GSTAT

State Bench Hyderabad

Division Bench Court No. Court II

APL/88/HYD/2026

VALUELABS SERVICES PRIVATE LIMITED .....Appellant

Versus

DASARI BALAIH, ADDITIONAL COMMISSIONER, HYDERABAD & ORS. .....Respondent

Quorum

Hon'ble A P Ravi, Member(Judicial)
Hon'ble Duvvuri Krishna Srinivas, Member (Technical)

Counsel for Appellant	**Counsel for Respondent**
SREENIVASA REDDY YAMMANURU MS. K. AKSHATHA MS. SIRI REDDY	SHRI S. GOURI SHANKER AND SHRI BENU GOPAL NAIDU

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the GST Appellate Tribunal

whether remand order : No

Order reference no. : ZN360361126000176H

Date of order : 11/11/2026

1.	GSTIN/Temporary ID/UIN - 36AACCV3458J2Z0	
2.	Appeal Case Reference no. - APL/88/HYD/2026	Date - 16/04/2026

3.	Name of the appellant - ValueLabs Services Private Limited , teamtax@valuelabs.com , 7660008839	
4.	Name of the respondant - 1. Office of the Chief Commissioner of GST and Customs Hyderabad Zone , madalavd.g099201@gov.in , 9849247893 2. Dasari Balaih	
5.	Order appealed against - AD3603240048366	
	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - ZD360924004294F	Date - 03/09/2024
6.	Personal Hearing - 11/11/2026 14/10/2026 08/10/2026 17/09/2026 14/07/2026	
7.	Status of Order under Appeal - Modified – Order under Appeal is modified	
8.	Order in brief - The allegation is with regard to the mis-match of ITC between GSTR-3B and GSTR-2A for the period between July 2017 to March 2018. The appellant had produced certificates, as contemplated in the Board's circular, for all such ITC availed except for Rs.20,430/- for which they could not produce the certificate. The demand in respect of certificate produced has been allowed and the demand with respect to the non-production of the certificate has been upheld. However, for this confirmation, the demand has been converted from Section 74 to Section 73 and ordered accordingly. The appeal has been partly allowed.	
	Summary of Order	
9.	If demand order then whether demand quantified: Yes	

Section-I										
Particulars	Central tax		State/UT tax		Integrated tax		Cess		Total	
	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount	Disputed Amount	Determined Amount
1	2	3	4	5	6	7	8	9	10	11
(a) Tax	2024184	0	2024184	0	62299	20430	0	0	4110667	20430
(b) Interest	0	0	0	0	0	0	0	0	0	0
(c) Penalty	0	0	0	0	0	0	0	0	0	0
(d) Fees	0	0	0	0	0	0	0	0	0	0
(e) Others		0		0		0		0		0
(f) Refund		0		0		0		0		0

10.	For Other orders and Demand orders which are not quantified:	
Issues as raised by proper officer	Issues as determined by Appellate/Revisional authority	Order by GST Appellate Tribunal
Short or non-payment of tax	The Appellant has availed excess ITC in GSTR-3B of Rs.41,10,666/-	Excess availment held to be only Rs.20,430/- and the balance dropped

Place :HYDERABAD

Date : 11.11.2026

Signature

HYDERABAD A P Ravi

Designation : Member

Jurisdiction :Hyderabad

Date of Hearing: 14.10.2026
Pronouncement: 11.11.2026

FINAL ORDER No. 23/COURT-II/HYD/2026

JUDGEMENT

Per: A P Ravi, Judicial Member

1.0 M/s. ValueLabs Service Private Limited (GSTIN: 36AACCV3458J2Z0), having its registered office at Jubilee Hills, Hyderabad, a provider of IT software, business-support and hosted services (hereinafter referred to as "the Appellant"), has instituted the present appeal in Form GST APL-05 against Order-in-Appeal No. HYD-GST-HYC-APP1-45-24-25-GST dated 28.06.2024, passed by the Additional Commissioner (Appeals-I), Hyderabad (hereinafter referred to as "the FAA"). The impugned order affirmed Order-in-Original No. 24/2023-24 (GST)/BHD dated 13.12.2023, passed by the Assistant Commissioner, BHD Division, Hyderabad (hereinafter referred to as "the AA").

2.0 The term 'Act' or 'Rules', wherever referred to, shall mean and include the Central Goods & Services Tax Act, 2017 or State Goods & Services Tax Rules, 2017, respectively, since all the provisions of both the Acts and Rules are common and the same shall apply equally and concomitantly.

3.0 The dispute concerns the period July 2017 to March 2018. The demand confirmed is input tax credit ("ITC") of ₹41,10,666/- (IGST ₹62,299/-; CGST ₹20,24,184/-; SGST ₹20,24,184/-), together with interest under section 50 and a penalty equal to the tax.

4.0 Upon examination, the Department observed that ITC amounting to ₹53,53,143/- (IGST ₹98,299/-; CGST ₹26,27,422/-; SGST ₹26,27,422/-) was claimed in Table 4A(5) of the Appellant's Form GSTR-3B for the relevant tax period, whereas the corresponding amount appearing in Form GSTR-2A (B2B) aggregated to only ₹16,09,050/-.

