



केन्द्रीय सीमा शुल्क एवं केन्द्रीय कर आयुक्त का कार्यालय (अपील्स-II)
सातवातल, जी.एस.टी.भवन, एल.बी.स्टेडियमरोड, बशीरबाग, हैदराबाद, पिन - ५००००८
OFFICE OF THE COMMISSIONER OF CUSTOMS & STAMPS

OFFICE OF THE COMMISSIONER OF CUSTOMS & CENTRAL TAX
APPEALS-II HYDERABAD - 440 001, बाराखोग, हैदराबाद, एन -

APPEALS-II HYDERABAD COMMISSIONERATE
7th Floor, GST Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad, PIN-500004, Telangana State.
Ph: 040-23234219/ e-Mail: cgst.hydappeals2@gov.in

अपीलसं Appeal No.526/2024(SC)GST

Order-in-Original No.24/2024-25 (GST-Adjn) dt 19.04.2024
DIN:20251256DN0000444B76

अपील आदेश ORDER - IN - APPEAL No.HYD-GST-MD-AP2-JC-560-2025-26

तारीख Date:31.12.2025

जारीकर्ता: श्री श्रीचरण कूटिकुप्पला, आईआर एस, संयुक्त आयुक्त, केन्द्रीय कर व जी.एस.टी. (अपील्स-II)
Passed by: Shri. Sricharan Kootikuppala, IRS, Joint Commissioner of Central Tax & GST
(Appeals-II)

उद्देशिका / PREAMBLE

<u>उदारका / PREAMBLE</u>	
1.	जिस व्यक्ति को यह प्रति जारी की जाती है, उस व्यक्ति के निजी उपयोग के लिए निशुल्क दी जाती है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	इस आदेश से व्यक्ति कोई भी व्यक्ति, वस्तु एवं सेवा कर नियम, 2017 के साथ पठित केन्द्रीय वस्तु एवं सेवा कर अधिनियम 2017 की धारा 112 (1) के तहत इलेक्ट्रॉनिक या अन्य माध्यम से, केन्द्रीय वस्तु एवं सेवा कर अधिनियम 2017 की धारा 109 के तहत गठित उपयुक्त अपीलीय न्यायाधिकरण के राज्य / क्षेत्र के क्षेत्राधिकार के खंड पीठ में उन मामलों में, जिनमें 'आपूर्ति की जगह', विवाद-ग्रस्त विषयों में से एक न हो, अपील दायर कर सकता है। जहां 'आपूर्ति की जगह' विवादित मामलों में से एक है, अपील, उपरोक्त धारा 109 के तहत गठित राष्ट्रीय / क्षेत्रीय खंडपीठ के समक्ष दायर की जाए। जिस आदेश के विरुद्ध अपील दायर की जा रही है उसे अपीलकर्ता को संप्रेषित करने की तिथि से 3 (तीन) माह के अंदर अपील जीएसटी एपीएल-05 फॉर्म में दायर की जानी चाहिए। आदेश की एक प्रमाणित प्रति, यदि लागू हो तो नियम 110 (5) के अंतर्गत विहित शुल्क तथा अन्य संगत दस्तावेज संलग्न करते हुए, अपील पर नियम 26 के तहत विनिर्दिष्ट तरीके से हस्ताक्षर किए जाएं।

