



सत्यमेव जयते

## आयुक्त ( अपील ) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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फाइल संख्या : File No : GAPPL/ADC/GSTP/2045/2023 -APPEAL

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अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-JC-21/2023-24

दिनांक Date : 31-08-2023 जारी करने की तारीख Date of Issue : 12-09-2023

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri. Adesh Kumar Jain, Joint Commissioner (Appeals)

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Arising out of Order-in-Original No. 01/LOK/SUPDT/HMT-1/2022-23 DT. 20.02.2023 issued by The Superintendent, CGST & C.Ex., Range-I, Divison- Himmatnagar, Gandhinagar Commissionerate

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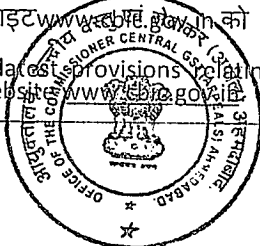
अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s. Satyam,

7/2, 136, Bagicha Vistar, Opp- Balmanir,

Himmatnagar Sabarkantha, Gujarat - 383001

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh 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 Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying (i) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months 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.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट <a href="http://www.cgst.gov.in">www.cgst.gov.in</a> को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website <a href="http://www.cgst.gov.in">www.cgst.gov.in</a>



**ORDER-IN-APPEAL****BRIEF FACTS OF THE CASE:**

M/s Satyam, 7/2, 136, Bagicha Vistar, Opp-Balmanir, HimmatnagarSabarkantha Gujarat- 383001 (hereinafter referred to as the "appellant") has filed the appeal on 17.05.2023 against Order-in-Original No. 01/LOK/SUPDT/HMT-1/2022-23 dated 20-02-2023 (hereinafter referred to as the "impugned order") passed by the Superintendent, Central GST & C.Ex., Range-1, Division- Himmatnagar, Gandhinagar Commissionerate (hereinafter referred to as the "adjudicating authority") for Wrong availment of Input Tax Credit ('ITC') amounting to Rs. 2,75,118/-.

2. Brief facts of the case in the present appeal is that the appellant registered under GSTIN 24ACNFS8128E1ZY, are engaged in the activity of supply of Readymade Cloth & Cosmetics Item,- Beauty Creams, Sindur. During the audit of records of the appellant conducted for the period from July 2017 to March 2019 (FAR No. GST 106/2020-21) the audit party raised objection that the appellant has Wrongly availment Input Tax Credit ('ITC') due to non fulfillment of conditions under Section 16(2)(c) of the CGST/SGST Acts, 2017 amounting to Rs. 2,75,118/- (i.e Rs. 1,19,388/- CGST, Rs. 1,19,388/- SGST and Rs. 36,342/- IGST). During the course of verification of the GSTR 9, GSTR 2A and GSTR 3B returns filed by the registered person for the period from July 2017 to March 2019, it was observed that the ITC Credit value found mentioned in their GSTR 3B returns is more than the ITC (Input Tax Credit) value found in the GSTR 2A. Further on examination of GSTR 2A returns of the registered person, it appeared that some amount of ITC availed by the registered person in their GSTR 3B returns was not reflected in their GSTR 2A returns. It appeared that the supplier of goods had not actually paid the Integrated Goods and Services Tax (IGST), Central Goods and Services Tax ('CGST') and State Goods and Service Tax ('SGST') (collectively 'tax') to the Government account as the amounts availed as ITC in their GSTR 3B returns were not reflected in the GSTR 2A returns of the registered person. Therefore, it appeared that the registered person has wrongly availed ITC in their GSTR 3B returns as the same is not reflected in their GSTR 2A returns. Further it appeared that they had not reversed the wrongly availed ITC at the material time within the prescribed due dates. It, therefore, appeared that there is a case of suppression of facts with an intent to wrongly avail ITC. It appeared that the ITC amounting to Rs.2,75,118/- (Rs.36,342/- (IGST) + Rs 1,19,388/- (CGST) + Rs,1,19,388/- (SGT)) is to be disallowed and recovered from the registered person, under the provisions of Sections 74( 1) of the GST, Act2017 read with the provisions of Section 20 of the IGST Act. It appeared that the registered person would also be liable to pay interest on the delayed reversal of ITC, under the provisions of Sections 50(1) of the Act read with the provisions of Section 20 of the IGST Act. It appeared that the registered person has suppressed the facts with an intent to wrongly avail the ITC, as stated above. Accordingly, they also appear to be liable for penal action under the provisions of Sections 74(1) of the Act read with the provisions of Sections 122(2)(b) of the Act and the provisions of Section 20 of the IGST Act. The appellant stated that they were

not agreed with observation and hence, not liable to pay tax for the amount not shown in GSTR-2A.