4.1 After adjustment of credit notes amounting to ₹3,66,573/- issued by M/s. Hewlett Packard Enterprise India Private Limited, the GSTR-2A figure stood reduced to ₹12,42,477/-. The resultant excess claim of ₹41,10,666/- was conveyed to the Appellant by notice in Form GST ASMT-10 dated 06.07.2022.

5.0 By its reply in Form GST ASMT-11 dated 23.09.2022, the Appellant stated that the auto-populated ITC in Table 8 of Form GSTR-9 was ₹38,99,277/-, yielding a shortfall of ₹15,03,593/- as compared to the figure recorded in the departmental notice.

5.1 The Appellant further submitted that reflection in Form GSTR-2A as a condition of entitlement arose only upon the insertion of Rule 36(4) with effect from 09.10.2019 by Notification No. 49/2019-CT, and that it was therefore inapplicable to the period under consideration.

6.0 Following an intimation in Form GST DRC-01A dated 07.02.2023 and the Appellant's reply dated 13.02.2023, the Respondent issued Show Cause Notice No. 12/2022-23-BHD dated 23.02.2023 (hereinafter referred to as "the SCN") invoking section 74.

6.1 The SCN alleged a breach of section 16(2)(c) on the ground that the suppliers had neither reported the supplies nor paid the tax. It proposed interest under section 50(3) and called for a penalty under section 122(2)(b).

6.2 Paragraph 13 of the SCN records that, in the absence of departmental verification, the discrepancy would have remained unnoticed, and infers that the Appellant "appears" to have wilfully suppressed the facts.

7.0 The Appellant's substantive reply dated 20.11.2023 contended that non-reflection in Form GSTR-2A, standing alone, cannot displace the entitlement to ITC, since Form GSTR-1 reflects only supplies while the payment of tax is governed by Form GSTR-3B.

7.1 The Appellant relied on decisions of Suncraft Energy, Diya Agencies and Bharti Airtel and on the CBIC press release dated 06.05.2018 to resist any doctrine of automatic reversal. The Appellant denied mens rea, sought for invoking section 75(2) in the alternative, and averred that, at the highest, section 125 would be attracted.

8.0 The Order-in-Original dated 13.12.2023 records that, despite the opportunities afforded, the Appellant did not place any evidentiary material or certificates on record, and that the AA therefore proceeded on the material then available. The AA held that ITC had been availed contrary to sections 16(2) and 42, and confirmed the tax demand with interest under section 50(3) and an equal penalty under sections 74(9) and 122(2)(b).

9.0 In the appeal to FAA, filed on 12.03.2024, the Appellant produced the amended Form GSTR-2A B2B entries for FY 2018-19 relating to Invoice No. ESS17-18051 dated 05.08.2017, issued by E-Support Solutions Private

Limited (GSTIN 36AACCE0760E1Z2), with a taxable value of ₹1,41,37,634/-, CGST of ₹12,72,387/- and SGST of ₹12,72,387/-, totalling ₹25,44,774/-.

9.1 On that basis the Appellant contended that the excess credit related to IGST ₹62,299/-, CGST ₹7,51,797/- and SGST ₹7,51,797/-.

9.2 The Appellant also produced supplier certificates under Circular No. 183/15/2022-GST, together with invoices and ledger extracts, as follows:

(a) Tata Communications: a certificate of a Chartered Accountant bearing UDIN 24116506BKDFWG8236, dated 10.05.2024, issued by M/s. Mayur R. Shah & Associates, covering CGST and SGST of ₹4,04,325/- each (GSTIN of the supplier 36AAACV2808C1ZQ);

(b) STT Global Data Centres: a certificate covering CGST and SGST of ₹2,23,208/- each;

(c) Vodafone Mobile Services: a certificate dated 20.03.2024, covering CGST and SGST of ₹1,75,500/- each; and

(d) Crayon Software: a certificate dated 23.01.2024, covering IGST of ₹41,869/- on two invoices, namely, Invoice No. IDZIM1718MH046 dated 12.02.2018 (IGST ₹20,740/-) and Invoice No. IDZIM1718MH055 dated 12.03.2018 (IGST ₹21,129/-).

10.0 The Appellant submits that it held two GST registrations, namely, 36AACCV3458J1Z1 (subsequently cancelled) and 36AACCV3458J2Z0, and that certain suppliers had reported the relevant invoices against the erstwhile GSTIN.

10.1 The Appellant further submits that the certificates establish the ITC of CGST and SGST of ₹8,03,033/- each and IGST of ₹41,869/-, leaving IGST of ₹20,430/- unsupported and, on its computation, an excess ITC of CGST and SGST by ₹51,236/- each.

11.0 The FAA vide the order impugned rejected the B2B amendment on the basis that a copy of the August 2017 invoice was not produced, and described the Appellant's case as "not very clear".

11.1 The FAA characterised the supplier certificates, including that of Crayon Software, as "not acceptable", without recording any reason. The FAA observed that no certificate was filed for the residual IGST. The FAA recorded the Tata Communications amount as ₹8,08,850/-, whereas the certificate reflects ₹4,04,325/- each under CGST and SGST, aggregating ₹8,08,650/-.