3.	<p>वस्तु एवं सेवा कर नियम, 2017 के नियम 111 के साथ पठित केंद्रीय वस्तु एवं सेवा कर अधिनियम 2017 की धारा 112 (3) के तहत आयुक्त द्वारा प्राधिकृत अधिकारी इलेक्ट्रॉनिक या अन्य माध्यम से, केन्द्रीय वस्तु एवं सेवा कर अधिनियम 2017 की धारा 109 के तहत गठित अपीलीय न्यायाधिकरण के राज्य / क्षेत्र के क्षेत्राधिकार के खंड पीठ में उन मामलों में, जिनमें 'आपूर्ति की जगह' विवाद-गस्त विषयों में से एक न हो, अपील दायर कर सकता है। जहाँ 'आपूर्ति की जगह' विवादित मामलों में से एक है, अपील, उपरोक्त धारा 109 के तहत गठित राष्ट्रीय / क्षेत्रीय खंडपीठ के समक्ष दायर की जाए। जिस आदेश के विरुद्ध अपील दायर की जा रही है उसे जारी करने की तिथि से 6 (छ.) माह के अंदर अपील जीएसटी एपीएल -07 फॉर्म में दायर की जानी चाहिए। अपील के साथ आदेश की प्रमाणित प्रति एवं अन्य संगत दस्तावेज़ संलग्न हो। विभागीय अपील के प्रत्याक्षेप, वस्तु एवं सेवा कर अधिनियम 2017 की धारा 112 (5) के साथ पठितनियम 110 (2) के अनुसार जीएसटी एपीएल -06 फॉर्म में इसकेसम्प्रेषण के 45 दिनों के अंदर दायर किए जाएं और इस पर नियम 26 में विनिर्दिष्ट तरीके से हस्ताक्षर किए जाएं।</p>
	<p>The officer authorized by the Commissioner under Sec 112(3) of the CGST Act 2017, read with Rule 111 of the CGST Rules, 2017; file an appeal electronically or otherwise, to the State / Area Bench of the Appellate Tribunal constituted under Sec 109 of the CGST Act 2017 in cases not involving 'place of supply' as one of the disputed issues. Where the 'place of supply' is one of the disputed issues, the appeal shall be filed with the National / Regional bench constituted under the said Sec 109. The appeal should be filed in Form GST APL-07 within 6 (six) months of the date of issuance of the disputed order. The appeal shall enclose a certified copy of the order, and any other relevant documents. The cross objections to the departmental appeal shall be filed within 45 days of communicating it, in Form GST APL-06 in terms of Rule 110(2) read with Sec 112(5) of the CGST Act 2017 and signed in the manner specified in Rule 26.</p>
	<p>रेवेन्यू बार एसोसिएशन के मामले में मद्रास उच्च न्यायालय के आदेश के मद्देनजर अपीलीय न्यायाधिकरण का गठन नहीं किया गया है। v. भारत संघ और इसलिए अपील उस तारीख से तीन महीने के भीतर दायर नहीं की जा सकती जिस दिन आदेश के खिलाफ अपील की मांग की गई है। अधिनियम के उपरोक्त प्रावधान को प्रभावी करने में उत्पन्न होने वाली कठिनाई को दूर करने के लिए, सरकार ने परिषद की सिफारिशों पर, केंद्रीय माल और सेवा कर (कठिनाइयों का नौवां निवारण) आदेश, 2019 दिनांक 03.12.2019 जारी किया है। उक्त आदेश के माध्यम से यह प्रावधान किया गया है कि ट्रिब्यूनल में अपील आदेश के संचार की तारीख या जिस तारीख को राष्ट्रपति या राज्य अध्यक्ष, के रूप में तीन महीने (सरकार द्वारा अपील के मामले में छह महीने) के भीतर की जा सकती है। अपीलीय न्यायाधिकरण के कार्यालय में प्रवेश करने की स्थिति में, जो भी बाद में हो।</p>
	<p>(ii) The appellate tribunal has not been constituted in view of the order by Madras High Court in case of Revenue Bar Assn. v. Union of India and therefore the appeal cannot be filed within three months from the date on which the order sought to be appealed against is communicated. In order to remove difficulty arising in giving effect to the above provision of the Act, the Government, on the recommendations of the Council, has issued the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019. It has been provided through the said Order that the appeal to tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.</p>
4.	<p>धारा 112 (8) के अनुसार, धारा 112 (1) के तहत तब तक कोई अपील दायर नहीं की जाएगी जब तक अपील कर्ता ने (ए) आक्षेपित आदेश से उत्पन्न कर, ब्याज, फाइन, शुल्क व जुर्माना के उस अंश का, जो उसके द्वारा स्वीकार किया गया है तथा (बी) उक्त आदेश, जिसके संबंध में अपील दायर की गई है, से उत्पन्न धारा 107(6) के अंतर्गत प्रदत्त राशि के अतिरिक्त, विवादित कर की शेष राशि के 20% का पूर्ण भुगतान नहीं किया हो।</p>
	<p>In terms of Sec 112(8), no appeal shall be filed under Sec 112(1) unless the appellant has paid (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and (b) a sum equal to 20% of the remaining amount of tax in dispute, in addition to the amount paid under Sec 107(6), arising from the said order, in relation to which the appeal has been filed.</p>

