IN THE GOODS AND SERVICES TAX APPELLATE TRIBUNAL
KOLKATA BENCH
COURT NO. 1
Appeal No. APL/97/KLK/2026

A TO Z CHEMICALS

..... Appellant

Versus

KRISHNA GOPAL SAHA,
ASSISTANT COMMISSIONER OF STATE TAX
LALBAZAR & RADHABAZAR CHARGE, WBGST & ORS.

..... Respondent

In appearance:
For the appellant : Mr. Tarun Kumar Gupta, Ld. Advocate
Shri Sourav Ghosh Chowdhury, Ld. Advocate
For the respondent : Mr. Sandip Roy Chowdhury,
Deputy Commissioner, SGST

CORAM :

Shri Satya Gopal Chattopadhyay : Hon'ble Judicial Member
Shri Anindya Mitra : Hon'ble Technical Member

FINAL ORDER

Date of Hearing : 08.10.2026
Date of Order : 06.11.2026

Per S.G. Chattopadhyay (JM):

[1]. The challenge raised in this appeal is against the order of the First Appellate Authority confirming the findings of the Adjudicating Authority regarding availment and utilization of ITC under CGST and SGST instead of IGST.

[2]. The appellant taxpayer is engaged in trading of chemicals under the name and style 'A TO Z Chemicals' under GSTIN 19AAFFA7664M1ZV who is running his business from 8B, Lal Bazar Street, Kolkata 700001 in West Bengal.

[3]. A demand was created under Section 73(1) CGST Act, 2017 against the taxpayer and the following demand notice dated 28.02.2023 was served on him:

"You are therefore, required to show the cause as to why you should not pay the amount specified in the table below along with interest payable and penalty leviable thereon.

Sl. No.	Act	Tax	Interest	Penalty
01	IGST (POS-WB)	36,991.98	35,697.26	-
02	CGST	1,72,455.80	1,66,419.90	-
03	WBGST	1,72,455.80	1,79,071.80	-
04	Cess	-	-	-

Please also note that, as per sec. 73(8) of the said Acts, if you pay the said tax along with interest payable under Section 50 within thirty days of issue of show cause notice, and inform the undersigned in DRC – 03, all proceedings in respect of the said notice shall be deemed to be concluded. And, in such situation, no penalty is to be paid as this notice is being issued u/s – 73(1) of the said Acts."

[4]. In reply to the demand notice, the taxpayer contended that he mistakenly availed and utilized ITC of a sum of Rs. 1,43,404/- under CGST and SGST each instead of availing the ITC under IGST. The taxpayer sought for exemption from the tax liabilities due to such inadvertent mistake. The matter was taken up by the Adjudicating Authority. By an order dated 29.05.2023 the Adjudicating Authority confirmed the demand as follows:

"Regarding excess availed ITC under the head of CGST and SGST A/R replied that they inadvertently availed ITC of CGST and SGST instead of IGST and prayed for pardon as in total ITC claimed on IGST, CGST and SGST is not exceeding the tax paid as declared by their supplier.

Regarding ITC reversal with proportionate to exempt supply A/R is abstained from producing any explanation/ reconciliation.

The undersigned authority has no authority to adjust ITC of one tax head to other tax head. Thus, excess availed ITC under the head of CGST and SGST and ITC proportionate to exempt supply has to be paid along with due interest.

Regarding intimated reversal of ITC Ld. A/R could not produce any explanation/ reconciliation/ representation with documentary evidences. So, the undersigned authority presumed that the RTP has nothing to rebut with documentary evidences against intimated reversal of ITC.

Under these circumstances in the interest of revenue the undersigned authority has no other option but to raise demand u/s 73 of the GST Act, 2017 as per following computation.