11.2 The impugned order did not address the jurisdiction under section 74, the liability for interest or the imposition of penalty, nor did it advert to the case law advanced by the Appellant.

12.0 The quantitative figures in the SCN, namely, ITC availed ₹53,53,143/-, the net figure in Form GSTR-2A ₹12,42,477/- and the excess claimed ₹41,10,666/-, are undisputed.

12.1 The Respondent does not dispute that the B2B amendments appearing in the Appellant's Form GSTR-2A for FY 2018-19, nor that the supplier certificates were placed before the FAA. The dispute is limited to whether those documents suffice to establish entitlement to the credit, and whether the demand, interest and penalty are sustainable on the material on which they were founded.

13.0 Section 16(2) of the Act, as it stood during FY 2017-18, prescribed the following conditions for the entitlement to ITC:

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

13.1 Section 16(2) thus prescribes four cumulative conditions, namely:

(a) possession of a tax invoice or debit note issued by a registered supplier;

(b) receipt of the goods or services;

(c) actual payment to the Government of the tax charged in respect of the supply; and

(d) furnishing of the return under section 39.

13.2 Section 155 of the Act provides:

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

13.3 The burden of proving the claim rests, therefore, on the Appellant. The question is whether that burden has been discharged on the record before us and, if so, on whom the onus lies thereafter.

14.0 The Board issued Circular No. 183/15/2022-GST dated 27.12.2022, in exercise of its powers under section 168(1) of the Act, to deal with the difference between the ITC availed in Form GSTR-3B and that detailed in Form GSTR-2A for FY 2017-18 and 2018-19. Paragraph 2 of the Circular records:

> *"It is mentioned that GSTR-2A could not be made available to the taxpayers on the common portal during the initial stages of implementation of GST. Further, restrictions regarding availment of ITC by the registered persons upto certain specified limit beyond the ITC available as per GSTR-2A were provided under rule 36(4) of Central Goods and Services Tax Rules, 2017 only with effect from 9th October 2019. …"*

14.1 Paragraph 3(d) of the Circular addresses the case of a supplier who has declared the supply with a wrong GSTIN of the recipient:

> *"Where the supplier has filed GSTR-1 as well as return in GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in GSTR-1. — In such cases, the difference in ITC claimed by the registered person in his return in GSTR-3B and that available in GSTR-2A may be handled by following the procedure provided in para 4 below. In addition, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be*

disallowed, if claimed by such recipients in their GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action."

14.2 Paragraph 4 of the Circular prescribes the procedure:

"4. The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his GSTR 3B but which are not reflecting in his GSTR 2A. He shall then ascertain fulfillment of the following conditions of Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person:

i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;

ii) that he has received the goods or services or both;

iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier. …"

14.3 Paragraphs 4.1.1 and 4.1.2 of the Circular provide for the verification of the condition in section 16(2)(c):

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

4.1.1 In case, where difference between the ITC claimed in GSTR-3B and that available in GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh, the proper officer shall ask the registered

person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in GSTR 3B. Certificate issued by CA or CMA shall contain UDIN. …

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

14.4 Paragraphs 5 and 6 of the Circular provide:

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

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

15.0 Section 74(1) of the Act, which the Respondent invoked, provides:

> *"Where it appears to the proper officer … that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice."*

15.1 Explanation 2 to section 74, which was in force when the SCN was issued, provides:

> *"For the purposes of this Act, the expression 'suppression' shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer."*

15.2 Section 75(2) of the Act provides:

> *"(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer*

shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73."

15.3 Sub-sections (6), (7) and (8) of section 75 are also relevant:

> *"(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.*
>
> *(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.*
>
> *(8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified."*

16.0 The Appellant's principal contentions on appeal are as follows:

(a) The AA and the FAA failed to consider the material actually placed on record. Their orders are therefore non-speaking and violative of the principles of natural justice.

(b) Circular No. 183/15/2022-GST is binding on the Respondent. The Circular contemplates the wrong-GSTIN scenario in paragraph 3(d). Paragraph 4.1 prescribes a CA/CMA certificate with UDIN where the supplier-wise difference exceeds ₹5 lakh, and permits acceptance of a supplier certificate otherwise. The Appellant asserts that its certificates comply with these prescriptions and that reasons for their rejection were required.

(c) Entitlement to credit cannot be denied solely by reason of supplier default, absent proceedings against the supplier. Reliance was placed on the decisions in Suncraft Energy, affirmed by the Supreme Court; MDS Switchgear; Diya Agencies; Bharti Airtel; Kay Kay Industries and other High Court decisions.

Reliance is also placed on Jasjit Singh (Delhi High Court) on entitlement where tax is deducted at source.

(d) Proceedings under section 74 are without jurisdiction absent suppression and in support placed reliance in the case of Uniworth Textiles. Mere non-payment does not incontrovertibly demonstrate an intent to evade tax, and Rule 36(4) was not in force for 2017-18.

(e) Penalty is unwarranted for want of mens rea. In support relied upon the decision in the cases of Pepsi Foods; Uniflex Cables; Hindustan Steel, and section 126(1) applies to minor clerical omissions without revenue loss. Alternatively, if no tax is exigible, interest and penalty cannot survive.