3. The appellant was further issued show Cause Notice vide F.No.VI/1(b)-17/IA/C-VIII/AP-56/2020-21 (DIN:20210864WY00004404AC) dated 24.08.2021 and corrigendum also has been issued vide F.No.VI/1(b)-17/IA/C-VIII/AP-56/2020-21 (DIN:20210964WY0000777FC7) dated 28.09.2021. Further, the adjudicating authority passed the impugned order and disallow the wrongly availed Input Tax Credit of Rs.2,75,118/- (Rs.36,342/- (IGST) + Rs 1,19,388/- (CGST) + Rs,1,19,388/- (SGST) under the provisions of Section 74(1) of the Act read with Section 74(1) of Gujarat GST Act, 2017 and Section 20 of IGST Act, 2017, confirmed the demand of interest under Section 50(1) of the Act read with read with the relevant provisions of Gujarat GST Act, 2017 and provisions of Section 20 of IGST Act, 2017, and imposed equivalent penalty under Section 74(1) of the Act read with relevant Section of Gujarat GST Act, 2017 and Section 20 of IGST Act, 2017 for the following reasons :

\* *The registered person had wrongly taken/availed ITC for the period from July 2017 to March 2019 during the verification GSTR-2A and GSTR-3B. The details of the ITC wrongly availed by the registered person is calculated and tabulated as below: -*

Period	Value of GST as per GSTR-2A			Value of ITC as per 3B			Difference		
	IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST
2017-18	1113160	1339793	1339793	1149502	1387604	1387604	36342	47811	47811
2018-19	0	1167108	1167108	0	1238685	1238685	0	71577	71577
							36342	119388	119388

• *the above ITC is not available in the registered person GSTR 2A for which proper explanation is not provided by the registered person. The registered person have an opportunity to reverse the excess availed credit while filing of their Annual Return but instead of reversal of wrongly availed ITC the registered person utilized the wrongly availed ITC for discharging their tax liability thus make himself liable to recovery of ITC to the tune of Rs.2,75,118/- under the provisions of Section 74(1) of the CGST Act, 2017 read with Section 20. of the IGST Act, 2017 along with applicable interest under section 50(1) of the CGST Act, 2017 and penalty under section 74(1) of the CGST Act, 2017.*

- *that the tax charged in respect on certain transactions had not been actually paid to the Government account by the suppliers from whom they had made the purchases, as stated above.*
- *the judgments referred by the registered person in his written submission were on different issue and no one is identical to the instant case.*
- *the registered person has submitted in their reply that they have informed Audit Officers that all the original invoices were available and they can verify the same but had not submitted copy of invoices for verification during Audit or during course of adjudication in which ample opportunity provide to them. They could submit the invoices along with relevant details to substantiate their claim.*

- the registered person has not produced any documentary evidence to say that the suppliers from whom they had made purchases, had paid the tax leviable on the supplies.
- the registered person has not declared correct value of Input Tax Credit available to him and availed & utilized Input Tax Credit in excess to their GSTR 2A for which no acceptable explanation is provided to Audit team or during Adjudication

4. **Being aggrieved with the impugned order, the appellant preferred the present appeal on 17.05.2023 for the following reasons:**

\* they have coated benefit of Circular No. 183/15/2022-GST issued on 27/12/2022 by The Central Board of Indirect Taxes and Customs , Department of Revenue, Ministry of Finance , Government of India which deals with matter of difference of input tax credit availed in form GSTR-3b as compared to that detailed in Form GSTR-2A for fy. 2017-18 and 2018-19.

\* Learned officer while passing final order ignored such circular issued by the CBIC and not allowed benefit to the tax payer. We herewith attached invoice wise details of each supplier where transaction is incurred duly claimed in GSTR 3B but it was not reflected in GSTR 2A on account of the scenario mentioned in the Circular No. 183/15/2022-GST issued on 27/12/2022.

\* The Original invoices can be produced for verification if department want to. All the invoices were taken as per the books of accounts, original invoices received and the payment done in accordance to the invoice received. The non-reflection of the amount in GSTR-2A does not affect the ability of the taxpayer to avail ITC. According to Sec 16(2) of the GST Act, the tax must be paid. Moreover, GSTR-1 is mere a statement of sales. The details of payment do not reflect in GSTR-1. GSTR-2A is a mirror reflection of GSTR-1.

\* The registered person submitted that they relied on the Government Press release dated 18.10.2018 wherein, in Para 4 of the said Press release it was mentioned that there is no requirement of ITC to be reflected in GSTR-2A. They also referred to Press Release dated 03- 07-2019. Moreover, they also relied on the judgment rendered by Hon. Madras High Court in the case of Mis. D.Y BEATHEL ENTERPRISE W.P (MD) NO. 2127 OF 2021 wherein, the judgment was given in favour of the appellant. Also, the registered person referred that in the case of BHARAT ALLUMINIUM WPT 94 OF 2021, Hon. Chattisgarh High Court has stayed all the proceedings regards recovery on basis of difference in GSTR-3B and GSTR2A. Even, Hon. Supreme Court of India in the case of Union of India v Bharti Airtel Ltd. (2021) 131 TAXMANN .COM 319(SC) Has pointed out that Form GSTR-2A is only a facilitator for raking an informed decision while doing self-assessment.

