GSTAT

State Bench Bengaluru

Division Bench Court No. Court III

APL/88/BUR/2026

FORTINET TECHNOLOGIES INDIA PRIVATE LIMITED **.....Appellant**

Versus

THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT)-5.3, DCCT, DGSTO-5 VTK-2 NEAR NATIONAL GAMES VILLAGE RAJENDRANAGAR KORAMANGALA BENGALURU 560047 & ORS. **.....Respondent**

Quorum

Hon'ble Prabhakaran PM, Member(Judicial)
Hon'ble Ravi Jesuraj S, Member (Technical)

Counsel for Appellant
RAMYA
DEEPAK VASUDEVA RAO ADVOCATE
DEEPAK VASUDEVA RAO ADVOCATE
RAMYA K S CHARTERED ACCOUNTANT

Counsel for Respondent
MS. PRIYA BASAPPA

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the GST Appellate Tribunal

whether remand order : No

Order reference no. : ZA290171026000128H **Date of order :** 27/10/2026

1.	GSTIN/Temporary ID/UIN - 29AABCF2399F1ZG	
2.	Appeal Case Reference no. - APL/88/BUR/2026	Date - 14/05/2026
3.	Name of the appellant - Fortinet Technologies India Private Limited , yacharya@fortinet.com , 9591360184	
4.	Name of the respondant - 1. JCCT (e-Audit) , jccte-audit@ctd.ka.gov.in , 9448811330 2. The Deputy Commissioner of Commercial Taxes (Audit)-5.3	
5.	Order appealed against -	

	(5.1) Order Type - Demand Order	
	(5.2) Ref Number - GST AP 101/23-24	Date - 27/06/2025
6.	Personal Hearing - 27/10/2026 25/09/2026 17/09/2026	
7.	Status of Order under Appeal - Reject - Order under Appeal is annulled	
8.	Order in brief - (i) The Adjudication Order dated 25.04.2023 and the Impugned order dated 27.06.2025 is set aside. (ii) The demand of CGST of Rs 1,09,815 and SGST of Rs 1,09,815 is set aside along with interest confirmed under Section 50 of the Act and penalty imposed at 10% on the tax confirmed under CGST and SGST. (iii) The pre-deposit, if any, shall be refunded with interest in accordance with law.. The appeal is allowed.	
Summary of Order		
9.	If demand order then whether demand quantified: No	

10.	For Other orders and Demand orders which are not quantified:	
Issues as raised by proper officer	Issues as determined by Appellate/Revisional authority	Order by GST Appellate Tribunal
Short or non-payment of tax	The Appellant's invoices pertained to the wrong financial year and that the supplier was unregistered during the disputed period, thereby attracting RCM under Section 9(3). The JCCT(A) further upheld the demand for tax, interest, and penalties on the grounds that the Appellant had collected meal charges from their employees	Appeal Allowed, The Adjudication Order dated 25.04.2023 and the Impugned order dated 27.06.2025 is set aside.

Place :BENGALURU

Date : 27.10.2026

Signature

BENGALURU Prabhakaran PM

Designation : Member

Jurisdiction :Bengaluru

GOODS AND SERVICES TAX APPELLATE TRIBUNAL

BENGALURU BENCH (Division Bench: Court No. III)

CORAM

PRABHAKARAN P M, Member (Judicial), RAVI JESURAJ S, Member (Technical)

APPEAL NO: APL/88/BUR/2026

Against Order-in-Appeal No. GST. AP. No. 101/23-24 dated 27.06.2025

FORTINET TECHNOLOGIES INDIA PRIVATE LIMITED, BENGALURU **…….APPELLANT**

Versus

THE COMMISSIONER OF COMMERCIAL TAXES, KARNATAKA, BENGALURU **.....RESPONDENT**

Appearance by: **Mr. Deepak Vasudeva Rao, Advocate &**
Ms Ramya K S, Chartered Accountant for the Appellant

Mrs. Priya Basappa, Deputy Commissioner and Authorised Representative for the Respondent

……

FINAL ORDER: Dated 27th October 2026

……

Per: Prabhakaran P M, Member (Judicial)

1.1 The main question involved in this appeal is whether a demand can be confirmed when the proper officer serves only a summary in Form GST DRC-01, without a show cause notice under Section 73(1) of the Act, and passes an adverse order without a personal hearing is

IBC Laws | www.ibclaw.in

violated the principle of natural justice. The appeal also raises the effect of the absence of a DIN/RFN.

Introduction

2.1 The present Appeal has been filed under Section 112(1) of the Central Goods and Services Act, 2017 as amended from time to time (CGST Act) / Karnataka Goods and Services Act, 2017 as amended from time to time (KGST Act), (referred to hereinafter as 'the Act') by Fortinet Technologies India Private Limited, Bengaluru, (hereinafter referred to as 'Appellant') against the order passed by the Joint Commissioner of Commercial Taxes (Appeals - 5), Bengaluru - 560 071 vide order No. GST. AP. No. 101/23-24 dated 27 June 2025, (hereinafter referred to as 'impugned order'). The Appeal pertains to tax period July 2017 to March 2018.

2.2 The appellant is a Private Limited Company engaged in the business of development of software services like network security products, export of Information Technology Software Services and technical support services. The Appellant has its place of business in State of Karnataka and is a registered taxable person under the provisions of the Act and the Rules thereunder with GSTIN 29AABCF2399F1ZG. (wrongly mentioned as 29AACCL6L52FIZJ in the impugned order).

2.3 An audit of accounts of the Appellant for the financial year 2017-18 under Section 65 of the Act was undertaken vide communication No. 247/ 22-23 dated 8.09.2022 during November – December 2022 by the Office of the Deputy Commissioner of Commercial Taxes, (Audit)-5.3, DGSTO-5, Bengaluru. The Appellant submitted documents / information vide letters dated 03.11.2022, 14.11.2022 and 25.11.2022, which *inter alia* includes service agreements, details of the employees, ledgers with respect to all expenses, staff welfare

expenses, sample input invoice copies, sample employee contract, meals or office meals expenses.

2.4 Audit enquiry note as consolidated was issued by the Deputy Commissioner of Commercial Taxes, (Audit)-5.3, DGSTO-5, Bengaluru vide letter dated 07.12.2022, which had four audit observations.

(i) Para 1: Carry forward of excess Cenvat credit through TRAN 1 in respect of Krishi Kalyan Cess.

(ii) Para 2: Wrong availment and utilization of excess Input tax credit claimed in GSTR-3B against reflected in GSTR-2A.

(iii) Para 3: Tax has not been paid on hiring charges, loan documentation charges etc under reverse charges u/s 9(3) of the Act

(iv) Para 4: Non restriction of Input Tax on blocked inward supplies

2.5 A reply was furnished by the Appellant on 21.12.2022.

2.6 Final Audit Note in Form GST ADT 02 No. 37/22-23 GST A-1 dated 28.12.2022 was issued raising a total demand of Rs. 6,47,837/- (tax and interest). In the Audit note, Para 1 was retained in full after the taxpayer's reply was examined; para no 2 was accepted and dropped in full; in para 3, out of 19 sub-points, 17 were accepted and dropped based on the reply, while two sub-points were retained to be carried forward; para 4 retained in full.