Sl. No.	Act	Tax	Interest	Penalty
01	IGST (POS-WB)	31,689.98	35,697.26	10,000.00
02	CGST	1,67,455.80	1,66,419.90	16,746.00
03	WBGST	1,67,455.80	1,66,419.80	16,746.00
04	Cess	-	-	-

"

[5]. Aggrieved taxpayer challenged the OIO before the First Appellate Authority by filing an appeal under Section 107 (1) CGST Act, 2017. After hearing the parties, the First Appellate Authority by an Order dated 25.08.2023 decided the appeal and viewed as under:

"*1. The taxpayer availed ITC under CGST and SGST at the rate of Rs. 1,43,011.11/- each instead of IGST and such ITC availed by the taxpayer is not adjustable under CGST and SGST and therefore the taxpayer is liable to reverse such ITC under CGST and SGST along with interest in terms of Section 50. Secondly, ITC of a sum of Rs. 4,176/- was not in accordance with Section 16(4) CGST Act, 2017 and the same was liable to be reversed by the taxpayer. The First Appellate Authority modified the OIO and attributed the following liability to the taxpayer.*

(i). So tax payable found as:

Issues	Integrated Tax in Rs	CGST in Rs	WBGST in Rs
Excess ITC availed on inward B2B Supply	0.00	1,43,403.74	1,43,403.74
ITC found reversible as ITC uploaded by supplier after date prescribed u/s – 16(4)	0.00	**4,176.00**	**4,176.00**
Total Tax Payable	0.00	1,47,580.00	1,47,580.00

(ii)So, Penalty u/s 73(9) under the IGST Act becomes Nil.

	IGST in Rs	CGST in Rs	WBGST in Rs
Penalty payable	0.00	14,758.00	14,758.00

(iii) Interest payable

	IGST in Rs	CGST in Rs	WBGST in Rs
Interest payable	0.00	14,2415.00	14,2415.00

"

[6]. Aggrieved by and dissatisfied with the impugned order passed by the First Appellate Authority, the taxpayer has filed this appeal under Section 112(1) of the CGST Act, 2017 before this tribunal for setting aside the impugned order passed by the First Appellate Authority.

[7]. We have heard Mr. Tarun Kumar Gupta, Ld. Advocate for the appellant as well as Mr. Sandip Roy Chowdhury, Dy. Commissioner, SGST for the respondent.

[8]. The main contention of the appellant taxpayer is that the claim pertains to financial year 2017-18 which is the First year of the GST regime and GSTR 2A was made available only at the end of 2018. As a result, the assessee did not have the opportunity to detect his mistake from GSTR 2A. Otherwise he could have reversed the ITC availed by him under CGST and SGST heads to IGST head. Mr. Gupta, Ld. Advocate has vehemently argued that there is no loss of revenue to the respondent arising from his availment and utilization of ITC under CGST and SGST instead of IGST. The mistake occurred due to inadvertence and justice should not be denied to him for such technical error. In order to buttress his contention, Mr. Gupta has relied on the Judgment of the Kerala High Court in the case of **Kalleppuram Metals, represented by its partner Versus Union of India, through the secretary (Revenue) Ministry of Finance, Department of Revenue and others** reported in **2024 SCC OnLine Ker7751** in which the Hon'ble High Court of Kerala at Ernakulam has held as under:

> *"4. Petitioner is alleged to have wrongly claimed IGST credit as CGST and SGST credits. However, in a recent judgment of this Court in* ***Rejimon Padickapparambil Alex v. Union of India***

***[2024 KHC OnLine 7215]**, on an almost similar situation, it was observed that the input tax credit available in the electronic credit ledger should be considered as a pool of funds designated for different types of taxes, such as IGST, CGST and SGST. It was further observed that the said credit ledger represents a wallet with compartments for IGST, CGST and SGST funds and the entire wallet has to be taken into consideration, instead of individual compartments.*

5. The aforementioned decision elucidates that Section 73 of the GST Act is attracted only when tax has not been paid or when there is a short payment or when any amount has been erroneously refunded, or where any input tax has been wrongly availed or utilised for any reason.