\* The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.



\* *A fresh suitable order may be passed for verification of invoice and proof by the Ld. Superintendent which are available with us for transaction of purchases from those parties who are not found in GSTR 2A and an opportunity may please be given to us.*

**PERSONAL HEARING :**

5. Personal hearing in the present appeal was held on 29.08.2023. Shri Yogeshbhai Joshi, Tax Practitioner and Mr. Vishrut Shah, C.A., Authorized Representative's appeared in person on behalf of the appellant in the present appeal. During P.H. he has submitted that "in the instant case the Tax payer has rightly availed the ITC in GSTR-3B based on invoices issued by their suppliers, though not reflected in GSTR-2A, which are mistakenly or inadvertently shown as B to C transactions. This issue has also clarified by CBIC vide Circular No. 183/15/2022-GST issued on 27/12/2022. Their case is covered under para 4.1.1. The required certificates have also submitted along with appeal memorandum. In view of above requested to set aside Order in Original, and allow appeal."

**DISCUSSION AND FINDINGS:**

6(i). I have gone through the facts of the case, written submissions made by the 'appellant'. I find that the main issue to be decided in the instant case is whether the registered person had wrongly taken/availed ITC for the period from July 2017 to March 2019 during the verification GSTR-2A and GSTR-3B or not.

6(ii). I find that the during the audit of records of the appellant conducted for the period from July 2017 to March 2019 the audit party raised objection that the appellant has wrongly availed Input Tax Credit ('ITC') due to non fulfillment of conditions under Section 16(2)(c) of the CGST/SGST Acts, 2017 amounting to Rs. 2,75,118/- (i.e Rs. 1,19,388/- CGST, Rs. 1,19,388/- SGST and Rs. 36,342/- IGST). Further I find that, during the course of verification of the GSTR 9, GSTR 2A and GSTR 3B returns filed by the registered person for the period from July 2017 to March 2019, the ITC Credit value found mentioned in their GSTR 3B returns is more than the ITC (Input Tax Credit) value found in the GSTR 2A. The difference between Value of ITC as per 3B and Value of GST as per GSTR-2A availed by the appellant is calculated and tabulated as below: -

Period	Value of GST as per GSTR-2A			Value of ITC as per 3B			Difference		
	IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST
2017-18	1113160	1339793	1339793	1149502	1387604	1387604	36342	47811	47811
2018-19	0	1167108	1167108	0	1238685	1238685	0	71577	71577
							36342	119388	119388

7. I find that in the instant case adjudicating authority is contending that the appellant has contravened the provisions of Section 16(2)(c) of CGST Act 2017 read with Section 20 of the IGST Act, 2017 and Section 38 of CGST Act 2017 and appellant is coating the benefit of Circular No. 183/15/2022-GST issued on 27/12/2022 by The Central Board of Indirect Taxes and Customs , Department of Revenue, Ministry of Finance , Government of India which deals with matter of difference of input tax credit availed in form GSTR-3B as compared to that detailed

in Form GSTR-2A for financial year 2017-18 and 2018-19. In this regard, I hereby refer the relevant provisions as under:

**Section 16. Eligibility and conditions for taking input tax credit.-**

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

**1[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]**

(b) he has received the goods or services or both.

2[**Explanation.-** For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;]

3[[ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;]

**(c) subject to the provisions of 4[section 41 5[\*\*\*]], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and**

(d) he has furnished the return under section 39:

**Provided** that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

**Provided** further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

**Provided** also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

**Section 38. Communication of details of inward supplies and input tax credit.\***

(1) The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.

(2) The auto-generated statement under sub-section (1) shall consist of—

(a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and

(b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,—

(i) by any registered person within such period of taking registration as may be prescribed; or

(ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or

(iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or

(iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or

(v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or

(vi) by such other class of persons as may be prescribed.]

**"Section 38. Communication of details of inward supplies and input tax credit.**

(1) The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.

(2) The auto-generated statement under sub-section (1) shall consist of—

(a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and

(b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,—

(i) by any registered person within such period of taking registration as may be prescribed; or

(ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or

(iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or

(iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or

(v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or

(vi) by such other class of persons as may be prescribed.]

**Circular No. 183/15/2022-GST, dated 27.12.2022.**

Subject: Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19—reg.