2.7 Vide reply dated 5th January 2023, the Appellant placed on record that in respect of Para 1, they would voluntarily reverse the amount of Rs 95,988/- in the GST return for the month of December 2022; in respect of Para 4, Rs 9,928/- along with Interest of Rs 9,828/- totalling to Rs 19,756 was paid vide DRC 03 dated 4.01.2023. The Appellant however choose to contest the issue in Para no. 3.

IBC Laws | www.ibclaw.in

2.8 Thereafter, DRC 01 was issued by Deputy Commissioner of Commercial Taxes, (Audit)-5.3, DGSTO-5, Bengaluru on 21.03.2023 (mentioned as Rectified Copy) for the period July 2017 to March 2018. It was mentioned in the DRC 01 t that the Section/sub-section under which SCN was issued as Form GST DRC-01A under Section 73(5)/74(5) and with reference to T. No. 370/22-23/Date: 28-12-2022. The Summary of the Show cause notice provides the brief facts of the issues in a table with description as *'No.1 Tax has not been paid on Hiring Charges, Loan Documentation Charges etc under Reverse Charges u/s 9(3)'* with IGST Rs 0, CGST Rs 109815/- and SGST of Rs 109815/- followed by interest IGST Rs 0, CGST Rs 113659/- and SGST Rs 113659/- and penalty of IGST 0, CGST Rs 10982/- and SGST Rs 10982/-. The Form DRC 01 dated 21.03.2023 further gave, as its 'grounds' only the reference Form GST ADT-02: 37/2022-23 Dated: 28-12-2022. No Show cause notice was issued other than the summary in DRC 01. Form DRC 01 dated 21.03.2023 is as below:

(Emblem)
GOVERNMENT OF KARNATAKA
(Department of Commercial Taxes)

GST(AUDIT)/T.No.3)/2022-23

Deputy Commissioner of Commercial Taxes
(Audit)-5.3, DGSTO-5, Room No. 506, 5th Floor,
VTK-2, Near National Games Village,
Rajendranagar, Koramangala, Bangalore-560047
Dated: 21-03-2023, Ph. No: 080-25706172
Email:dc5.3.bng@ka.gov.in/dcaudit5.3@gmail.com

FORM GST DRC-01
[See rule 100(2) & 142(1)(a)]
(RECTIFIED COPY)

To.

GSTIN: 29AABCF2399F1ZG
Name: FORTINET TECHNOLOGIES INDIA PVT. LTD.,
Address: No. 301, Tower C, Milennia Ground Floor,
2nd & 3rd Floor, Murphy Road, Ulsoor, Bengaluru-560008.
Email: yacharya@fortinet.com

Tax Period- July-2017 to March-2018 *F.Y. 2017-18*

Section/sub-section under which SCN is being issued - *Form GST DRC-01A under Section 73(5)/74(5)*

Reference No: T.No. 370/22-23/Date: 28-12-2022

Summary of Show Causes Notice

(a) Brief facts of the case:

Description	*Tax*			*Interest*			*Penalty*	*Total*
	IGST	*CGST*	*SGST*	*IGST*	*CGST*	*SGST*		
No.1 Tax has not been paid on Hiring Charges, Loan Documentation Charges etc under Reverse Charges U/s 9(3)	*0*	*109815*	*109815*	*0*	*113659*	*113659*	*21963*	*468912*
Total	*0*	*109815*	*109815*	*0*	*113659*	*113659*	*21963*	*468912*

(b) Grounds, : *Form GST ADT-02: 37/2022-23 Dated: 28-12-2022*

(c). Tax and other dues:

(Amount in Rs.)

Tax			*Interest*			*Penalty*			*Total*
IGST	*CGST*	*SGST*	*IGST*	*CGST*	*SGST*	*IGST*	*CGST*	*SGST*	
0	*109815*	*109815*	*0*	*113659*	*113659*	*0*	*10982*	*10982*	*468912*
0	*109815*	*109815*	*0*	*113659*	*113659*	*21963*			*468912*

(Satheesh. N)
Deputy Commissioner of Commercial Taxes
(Audit)-5.3. DGSTO-5, Bangalore.
(signed with seal)

2.9 The Appellant furnished the reply to DRC 01 on 28.04.2023, wherein it was contended that: the proper officer was required to issue a notice in terms of Section 73(5) of the Act, in the event of short payment or non-payment of tax, for demand of tax stating the grounds on which such a demand was made; the DRC-01 was issued without stating any grounds; it did not make any mention of the taxable value of the contravention and proceeded directly into the

IBC Laws | www.ibclaw.in

tax amount due from the Company; either the mechanism adopted to arrive at the taxable value nor the rate applied could be ascertained from the Form. On merit the Appellant contested the demand by referring to Section 9(3) of the Act and Notification No. 13/2017- Central Tax (Rate) dated 28.06.2017 that the Meals or office meals provided to the employees or reimbursement expenses were not taxable under Reverse charge mechanism.

2.10 Order of adjudication was passed by the Deputy Commissioner of Commercial Taxes, (Audit)-5.3, DGSTO-5 Bengaluru vide order no. DCCT(AUDIT)-5.3/DGSTO-5/GSTADT(17-18)/ORDER -8/2023-24.dated:25-04-2023 issued on 26.04.2023 u/s 73(9), 50 and 122 (2) of the Act and Sec. 20 of the IGST Act-2017 read with Rule 142 (5) and (6) of the KGST Rules 2017. (The Adjudication order was passed two days prior to the reply from the Appellant). The greater part of the order narrates the audit and its conclusion. It does not discuss the demand. The operative portion of the order reads:

The total arrears of tax and interest payable u/s 73(1) relating to the period from July- 2017 to March-2018 as ascertained above is Rs. 4,68,912- 00 with interest as applicable u/s 50 and the penalty u/s 122 (2) (a) and the details as under:

Description	*Tax*			*Interest*			*Penalty*	*Total*
	IGST	*CGST*	*SGST*	*IGST*	*CGST*	*SGST*		
No.1 Tax has not been paid on Hiring Charges, Loan Documentation Charges etc under Reverse Charges U/s 9(3)	*0*	*109815*	*109815*	*0*	*116953*	*116953*	*21964*	*475500*
Total	*0*	*109815*	*109815*	*0*	*116953*	*116953*	*21964*	*475500*

As per Sec. 20 under Chapter IX in miscellaneous provisions it is stated for penalty provisions as "Provided also that in cases where the penalty is leviable under the Central Goods and Services Tax Act and the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the penalty leviable under this Act shall be the sum total of the said penalties". Accordingly, penalty for nonpayment of tax liable to pay but not paid after the 30 days from the date of issue of the SCN, the penalty has to be levied. Therefore the penalty is levied at 10% under CGST and SGST each. Since there is no liability under IGST, penalty is not levied under IGST. Accordingly, the order is concluded u/s 73(9) of the Act for the period 2017-18 (July-2017 to March-2018) as such.