6. In the instant case, it cannot be stated that petitioner had wrongly availed input tax credit. Even going by the orders of the adjudicating authority the mistake committed by the petitioner was at the most a technical one, since CGST/SGST was availed instead of IGST. The alleged excess claim of CGST and SGST was due to the availability of eligible IGST credit. Since the GST system treats the electronic credit ledger as a unified source, there cannot be a wrongful availing or utilization of input tax credit in the instant case. There cannot also be any loss of revenue as well, arising from the utilization of CGST/SGST instead of IGST.

7. Taking note of the aforesaid, I am of the view that the impugned order Ext. P-6 is liable to be set aside and a reconsideration ought to be directed in the light of the judgment mentioned above.

*Accordingly, Ext. P-6 is set aside, and the third respondent is directed to reconsider the appeal filed by the petitioner afresh in light of the judgment in **Rejimon Padickapparambil Alex v. Union of India [2024 KHC OnLine 7215]**.*

The writ petition is allowed as above."

[9]. Learned Counsel of the appellant contends that the present appeal is squarely covered by the ratio decided by the Kerala High

Court in **Kelleppuram Metals (Supra)** and as such the appeal may be allowed.

[10]. Mr. Sandip Roy Chowdhury, Deputy Commissioner, SGST appearing for the respondent on the other hand contends that the appeal is devoid of merit because there is no provision under the CGST Act to grant such relief to the appellant. The AR of the respondent therefore, urges for dismissal of the appeal.

[11]. The crux of the issue in this appeal is that the taxpayer availed credit under CGST and SGST instead of IGST and utilized the same for payment of GST arising out of outward supply. The First Appellate Authority viewed that the amount of ITC availed and utilized by the taxpayer under CGST and SGST instead of IGST is not adjustable and therefore the appellate authority directed the taxpayer to reverse such ITC along with interest in terms of Section 50, CGST Act, 2017 and penalty. We have to examine the merit of the challenge against the decision of the First Appellate Authority.

[12]. Apart from directing the taxpayer to reverse ITC availed by him under CGST and SGST instead of IGST, the First appellate authority under the impugned order also directed the taxpayer to reverse a sum of Rs. 4176/- which was availed by him in breach of Section 16(4) CGST Act, 2017.

[13]. In so far as the dispute regarding availment of ITC of the sum of Rs. 4,176/- each for CGST and SGST is concerned, such dispute is put to rest after insertion of the non-obstante clause of sub-section (5) under Section 16 of the CGST Act, 2017. The taxpayer is absolved of the liability of reversing the said amount of ITC (Rs. 4,176/- each for CGST and SGST) in terms of the provision of Section 16(5), CGST Act, 2017.

[14]. Therefore, the only question to be decided by us is whether the amount of ITC (Rs. 1,43,404.00/- each for CGST and SGST) inadvertently availed by the taxpayer under the head CGST/SGST instead of IGST is to be reversed along with interest and penalty as it has been held by the First Appellate Authority.

[15]. We have examined the case in the light of the Judgement of the Hon'ble Kerala High Court in the case of **M/S.**

KALLEPPURAM METALS(Supra) and the judgement delivered in **REJIMON PADICKAPPARAMBIL ALEX v. Union of India reported in 2024 KHC Online 7215** which have been relied upon by the counsel of the taxpayer.

[16]. In the case of **M/S. KALLEPPURAM METALS(Supra)** the Hon'ble Kerala High Court in paragraph No. 4 of the Judgment has also relied on its earlier decision in the case of **REJIMON PADICKAPPARAMBIL ALEX(Supra)** and held as under:

> *"4. Petitioner is alleged to have wrongly claimed IGST credit as CGST and SGST credits. However, in a recent judgment of this Court in **Rejimon Padickapparambil Alex v. Union of India [2024 KHC Online 7215]**, on an almost similar situation, it was observed that the input tax credit available in the electronic credit ledger should be considered as a pool of funds designated for different types of taxes, such as IGST, CGST and SGST. It was further observed that the said credit ledger represents a wallet with compartments for IGST, CGST and SGST funds and the entire wallet has to be taken into consideration, instead of individual compartments."*