5. (i)	धारा 112 (1) के तहत आवेदन पत्र के साथ रुपए 5 मूल्य (केवल पांच रुपये) का गैर न्यायिक न्यायालय शुल्क टिकट हो। नियम 110 (5) के साथ पठित धारा 112 (10) के अनुसार अपीलीय प्राधिकरण के समक्ष अपील / अपील प्रत्यावर्तन हेतु प्रस्तुत आवेदन के साथ अधिकतम रु. पच्चीस हजार रुपये के अध्यधीन कर / इनपुट टैक्स क्रेडिट के प्रति एक लाख रुपए के लिए रु. एक हजार का शुल्क या कर या इनपुट टैक्स क्रेडिट में अंतर या जिस आदेश के विरुद्ध अपील की जा रही है उसमें निर्धारित फाइन, शुल्क या जुर्माना लगाया जाए ।
	The application under Sec 112(1) shall bear a non-judicial court fee stamp of value Rs.5 (Rupees Five only). In terms of Sec 112(10) read with Rule 110(5), an application for appeal / restoration of appeal before the Appellate Tribunal shall be accompanied by a fee of One thousand rupees for every one lakh rupees of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of twenty-five thousand rupees
5. (ii)	उपरोक्त धारा 112 की उप धारा (5) में संदर्भित कुल प्रत्याक्षेपों के ज्ञापन के संबंध में कोई शुल्क देय नहीं होगा।
	No fee is payable in respect of the Memorandum of Cross Objections referred to in sub-sec (5) of Sec 112 ibid.
5. (iii)	धारा 112(3) के अंतर्गत, आयुक्त द्वारा अधिकृत अधिकारीद्वारा दायर किए जाने वाले आवेदन के मामले में कोई शुल्क देय नहीं होगा।
	No fee is payable in case of an application filed by the officer authorized by the Commissioner to file an appeal under Sec 112(3).
6.	केन्द्रीय वस्तु एवं सेवा कर अधिनियम, 2017 में निहित उक्त एवं अन्य संबंधित मामलों को नियंत्रित करने वाले प्रावधानों और इनके तहत बनाए गए नियम / जारी की गई अधिसूचनाओं की ओर ध्यान आकर्षित किया जाता है ।
	Attention is invited to the provisions governing these and other related matters, contained in the Central Goods & Services Act, 2017 and the rules made / notifications issued thereunder, for compliance.

Appellant	M/s. Silver Oak Villa LLP, 2 nd floor, 5-4-187/3 and 4, Soham Mansion, M.G.Road, Secunderabad-500003. (GSTIN:36ADBFS3288A2Z7)
Respondent	The Assistant Commissioner of Central Tax, Secunderabad Division, Secunderabad GST Commissionerate.

M/s. Silver Oak Villa LLP, 2nd floor, 5-4-187/3 and 4, Soham Mansion, M.G.Road, Secunderabad-500003. (GSTIN:36ADBFS3288A2Z7) (here in after referred to as 'the appellant') have filed an appeal bearing No.526/2024(SC)GST dated 12.03.2025 against the Order-in-Original No.24/2024-25 (GST-Adjn) dt:19.04.2024 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner of Central Tax, Secunderabad Division, Secunderabad GST Commissionerate (hereinafter referred to as the "Original Adjudicating Authority" or OAA).

BRIEF FACTS OF THE CASE:

2. A Show Cause Notice No.39/2023-24 dt 28.12.2023 was issued to the appellant for violation of Section 16(2)(c) and 17(5) of the CGST Act, 2017 as below:

Issue	CGST	SGST	Interest	Penalty
Excess Claim of ITC	49,21,045/-	49,21,045/-	u/s 50	u/s 73 r/w 122(2)(a)
Under declaration of ineligible ITC	83,260/-	83,260/-	u/s 50	u/s 73 r/w 122(2)(a)

After following the due process by adhering to the principals of natural justice by the Original Adjudicating Authority (OAA), Order in Original (OIO) with demands as below:

Issue	CGST	SGST	Interest	Penalty
Excess Claim of ITC	49,21,045/-	49,21,045/-	u/s 50	u/s 73 r/w 122(2)(a)
Under declaration of ineligible ITC	83,260/-	83,260/-	u/s 50	u/s 73 r/w 122(2)(a)

GROUNDS OF APPEAL:

3. Having been aggrieved by the impugned order, the appellant filed the present appeal on the grounds that there is no excess availment of ITC as per the updated GSTR-2A and the SCN dated 12.01.2022 has raised very same demands that were raised in the impugned SCN. Present demand is clearly duplicated, unwarranted and requires to be dropped outrightly. Further, with regard to under declaration of ineligible ITC the appellant submitted that they have not availed ITC on motor vehicles as confirmed in the impugned order and availment of ITC has been verified during audit wherein under declaration of ineligible ITC has not been pointed.