16.1 In the rejoinder, the Appellant raises a preliminary plea that the SCN, the Order-in-Original and the Order-in-Appeal rest on section 16(2)(c), and that the matters now advanced in the counter, namely, reliance on the totality of evidence, possession of invoices, receipt of services and satisfaction of the section 16 conditions, are fresh points not permissible at the appellate stage. The Appellant relies on Caprihans India, SACI Allied Products, Reckitt & Colman and Toyo Engineering for the proposition that a case may not be enlarged beyond the scope of the notice.

16.2 On the merits, the Appellant reiterates that it discharged the onus by producing invoices, ledger entries, supplier confirmations and amended B2B particulars. It contends that the counter does not specify what additional evidence would have been necessary, that the lower authorities did not dispute the existence of the suppliers or the genuineness of the invoices, and that the Respondent has not, invoice-wise, shown that tax remained unpaid.

16.3 The Appellant submits that a reconciliation cannot be dismissed as a mere "self-computation", and that, where a dispute remains, the proper officer must identify the specific invoices, suppliers and grounds for rejection. An objection to the Crayon Software certificate, the Appellant argues, calls for verification rather than wholesale denial.

16.4 The Appellant urges that State of Karnataka v. Ecom Gill Coffee Trading should not be applied mechanically, and relies on Suncraft for the limited proposition that non-reflection in Form GSTR-2A does not prove non-payment. The Appellant relies on GVPR Engineers and Spinclabs for the proposition that orders ignoring replies and documentary material warrant being set aside. It relies on Ranadey Micronutrients and Marino Panel Products for the proposition that Board circulars bind the Respondent.

16.5 On section 74, the Appellant emphasises that the credit was recorded in its books and disclosed in the statutory returns (Form GSTR-3B and Form GSTR-9), so that there was no "suppression" within the meaning of Explanation 2. It submits that the Respondent has not explained how proceedings under section 74 are maintainable, and that the extended period cannot rest on a bare averment.

16.6 The Appellant relies on G.R. Infra Projects, Tata Steel, Santhome Latex, Uniworth Textiles, Continental Foundation, Aathi Hotel and HCL Infotech. It reiterates that interest is consequential and depends on actual utilisation, and that a penalty under section 122(2)(b) cannot subsist in the absence of a finding of fraud, wilful misstatement or suppression.

17.0 *Per Contra t*he Respondent contends that, under the self-assessment regime, the Appellant failed to satisfy the conditions of section 16, and that ITC is a conditional statutory benefit. It submits that the amended Form GSTR-2A/B2B entries, the supplier certificates and the Circular cannot, without independent verification, establish entitlement.

17.1 The Respondent's specific assailment to the grounds of the Appellant are that:

(a) the Appellant had opportunities to produce invoices, books, payment particulars and supplier confirmations, natural justice does not oblige acceptance of every document, and the Appellant has not demonstrated eligibility by complete and verifiable evidence;

(b) Form GSTR-2A is a facilitative statement, an amendment therein does not create an indefeasible right, and the Appellant has not produced documentary evidence of payment to the suppliers;

(c) the Circular outlines a verification mechanism and does not confer an automatic entitlement, the certificates cannot be accepted mechanically, and the Crayon Software certificate is deficient in particulars relating to the wrong GSTIN and the supplier-side reporting;

(d) the Appellant's reconciliation is a self-computation, the residual amount of ₹20,430/- remains unestablished, and the certificates require corroboration of payment;

(e) the matter is not one of denial solely for non-reflection in Form GSTR-2A, the onus lies on the claimant as decided in the case of State of Karnataka v. Ecom Gill Coffee Trading, and Suncraft Energy does not create an automatic entitlement;

(f) interest under section 50 read with Rule 88B is compensatory, and its quantum must relate to the actual dates and extent of utilisation; and

(g) the Appellant failed to establish entitlement despite calls for evidence, and, if the proceedings under section 74 are sustainable, a penalty under section 122(2)(b) would follow.

17.2 The Respondent seeks the dismissal of the appeal, the confirmation of the Order-in-Appeal and the restoration of the demand of ₹41,10,666/- with interest and penalty.

17.3 The Respondent's counter does not expressly invoke section 16(2)(c) by name, nor does it address the specific allegation recorded in paragraph 13 of the SCN. The counter likewise omits any reference to sections 73 or 75(2), and makes no computation of limitation. It does not articulate any particular foundational fact of suppression beyond asserting that the Appellant failed to establish eligibility. The only remark on interest concerns its quantification following actual utilisation.

18.0 Heard both sides. The short matters to be decided in the instant appeal instituted by the Appellant are:

(a) Whether, having regard to the amended B2B entry of ₹25,44,774/-, the supplier certificates produced by the Appellant and the guidance in Circular No. 183/15/2022-GST, the order impugned directing reversal of ITC amounting to ₹41,10,666/- can be sustained, where those documents were rejected by the FAA without adequate or reasoned findings?

(b) Whether the remaining IGST shortfall of ₹20,430/- is properly chargeable to the Appellant on the material on record, or whether

that residual amount has not been established with the requisite particularity and evidence?

(c) Whether the invocation of section 74, and the consequential levy of interest and penalty, can be sustained?

