



MOOT PROPOSITION

BEFORE THE HON'BLE SUPREME COURT OF

INDIA AT NEW DELHI

C.A. No. 1 of 2026

Arising out of SLP (Civil) No. 12345 of 2025

Software Solutions India Limited

Bengaluru

... Appellant

vs.

1. The Ministry of Finance

Government of India

Represented by its Secretary

New Delhi

2. Assistant Commissioner of Central Tax

GST Department

Bengaluru

...
Respondents

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1. Software Solutions India Limited (SSIL or the company or the appellant) is a company registered under the Companies Act, 2013 having its registered office in Bengaluru. The company is into manufacture of various types of software and has customers both in India and abroad. The company has been compliant of all registration requirements and is registered under the Goods and Services Tax Act, 2017 (GST Act) and has been filing all its returns promptly right from the introduction of the GST Act.
 2. Being a software company, the company had both foreign customers as well as Indian customers. For the purpose of rendering these software services to its Indian and foreign customers, the company was purchasing various goods and services within the country on which GST was applicable on its input services and goods.



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3. On the exports that were made by the company, they were treated as ‘zero rated sales’ and therefore, the company was eligible to claim refund of all the input taxes that it had paid which were available to it as input tax credit (ITC) on the software that were exported. For this purpose, the company was accurately maintaining accounts and documents to ensure that only those services and goods which were used for the purpose of exports on which GST was paid are claimed as refund.
4. Similarly, the company was also availing the ITC on the GST paid on all the goods and services which were used for the purpose of domestic supplies within the country and was offsetting such ITC against its outward tax liability.
5. The company was promptly filing its various returns, especially the monthly returns such as Forms GSTR1, GSTR 3B and the annual returns in GSTR 9. On GSTR 3B, the company was promptly mentioning all the input services and goods purchased by it and was also mentioning the GST paid on such services and goods which were claimed as ITC in these returns. To support the claim of the ITC claimed in GSTR 3B, company had various supporting documents such as the invoices raised by its various suppliers, the bank statements to show that the payments have been made to such suppliers, proof of transportation and delivery of goods and services which were acknowledged both by the company as a purchaser and the suppliers through emails and other delivery challans.
6. In so far as the exports were concerned, the company has been prompt in ensuring that the invoices raised in foreign currencies were promptly paid within the stipulated time by the RBI in the applicable foreign exchanges by the foreign buyers. The company claimed and obtained the refunds of the ITC paid on such input services and goods which were used for the purpose of export being export of services.
7. Under such circumstances, the company encountered two difficulties during the financial year (FY) 2018-19. The first was in relation to the exports made by the company where some of the foreign buyers from the company did not clear the invoices raised by the company within the stipulated time to receive the invoice amounts in foreign exchange in order to avoid recovery of the refunds obtained by the company on the input services and goods. The second difficulty faced by the company was that some of its domestic suppliers during the same



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financial year did not file their GSTR 1 capturing all the sale of goods and services to the company during that year. Though the invoices were paid by the company through banking channels, these suppliers did not mention much of the supplies made to the company in their GSTR 1 which in turn, did not reflect in GSTR 2A pertaining to the Company.

8. Under such circumstances, the respondent GST Department issued an intimation dated 07.09.2023 by way of an email under section 61 of the KGST Act based on the returns filed by the company. In the said intimation, the respondent sought the company to prove the receipt of foreign currency on the exports made by it during the FY 2018-19 since the petitioner had obtained refunds on the inputs on 31.12.2019. The intimation also sought from the company to match the ITC availed by it between Forms GSTR 2A and GSTR 3B since according to the department, there were several mismatches on the claims of ITC by the company because the ITC claimed on several invoices by the company under GSTR 3B did not reflect in GSTR 2A, auto-generated *qua* the GSTR 1 filed by the Company's of suppliers and therefore, according to the respondent Department, the claim of ITC to that extent were not eligible.
9. The company did not reply to the said intimation. Subsequent to the issuance of the above intimation, the respondent had issued show cause notice (SCN) dated 30.01.2024 under section 73(1) which is applicable to normal circumstances which does not include extended period of limitation under section 74(1) relating to fraud, willful misstatement and suppression of facts. In the said show cause notice, the company was called for to explain as to why recovery action should not be taken against it in recovering all the export incentives such as the refund of the ITC made to it by the concerned department based on the exports invoices raised by it during the FY 2018-19 and also sought why the excess ITC claimed based on the invoices which were not reflected in GSTR 2A of its various suppliers but only mentioned in GSTR 3B filed by the company be denied. The show cause notice also mentioned about the imposition of interest and penalty. The SCN also had summary of SCN format which referred to sections 16, 50, 73(1) and 73(9) of the GST Act, 2017.
10. The company appeared before the respondent on the stipulated date and time and made both oral as well as written submissions to the show cause notice on all the aspects. Insofar as the experts were concerned, the company stated that it had made sincere efforts in bringing back the foreign currency of some of the foreign buyers but still they could not succeed, the reason