2.11 As the order was passed on 26.04.2023, two days prior to the reply filed by the Appellant, two days before the Appellant sent its seven-page reply on 28.04.2023, the order does not refer to that reply. No opportunity of personal hearing also was granted.

Proceedings before the First Appellate Authority

2.12 Appeal against the Adjudication order was filed by the Appellant under Section 107 of the Act on 18.08.2023 mainly on the grounds that there was no SCN issued under Section 73(1) of the Act and only summary was issued in form DRC-01 indicating the taxes to be paid; in terms of Section 73(5) of the Act, the proper officer was required to issue a notice, in the event of short payment or non-payment of tax, for demand of tax stating the grounds on which such a demand was made; In this case, the DRC-01 was issued without stating any grounds; relied on the decision of CCE vs M/s Brindavan Beverages (P) Ltd. and Ors - Appeal (civil) 3417-3425 of 2002 dated 15.06.2007 and M/S Virani Metal Industries vs State of Gujarat - R/Special Civil Application No. 13233 of 2022; the Adjudicating Authority had grossly erred in the interpretation of the provisions of the GST legislation and understanding of the transaction of expense while issuing the OIO demanding tax along with interest and penalty; the Adjudicating

Authority had indefensibly violated the principles of natural justice by not granting the personal hearing to the Appellant before issue of the order; the Adjudicating Authority had proceeded to demand tax on the transaction which is not taxable under reverse charge as per Section 9(3) of the Act; the Adjudicating Authority had adopted contradictory views throughout the order to arrive at unjustified conclusions.

2.13 In so far as the ground taken by the adjudicating authority in the order, while confirming the amount mentioned in Form DRC 01, that the description of 'hiring and documentation charges' mentioned in DRC 01 was in relation to '*meal expense and accrual for meal expense*' and the reimbursement made to the employees in relation to office meals; that the '*Tax Payer deducted amount from employee and for the same TP is to discharge Output Tax*', the Appellant contended that no logical reasons were available in the order to decide that the reimbursement made to employees accounted in the expenses head could be considered as an entry liable for output tax liability.

2.14 It was also the contention of the Appellant that office meals or reimbursement expenses were not taxable under reverse charge mechanism (RCM) and relied on the Circular No. 172/4/2022-GST dated 6 July 2022.

2.15 The Appeal was filed with a delay of 21 days, within the condonable period.

2.16 Personal hearing was granted to the appellant and the impugned order was passed on 27.06.2025 dismissing the appeal filed by the Appellant on the following grounds:

> "*On verification of the invoices issued by the outdoor catering vendor it is observed that those invoices pertains to the financial year 2022-23 whereas the issue involved in this appeal pertains to the period from July 2017 to March 2018. Further, it is observed from the GSTIN portal that the supplier of meals is registered from 12.07.2018 under*

the provisions of Section 22 of the CGST Act, 20I7 and therefore prior to the date of obtaining registration the supplier was not registered under the provisions of CGST Act, 2017 and therefore the supplies made by such unregistered supplier attracts RCM under Section 9(3) of the CGST Act, 20l7 which has rightly been invoked in the facts of the case of the appellant. In addition to this, the Respondent while concluding the impugned order has recorded a finding that the appellant has collected meal charges from its employees. Thus, on any count the appellant is liable to pay RCM which has rightly been demanded by the Respondent along with consequential penalty and interest under Section 73(9) and 50 of the CGST Act, 2017".

3.0 The Appellant is before us against this order.

Submissions by the Appellant:

3.1 Shri Deepak Vasudeva Rao, Advocate assisted by Ms Ramya K S, Chartered Accountant and Authorised Representative of the Appellant appeared before us and sought to have set aside the GST demand of INR 4,75,500 by challenging both the validity of the proceedings and the alleged reverse-charge liability on meal-related entries. It is submitted that:

(i) No proper show-cause notice: Only a DRC-01 summary was issued, rather than a detailed notice under Section 73(1) of the Act. The Counsel argued that the summary did not identify the taxable value, factual basis, or reasoning for tax, interest, and penalty.

(ii) Invalid order for lack of DIN/RFN: The notices and order did not carry the mandatory Document Identification Number or Reference Number.

(iii) No personal hearing: The original order was passed without a post-DRC-01 hearing, despite an adverse decision being contemplated in violation of Section 75(4) of the Act and principle of natural justice.

(iv) Vague and unreasoned demand: The audit report, DRC-01, and original order allegedly failed to clearly identify the transactions, basis of valuation and legal reasoning. The reference to "hiring charges" and "loan documentation charges" was said to be inconsistent with the meal-expense ledger on which the demand appears to rely.

(v) Section 9(3) does not cover meal or outdoor-catering expenses: It was argued that reverse charge under Section 9(3) applied only to specifically notified supplies. Food expenses and outdoor catering were not among the notified categories relied upon by the department.

(vi) The appellate authority used the wrong provision: It is further submitted that the authority confirmed a demand under Section 9(3) while reasoning from Section 9(4), which concerns supplies by unregistered persons; these are distinct provisions and cannot be interchanged.

(vii) Authority went beyond the case in the notice: The unregistered-supplier rationale under Section 9(4) was not stated in the audit report, DRC-01, or original order. The Appellant contended that the appellate authority could not introduce this new basis without notice and an opportunity to respond.

(viii) No qualifying unregistered-vendor purchases: It was stated that, from July to October 2017, the Appellant did not receive outdoor-catering services from unregistered suppliers. It was also argued that Section 9(4), even if relevant, was limited to the applicable period and threshold, not every book entry.

(ix) Services were under forward charge: The Appellant maintained that registered vendors charged GST on catering transactions under forward charge, so reverse-charge tax could not additionally arise.

(x) Employee reimbursements, not collections: The Appellant denied collecting meal charges from employees. It was said the ledger records reimbursements for office meals and related expenses.

(xi) Employee food benefits are not taxable consideration: Where food coupons were provided, Appellant characterised them as salary-related perquisites, not consideration for a supply. It relied on Circular No. 172/04/2022-GST dated 06.07.2022 which clarifies that employment-related perquisites under the employment contract are not subject to GST.

(xii) Accruals and reversals are not taxable supplies: Some entries were said to be monthly provisions, reversals, or rectifications based on estimated reimbursements, rather than actual procurements subject to reverse charge.

(xiii) It was finally submitted that because the tax demand is unsustainable, the related interest and penalty must also fail.