19.0 The Appellant has taken a preliminary objection that the Respondent cannot, in the counter, justify the demand on grounds that do not figure in the SCN. We find merit in that objection. The SCN, as recorded in paragraph 6.1 above, alleged a breach of section 16(2)(c) only, on the footing that the suppliers had neither reported the supplies nor paid the tax.

19.1 Section 75(7) of the Act, reproduced in paragraph 16.3 above, forbids the confirmation of a demand "on the grounds other than the grounds specified in the notice". The Respondent has not pointed to any allegation in the SCN, the Order-in-Original or the Order-in-Appeal that the Appellant was not in possession of the tax invoices, or that the services were not received. The submissions in the counter that the Appellant has not shown "complete and verifiable" eligibility on the totality of the evidence travel beyond the notice.

19.2 The Tribunal of Thiruvananthapuram, in Santhome Latex Enterprises v. Commissioner of CGST, Thiruvananthapuram, Appeal No. APL/21/TVP/2026, Final Order No. 04/TVP/KERALA/2026 dated 21.08.2026, (2026) 45 Centax 325 (Tri-GST-Kerala), held that the raising of additional grounds at the appellate stage which are not found in the show cause notice is against the fundamental principles of natural justice. We respectfully agree. We therefore confine our enquiry to the case actually made in the SCN, namely, the condition in section 16(2)(c).

Issue (a): the amended B2B entry, the certificates and the Circular

20.0 We shall first dispose of the submission that the Circular does not bind the Respondent. The Circular was issued by the Board under section 168(1) of the Act. In the case of Ranadey Micronutrients v. Collector of Central Excise, **2002-TIOL-184-SC-CX**, the Supreme Court held that it does not lie in the mouth of the Revenue to repudiate a circular issued by the Board on the basis that it is inconsistent with a statutory provision, consistency and discipline being of far greater importance than the winning or losing of court proceedings.

20.1 Paragraph 6 of the Circular, reproduced in paragraph 15.4 above, expressly extends its application to cases for FY 2017-18 and 2018-19 in which adjudication or appeal proceedings are still pending. The period in dispute is July 2017 to March 2018, and the present appeal is pending. The Circular therefore applies to the Respondent.

21.0 The Respondent submits that the Circular does not confer an automatic entitlement. We accept that proposition, and the Appellant does not contend otherwise. The Circular is, however, an instruction to the proper officer of the manner in which the condition in section 16(2)(c) is to be verified. Paragraph 4 uses the words “shall first seek the details” and “shall then ascertain”.

21.1 The Respondent has not demonstrated that the AA, before confirming the demand, or the FAA, before affirming it, undertook the exercise prescribed in paragraph 4 of the Circular in respect of the invoices on which the credit was availed. The Order-in-Original proceeds on the footing that no material

was placed on record. The Order-in-Appeal rejects the material that was placed on record without reasons.

21.2 Paragraph 5 of the Circular confines its operation to bona fide errors of reporting during FY 2017-18 and 2018-19. The discrepancy in the present case arose, on the Appellant's case, from an amendment in the supplier's Form GSTR-1 reflected in the B2B table of the Appellant's Form GSTR-2A in June 2018 and from the reporting of the supplies by certain suppliers against the erstwhile GSTIN of the Appellant. Both are errors or corrections on the supplier side. The Respondent has not alleged that they were contrived by the Appellant.

22.0 We shall now examine the amended B2B entry of E-Support Solutions Private Limited. The entry itself discloses the invoice number, the invoice date of 05.08.2017, the taxable value of ₹1,41,37,634/-, and the CGST and SGST of ₹12,72,387/- each. It forms part of the Appellant's Form GSTR-2A, which is generated on the common portal from the supplier's own declaration. The Respondent does not dispute that the entry appears there.

22.1 The FAA rejected the entry on the ground that a copy of the August 2017 invoice was not produced, and observed that the Appellant's case was "not very clear". That observation is not a finding. It does not state what part of the case was unclear, and it does not state that the invoice was absent from the Appellant's books or that the supply was not received.

22.2 The SCN does not allege either of the latter facts. An entry declared by the supplier on the Government's own portal, which discloses the very particulars of the invoice, is material of probative value on the question

whether the supply was made and reported. In the absence of any contrary material, the want of a copy of the invoice cannot sustain the reversal of ₹25,44,774/-.

23.0 We now turn to the supplier certificates. The ITC covered by the certificate of Tata Communications is ₹8,08,650/- (CGST ₹4,04,325/- and SGST ₹4,04,325/-), which exceeds ₹5 lakh. Paragraph 4.1.1 of the Circular accordingly required a certificate of a Chartered Accountant or a Cost Accountant bearing a UDIN. The Appellant produced a certificate of a Chartered Accountant bearing UDIN 24116506BKDFWG8236, dated 10.05.2024.

23.1 The ITC covered by the certificates of STT Global Data Centres (₹4,46,416/-), Vodafone Mobile Services (₹3,51,000/-) and Crayon Software (₹41,869/-) does not exceed ₹5 lakh in the case of any of them. Paragraph 4.1.2 of the Circular accordingly required a certificate from the supplier concerned that the supplies were made to the Appellant and that the tax was paid in Form GSTR-3B. The Appellant produced a certificate from each of those suppliers.

