A To Z Chemicals v. Krishna Gopal Saha, Assistant Commissioner of State Tax, Lalbazar & Radhabazar Charge, WBGST & Ors.

ITC mistakenly availed under CGST/SGST instead of IGST (FY 2017-18) – Section 73 demand set aside; remanded on Kerala High Court ratio.

Date of Order: November 7, 2026
Case Law No: GIB-GSTAT-2026-133
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CASE DESCRIPTION / SUMMARY

Background

A To Z Chemicals, a Kolkata-based trader of chemicals, was served a show cause notice dated 28.02.2023 under Section 73(1) of the CGST Act, 2017 by the West Bengal GST authorities. The issue was that, in FY 2017-18, the first year of GST, the assessee had availed and utilised ITC of about Rs. 1,43,404 each under CGST and SGST instead of IGST. The assessee explained that this was an inadvertent mistake, that GSTR-2A became available only at the end of 2018, and that the total ITC claimed did not exceed the tax paid by its suppliers, so there was no loss of revenue. The Adjudicating Authority (order dated 29.05.2023) confirmed the demand with interest and penalty, holding that ITC cannot be adjusted from one tax head to another. The First Appellate Authority (order dated 25.08.2023) upheld the reversal of this ITC with interest under Section 50 and penalty, and further directed reversal of Rs. 4,176 each under CGST and SGST for breach of Section 16(4). Aggrieved, the assessee appealed under Section 112(1) before the Tribunal, and the Revenue opposed it, arguing that the CGST Act has no provision to grant such relief.

Final Verdict

The Tribunal first held that the dispute over Rs. 4,176 (each under CGST and SGST) stood settled by the non-obstante clause in Section 16(5) of the CGST Act, so the assessee is absolved of reversing it. On the main issue, it relied on the Kerala High Court rulings in Kalleppuram Metals and Rejimon Padickapparambil Alex v. Union of India, which treat the electronic credit ledger as a unified pool, like a wallet with IGST, CGST and SGST compartments. On that view, availing CGST/SGST in place of IGST is an inadvertent, technical error and not a wrongful availment or utilisation, causes no loss of revenue, and does not attract Section 73. The Tribunal held that these Kerala High Court judgments squarely apply, set aside the First Appellate Authority's order and remanded the appeal

for fresh decision in their light within three months, after giving the assessee a reasonable hearing.

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