Submissions by the Respondent:

3.2 **Mrs. Priya Basappa**, Deputy Commissioner and Authorised Representative for the Respondent appeared before us and defended the impugned order and submitted that:

(i) The intimation in DRC 01 was issued after the issue of final audit report which had detailed grounds in respect of the short payment of tax under the head 'Hiring Charges, Loan Documentation Charges' etc under Reverse charges u/s 9(3)'; it covered several sub-heading like 63100-097-Expensed Comp Eqpmt, 63500-097-Commission Exp, 65000-097-Empl. Benefits, 7600-097-Internet Expense, 68500-097-Legal & Professional Fee, 70500-097-Meetings & Ent.

70700-097-Meals, 70710-097-250-Office Meals, 70710-097-398-Office Meals, 70710-097-637-Office Meals, 70800-097-Meeting and Conferences, 75500-097-Supplies Expense, 76500-097-Telephone Expense, 76501-097-Mobile Cellular Phone etc.

(ii) During the Audit the Appellant provided the details for all heads including 70700-097-Meals, 70710-097-250-Office Meals, 70710-097-398-Office Meals, 70710-097-637-Office Meals, and the same was accepted and deleted from the audit observation, except in the case of '70710-097-398-Office Meals, 70710-097-637-Office Meals';

(iii) The said amount pertains to expenses towards 'office meals' were incurred by the Company in relation to the meals / food provided to the employees.

(iv) The DRC 01 was issued only on those expenses under; sub-heading 'meals, office meals' under heading 'Hiring Charges, Loan Documentation Charges'.

(v) The argument that the entries were only provisional and expenses booked on which GST is charged by outdoor catering vendor on forward charge basis and therefore no RCM is leviable, was not acceptable.

(vi) The appellant had furnished copies of invoices issued by the outdoor catering vendor pertain to the financial year 2022-23 whereas the issue involved in this appeal pertains to the period from July 2017 to March 2018; it was observed from the GSTIN portal that the supplier of meals was registered from 12.07.2018 under the provisions of Section 22 of the CGST Act,2017 and therefore prior to the date of obtaining registration the supplier was not registered under the provisions of CGST Act, 2017 and therefore the supplies made by such unregistered supplier attracts RCM under Section 9(3) of the CGST Act, 2017;

(vii) It was submitted by the Respondent before the First Appellate Authority that the appellant had collected meal charges from its employees; thus, on any count the appellant was liable to pay RCM.

4.0 Findings and decision:

4.1 We have heard both the parties and gone through the DRC 01 intimation, adjudication proceedings, impugned order, appeal papers, written submission along with annexures considered the matter.

4.2 The issues to be decided in this matter are:

(i) Whether service of a summary in Form GST DRC-01, without a show cause notice under Section 73(1) or Section 74(1) of the Act, validly initiates adjudication proceedings?

(ii) Whether an adverse adjudication order passed without extending an opportunity of hearing to the Appellant violates Section 75(4) of the Act and the principles of natural justice?

(iii) Whether the Form GST DRC-01 and the adjudication order are invalid for want of a Document Identification Number (DIN) or Reference Number (RFN)?

(iv) Whether the first appellate authority could sustain the demand on grounds not set out in the adjudication order?

(v) Whether, on merits, the Appellant was required to pay GST under RCM under Section 9(3) of the Act on the expenses towards 'meals', 'office meals' ?

No SCN issued; Principle of natural justice

4.3 On the first issue the Appellant vehemently argued that the adjudication proceedings are invalid for the reason that only a DRC-01 summary was issued, rather than a detailed notice under Section 73(1) of the Act, which did not identify the taxable value, factual basis, or

reasoning for tax, interest, and penalty. The Appellant relies on the decision of *Hon'ble Guwahati High Court in the case of Construction Catalysers Pvt. Ltd. 24 Centax 122 (Gau.) /2025 and the decision of Hon'ble Jharkhand High court in the case of NKAS Services Pvt Ltd 2022 (58) G.S.T.L. 257 (Jhar.)*.

4.4 We observe that neither the Adjudicating authority nor the Appellate Authority examined this contention or gave their findings in the respective orders. A Show cause notice is the foundation of the adjudication proceedings under Tax laws.

4.5 Section 73 deals with issue regarding 'Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts'. Section 73 (1) and (2) is relevant here which reads for the relevant period thus:

> *(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax,* ***he shall serve notice on the person chargeable with tax*** *which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit,* ***requiring him to show cause*** *as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.*
>
> *(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.*

[Emphasis supplied]

4.6 Sub section (1) of Section 73 makes it mandatory on the Proper officer if it appears to him that tax is unpaid, short-paid, wrongly refunded, or that input tax credit (ITC) was wrongly claimed, by a person, without any fraud, wilful misstatement or suppression of facts to evade tax, to issue a show-cause notice on such person, to explain why he should not pay the specified tax amount along with applicable interest under Section 50 and applicable penalties under the Act or its rules. Sub-section (2) further provides for the time limit within such notice to be issued.

4.7 Rule 142 of the CGST Rules/KGST Rules prescribes the forms and manner in which a summary of the demand proposed *inter alia* under Section 73 or Section 74 of the Act. Sub Rule (1), as it stood on 21.03.2023, read:

> *(1) The proper officer shall serve, along with the*
>
> *(a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01,*
>
> *(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in FORM GST DRC-02,*
>
> *specifying therein the details of the amount payable.*

4.8 Under sub-rule (1), the summary in Form GST DRC-01 is to be served "along with" the notice issued under Section 73. The summary accompanies the notice; it does not replace it. The notice under Section 73(1) must therefore exist before a summary in Form GST DRC-01 can be served.

4.9 The core principle of natural justice, *audi alteram partem* which means that 'no one should be condemned unheard' requires that a person be told, through a notice, why action is proposed against him and be given a chance to answer.. It is trite law that any order passed by

the quasi-judicial authorities in contravention of the principles of natural justice, cannot be sustained.

4.10 A Noticee must know the case he has to meet. This communication would happen only by issue of a proper notice show causing the party as to why there was a short payment etc. The Honourable High Court of Kerala in *K.T. Saidalavi v. State Tax Officer, reported in 2024 SCC OnLine Ker 5674*, while considering the issue related to Authorisation of Officers of State Tax or Central Tax as the case may be as Proper Officer held that the phrase "initiation of any proceedings" under Section 6(2)(b) refers specifically to the issuance of a notice under the relevant provisions of the GST enactment.

4.11 It was held by Hon'ble Supreme Court in *Metal Forgings & Anr vs. Union of India & Others, (2003) 2 SCC 36,* that show cause notice is a mandatory requirement for raising demands and that communications, orders, suggestions or advices from department cannot be deemed to be a show cause notice. It was held by Hon'ble Supreme Court in *CCE v. Brindavan Beverages (P.) Ltd. (2007) 5 SCC 388* that the show cause notice was the foundation on which the department had to build up its case. If the allegations in the show cause notice were not specific and were on the contrary vague, lacked details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice.

