ATANU MONDAL v. DIRECTOR, M/s D.R. STEEL CONSTRUCTION CO. PVT. LTD.

Reversal of excess ITC under Section 73 of the CGST Act, 2017, and determination of consequential interest and penalty. Applicability of waiver of interest and penalty under Section 128A in respect of Section 73 proceedings.

Date of Order: August 18, 2026
Case Law No: GIB-GSTAT-2026-81
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

BACKGROUND

The proceedings arose from an SCN under Section 73 alleging excess ITC for the financial years 2018-19 to 2020-21. The Revenue subsequently appropriated part of the amount already paid and disputed whether the remaining reversal could be mapped to the demand.

The taxpayer had made reversals through the electronic ledgers and furnished reconciliation material. The first appellate authority accepted the reconciliation and held that the excess ITC had been reversed, but the Revenue challenged the order, particularly concerning the proof of reversal and liability for interest and penalty.

COURT OBSERVATION

The Tribunal found no reason to disagree with the first appellate authority's conclusion that the excess ITC had been reversed. The Revenue's objection that there was no proof linking the payments to the disputed liability was not accepted because the reversal had been acknowledged through DRC-04 and the reconciliation had been scrutinised by the appellate authority.

However, the Tribunal found that the appellate authority had not properly considered the liability for interest and penalty. Since the demand was under Section 73 and the relevant period fell within Section 128A, the Tribunal held that the taxpayer was entitled to the benefit of Section 128A subject to compliance with its prescribed procedure.

FINAL VERDICT

The matter was remanded to the first appellate authority under Section 113(1) for fresh computation of interest and penalty, if any, attributable to the taxpayer. The taxpayer was to be given an opportunity of hearing, and the instructions contained in Circular No. 192/04/2023-GST were to be considered.

If any interest or penalty liability remained after fresh computation, the taxpayer was permitted to seek waiver under Section 128A, which was to be considered in accordance with the relevant provisions and Circular No. 238/32/2024-GST.