PERSONAL HEARING:

4. The Appellant was given the opportunity for Virtual personal hearing on 08.09.2025. The authorised representative of the appellant Shri K.N.Nishanth Rao, Advocate appeared for the personal hearing & informed that the issue is about excess availment of ITC in GSTR-3B vs 9 and availment of ineligible ITC u/s 17(5)

of the CGST Act, 2017 for the FY 2018-19. The appellant has given written submissions during the PH dated 08.09.2025 and said that the current proceedings are hit by the principles of res judicata. He further requested 7 days' time to provide additional submissions and supporting documents to substantiate their arguments and requested that the said submissions be taken on record and that appropriate orders be passed thereon.

FINDINGS:

5. I have examined the submissions made by the appellant in the appeal memorandum, during & after the personal hearing along with the impugned order. The Appellant filed Writ Petition No.19594/2024 before the Hon'ble High Court for the state of Telangana and the said writ petition is disposed vide common order dated 02.01.2025 as below:

"Reserving liberty to the petitioners to avail the remedy of statutory appeal. If the appeal is preferred by the petitioners within 45 days before the appellate authority, the said authority shall consider and decide the appeal on merits and it shall not be thrown overboard on the ground of limitation. It is made clear that this court has not expressed any opinion on merits of the cases".

However, the appellant filed review petition dated 22.01.2025 requesting the Hon'ble High Court to decide the matter under Article 226 and the Hon'ble High Court for the State of Telangana vide order dated 29.01.2025 disposed of the review petition as below:

"The petitioner is unable to show as to what prejudice would be caused to him, if he raises all the aforesaid grounds in the appeal. The appellate authority is best suited and competent to take care of all possible grounds including the ground related to principles of natural justice and also the grounds highlighted herein above.

The Apex Court in PHR INVENT EDUCATIONAL SOCIETY V. UCO

BANK set aside the judgment of Telangana High Court in WP.No.5275 of 2021, dated 04.02.2022 and opined as under:

“15. It could thus be seen that, this Court has clearly held that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person. It has been held that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. The Court clearly observed that, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. It has been held that, though the powers of constitution are of widest amplitude, still the Courts cannot be oblivious of the rules of self-imposed restraint evolved by this Court. The Court further held that though the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, still it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution.”

No case is made out to exercise review jurisdiction”

In light of the above observation of the Hon’ble High Court. I hereby admit the appeal application.

6. The issue to be decided is whether the OAA is correct in confirming the demands of excess availment of ITC and ineligible ITC under various provisions of the CGST Act, 2017.

7. In respect of the issue of excess availment of ITC, the appellant had submitted that they are in receipt of SCN for the same issue and demand invoked in the present SCN is completely duplicated, fallacious and devoid of any merit. The appellant in their additional submissions had submitted the copy of the SCN dated 12.01.2022, OIO dated 29.06.2024 and OIA dated 15.04.2025. The said submissions of the appellant have been verified. On verification, it is observed that the audit on the accounts of the appellant has been conducted, pursuant to which an SCN has been issued for various issues including the issue of irregular availment of ITC based on the ITC available as per dynamic GSTR-2A. Subsequently, Order-In-Original has also been issued confirming the demand of excess availment of ITC for which the appellant filed appeal and OIA No.HYD-GST-SC-AP2-02 & 03-2025-26 dated 15.04.2025 has been passed by the Commissioner of Central Tax, Appeals-II Commissionerate, Hyderabad.

8. On careful consideration of the facts and records, I find that the appellant was subjected to audit for the period July 2017 to March 2019. Pursuant thereto, FAR No.707/2020-21-GST dated 11.06.2021 was issued raising objections including irregular ITC, followed by SCN and Adjudication Order No.78/2024-25-SEC-ADJN-JC(GST) dt 29.06.2024. Appeal against the said order was preferred by the taxpayer, which stood disposed of by the Commissioner (Appeals) vide Order-in-Appeal No. HYD-GST-SC-AP2-02 & 03-2025-26 dated 15.04.2025. Thus, the issue of irregular ITC for the entire audit period, including FY 2018-19, were comprehensively adjudicated and carried in appeal.