4.12 The above decisions were rendered under the erstwhile Central Excise Law. Under the GST Law also the Honourable Apex Court and High Courts have interfered with adjudication proceedings that violated from the principle of natural justice.

4.13 It was held by the Hon'ble Supreme Court in *Armour Security (India) Ltd. v. Commissioner, CGST, Delhi East Commissionerate, 2025 (8) TMI 991*, that under the GST

regime, issuance of a show cause notice is a mandatory precondition for raising a demand and that the proceedings stand initiated when a show cause notice is issued with regard to a subject matter. The relevant para of the Judgement reads:

> *65. A show cause notice is a document served on a noticee, requiring them to explain why a particular action should not be initiated against them. Under the GST regime, issuance of a show cause notice is a mandatory precondition for raising a demand. It forms the bedrock for proceedings related to the recovery of tax, interest, and penalty. The notice ensures adherence to the principles of natural justice by granting the assessee an opportunity to present their case before any adverse action is taken. In essence, it serves as both a procedural safeguard and a legal necessity, marking the commencement of quasi-judicial adjudication under the Act.*
>
> *66. A show cause notice sets the law in motion concerning the liability under the statute, containing charges that a specific person is called upon to answer. In other words, it sets out the alleged violations of legal provisions and requires the assessee to explain why the duty should not be recovered from them. Thus, a show cause notice cannot be vague, nor can any allegations be made without evidence being commensurate with the gravity of the charges levelled against the noticee.*
>
> *67. It sets forth the framework for the proceedings proposed to be undertaken and provides the noticee with an opportunity to submit their explanation before the adjudicating authority. It outlines the background for the initiation of such proceedings, whether arising from an audit of accounts by the internal audit wing, scrutiny of returns, or intelligence gathered by officers of the Audit and Intelligence Commissionerate. It is further mandated that the authority issuing the notice must meticulously set out all relevant legal provisions under which the alleged contraventions are framed. The materials obtained through summons and relied upon for issuing the show cause notice must be appended and disclosed to the assessee. In essence, a show cause notice enumerates the charges levelled against the noticee.*

4.14 The Hon'ble Guwahati High Court in the case of M/s *Construction Catalysers Pvt. Ltd. Vs State of Assam and 2 Others, [2025] 93 GSTL 213 (Gau)* ruled that demand and assessment

orders passed mechanically via summary formats without foundational proceedings violate principles of natural justice and are void. The High Court held that issuing a summary of show cause notice (such as Form GST DRC-01) or a tax determination statement under Section 73(3) cannot substitute for a proper, statutory show cause notice (SCN) required under Section 73(1) of the CGST/SGST Act. The conclusion of the judgement reads:

> *"CONCLUSION*
>
> *(A) The Summary of the Show Cause Notice in GST DRC-01 is not a substitute to the Show Cause Notice to be issued in terms with Section 73 (1) of the Central Act as well as the State Act. Irrespective of issuance of the Summary of the Show Cause Notice, the Proper Officer has to issue a Show Cause Notice to put the provision of Section 73 into motion.*
>
> *(B) The Show Cause Notice to be issued in terms with Section 73 (1) of the Central Act or State Act cannot be confused with the Statement of the determination of tax to be issued in terms with Section 73 (3) of the Central Act or the State Act. In the instant writ petitions, the attachment to the Summary of Show Cause Notice in GST DRC-01 is only the Statement of the determination of tax in terms with Section 73 (3). The said Statement of determination of tax cannot substitute the requirement for issuance of the Show Cause Notice by the Proper Officer in terms with Section 73 (1) of the Central or the State Act……"*

4.15 The Hon'ble High Court of Jharkhand in the case of *M/s NKAS Services Pvt. Ltd. Vs State of Jharkhand (2022 (63) G.S.T.L.18 (Jhar.)* held that show cause notice and its summary are two separate things and the summary i.e. DRC-01 cannot take place of a proper show cause notice.

4.16 Relying on the decision of the Hon'ble High Court of Jharkhand, supra, the GSTAT Bench of Lucknow in the case of *Sakhsham Knowledge Services Private Limited Versus,*

Commissioner State Tax Lucknow 2026 (9) TMI 1082 - GSTAT Lucknow, held the adjudication and appellate proceedings were invalid and set them aside.

4.17 In respect of *M/s L C Infra Projects (P.) Ltd. v. Union of India (2019) 75 GST 751 (Kar.),* where the authority had initiated recovery of interest without a show cause notice, it was held by the Hon'ble Karnataka High Court that:

> *"The issuance of Show Cause Notice is sine qua non to proceed with the recovery of interest payable thereon under Section 50 of the Act and penalty leviable under the provisions of the Act or the Rules. Undisputedly, the interest payable under Section 50 of the Act has been determined by the third respondent-Authority without issuing Show Cause Notice, which is in breach of principles of natural justice. It is trite law that any order passed by the quasi-judicial authorities in contravention of the principles of natural justice, cannot be sustained. Similarly, after determination of the interest liable to be paid by the petitioner, no notice has been issued before attaching the bank account of the petitioner. There is a lapse on the part of the third respondent-Authority. The notion of the third respondent Authority that Section 75(12) of the Act empowers the authorities to proceed with recovery without issuing Show Cause Notice is only misconceived. The said Section is applicable only to the self-assessment made by the assessee and not to quantification or determination made by the Authority."*

4.18 It was held by Jharkhand High Court in the case of *Godavari Commodities Ltd.* v. *Union of India* 2019 (12) TMI 275 that a proper Show Cause Notice (SCN) under Section 73(1) of the CGST Act along with an opportunity of a personal hearing is mandatory prior to recovering short-paid or delayed interest under Section 50(1), and an intimation letter alone cannot bypass these principles of natural justice.

4.19 From the above analysis, it follows that a show cause notice is the foundation of adjudication proceedings and must precede the summary in Form GST DRC-01. Where an audit detects a short payment, Section 65(7) provides that:

"(7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74."

4.20 Even after an audit, therefore, the demand must be raised through a notice under Section 73 or Section 74. The final audit report in Form GST ADT-02 is not such a notice, and the summary in Form GST DRC-01 cannot take the place of Show cause notice. Adjudication Order passed without issue of the Show Cause Notice as mandated under Section 73(1) of the Act is without authority of law and contrary to the principle of natural justice. The adjudication order in the present case cannot therefore be sustained.

4.21 Section 160 of the Act deals with the effect of defects in notices and orders. Sub-sections (1) and (2) reads as follows:

"(1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law."

"(2) The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication."

4.22 Sub-section (1) saves a proceeding from a mere mistake, defect or omission, if it is in substance and effect in conformity with the Act. Sub-section (2) bars a challenge to the service of a notice that has been acted upon. Neither applies here. The absence of a notice under Section 73(1) is not a mere defect; a summary that states no grounds is not, in substance and effect, a notice under that provision. Nor is the service of any notice in question. Besides, the Appellant raised the absence of a show cause notice at every stage. Section 160 does not help the Respondent.

