सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2568/2023 7015- 21
(ख)	अपील आदेश संख्याऔर दिनांक / Order-In –Appeal and date	AHM-CGST-003-APP-JC-33/2023-24 and 29.09.2023
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	04.10.2023
(ङ)	Arising out of Order-In-Original No. 01/AR-II/HMT/2023-24 dated 30.05.2023 passed by The Superintendent, CGST & C.Ex, Range-II, Division- Himatnagar, Gandhinagar Commissionerate.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Sharneshvar Alloys Pvt. Ltd. (GSTIN: 24AAWCS1863L2ZN), F 205, Damodar Complex, B/h Dena Bank, Idar, Sabarkantha, Gujarat - 383430

(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) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and (ii) A sum equal to twenty five per cent of the remainingamount 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 वेबसाइटwww.cbic.gov.inको देख सकते है। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the websitewww.cbic.gov.in.

ORDER-IN-APPEAL

BRIEF FACTS OF THE CASE :

M/s. Sharneshvar Alloys Pvt Ltd., F-205, Damodar Complex, Behind Dena Bank, Idar, Sabarkantha, Gujarat-383430 (hereinafter referred to as *"the appellant"*), holding GST Number 24AAWCS1863L2ZN has filed appeal against Order-In-Original No. 01/AR-II/HMT/2023-24, dated 30.05.2023 (hereinafter referred to as the "impugned order") passed by the Superintendent, CGST & C.Ex., Range-II, Division- Himmatnagar, Gandhinagar Commissionerate (hereinafter referred to as the "adjudicating authority") .

2(i). The facts leading to this case are that the appellant is engaged in manufacturing and supply of MS Ingots and Profile Sheet cutting. The registered person is registered in GST having GST registration no. 24AAWCS1863l2ZN and administered under Centre jurisdiction. Shri Mayankbhai Ghemarbhai Patel and Shri Misthibhai Girishbhai are the directors of the registered person firm. Shri Girisbhai Faljibhai Patel is authorised person, looking after all the affairs of the registered person firm.

2(ii). M/s. Ham Alloys Exim and M/s. Prime Trading Co. were found to be non-existent/ fake invoice supplier firms during investigations conducted by Central GST Commissionerate, Kutch- Gandhidham, it was found that GST registration of said non-existent firm (M/s. Ham Alloys Exim) was acquired through fraudulent manner by uploading bogus documents in the GSTN portal, talking undue benefit of the liberalised, norms of registration allowed by the Government in GST era, where physical verification of newly registered premises was not made mandatory by field officers and registration was granted by only viewing and verifying the uploaded documents online. M/s. Prime Trading Co., was found supplying fake invoices without supply of any goods.

2(iii). An inquiry was carried out by the officers of CGST &C.Ex., Kutch, Gandhidham Commissionerate in respect of M/s. Global Enterprise Gandhidham Kutch, M/s HAM Alloys, its proprietor Shri Mukesh Pitti and other related firms operated by him. They were issuing fake invoices and passing ineligible GST credit to various assessees of Ahmedabad sector without movement of the goods. In this connection an inquiry was initiated on the appellant i.e. M/s. Sharneshvar Alloys Pvt Ltd. (purchaser of goods and availer

of ITC) and issued summons on 09.10.2018. Shri Girishbhai Faljibhai Patel presented himself in respect of M/s. Sharneshvar Alloys Pvt Ltd. During the statement it was informed by Shri Girishbhai Fuljibhai Patel Authorised Signatory of M/s. Sharneshvar Alloys Pvt Ltd., that they were obtaining invoices without supply of goods through Shri Yunis bhai who is proprietor of M/s. Prime Trading Company Bhavnagar. He further stated that M/s. Ham Alloys Exim and M/s. Prime Trading Co. Had never conducted any business, never supplied or received any goods in physical or services; however they received / issued goods less invoices to receive / supply fake input tax credit (ITC) in instant case. It was found that the said non-existent / fake invoice supplier firms were involved in only paper trading or the purpose of defrauding the government exchequer by way of passing of irregular and inadmissible Input Tax Credit. Further, it was noted that said non-existent firms had supplied invoices without supply of goods to many firms including the registered persons firm thereby passing fake ITC and the registered person had availed the fake ITC on the strength of the invoices issued by said fake firms. The details of Non-existent/ fake invoices, during the period 2017-18 (from July 2017) and 2018-19 (upto 31.08.2018) are as under:-