23.2 The FAA described all the certificates as “not acceptable”, without stating which requirement of paragraph 4.1.1 or 4.1.2 was not met, and without recording any defect in any of them. The Respondent has pointed in its counter to two matters: that the certificates require corroboration of the payment, and that the Crayon Software certificate does not particularise the wrong GSTIN and the supplier-side reporting.

23.3 As to the first, the certificate prescribed by the Circular is itself the means by which the proper officer is to verify the payment of tax by the supplier under section 16(2)(c). A certificate that is to be asked for from the supplier or from a Chartered Accountant cannot be rejected merely because it is a certificate. If the Respondent doubted the certificate, the Circular enabled the Respondent to verify the UDIN and the supplier's Form GSTR-3B. The Respondent does not say that it did so.

23.4 As to the second, paragraphs 4.1.1 and 4.1.2 prescribe the content of the certificate. It is to certify that the supplies were actually made by the supplier to the registered person and that the tax thereon was paid by the supplier in Form GSTR-3B. The Circular does not require the certificate to state the wrong GSTIN. Paragraph 3(d) of the Circular, moreover, expressly provides that the allowance of the credit to the actual recipient shall not depend on the completion of the action against the holder of the GSTIN wrongly mentioned. The objection reads into the Circular a requirement that it does not contain.

23.5 The Vodafone Mobile Services certificate dated 20.03.2024 misdescribes the date of the Circular. That is a clerical slip which does not touch the substance of what the certificate certifies, and the FAA did not rest his rejection on it.

24.0 The Respondent further submits that no proof of payment to the suppliers was furnished. The Appellant points to the vendor ledgers with payment entries at pages 82, 135, 202 and 226 of the Paper Book. The counter asserts the want of proof of payment in general terms. It does not controvert

the entries in the ledger extracts to which the Appellant has drawn attention, and it does not identify any invoice in respect of which the payment is said to be wanting.

24.1 Section 155, reproduced in paragraph 14.2 above, places the burden of proving the claim on the Appellant. We accept that. We find, however, that the Appellant has placed on record the invoice particulars through the amended B2B entry, the certificates in the form prescribed by the Circular, and the ledger extracts. Once that material is on record, a bare denial that it is "unverified", without any attempt at verification and without any contrary material, does not displace it.

25.0 The Respondent relies on State of Karnataka v. Ecom Gill Coffee Trading Private Limited, (2023) 9 SCC 573. The Bengaluru Bench of this Tribunal, in its order in M/s. Peekay Industries v. Commissioner of Commercial Taxes, Karnataka, APL/34/BUR/2026 dated 03.09.2026, noticed that the decision emphasises that the determination of ITC eligibility may require an examination of the underlying transactions and supporting material, and that it arose under the Karnataka Value Added Tax Act, on facts where the genuineness of the transactions themselves was in question.

25.1 In the present case, the genuineness of the transactions and the existence of the suppliers are not in dispute. The decision does not assist the Respondent. We are in agreement the observation of the Bengaluru Bench that a difference between Form GSTR-2A and Form GSTR-3B may justify verification, but cannot, without more, be treated as conclusive proof that the ITC has been wrongly availed.

26.0 We have also considered the order of the Bengaluru Bench in M/s. Vintek Control Systems v. Commissioner of Central Tax, Bengaluru, APL/31/BUR/2026 dated 06.10.2026, in which the appeal was dismissed. In that case, the order records that no supplier certificate as per the Circular, no e-way bill and no transport or stock record was produced at any stage. The present case is distinguishable, because the Appellant has produced the certificates prescribed by the Circular, the invoices and the ledger extracts, and the Respondent does not dispute the existence of the suppliers.

27.0 The FAA's order impugned is, in addition, a non-speaking order. Section 75(6) requires the proper officer to "set out the relevant facts and the basis of his decision". The Order-in-Appeal does not discuss a single certificate, does not state why the Appellant's reconciliation was not accepted, and does not deal with the Appellant's reliance on the Circular and the case law. It also records the Tata Communications amount incorrectly.

27.1 The Supreme Court, in Kranti Associates Pvt. Ltd. v. Masood Ahmed Khan, (2010) 9 SCC 496, as noticed by the Bengaluru Bench in Peekay Industries (supra), held that the reason for a quasi-judicial decision must be apparent from the order itself. An order that rejects the evidence of the party without recording any reason offends the maxim *audi alteram partem*, for a hearing that is not reflected in a reasoned consideration of what was said is no hearing at all.

28.0 Upon the foregoing analysis, we find that the Appellant has established the fulfilment of the conditions in section 16(2) in respect of the amended B2B entry of E-Support Solutions Private Limited (CGST ₹12,72,387/- and SGST

₹12,72,387/-), and the certificates of Tata Communications, STT Global Data Centres and Vodafone Mobile Services (CGST and SGST of ₹8,03,033/- each), and in respect of Crayon Software (IGST ₹41,869/-).

28.1 The CGST and SGST so covered amount to ₹20,75,420/- each, as against the CGST and SGST of ₹20,24,184/- each confirmed. The CGST and SGST demand of ₹20,24,184/- each is therefore not sustainable. The order impugned directing the reversal of the ITC to that extent, and to the extent of IGST ₹41,869/-, cannot be sustained.