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being, these were new foreign buyers with whom no prior transactions were made and were entered only for the purpose of market penetration. Further, the emails and the communications sent to these foreign buyers were not responded or delivered as they were not traceable. In fact, the company had reached out to these foreign buyers through the Indian Consulate also in those countries but still they were not successful. It was felt that filing of any case against these companies in an unknown country would only further add to their costs which may may not be recoverable and therefore, the company had written off these invoices as bad debts in its book of accounts during the subsequent years. It was further argued by the company that the amount that was not brought back was less than 10% of its total exports during that year and therefore, a lenient view may be taken.

11. In so far as the other issue of mismatch of the ITC in Form GSTR 2A and Form GSTR 3B filed by the company for all the months during the FY 2018-19 was concerned, the company stated that the mistake of the suppliers in not correctly and promptly mentioning all the supplies that were made by them to its purchasers like the company cannot be saddled upon the company which has promptly paid all the invoice amounts through proper banking channels and the company has in its possession the invoices, the bank statements and other documents to support that these goods and services were, in fact, actually purchased by them upon payment for the value of the goods and also the applicable GST levied on them by the suppliers. Non-payment of GST collected from its purchasers by the suppliers cannot be a reason to deny ITC to bonafide purchasers like the company and separate proceedings have to be initiated against those suppliers as prescribed under the GST Act.
12. Even though the company made detailed submissions, both on facts and on law, the respondent department passed the impugned order on 30.04.2024 under section 73(9) of the KGST Act, 2017 holding that the company was not able to bring back the foreign exchange within the stipulated time and therefore, the refund of the ITC on the inward supplies of goods and services corresponding to such exports were directed to be paid forthwith by the company along with interest and penalty. With regard to the other issue of mismatch between GSTR 2A and 3B was concerned, the respondent Department held that the claim of ITC based upon the invoices and other documents in GSTR 3B by any assessee like the company is only provisional in nature and will get fructified only when the suppliers actually pay the GST collected from the purchasers to the account of the department. Failing which, the purchasers

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like the company will not be entitled to avail the ITC based upon such invoices alone and further held that there is no bar under the GST Act to recover such ITC from the company without proceeding against such suppliers.

13. The company challenged the above impugned order before the Hon'ble Karnataka High Court by filing a writ petition under Article 226 of the Constitution of India. Before the Karnataka High Court, the counsel for the company/petitioner challenged the impugned order on merits and had also challenged on the jurisdictional point that the above order was barred by limitation and therefore, the respondent department did not have jurisdiction to pass such orders including issuance of the show cause notice for FY 2018-19.
14. The company argued that the entire proceeding right from the beginning has been initiated by the respondent under section 73 which has a limitation of only three years from the end of the due date to file the annual return for the relevant financial year which usually lapses on December 31 of the following financial year or three years from the date of the erroneous refund. In the case of the company, the due date to file annual return for FY 2018-19 (which is relevant for GSTR2A vs. GSTR 3B issue) and the refund granted to the company (for exports made and forex sale proceeds not received) both fall on 31.12.2019. Therefore, the last date to pass the impugned assessment order was three years from 31.12.2019 for the FY 2018-19 which lapsed on 31.12.2022 itself. However, the impugned order in the present case was passed as belatedly as 30.04.2024 and therefore, the respondent department had no jurisdiction to pass the orders and are liable to be quashed.
15. The company was aware that the Government of India, Ministry of Finance issued a notification in Notification No. 56 of 2023 dated 28.12.2023 whereby it extended the time limit to pass assessment orders for FY 2018-19 up to 30.04.2024. According to the company, the said notification had no justifiable reason to extend the limitation especially for FY 2018-19 when the original time limit to pass the impugned order was on 31.12.2022 and therefore, it cannot be a reason to extend the limitation due to COVID pandemic since by 2022 the pandemic had well settled and therefore, there was no justifiable reason to extend the limitation under section 168A of the GST Act.
16. It was further argued by the company that, interestingly, the said Notification has not followed