M/s. Sharneshvar Alloys Pvt Ltd							
Issuer	Issuer GSTIN	Invoices Number	Date	Taxable Amount	CGST	SGST	Total Tax
M/s. Prime Trading Co.	24ABUPH2633M1ZC	TI-981	30.01.2021	689265	62033.9	62033.9	124067.7
M/s. Prime Trading Co.	24ABUPH2633M1ZC	TI-983	30.01.2021	635735	57216	57216	114432
M/s. Ham Alloys Exim	24BOCPR3165N1ZL	HMA/17-18/322	29.01.2018	650505	58545.5	58545.5	117090.9
M/s. Ham Alloys Exim	24BOCPR3165N1ZL	HMA/17-18/317	28.01.2018	639285	57535.7	57535.7	115071.3
M/s. Ham Alloys Exim	24BOCPR3165N1ZL	HMA/17-18/318	28.01.2018	642855	57857	57857	115713.9
M/s. Ham Alloys Exim	24BOCPR3165N1ZL	HMA/17-18/321	28.01.2018	633930	57053.7	57053.7	114107.4
Total							700483.2

2(iv). Shri Girishbhai Faljibhai Patel told that in consultation with Shri Yuneshbhai (proprietor of M/s. Prime Trading Co.) he decided to procure only bills/ invoices from him. In such transaction Shri Yuneshbhai supplied only bills/invoices showing purchase of MS Scrap or Waste & Scrap or Iron and Steel in name of M/s. Sharneshvar Alloys Pvt Ltd. and in return they procured the raw materials actually from nearby or Ahmedabad based scrap traders/suppliers. He further stated that Shri Yuneshbhai only supplied the

bills/invoices, they used to first transfer the purchase amount shown in the Bills/Invoices (which were supplied by Shri Yunushbhai, without actual transfer or supply of materials) in the bank Accounts of Shri Yunushbhai of the bank accounts suggested by Shri Yunushbhai. He further stated that on basis of the supplied fake bills they availed the GST ITC fraudulently in their ITC ledger. Shri Girishbhai Faljibhai Patel further stated that after deducting his commission or charge Shri Yunushbhai returned the amount in cash or through Havala or they instructed him to give the amount to other suppliers from whom they actually procured the raw materials. He further stated that on their demand Shri Yunushbhai had supply only bills/invoices from M/s. Ham Alloys Exim, Gandhidham and also from his own firm M/s. Prime Trading Co. during the year 2017-18 (from July 2017) and 2018-19 (upto 31.08.2018). Shri Girishbhai Faljibhai Patel further stated that as the supply of goods were shown only on paper and no materials were procured, no delivery challan or E-way bills were supplied by Shri Yunushbhai. Also they didn't have any consignment notes / transport bills showing actual transport of goods/raw material shown to have procured form M/s. Ham Alloys Exim, Gandhidham and also his own firm M/s. M/s. Prime Trading Co. during the year 2017-18 (from July 2017) and 2018-19 (upto 31.08.2018). Agreeing to the mistake the appellant paid/reversed the said amount for Rs. 7,00,484/-(CGST Rs. 3,50,242/- and SGST Rs. 3,50,242/-).

3. Accordingly, the appellant was issued Show Cause Notice vide F. No. IV/16-43/PI/MMAloys/2018-19/Gr.III, dated 31.03.2022 by the Superintendent (Preventive), CGST & Central Excise, Gandhinagar. The impugned Show Cause Notice dated 31.03.2022 has been adjudicated by the adjudicating authority vide the impugned order dated 30.05.2023. The adjudicating authority has passed the impugned order, which is briefly summarized as below:

- They disallow the wrongly availed Input Tax Credit of Rs. 7,00,484/-(CGST Rs. 3,50,242/- and SGST Rs. 3,50,242/- under sub-section (1) of Section 74 of the CGST Act, 2017 which has been paid by the appellant vide DRC-03 debit Entry Number DC2411180O01350 dated 01/11/2018 is confirmed and appropriated.
- They order to recover Interest at applicable rates under the provisions of under Section: 50(3) of CGST Act, 2017 read with Section 74 of the CGT Act, 2017 on the GST liability mentioned above.