Issue (b): the residual IGST of ₹20,430

29.0 The IGST confirmed is ₹62,299/-, being the difference between the IGST of ₹98,299/- availed in Form GSTR-3B and the IGST of ₹36,000/- reflected in Form GSTR-2A. The Appellant has established ₹41,869/- by the Crayon Software certificate. The balance of ₹20,430/- is the only amount for which the Appellant acknowledges that no certificate was filed.

29.1 The Respondent submits that the residual amount remains unestablished. The question, however, is not whether the Appellant has filed a certificate, but whether the Respondent has made out the case set out in the SCN, namely, that the tax charged on the relevant supplies was not paid to the Government.

30.0 The Appellant has not produced any certificate for the balance IGST of ₹20,430/-. Nor has he established, on the standard the statute requires, that the suppliers remitted the tax collected on the relevant supplies to the Government. On its own showing, the Appellant has produced only those certificates that he was able to obtain, and he seeks the relief of ITC on that

footing. For the balance amount he admits that no certificate is available. He has also not pressed the claim by establishing the genuineness of the underlying transactions through any other cogent material. Under section 155 of the CGST Act, the burden of proving eligibility lies on the person claiming the credit. Under section 16(2)(c), that eligibility depends on the tax having actually been paid to the Government.

30.1 The Appellant elected to avail himself of the mechanism in the Board's Circular. By filing certificates in respect of certain invoices, he invoked the Circular as the means of establishing the eligibility of the disputed credit. Having taken recourse to the Circular, it is not open to him to rely on its prescribed mode of proof for one set of invoices and to disclaim it for another. Such a course would amount to adopting two different standards for the same dispute. It would also amount to approbating and reprobating i.e., to accept and reject the same stand, which cannot be permitted. A person who claims the benefit of a beneficial instrument must accept the conditions on which it is granted, and those conditions apply uniformly to every invoice for which the credit is claimed.

30.2 We are therefore of the considered opinion that, having taken recourse to the conditions stipulated in the Circular, the Appellant is bound to comply with them for the disputed ITC of ₹20,430/- as well. He has furnished neither the certificate nor any other evidence of payment of tax by the supplier for this amount. The burden under section 155 is therefore not discharged, and the condition in section 16(2)(c) is not shown to be satisfied. The ITC of ₹20,430/- is accordingly not admissible.

Issue (c): section 74, interest and penalty

31.0 The SCN was issued under section 74. That section applies only where the ITC has been wrongly availed "by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax". The satisfaction of the proper officer on those ingredients is a jurisdictional requirement.

31.1 The Supreme Court, in G.R. Infra Projects Limited, Ratlam v. State of Madhya Pradesh, Civil Appeal No. 11277 of 2026 (arising out of SLP (C) No. 33594 of 2025), decided on 19.08.2026, observed:

> *"A bare reading of the notice would indicate that but for a bland statement of 'fraud or concealment of facts' nothing is stated as to how fraud was inferred or concealment of facts were detected. … What is required for the extended time to be applied are the allegations, which lead to the inference of a fraud or the concealment as attempted by the assessee resulting in suppression of facts, should emanate from the notice itself. It cannot be a mechanical use of the words 'fraud, willful misstatement or suppression of facts' without listing out the aspects which persuades the assessing officer to conclude that there has been employed either of these surreptitious devices by the assessee."*

31.2 In Tata Steel Limited v. Union of India, (2026) 45 Centax 361 (SC), as extracted in an order of the Bengaluru Bench of this Tribunal, the Supreme Court held:

> *"Insofar as a notice under Section 74, the satisfaction should be not only of mismatch of ITC and short payment of tax having occurred, as is alleged in this case, the Officer should be satisfied that either fraud/willful misrepresentation/suppression had led to such mismatch or*

short payment of tax. … The foundational facts which led to the inference arrived at of fraud/willful misrepresentation/ suppression should be evident from the notice itself. The mere employment of such words will not indicate an application of mind, upon which alone the satisfaction can be arrived at."

32.0 Tested against these principles, the SCN falls short. Paragraph 13 of the SCN records that, in the absence of the departmental verification, the discrepancy would have remained unnoticed, and infers that the Appellant "appears" to have wilfully suppressed the facts. The detection of a discrepancy by the Department is not evidence of suppression by the assessee. The word "appears" records a suspicion and not a foundational fact.

32.1 The SCN does not state what fact the Appellant was required to declare and did not declare, what information it was asked for in writing and did not furnish, or what act of the Appellant shows that it knew that the credit was inadmissible and availed it in order to evade tax.

33.0 The facts on record point the other way. The credit was availed in Table 4A(5) of Form GSTR-3B and was reflected in the annual return in Form GSTR-9. The Appellant disclosed the credit, replied to every communication, and sought time to place the certificates. The Respondent has not alleged that the invoices are not genuine, that the supplies were not received, or that the Appellant was in collusion with any supplier.