4.23 In view of the above the Adjudication Order and the impugned order that upheld the Adjudication Order cannot be sustained. Issue (i) is answered in favour of the Appellant.

No opportunity of personal hearing extended; Principle of natural justice

4.24 The summary of the demand in Form DRC 01 dated 21.03.2023 was served on the Appellant on 23.03.2023. The Appellant prepared the reply dated 26.04.2023 and communicated on 28.04.2023 through E Mail to DC Audit. The Adjudication order No. DCCT(AUDIT)-5.3/DGSTO-5/GSTADT (17-18)/ORDER -8/2023-24.DATED:25-04-2023 signed on 26.04.2023. The summary of demand in Form DRC 07 also was signed on 26.04.2023. It was submitted by the Appellant that no opportunity of personal hearing was extended to them before passing this adverse Order. We observe that the reply was furnished beyond 30 days from the date communication of DRC 01. Such delay however, will not take away the right of the Appellant to hear him before passing an adverse order. Section 75(4) of the Act makes it very clear.

4.25 Sub-section (4) of Section 75 of the Act makes it mandatory for the authority to provide an opportunity of personal hearing where any adverse decision is contemplated against such person. It reads:

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, ***or where any adverse decision is contemplated against such person.***

[Emphasis supplied]

4.26 The Adjudication order was passed confirming the demand mentioned in the Form DRC 01 which is an adverse decision. Apart from the absence of issue of Show Cause Notice, no date for the opportunity of hearing the Appellant in person was communicated to the Appellant before passing the order. The Honourable Delhi High Court in *Rohit Vij Proprietor of RRR Enterprises vs The Commissioner of GST (W.P.(C) 13848/2021), 2026 (10) TMI 232- Delhi High Court* unequivocally reinforced that the failure of an adjudicating authority to provide an opportunity for a personal hearing before passing an adverse tax demand completely vitiates the proceedings, making the resulting assessment order inherently illegal and void. In *Eminent Logistics vs. Assistant Commissioner of State Tax (Calcutta HC, WPA 3877 of 2025), 2025 (6) TMI 1843- Calcutta High Court* set aside a final assessment order issued under Section 73 because the Show Cause Notice (SCN) was "conspicuously silent" on the date and time of a personal hearing. The court reiterated that even if the taxpayer does not formally submit a written request, the officer is '*suo motu* obligated' to schedule an oral hearing if the decision will negatively impact the taxpayer. It was held by the Allahabad High Court in *Bharat Mint and Allied Chemicals v. Commissioner Commercial Tax, 2022 (3) TMI 492 - Allahabad High Court* that if an adverse order is being planned, a personal hearing must be given regardless of whether the taxpayer requested it. It further ruled that the only scenario where a personal hearing is *not* required is when the tax authority fully accepts the taxpayer's written explanation and drops the demand entirely.

4.27 Similar provisions were available under the erstwhile Indirect tax laws also. Honourable Supreme court in case of *Gokak Patel Volkart Ltd. v. Collector of Central Excise 1987 (28) E.L.T. 53 (S.C.)* held under the Central Excise Act that the scheme is in consonance with the rules of natural justice. An opportunity to be heard is intended to be afforded to the person who is likely to be prejudiced when the order is made, before making the order thereof.

> *"The provision of section 11A(1) and (2) of the Central Excises and Salt Act, 1944 make it clear that the statutory scheme is that in the situations covered by the sub-section(1), a notice of show cause has to be issued and sub-section(2) requires that the cause shown by way of representation has to be considered by the prescribed authority and then only the amount has to be determined. The scheme is in consonance with the rules of natural justice.* ***An opportunity to be heard is intended to be afforded to the person who is likely to be prejudiced when the order is made, before making the order thereof****. Notice is thus a condition precedent to a demand under sub-section (2). In the instant case, compliance with this statutory requirement has not been made, and, therefore, the demand is in contravention of the statutory provision."*
>
> [Emphasis supplied]

4.28 In *F.N. Roy v. Collector of Customs, Calcutta (AIR 1957 SC 648)* the Constitution Bench of the Hon'ble Supreme Court of India ruled that the requirement of a "reasonable opportunity of being heard" does not automatically mean an in-person or oral hearing unless the statute explicitly provides for it or the circumstances of the case strictly demand it to prevent injustice. The position in *F.N. Roy* applies where the statute is silent.

4.29 It is explicitly provided under Section 75(4) of the Act that an opportunity of hearing shall be granted where any adverse decision is contemplated against such person, so the statute governs**.** Failure of the adjudicating authority to provide an opportunity for a personal hearing before passing an adverse order completely vitiates the proceedings. Consequently, on this

ground also the Adjudication Order and the impugned order that upheld the Adjudication Order cannot sustain. Issue (ii) is answered in favour of the Appellant.

Communication without DIN

4.30 It was further submitted by the Appellant that the Form DRC 01 and the Adjudication order was communicated to them without Document Identification Number (DIN), and therefore, such communication were invalid.

4.31 A Document Identification Number (DIN) under GST is a unique 20-digit electronic code to be generated for all communications sent by officers of the Central Board of Indirect Taxes and Customs (CBIC). It was introduced by the CBIC to ensure transparency in issue of departmental notices or communications.

4.32 CBIC Circular Nos. 122/41/2019-GST dated 5th November, 2019 and 128/47/2019-GST dated 23rd December, 2019 were issued to implement the decision for Generation and Quoting of Document Identification Number (DIN) on specified documents.

4.33 Circular No. 122/41/2019-GST dated 5th November, 2019 issued by the CBIC made DIN mandatory for certain specific communication. In terms of the Circular no search authorization, summons, arrest memo, inspection notices and letters issued in the course of any enquiry shall be issued by any officer under the CBIC to a taxpayer or any other person, on or after the 8th day of November, 2019 without a computer generated Document Identification Number (DIN) being duly quoted prominently in the body of such communication**.** According to the Circular any specified communication mentioned above which does not bear the electronically generated DIN shall be treated as invalid and shall be deemed to have never been issued.

4.34 In terms of Circular No.128/47/2019-GST dated 23rd December, 2019 the Board had directed that electronic generation and quoting of Document Identification Number (DIN) should be done in respect of all communications including e-mails sent to tax payers and other concerned persons by any office of the Central Board of Indirect Taxes and Customs (CBIC) across the country. Instructions contained in the circular came into effect from 24.12.2019.

4.35 The Board once again directed by this Circular that any specified communication which did not bear the electronically generated DIN and was not covered by the exceptions mentioned in paragraph 3 of Circular No. 122/41/2019-GST dated 05.11.2019, should be treated as invalid and should be deemed to have never been issued.

4.36 These circulars were issued by the CBIC and bind officers of the CBIC. The Commercial Taxes Department of Karnataka issued no corresponding circular during the relevant period.

