, 2017, alleging excess ITC of ₹2,33,502/-. The Appellant did not file any reply.

2.1. A Show Cause Notice in FORM GST DRC-01 was issued on 30.01.2024 under Section 73(1) of the CGST/KGST Act, proposing recovery of the same ₹2,33,502/- as tax, together with interest of ₹2,03,730/- under Section 50(1) and penalty of ₹23,350/- under Section 73(11), aggregating ₹4,60,582/-. We record, as a matter of fact borne out by the Notice itself, that the fields for "date of personal hearing," "time of personal hearing" and "venue where personal hearing will be held" are each recorded as "NA."

2.2. As no reply was filed within the time allowed, the Proper Officer passed the Order-in-Original dated 20.04.2024, confirming the entire demand of ₹4,60,582/- under Section 73(9).

2.3. The Appellant filed a first appeal on 12.08.2024. By Order-in-Appeal dated 07.11.2024, the First Appellate Authority dismissed the appeal and upheld the Order-in-Original in full.

2.4. The Appellant has now filed the present appeal before this Tribunal in Form GST APL-05, verified on 16.02.2026, along with a working sheet and reconciliation statement, an extract of the ITC register for the Financial Year 2017–18 credit availed in Financial Year 2018–19, and the annual returns in Forms GSTR-9 and GSTR-9C for Financial Year 2017–18.

C. The Proper Officer's Computation, as it Appears from the Record

3. The final tax demand in this appeal depends entirely on the Proper officer's calculations. To see if this demand is correct, we must check how the officer figured out the numbers, starting from the original tax match-up down to the final interest and penalties.

3.1. The tax demand is based on differences found when matching up the Input Tax Credit (ITC) claimed in FORM GSTR-3B during the 2018–19 financial year. The officer wrote down these exact calculations and differences in FORM GST DRC-01 and its attached documents, but the full tables showing these calculations are not copied here.

3.2. On this basis, the Show Cause Notice computed interest under Section 50(1) at 1.5% per month on the mismatched amount of ₹1,16,751/- under each of the CGST and SGST heads, working out to ₹1,01,865/- under each head, and penalty under Section 73(11) at 10%, amounting to ₹11,675/- under each head.

Particulars	**CGST (₹)**	**SGST (₹)**	**Total (₹)**

Difference in ITC claim (GSTR-3B vs GSTR-2A)	1,16,751	1,16,751	2,33,502
Interest @ 1.5% u/s 50(1)	1,01,865	1,01,865	2,03,730
Penalty @ 10% u/s 73(11)	11,675	11,675	23,350
Total payable	**2,30,291**	**2,30,291**	**4,60,582**

D. Findings Recorded by the Proper Officer

4. The Proper Officer proceeded on the premise that the year-wise comparison between FORM GSTR-3B and FORM GSTR-2A for Financial Year 2018–19 disclosed excess ITC of ₹1,16,751/- each under the CGST and SGST heads.

4.1. The order does not examine or discuss any explanation regarding ITC pertaining to Financial Year 2017–18 having been availed in Financial Year 2018–19, nor does it record whether such credit was reflected in the GSTR-2A of Financial Year 2017–18. It proceeded ex parte, as no reply had been filed to the Show Cause Notice.

4.2. We record a further, and more fundamental, infirmity. The Show Cause Notice itself records the date, time and venue of personal hearing as "NA." No personal hearing was, on the record before us, ever granted to the Appellant before the demand was confirmed.

E. Findings Recorded by the First Appellate Authority

5. The First Appellate Authority held that mere possession of a purchase invoice is not sufficient; the supplier must also have paid the tax and filed the return, in terms of Section 16(2)(c) read with Rule 36. Since certain invoices were not reflected in GSTR-2A, it treated this as evidence that the suppliers had not paid the tax.

5.1. On this basis, the First Appellate Authority dismissed the appeal and confirmed the demand of ₹4,60,582/- in full. The impugned Order-in-Appeal does not deal with the Appellant's explanation that the credit relates to Financial Year 2017–18 invoices, nor with the absence of a personal hearing. In dismissing the appeal, the First Appellate Authority relied on three judicial precedents. First, reliance was placed on the judgment of the Hon'ble Bombay High Court in *Mahalakshmi Cotton Ginning Processing and Oil Industries v. State of Maharashtra* [(2012) 35 STT 589], which held that input tax credit (set-off) is not available where the selling dealer has not paid the tax, even if the purchasing dealer has otherwise complied with the relevant statutory provision. Second, reliance was placed on the judgment of the Hon'ble Supreme Court in *ALD Automotive Private Limited v. CTO* [(2018) 70 GST 751], which held that input tax credit is in the nature of a benefit extended to a dealer under a statutory scheme, and such a concession can be availed by the beneficiary only strictly in accordance with the scheme of the statute. Third, reliance was placed on the judgment of the Hon'ble Karnataka High Court in *Microqual Techno Ltd. v. State of Karnataka* [STA No. 01/2010, decided on 6-8-2010], which held that where an input tax credit claim is not based on a genuine transaction, it amounts to an attempt to evade tax, and such a claim, not being a bona fide act of the assessee, is liable to be disallowed. On this basis, the First Appellate Authority found that the Appellant had failed to establish satisfactory compliance with Section 16(2)(c) read with Section 155 of the Act, and upheld the disallowance of ITC.