9. In the present case, the impugned notice and Order-in-Original No.24/2024-25 (GST-Adjn) dt 19.04.2024 again sought to raise demand on excess ITC for the FY 2018-19 based on the information received from the State authorities, even though the said year was already covered in the earlier audit and adjudication. Applying the principle laid down by the Hon'ble Orissa High Court in ***Bipin Kumar Agrawal v. Commissioner, CGST [W.P.(C) 20151/2024, judgment dated 24.02.2025]***, parallel or duplicative proceedings on the same subject matter for the same period are impermissible in view of Section 6(2)(b) of the CGST/SGST Acts.

More importantly, the legal doctrine of *Res judicata* prevents an already "judged matter" from being re-litigated in a subsequent notice/Order. The principle essentially dictates that once a competent authority has made a final decision based on the case's merits, the parties involved are barred from bringing the same claim again. Since the subject matter involving the present appellant was already adjudicated, the same cannot be adjudged again.

Considering the above legal position, I hold that the subsequent proceedings culminating in Order-in-Original No.24/2024-25 (GST-Adjn) dt 19.04.2024 constitute a duplication of adjudication on issue already settled by the appellate order dated 15.04.2025. The contention of the appellant is found to be correct, and accordingly, the impugned order with regard to excess claim of ITC of Rs.98,42,090/- is liable to be set aside on this ground alone, without entering into the merits of the case. Accordingly, the demand of excess claim of ITC of Rs.98,42,090/- is set aside along with interest and penalty.

10. In respect of the issue of ineligible ITC u/s 17(5), the appellant submitted that they had not availed any ITC on the motor vehicles as confirmed in the impugned order. Further, the appellant submitted that the ITC availed by them has been verified during the course of audit and have not pointed the same. Since the audit is already completed, appellant requests to set aside the impugned order to such extent. The said submissions of the appellant have been verified with the impugned order and the Audit report which attained finality through OIA dated 15.04.2025. On verification, I find that the issue of excess availment of ITC raised during audit and settled by the appellate order dated 15.04.2025 was confined to reconciliation of ITC as per dynamic GSTR-2A and doesn't specify regarding ineligible ITC on motor vehicles. In view of the above, the contention of the appellant that no ineligible ITC was availed cannot be accepted merely on the ground that the audit has been completed. As the issue of ineligible ITC u/s 17(5) was not examined during audit, the contention of appellant cannot be accepted. Accordingly, the demand of ineligible ITC amounting to Rs.1,66,520/- (CGST of Rs.83,260/- and SGST of Rs.83,260/-) is hereby upheld along with applicable interest under Section 50 of

the CGST Act, 2017 and penalty of Rs.20,000/- (CGST of Rs.10,000/- and SGST of Rs.10,000/-) imposed under Section 73(9) read with Section 122(2)(a) of the CGST Act, 2017.

In the light of the above discussions, I pass the following order.

ORDER

The Appeal filed by the appellant is partially allowed.

b.l.s

(श्रीचरण कूटिकुप्पला) / (SRICHARAN KOOTIKUPPALA)
संयुक्त आयुक्त (अपील- II) / **JOINT COMMISSIONER (APPEALS-II)**

To
M/s. Silver Oak Villa LLP,
2nd floor, 5-4-187/3 and 4,
Soham Mansion, M.G.Road,
Secunderabad-500003.
(GSTIN:36ADBFS3288A2Z7)

मीटिंग कॉमीशनर ऑफेल्स- II
संयुक्त आयुक्त/Joint Commissioner
केंद्रीय कर/Central Taxes
अपील्स-II आयुक्तालय
Appeals-II Commissionerate
हैदराबाद/Hyderabad.

Copy Submitted to:

1. The Principal Commissioner of Central Tax, Secunderabad GST Commissionerate/ Review Section, Secunderabad GST Commissionerate.
2. The Commissioner, SGST, Commercial Tax Building, Opp.Gandhi Bhavan, Nampally, Hyderabad-500001 **(As per Section 107(15) of the CGST Act, 2017).**

Copy to:

1. The Assistant Commissioner of Central Tax, Secunderabad Division, Secunderabad GST Commissionerate.
2. Master Copy/Office Copy.

Received copy
on 27/01/2026
[Signature]

Advocate Nishan M Rao K.W.