4.37 By way of Writ Petition (Civil) No. 320 of 2022 under Article 32 of the Constitution of India, a petitioner, Pradeep Goyal**,** a Chartered Accountant by profession, approached the Supreme Court of India by way of a Public Interest Litigation. It was prayed for an appropriate writ, order or direction to the respondents – respective States and the GST Council to take all necessary steps to implement a system for electronic (digital) generation of a Document Identification Number (DIN) for all communications sent by the State Tax Officers to taxpayers and other concerned persons. It was also prayed to direct the GST Council to consider and take a policy decision in respect of implementation of the DIN system by all the States.

4.38 The Honourable Supreme Court considered the issue in the Writ Petition and recognized the framework and importance of tracking communications via a Document Identification Number to bring transparency and accountability to indirect tax administration

in the above case, reported as *Pradeep Goyal v. Union of India & Ors (2022): 2022 (63) G.S.T.L. 286 (SC)*. The Supreme Court held thus:

> *6. It cannot be disputed that implementing the system for electronic (digital) generation of a Document Identification Number (DIN) for all communications sent by the State Tax Officers to taxpayers and other concerned persons would be in the larger public interest and enhance good governance. It will bring in transparency and accountability in the indirect tax administration, which are so vital to efficient governance. Even the Central Government has also taken a decision and as such implemented the DIN system of Central Board of Direct Taxes and on and from 01.10.2019, as every CBDT communication will have to have a Document Identification Number (DIN). But, as on today, only two States, namely, the States of Karnataka and Kerala have implemented the system for electronic (digital) generation of a DIN in the indirect tax administration, which is laudable and to be appreciated.*
>
> *7. In view of the implementation of the GST and as per Article 279A of the Constitution of India, the GST Council is empowered to make recommendations to the States on any matter relating to GST. The GST Council can also issue advisories to the respective States for implementation of the DIN system, which shall be in the larger public interest and which may bring in transparency and accountability in the indirect tax administration. Therefore, we dispose of the present writ petition by directing the Union of India / GST Council to issue advisory / instructions / recommendations to the respective States regarding implementation of the system of electronic (digital) generation of a DIN in the indirect tax administration, which is already being implemented by the States of Karnataka and Kerala. We impress upon the concerned States to consider to implement the system for electronic (digital) generation of a DIN for all communications sent by the State Tax Officers to taxpayers and other concerned persons so as to bring in transparency and accountability in the indirect tax administration at the earliest.*

4.39 As per the averments made before the Honourable Supreme Court the GST authorities in Karnataka had implemented the scheme of generation of a DIN electronically in their communication made through electronic mode.

4.40 Further in the State of Karnataka Commercial Tax Department has issued Circular No. GST-02/2023-24 dated 23.05.2023 instructing the tax officer to generate a Verifiable Reference Number (RFN) for the physically generated correspondence to be sent to taxpayers or other concerned persons.

> *All the officers are hereby instructed to generate RFN (Reference Number) in respect of all offline communication physically generated communication such as Notices, Adjournments, Orders, Reminders and RFN so generated shall be superscribed on the document.*

4.41 In the case on hand, we understand that the DRC 01 and the Adjudication Order were found to be physically generated and communicated through electronic mode. No DIN number or RFN was generated and made available in the communication.

4.42 In *M/s Novelty Reddy and Reddy Motors Pvt. Ltd. Vs Assistant Commissioner, CGST & Anr. (2025)* the Andhra Pradesh High Court set aside a GST demand order for non-compliance with the mandatory DIN requirement under CBIC Circular No. 128/47/2019-GST, holding that issuing an order without a DIN renders it legally non-est and invalid. That Judgement has been stayed by the Supreme Court in *Assistant Commissioner, CGST & Anr. v. M/s Novelty Reddy and Reddy Motors Pvt. Ltd. (2025) 2025 taxscan (SC) 322,* directing that no coercive steps be taken while the Special Leave Petition is pending.

4.43 In *M/s. Sri Venkateswara Agencies v. Assistant Commissioner (ST) & Others (W.P. No. 2530 of 2025*) the High Court of Andhra Pradesh at Amaravati, 2025, the GST assessment order issued under Sections 73 and 74 of the CGST Act was quashed due to the absence of a DIN. In *M/s Arhaan Ferrous and Non Ferrous Solutions Pvt. Ltd. v. Superintendent, Central Tax*, [2025] 175 taxmann.com 426 (Andhra Pradesh) again the Hon'ble Andhra Pradesh High Court held that a Show Cause Notice issued without a DIN is non-est and invalid after noting the circular regarding portal-generated Reference Numbers (RFN).

4.44 From the facts of the matter under consideration we have noted that no SCN was issued but the Appellant was served with the Summary of demand of tax in Form DRC 01. The Form DRC 01 was communicated through electronic mode. The Adjudication Order and DRC 07 were also communicated through Electronic mode. No DIN or electronic generated Reference Number other than the Order number appeared on the face of the documents.

4.45 Though it was averred before the Honourable Supreme Court in *Pradeep Goyal* case that the procedure for creating DIN was implemented in Karnataka after the 2019 Circular issued by the CBIC the specific circular for RFN was issued only on 23.05.2023 by the Commercial Tax Department of Karnataka after the initiation of the present matter. The proceedings are initiated based on a proper assignment issued by the Authority. Therefore, for the relevant period, we are not inclined to take a view that the DRC 01 and Adjudication order communicated in the present case through electronic mode without DIN is invalid.

Impugned order; goes beyond the grounds confirmed in the adjudication order

4.46 The next issue to be answered is whether the Appellate Authority can go beyond the grounds based on which the Adjudicating authority passed the order. Here the demand as communicated vide Form DRC 01, stated as tax arrears from the Audit, was confirmed in the adjudication order on the ground that GST has not been paid on '*hiring charges, loan documentation charges etc under Reverse charges u/s 9(3)*' of the Act.

4.47 The Impugned order however considered the levy against 'Outdoor catering service' received by the Appellant during the period July 2017 to March 2018.; that registration under GST was taken by the said outdoor caterer only on 12.07.2018; therefore, during the period service availed from unregistered outdoor caterer the Appellant was liable to pay GST under RCM under Section 9(3). Further the impugned order also held that appellant had collected

IBC Laws | www.ibclaw.in

meal charges from its employees, thus, on any count the appellant was liable to pay RCM on the said expenses.

4.48 The above points were not discussed in the Adjudication order. The first appellate authority had to examine the material placed before it. But in this case the First Appellate Authority gave its findings on new grounds. In case the Appellate authority found merit in the demand on account of services from outdoor caterer under RCM or amount stated to be collected from the employees taxable under forward charge, the Appellant should have put on notice and obtain their submissions. The first appellate authority could not confirm the demand on a new legal basis (Section 9(4), or forward charge on recoveries from employees) that was never put to the Appellant in any notice; a point raised by the Appellant in defence does not become a charge against it. Issue (iv) would then be answered in favour of the Appellant.

