N. R. Builders v. Commissioner of Commercial Taxes, Karnataka

The appeal concerned alleged excess availment/utilisation of Input Tax Credit (ITC) arising from a mismatch between ITC claimed in GSTR-3B and ITC reflected in GSTR-2A for FY 2018-19.

Date of Order: August 21, 2026
Case Law No: GIB-GSTAT-2026-107
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

Scrutiny of the returns for FY 2018-19 revealed a difference between ITC claimed in GSTR-3B and ITC auto-populated in GSTR-2A. A pre-intimation in FORM GST DRC-01A was issued alleging excess ITC, followed by a Show Cause Notice under **Section 73(1)** proposing recovery of tax, interest under **Section 50(1)** and penalty under **Section 73(11)**. The Proper Officer subsequently confirmed the entire demand under Section 73(9).

The appellant contended that the alleged mismatch was not excess ITC because part of the credit related to **FY 2017-18** and was availed during FY 2018-19 within the time permitted under Section 16(4). It was also contended that the relevant credit was reflected in GSTR-2A for FY 2017-18. The first appellate authority, however, dismissed the appeal and upheld the demand, principally relying upon the non-reflection of certain invoices in GSTR-2A.

Court Observation

The Tribunal observed that **GSTR-2A was a facilitation tool and not a statutory bar to credit** during the relevant period. It further noted that CBIC Circular No. 183/15/2022-GST specifically required verification where FY 2017-18 credit was claimed in FY 2018-19. The finding that non-reflection of an invoice in GSTR-2A for FY 2018-19 established non-payment of tax by the supplier was held to be an **assumption rather than a finding based on actual verification**. Accordingly, invoice-wise verification of the FY 2017-18 credit was required.

The Tribunal also found a clear infirmity in the absence of a personal hearing. The Show Cause Notice itself recorded the date, time and venue of personal hearing as **"NA"**, whereas Section 75(4) makes a hearing mandatory where an adverse decision is contemplated. The Tribunal held that the

absence of personal hearing, by itself, justified setting aside the Order-in-Original.

On the issue of FORM GST ASMT-10, the Tribunal held that **Section 61 and Section 73 are independent provisions**. Since the proceedings had been initiated under Section 73 following an audit reference and not under Section 61 scrutiny, absence of FORM GST ASMT-10 did not, by itself, invalidate the proceedings.

Final Verdict

The Tribunal **allowed the appeal by way of remand** and set aside both the Order-in-Original dated 20.04.2024 and the Order-in-Appeal dated 07.11.2024. The matter was remanded to the Proper Officer for **de novo adjudication**, including invoice-wise verification of the reconciliation with reference to FY 2017-18 GSTR-2A, suppliers' GSTR-1, ITC register, books of account and relevant GSTR-9/GSTR-9C returns.

The Proper Officer was directed to grant a proper personal hearing and pass a **fresh, reasoned and speaking order within twelve weeks** from communication of the Tribunal's order. Any consequential interest under Section 50 and penalty under Section 73 were directed to abide by the fresh determination of tax liability. The Tribunal expressly clarified that it had **not decided the ultimate admissibility of the disputed ITC**, leaving all questions of fact open for determination by the Proper Officer.

Case Referred by Court

1. **Mahalakshmi Cotton Ginning Processing and Oil Industries v. State of Maharashtra** — Bombay High Court — **2012** — *(2012) 35 STT 589*.
2. **ALD Automotive Private Limited v. CTO** — Supreme Court — **2018** — *(2018) 70 GST 751*.
3. **Microqual Techno Ltd. v. State of Karnataka** — Karnataka High Court — **06 August 2010** — STA No. 01/2010.
4. **Sahara India (Firm) v. CIT** — Supreme Court — **2008** — [2008] 169 Taxman 328.
5. **Gayathri Agencies v. State Tax Officer** — Madras High Court — date not stated in the order.
6. **A.H. Enterprises v. Deputy Commercial Tax Officer** — Madras High Court — date not stated in the order.
7. **Goutam Bhowmik v. State of West Bengal** — Calcutta High Court — date not stated in the order.
8. **Dominic David v. State Tax Officer** — Kerala High Court — **2023** — [2023] 146 taxmann.com 110.
9. **Canon India Pvt. Ltd. v. Commissioner of Customs** — Supreme Court — Civil Appeal No. 1827 of 2018; date not stated in the order.

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