F. Submissions on Behalf of the Appellant

6. Learned Authorised Representative Shri Akash A Parmar CA, appearing for the Appellant reiterated the grounds urged in the memorandum of appeal and assailed the impugned orders both on facts and in law. It was submitted that:

6.1. Reconciliation of ITC: The alleged excess claim is not an excess claim at all. It arises because ITC pertaining to Financial Year 2017–18 was availed in Financial Year 2018–19, within the time permitted under Section 16(4), and this very credit is reflected in the Appellant's GSTR-2A of Financial Year 2017–18, not 2018–19. Comparing GSTR-3B of one year with GSTR-2A of another, without accounting for this carry-forward, produces a false mismatch.

6.2. **Non-speaking order**: The impugned Order-in-Appeal did not deal with this reconciliation at all. Reliance was placed on *Assistant Commissioner (CT) v. Shukla Brothers*, (2011) 22 STR 105 (SC), and *Raj Kishore Jha v. State of Bihar*, JT 2003 (Supp.2) SC 354, for the proposition that a reasoned order is an essential part of the rule of law.

6.3. Violation of natural justice: No personal hearing was granted before the Order-in-Original was passed, as recorded on the face of the Show Cause Notice itself, contrary to Section 75(4). Reliance was placed on *Sahara India (Firm) v.*

CIT, [2008] 169 Taxman 328 (SC), and a line of High Court decisions applying Section 75(4), including *Gayathri Agencies v. State Tax Officer* (Madras HC), *A.H. Enterprises v. Deputy Commercial Tax Officer* (Madras HC), and *Goutam Bhowmik v. State of West Bengal* (Calcutta HC).

6.4. Absence of notice under Section 61: Scrutiny of returns under Section 61 read with Rule 99 requires a notice in FORM GST ASMT-10, and no such notice was issued in this case. Reliance was placed on *Dominic David v. State Tax Officer*, [2023] 146 taxmann.com 110 (Kerala), and *Canon India Pvt. Ltd. v. Commissioner of Customs*, Civil Appeal No. 1827 of 2018.

6.5. It was submitted that the impugned orders be set aside and the matter remanded for proper verification of the reconciliation, and that interest and penalty, being accessory to the principal demand, cannot survive once the underlying tax demand is not sustainable, relying on *Prathibha Processors v. Union of India*, 1996 (88) ELT 12 (SC).

G. Contentions of the Revenue

7. Per contra, the learned Departmental Representative supported both the adjudication order and the impugned appellate order, and submitted that:

7.1 Section 16(2)(c) expressly makes payment of tax by the supplier a condition for availing ITC, in terms of Section 155. The mismatch between FORM GSTR-3B and FORM GSTR-2A is sufficient prima facie material to initiate proceedings under Section 73.

7.2 Since certain invoices were not appearing in GSTR-2A, this indicated non-payment of tax by the suppliers, and the Appellant had not placed satisfactory material to establish compliance with Section 16(2)(c) or with CBIC Circular No. 183/15/2022-GST.

7.3 The demand was correctly confirmed, and the appeal should be dismissed. However, the learned Departmental Representative fairly submitted that the Revenue did not object to the Appellant's prayer for remand of the matter.

H. Issues for Determination

8.We have heard the learned Authorised Representative for the Appellant and the learned Departmental Representative for the Respondents. We have examined the record, the pleadings, the statutory provisions, and the judicial precedents cited before us. The following issues arise for our determination:

(i). Whether the difference between the ITC claimed in GSTR-3B and the ITC reflected in GSTR-2A for FY 2018–19 can be treated as inadmissible without examining the Appellant's explanation that part of it relates to FY 2017–18 invoices claimed within the Section 16(4) window?

(ii). Whether the Order-in-Original is vitiated by the absence of a personal hearing?

(iii). Whether the absence of a notice in FORM GST ASMT-10 renders the proceedings invalid?

(iv). To what relief, if any, is the Appellant entitled?