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the due procedure before being issued as per section 168A of the GST Act, 2017. According to section 168A, any notification under section 168A can be issued by the Government after the recommendation of the GST Council. However, with regard to the above notification, the said Notification No. 56/2023 dated 28.12.2023 was first issued by the Government and the same was only later ratified by the GST Council which is not in dispute. Therefore, on this count, the said notification itself is ultra vires section 168A of the GST Act and *ab initio* invalid and any extension of time based on such notification to pass orders will also be bad in law and therefore, the orders passed based on such notification granting extension of time till 30.04.2024 was invalid.

17. Since there have been several writ petitions filed across the country challenging the impugned orders passed based on the above notification granting extension of time to pass orders for FY 2018-19 up to 30.04.2024 and on hearing the parties, the Learned Single Judge was pleased to allow the writ petition.
18. In so far as the issue relating to notification is concerned, the Court held that it was ultra virus the procedure prescribed under section 168A of the GST Act which was not a curable defect and therefore, quashed the notification. Since the notification was cancelled, the Court held that the impugned order which was passed making demand for the refund of the export incentives and for mismatch of the ITC between GSTR 2A and 3B was also set aside as it was beyond the period of limitation reckoning the usual period of limitation under section 73(10).
19. On merits, regarding the export of services was concerned, the Court held that though the export proceeds have not been repatriated within this stipulated time by the company, since the company made reasonable efforts to repatriate the funds from its foreign buyers, the Court held that there was no error on the part of the company and further held that since the amount that was not brought back in foreign exchange was less than 10% of the total exports, there was no violation of any FEMA provision or circulars and there was no necessity for the company to refund the export incentives.
20. With regard to the denial of ITC based on mismatch of GSTR 2A and 3B is concerned, the Court held that once a bonafide purchaser has received the goods or services and made the payments to the suppliers, then it is up to the department to go behind such suppliers to recover the taxes collected from the purchasers. The Court further held that only in those cases where the supply itself was fake, the purchasers can be proceeded with.

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21. Against this order, the GST department went on appeal before the Hon'ble Division Bench of the Karnataka High Court. Upon hearing the details of the case, the Division Bench took a view that noncompliance of the procedure as laid down in section 168A by the Ministry before issuing the notification was a curable defect and held that the word 'recommendation' as found in the section will also include 'ratification' retrospectively.
22. In so far as on the merits were concerned, the Division Bench held that non-repatriation of the foreign currency within the stipulated time was fatal to the benefits availed and if the company could not bring the foreign currency, then it ought to have made a request to the RBI to extend the time limit to bring such foreign proceeds.
23. With regard to the mismatch between GSTR 2A and 3B was concerned, the Division Bench held that the claim of ITC based upon GSTR 3B was only provisional in nature and it can be ascertained only when the supplier actually pays the GST collected to the department. The power of the department to go either after the purchaser or the supplier was concurrent in nature and was mutually exclusive.
24. Against the judgement of the Division Bench, the company preferred a Special Leave Petition (SLP) before the Hon'ble Supreme Court of India which was admitted and the appeal was numbered. Now the case has been posted for final hearing on the following issues:
 - (i) Whether the Notification No. 56/2023 was *ultra vires* section 168A of the GST Act;
 - (ii) Whether the impugned order passed by the department was beyond the period of limitation and hence liable to be set aside;
 - (iii) Whether the non-repatriation of foreign exchange within the stipulated time on exports made by the company would result in denial of export incentives;
 - (iv) Whether the non-mentioning of the ITC on the supplies made by the supplier in its GSTR 2A would deny such ITC in the hands of the purchaser.
25. The above appeal has been posted along with other similar batch of cases, and the parties were permitted to make their submissions addressing the above issues and such other issues as they deem relevant to the facts of the case and circumstances.