Examination on merit

4.49 We now examine whether the grounds on which the impugned order sustained the demand are correct in law.

4.50 The issue arose from the Audit para 3. The demand was proposed under Section 9(3) read with Notification no. 13/2017-State Tax (Rate), No. FD 48 CSL 2017, Bengaluru, dated: 29.06.2017 under RCM on Hiring Charges, Loan Documentation Charges etc. The audit Para listed 19 heads of expenses.

4.51 Documents as submitted were examined in Audit and accepted wherever 'services procured from RD (Registered Dealer) accepted contention of the Tax payer.' Two line items '70710-097- 398-Office meals' and '70710-097- 637-Office meals' remained unresolved during audit for the reason that 'Tax Payer deducted Amount from Employee and for the same TP is to discharge Output Tax', and the final audit report was issued thus. We have also

observed that two similar line items '70700-097-Meals' and '70710-097-250-Office Meals' were closed during Audit on the ground 'services procured from RD (Registered Dealer) accepted contention of the Tax payer.' We could not find difference between the earlier two entries and the later.

4.52 The Appellant clearly mentioned the distinction between Section 9(3) and 9(4) of the Act and shared the supporting documents to establish the nature of expense at the time of the reply to Audit. This was not considered in the adjudication order. The first appellate authority referred to the invoices only to reject them as relating to 2022-23.

4.53 No notice was issued to set out the ground for the proposed demand, but issued only the Summary in Form DRC 01 and order passed summarily. Therefore, the Appellant lost their opportunity of being heard. The Appellant however submitted a detailed reply setting out the details of all the expense related to the impugned expenses, inferring the grounds from the Audit report. That reply reached the officer after the order was passed and was never considered. In the Order the headings were copied from Audit report 'No.1 Tax has not been paid on Hiring Charges, Loan Documentation Charges etc under Reverse Charges U/s 9(3)' and confirmed the demand.

4.54 The impugned order went further. Drawing on the facts stated by the Appellant, it held that the payments related either to services received from an unregistered outdoor caterer or to amounts collected from employees for meals, and that, either way, the Appellant was liable to pay tax under RCM under Section 9(3).

4.55 We have no doubt that Section 9(3) provides for levy of Tax under RCM on specified category of supplies received as notified under Notification no. 13.2017- CT(Rate) as amended from time to time and Section 9(4) provides for levy of Tax under RCM on supplies received

IBC Laws | www.ibclaw.in

from unregistered persons and that liability operated only from 01.07.2017 to 12.10.2017, after which it was exempted by Notification No. 38/2017-Central Tax (Rate) dated 13.10.2017. Even during that period, intra-State supplies from unregistered persons up to Rs. 5,000/- a day were exempt under Notification No. 8/2017-Central Tax (Rate) dated 28.06.2017. Outdoor catering is not among the services notified under Section 9(3) of the Act. Section 9(3) and (4) during the relevant period reads:

> *"(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both."*
>
> *"(4) The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both."*

4.56 The record does not show under which provision, the demand on '70710-097-398-Office meals' and '70710-097-637-Office meals' was raised. It could only be guessed. Tax demand cannot be created based on assumptions or presumptions. Tax audit under GST cannot create a confirmed demand nor such amount become tax arrears unless such amount was determined through assessment procedure provided under Section 73 or 74 as existed during the relevant period.

4.57 None of the authorities, — the audit officer, the proper officer who issued the summary, the adjudicating authority or the first appellate authority — identified the correct provision and

the applicable notification before levying tax. Even on the Section 9(4) basis adopted in the impugned order, the Revenue did not identify the supplies received between 01.07.2017 and 12.10.2017 or exclude those within the Rs. 5,000/- daily exemption. The demand covers the whole year.

4.58 In *Collector of Central Excise, Calcutta vs. Pradyumna Steel Ltd 1996 (82) ELT 441 (SC)*, the Hon'ble Supreme Court held that merely citing a wrong section, rule, or provision of law in a show cause notice or demand order did not invalidate the exercise of power.

4.59 The Hon'ble Supreme Court in *Fortune Impex V. Commissioner - 2004 (167) ELT A 134 (SC)* held that non mentioning of particular section of Customs Act, 1962 would not vitiate the proceedings when allegations and charges against all the appellants were mentioned in clear terms in the show cause notice.

4.60 However, in the above said decisions the Notices were set out in clear terms stating all factual grounds or details and the only issue was wrong mentioning of section rnder the respective law which was apparent on the face of the record and rectifiable under the law. We have already examined the provision of Section 160 and expressed that the said section would not be of any help to the Respondent in this case. Therefore, the above case laws are distinguishable.

4.61 Sub-section (6) of Section 75 reads: "(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision." In the case under consideration the Show cause notice itself was not issued and adjudication order failed to bring out the correct factual and legal positions. Impugned order captured the facts from the Audit note or the submissions from the Appellant. The impugned order held initially that the expenses under consideration were towards services received from un-registered outdoor caterer, which was taxable under RCM

during 01.07.2017 to 12.10.2017, but cited Section 9(3) instead of Section 9(4), repeatedly. Further, alternatively, it held that the amount was considered as amount collected from Employees towards supply of meals but confirmed the tax under Section 9(3) of the Act. No supporting ledger account or proof of payment was referred to before confirming the demand.

4.62 The audit report in Form GST ADT-02 dated 28.12.2022 described the amount as '*Tax Payer deducted Amount from Employee and for the same TP is to discharge Output Tax'*. Yet no action was taken to demand tax on this account under forward charge. The impugned amount, however, was available in Audit Report under expenses head and not under receipt head. In GST Tax is charged on a supply. Tax under the Act is levied on a supply. Without establishing a supply, the value of the supply and the person liable, tax cannot be demanded.

4.63 In view of the above discussion on merits we are of the view that the Respondent failed to establish their case that the Appellant was required to pay GST under RCM under Section 9(3) of the Act or even under Section 9(4) of the Act on the expenses under the heads '70710-097- 398-Office meals' and '70710-097- 637-Office meals'. The demand fails on merits as well. Issue (v) is answered in favour of the Appellant.

4.64 As the demand of tax fails, the interest under Section 50 and the penalty confirmed in the impugned order also fall.

5.1 In the result, we order as follows:

(i) The Adjudication Order dated 25.04.2023 and the Impugned order dated 27.06.2025 is set aside.

(ii) The demand of CGST of Rs 1,09,815 and SGST of Rs 1,09,815 is set aside along with interest confirmed under Section 50 of the Act and penalty imposed at 10% on the tax confirmed under CGST and SGST.

(iii) The pre-deposit, if any, shall be refunded with interest in accordance with law.

(iv) There shall be no order as to cost.

5.2 The appeal is allowed.

Order pronounced on 27th October 2026.

Ravi Jesuraj S
Member (Technical)

Prabhakaran P M
Member (Judicial)

IBC Laws | www.ibclaw.in