I. Tribunal's Analysis and Findings

9. We examine the applicability of the above authorities to the present controversy, issue by issue, below.

Issue-wise Analysis and Findings

9.1. Issue No. 1 — Whether the difference between GSTR-3B and GSTR-2A can be treated as inadmissible without examining the Appellant's Section 16(4) explanation?

Section 16(4), as it stood for the transition period, permitted a taxpayer to claim ITC on Financial Year 2017–18 invoices up to the due date of the March 2019 return, as extended by CBIC Order No. 02/2018-Central Tax dated 31.12.2018. GSTR-2A was, at the relevant time, a facilitation tool and not a statutory bar to credit. CBIC Circular No. 183/15/2022-GST specifically directs the Proper Officer to verify — not summarily disallow — cases where Financial Year 2017–18 credit has been claimed in Financial Year 2018–19 returns. The Appellate Authority's finding that non-appearance of an invoice in GSTR-2A of Financial Year 2018–19 shows that the supplier did not pay tax is an assumption, not a finding reached after verification. That verification has not, on the record before us, actually been carried out.

In dismissing the appeal, the First Appellate Authority relied on *Mahalakshmi Cotton Ginning Processing and Oil Industries v. State of Maharashtra*, *ALD*

Automotive Private Limited v. CTO, and *Microqual Techno Ltd. v. State of Karnataka*. These three judgments are, however, distinguishable and not applicable to the facts of the present case. Mahalakshmi Cotton Ginning Processing and Oil Industries was rendered under the Maharashtra Value Added Tax Act, a distinct statutory scheme that did not contain provisions comparable to Section 16(2)(c) of the CGST Act read with the safeguards under Rule 36 of the CGST Rules and Circular No. 183/2022-GST, and cannot be mechanically applied to a claim governed by the GST framework. ALD Automotive Private Limited dealt with the entitlement to claim input tax credit beyond the statutory time limit prescribed under a different State enactment, and did not concern the question of denial of credit solely on account of non-reflection of purchases in the auto-populated statement, GSTR-2A. Microqual Techno Ltd. proceeded on a finding that the input tax claim was not based on a genuine transaction and was made with an intent to evade tax; in the present case, there is no such finding or allegation that the underlying purchases were not genuine, the sole ground for disallowance being the mismatch between GSTR-3B and GSTR-2A. The three judgments therefore rest on facts and statutory provisions materially different from the present case, and could not have been relied upon to disallow the credit.

Finding: Issue No. 1 is answered in favour of the Appellant. The demand cannot be sustained on the record as it stands, without invoice-wise verification of the Financial Year 2017–18 credit.

9.2. Issue No. 2 — Whether the Order-in-Original is vitiated by the absence of a personal hearing?

The Show Cause Notice records the date, time and venue of personal hearing as "NA." Section 75(4) makes a hearing mandatory once an adverse decision is contemplated against the person, irrespective of whether a specific request for hearing was made. The absence of any such hearing before the Order-in-Original was passed is a clear infirmity.

The Appellant has relied on *Sahara India (Firm) v. CIT*, [2008] 169 Taxman 328 (SC), and a line of High Court decisions applying Section 75(4), including *Gayathri Agencies v. State Tax Officer* (Madras HC), *A.H. Enterprises v. Deputy Commercial Tax Officer* (Madras HC), and *Goutam Bhowmik v. State of West Bengal* (Calcutta HC), for the proposition that grant of personal hearing under Section 75(4) is mandatory wherever an adverse decision is contemplated, and that failure to grant such hearing vitiates the proceedings. We find that these decisions are squarely applicable. The Show Cause Notice itself records the date, time and venue of personal hearing as "NA," and nothing on the record shows that any hearing was in fact granted before the demand was confirmed. The ratio of the decisions relied upon by the Appellant is accordingly attracted, and applies with full force to the facts of this case.

Finding: Issue No. 2 is answered in favour of the Appellant. The absence of a personal hearing, by itself, justifies setting the Order-in-Original aside.

9.3. Issue No. 3 — Whether the absence of a notice in FORM GST ASMT-10 renders the proceedings invalid?

Section 61 and Section 73 are independent provisions. Section 61 provides one particular route — scrutiny of returns — which requires a notice in FORM GST ASMT-10. The record shows that the present proceedings were initiated pursuant to a specific assignment issued under Section 73, following an audit reference, and not as a Section 61 scrutiny. Where the Proper Officer proceeds directly under Section 73 read with Rule 142, without first invoking Section 61, the absence of a FORM GST ASMT-10 notice does not, by itself, invalidate the proceedings.