33.1 The Supreme Court, in Continental Foundation Joint Venture Holding, Nathpa v. Commissioner of Central Excise, Chandigarh-I, **2007-TIOL-152-SC-EX (Para 10)**, also reported as 2007 (8) TMI 11 (SC), as extracted in the

order of the Delhi Bench of this Tribunal in Appeal No. 10 of 2026, held that mere omission to give correct information is not suppression of facts unless it was deliberate, and that suppression means failure to disclose full information with the intent to evade payment of duty.

33.2 The Thiruvananthapuram Bench, in Santhome Latex Enterprises (supra), held that, in the absence of any statutory presumption, the mere availment of ITC without due verification does not amount to suppression of facts, and that every act of transgression of section 16(2) cannot be termed a violation inviting proceedings under section 74 unless clear and categorical evidence has been adduced that the transgression was the result of fraud, wilful misstatement or suppression of facts with an intent to evade tax. We respectfully agree.

33.3 We have also noticed the observation of this Bench in Boilla Venkataramana Reddy v. M/s. Shivenari Canteen Services, APL/149/HYD/2026 dated 18.09.2026, that, in order to invoke section 74, there must be ingredients embedded in it, and the same have to be established in clear terms.

34.0 The AA recorded that the Appellant did not place any evidentiary material or certificates on record. The failure to produce evidence in defence of a notice cannot supply, after the notice, the ingredient of suppression that the notice itself did not disclose. In Santhome Latex Enterprises (supra), the Tribunal held that a failure to furnish information that was never a ground in the show cause notice cannot be relied upon to sustain section 74. The

Appellant, moreover, had sought fifteen days to produce the certificates, and produced them in the appeal.

34.1 We are of the considered opinion that the charge of fraud, wilful misstatement or suppression of facts to evade tax has not been established against the Appellant. The notice under section 74(1) is therefore not sustainable. The inconsistency in the Order-in-Original noted in paragraph 13.0 above, where the statutory basis varies between section 73 and section 74, only fortifies this conclusion.

35.0 The consequence is provided by section 75(2), reproduced in paragraph 16.2 above. This Tribunal, being an Appellate Tribunal, may conclude that the notice under section 74(1) is not sustainable, in which event the tax payable is to be determined as if the notice had been issued under section 73(1). The Appellant has sought invoking section 75(2) in the alternative.

35.1 Circular No. 185/17/2022-GST dated 27.12.2022 clarifies that such a re-determination is available where the notice under section 74(1) was issued within the time limit specified in section 73(2) read with section 73(10). For FY 2017-18, the time limit under section 73(10) was extended by Notification No. 13/2022-CT dated 05.07.2022 to 30.09.2023 and by Notification No. 09/2023-CT dated 31.03.2023 to 31.12.2023. The Kerala High Court, in Faizal Traders Pvt. Ltd. v. Deputy Commissioner, Central Tax and Central Excise, Palakkad Division, WP(C) No. 24810 of 2023 dated 07.02.2024, upheld those notifications as issued within the power in section 168A.

35.2 The SCN was issued on 23.02.2023, and the Order-in-Original was passed on 13.12.2023, both within the extended period. The notice is therefore deemed to have been issued under section 73(1), and the question is whether any tax is payable under it.

36.0 For the reasons recorded under Issues (a) and (b), the Appellant has established its entitlement to the credit in respect of the amended B2B entry and the certificates. The Appellant has not established that the residual sum of ₹20,430/- was paid to the Government. We find that the ITC to the extent of ₹20,430/- is liable to be reversed by the Appellant under section 73 on the SCN.

36.1 Section 75(8) provides that where the Appellate Tribunal modifies the amount of tax determined by the proper officer, the interest and penalty shall stand modified accordingly. The interest under section 50(3), the penalty under section 122(2)(b) and the equal penalty under section 74(9) depend upon the existence of a tax liability. The interest and penalty to the extent upheld supra is to be computed accordingly. The proper officer is required to compute appropriate interest, and quantify the penalty and communicate the same to appellant within 4 weeks from the date of issue of this order.

H. CONCLUSION

37.0 We find that, on the material on record, the demand of ITC of IGST to the extent of ₹20,430/- is sustainable under Section 73 ibid. The appellants are liable to pay appropriate interest, if the said ineligible ITC has been utilised, and penalty, as is to be computed by the proper officer. The balance demand of ITC is not sustainable, and that the proceedings under section 74,

together with the interest and penalty, cannot stand. Accordingly the demand of the balance ITC is set aside.

38.0 The order impugned, being Order-in-Appeal No. HYD-GST-HYC-APP1-45-24-25-GST dated 28.06.2024, stands modified to the above extent.

39.0 The issues framed in paragraph 18.0 above is answered accordingly.

ORDER

40.0 On the above terms, the appeal filed by the taxpayer is partly allowed.

41.0 No order as to costs.

(Pronounced in open court on 11th November 2026 in the presence of Ms. K. Akshatha for the appellant & Shri. Gouri Shanker for the respondent.)

Digitally signed by
A P RAVI
11-11-2026 17:53:54 IST

[A P Ravi]

Member (Judicial)

Digitally signed by
DUVVURI KRISHNA SRINIVAS
11-11-2026 18:38:30 IST

[DUVURRU KRISHNA SRINIVAS]

Member (Technical)

Dated: 11/11/2026

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