The main content of this circular are reproduced as under. " In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby clarifies as follows:

	Scenario	Clarification
	Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR-3B for said tax period, due to which the supplies made in the said tax period do not get reflected in FORM GSTR-2A of the recipients	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
b.	Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but has failed to report a particular supply in FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the recipient.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below
c.	Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN of the recipient, but supplier has wrongly reported the said supply as B2C supply, instead of B2B supply, in his FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the said registered person.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below



d.	Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below. In addition, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be disallowed, if claimed by such recipients in their FORM GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action.
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4. The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfillment of the following conditions of Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person:

- i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;
- ii) that he has received the goods or services or both;
- iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier

4.1 In order to verify the condition of clause (c) of sub-section (2) of Section 16 of CGST Act, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of section 16 of CGST Act.

4.1.1 In order to verify the condition of clause (c) of sub-section (2) of Section 16 of CGST Act that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:

4.1.1.1 In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI website <https://udin.icai.org/search-udinand> that issued by CMAs can be verified from ICMAI website <https://eicmai.in/udin/VerifyUDIN.aspx>.

4.1.2 In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto Rs 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

4.2 However, it may be noted that for the period FY 2017-18, as per proviso to section 16(4) of CGST Act, the aforesaid relaxations shall not be applicable to the claim of ITC made in the FORM GSTR-3B return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR 1 for the month of March, 2019.

5. It may also be noted that the clarifications given hereunder are case specific and are applicable to the bonafide errors committed in reporting during FY 2017-18 and 2018-19. Further, these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

6. These instructions will apply only to the ongoing proceedings in scrutiny/audit/investigation, etc. for FY 2017-18 and 2018-19 and not to the completed proceedings. However, these instructions will apply in those cases for FY 2017-18 and 2018-19 where any adjudication or appeal proceedings are still pending.



In the instant case I find that this case falls under main content of this circular No. 183/15/2022-GST, dated 27.12.2022 (Sr. No. C) and clause no. 4.1.2. During personal hearing the authorized representative has also stated that the appellant has \* wrongly reported the said supply as B2C supply, instead of B2B supply, in his FORM GSTR-1, due to which the some supply does not get reflected in FORM GSTR-2A of the said registered person. As per Circular No. 183/15/2022-GST, dated 27.12.2022, in such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4.1.2 as mentioned above.

8(ii). In the impugned order it has been mentioned that the appellant has not produced any documentary evidence to say that the suppliers from whom they had made purchases, had paid the tax leviable on the suppliers. However, during appeal the appellant has submitted the invoice wise details and confirmation certificate of each supplier where transaction is incurred duly claimed in GSTR 3B but was not reflected in GSTR-2A on account of wrongly reported the said supply as B2C supply, instead of B2B supply, in his FORM GSTR-1. In the confirmation certificate respective suppliers have also declared that due to clerical mistake they have disclosed the GST output amount in the B2C

transactions in the GSTR-1 for the said period instead of B2B transactions. The respective suppliers also declared that they have filed GSTR-1 and GSTR-3B related to the above-mentioned invoices in time.

9. In view of the above, I find that the appellant have submitted the proper documents during filing of APL 01 form in this office. Hence, the impugned order disallowing the demand of Input Tax Credit (ITC) by the adjudicating authority under Section 74(1), needs to be re-determined by the adjudicating authority, in terms of Circular No.183/15/2022-GST dated 27.12.2022.

10. In view of above discussions, I find that the impugned order is not legal and proper and therefore, it requires to be set aside and accordingly I order the adjudicating authority to re-determine the ITC, interest and penalty under the provisions of Section 73 of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 along with applicable interest under section 50(1) of the CGST Act, 2017 and penalty under section 73 of the CGST Act, 2017 in light of the of Section 75(2) of the CGST Act, 2017 and CBIC's clarification vide Circular No.185/17/2022-GST dated 27.12.2022. Accordingly, I allow the appeal of the "Appellant" with a direction to submit all the relevant documents/submission before the adjudicating authority for verification of the facts, who shall verify the facts as directed above and pass order accordingly.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the appellant stands disposed of in above terms.

Attested

(Sandheer Kumar)  
Superintendent (Appeals)

By R.P.A.D.

To

M/s Satyam, 7/2, 136,  
Bagicha Vistar, Opp-Balmanir,  
Himmatnagar Sabarkantha,  
Gujarat- 383001

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad
3. The Commissioner, Central GST & C.Ex, Gandhinagar Commissionerate
4. The Dy. / Assistant Commissioner, CGST & C.Ex, Division-Himmatnagar, Gandhinagar Commissionerate.
5. The Superintendent, CGST & C.Ex, Range-I, Division-Himmatnagar, Gandhinagar Commissionerate.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
7. Guard File
8. P.A. File.

*Asanuu*  
31/08/2023  
(Adesh Kumar Jain)  
Joint Commissioner (Appeals)  
Date: 31.08.2023