As recorded above, the present proceedings were initiated pursuant to a specific assignment under Section 73 read with Rule 142, following an audit reference, and not pursuant to scrutiny under Section 61. The decisions relied upon by the Appellant on this point are, accordingly, distinguishable on facts and do not assist the Appellant on this issue.

Finding: Issue No. 3 is answered against the Appellant. This ground does not, by itself, invalidate the proceedings; but it does not cure the infirmities found on Issues No. 1 and 2, which go to the root of the impugned orders.

9.4. Issue No. 4 — What relief should be granted to the Appellant?

As to interest and penalty: it is well settled that interest is compensatory and penalty is consequential upon a sustainable demand of tax. Since the principal demand requires fresh determination, the demand for interest and penalty must abide by the outcome of that determination. Having regard to our findings on

Issues No. 1 and 2, the matter must go back to the Proper Officer for fresh verification, after a proper opportunity of personal hearing. Since the sustainability of the demand turns on verification of facts not undertaken below, and since the Order-in-Original was itself passed without a hearing, this is not a case where the Tribunal can finally determine the ITC claim on the present record; remand, rather than a final decision on merits, is the appropriate relief.

The Appellant has relied on *Prathibha Processors v. Union of India*, 1996 (88) ELT 12 (SC), for the proposition that interest, being compensatory, and penalty, being consequential, cannot survive independently of a sustainable principal demand. We agree with the proposition of law laid down in this decision. However, since the sustainability of the principal demand of Input Tax Credit has not, for the reasons recorded under Issues No. 1 and 2 above, been finally determined after affording the Appellant a proper opportunity of hearing, it would be premature to record a finding on the correctness of the demand of tax, interest and penalty at this stage. The applicability of this decision shall accordingly abide by the outcome of the fresh adjudication directed below.

Finding: The appeal is allowed by way of remand, on the terms set out in Part J below.

J. Operative Order

10. In view of the foregoing discussion, the appeal is allowed by way of remand, on the following terms:

(a) The Order-in-Original dated 20.04.2024 (Reference No. ZD290424050852A) passed by the Commercial Tax Officer, LGSTO-170, Tumakuru, and the Order-in-Appeal No. GST/AP.No.403/2024-25 dated 07.11.2024 passed by the Joint Commissioner of Commercial Taxes (Appeals)-6, Bengaluru, are hereby set aside.

(b) The matter is remanded to the Proper Officer, Commercial Tax Officer, LGSTO-170, Tumakuru, for de novo adjudication in accordance with law.

(c) The Proper Officer shall specifically: (i) verify the reconciliation furnished by the Appellant, invoice-wise, with reference to the Financial Year 2017–18 GSTR-2A, the suppliers' GSTR-1, the Appellant's ITC register, books of account, and the GSTR-9/GSTR-9C returns for Financial Year 2017–18 and 2018–19; (ii) examine whether the ITC pertaining to Financial Year 2017–18 was availed within the time permitted under Section 16(4), read with Removal of Difficulties Order No. 02/2018-Central Tax dated 31.12.2018; and (iii) apply CBIC Circular No. 183/15/2022-GST dated 27.12.2022 to the extent relevant.

(d) The Appellant shall be granted a proper opportunity of personal hearing, with the date, time and venue duly communicated, and shall be permitted to produce its books of account, invoices and any further reconciliation statements, before any fresh order is passed.

(e) The Proper Officer shall pass a fresh, reasoned and speaking order, meeting the requirements of Section 75(6) of the CGST Act, 2017, within twelve weeks from the date of communication of this Order.

(f) Consequential demands of interest under Section 50 and penalty under Section 73, if any, shall abide by, and follow, the fresh determination of tax liability made pursuant to this Order, and shall not be independently sustained on the basis of the orders hereby set aside.

(g) It is clarified that this Tribunal has not expressed any opinion on the ultimate admissibility of the disputed Input Tax Credit. All questions of fact are expressly kept open for determination by the Proper Officer in accordance with law.

(h) The learned Departmental Representative shall ensure that a copy of this Order is communicated to the Adjudicating Authority, in case for any reason the Adjudicating Authority is unable to view or access it on the portal, so that there is no delay in giving effect to this Order.

(i) No order as to costs.

The appeal is accordingly disposed of in the above terms.

Pronounced in the open court on this the 31ST day of August, 2026.

(Prabhakaran P M)	(Ravi Jesuraj S)
Prabhakaran P M — Digitally signed by Prabhakaran P M Date: 2026.08.31 17:25:32 +05'30'	Ravi Jesuraj S — Digitally signed by Ravi Jesuraj S Date: 2026.08.31 17:24:02 +05'30'
Judicial Member	Technical Member

GSTAT, Karnataka State Bench, Bengaluru