[17]. The Hon'ble High Court was of the view that since the GST system treats the Electronic Credit Ledger as a unified source, there cannot be a wrongful availing or utilization of Input Tax Credit in the instant case. There cannot also be any loss of revenue as well arising from the utilisation of CGST/SGST instead of IGST. Having viewed thus, the Hon'ble Kerala High Court directed the First Appellate Authority to reconsider the appeal filed by the petitioner afresh in the light of its earlier judgment in **REJIMON PADICKAPPARAMBIL ALEX(Supra)**.

[18]. In **REJIMON PADICKAPPARAMBIL ALEX(Supra)** the Hon'ble High Court found that the appellant/taxpayer instead of showing the IGST component in the eligible credit details in Form GSTR-3B, inadvertently showed the IGST component as nil and added the bifurcated CGST and SGST components of IGST to the existing figures showing eligible CGST and SGST credit which resulted in a mismatch between GSTR 2A and GSTR 3B in relation to of the taxpayer. The Hon'ble High Court was of the view that since the mistake committed by the appellant was

inadvertent and technical one, proceedings initiated under Section 73 was unfounded because the said provision could be attracted only when it appeared to a proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax has been wrongly availed of utilized for any reason.

[19]. In this regard, the Hon'ble High Court observed in paragraph 8 and 9 as under:

> *"8. We have deemed it appropriate to extract the above findings from the order of the Assistant Commissioner since we find that it not only represents the correct view of the procedural law in this regard, but more importantly, demonstrates that revenue officials, even at the level of Assistant Commissioner, who are often the first point of contact between an assessee and the revenue department, are capable of rendering timely and effective justice in our country which is known for its huge backlog of cases. At a time when the justice dispensation system is looking for ways and means to reduce litigation generally, and especially in the field of taxation where delays can affect the nation's economy, orders such as the one extracted above come as a welcome breath of fresh air, and are to be duly appreciated and encouraged. It needs no gainsaying that an expeditious disposal of cases, especially those involving procedural aspects of taxation, is the need of the hour so as to ensure fairness and certainty in tax administration.*
>
> *9. We find that on the facts in the instant case, the notice issued to the appellant, and the demand confirmed against him, were in proceedings initiated under Section 73 of the GST Act. The said provisions are attracted only when it appears to a proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax has been wrongly availed or utilised for any reason. The case before us clearly reveals that there has been no wrong availment of credit, and that the only mistake committed by the appellant was an inadvertent and technical one, where he had omitted to mention the IGST figures separately in Form GSTR 3B. The mistake was also insignificant because it is not in*

dispute that there was no outward supply attracting IGST that was effected by him. We therefore set aside the impugned judgment of the learned Single Judge and allow the Writ Petition by quashing Ext.P14 order and declaring that the appellant shall not be seen as having availed excess credit for the purposes of initiating proceedings under Section 73 of the GST Act.

Before parting with this case and taking note of the anxiety and apprehension of the learned Government Pleader, that the State might be deprived of its legitimate share of the IGST paid by the suppliers outside the State in the instant case, we make it clear that on the respondent State producing a copy of this judgment, along with a representation before the GST Council, the GST Council shall issue necessary directions to resolve the issue by taking note of the declaration in this judgment."

[20]. Therefore, we are of the view that the judgments, aforesaid of the Hon'ble Kerala High Court squarely apply to the present case. As a result, the impugned order of the First Appellate Authority is set aside and the case is remanded back to the First Appellate Authority to reconsider the appeal filed by the taxpayer afresh in the light of the judgments, aforesaid of the Hon'ble Kerala High Court. The First Appellate Authority is directed to complete the whole exercise within a period of three months from the date of communication of this order after providing a reasonable opportunity of hearing to the appellant taxpayer. The appeal is thus disposed of.

SATYA GOPAL CHATTOPADHYAY

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S.G.Chattopadhyay
Judical Member

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