- They imposed Penalty of Rs. 7,00,484/-(CGST Rs. 3,50,242/- and SGST Rs.3,50,242/-) under Section 74(1) of the CGST Act, 2017

4(i). Being aggrieved with the impugned order, the appellant preferred this appeal on 21.08.2023 on the following grounds:-

- *That due to prejudice mind the learned adjudicating authority ignore appellant's arguments conveniently, that "The Show Cause Notice also alleges that the appellant has availed the ITC on the basis of fictitious/fake firms, which is factually incorrect.*

- *They further say & submit the learned adjudicating authority seems to be confused one side he argued that supplies were not existing firms and on the other side The learned adjudicating authority at para 17.2 of impugned order observed that "it is also seen that Tax on the said supply is also not actually paid to Government, as the supplier has paid it through spurious ITC." It is required to be ascertained first whether supplies are non-existing firms or the payment of tax by the supplier is under doubt. If supplier made wrong payment in such case how they are non-existence vice a versa if suppliers are non-existence than how they have made the payment. Also, when the adjudicating authority himself confirmed that the supplier has paid the tax from spurious ITC, which means that the supplier has allegedly availed the wrong ITC then paid the tax from such ITC. Then this will the case of wrong availment of ITC on the part of supplier and not the case of non-payment of GST and for which the recipient cannot be held responsible.*

  - *On going through the Show cause notice and impugned order it can be seen that entire case has been made only on the basis of the statement of Shri Girish Bhai Faljibhai Patel, that too retracted immediately after the recording of statement and same has already been communicated to department well in time, no other corroborative evidences were brought on records to establish the said charges. These facts can be verified from the documents relied upon by the department.*
  - *As, on one side the entire demand has been raised against appellant, on the basis of statement and the department could not produce any tangible corroborative evidences to establish the charges of wrong availment of Input Tax Credit by the appellant and on the other side the appellant is having all the required documentary evidences, copies of relevant documents as required by the investigating agency were produce by Shri Girish Bhal Faljibhai Patel during his statement. Further all the purchase documents viz. Invoice, Challan, L.R. etc., were seized by the department*

vide Order of Seizure in the From GST INS-02 dated 16/17.10.2019, from appellant premises which clearly proves that the appellant had received the inputs physically under the disputed invoices from the concerned suppliers and used the same in the manufacture of finished goods and/or further supply of goods on payment of applicable GST. AII these documentary evidences have been ignored by the investigating agency and learned adjudicating authority, which could have made the entire case disappear into thin air;

- The appellant made reliance on the following judgments :

  (i) Hon'ble High court of Bombay in the case of M/s Santogen Textile Mills limited V/s Commissioner of Central Excise Navi Mumbai reported at 2017-T101.

  (ii) Hon'ble Tribunal in the case of M/s. Davlnder Sandhu Impex Ltd. v. CCE, Ludhiana reported in 2016 (336) E.L.T. 99 (Tri. -Del.)

  Wherein court held that Documentary evidence has far greater weightage against oral evidence especially when the oral evidence is contrary to the documentary evidence;

- *Appellant further say & submit that it is a settled law that statement relied by the investigation can be considered as evidence only if it is voluntary and free from any inducement, threat or promise, in the present case statement is not free from presser, any inducement, threat or promise. In this regard appellant wish to rely on the decision of Hon'ble Supreme Court in the matter of Mohtesham Mohd Ismail V/s Spl. Director, Enforcement Directorate reported in [2007 (220) ELT 3 (S.C.)), wherein it was held that even confession of accused is not substantive evidence. The statement is part of the evidence only if it is voluntary and free from any sort of pressure. In view of above discursion in the present case statement dated 23.10.2018 of shri Girish Bhai Faljibhai Patel recorded under section 70 of CGST Act, 2017, has lost its evidential value;*

- *Appellant say & submit that the view of learned adjudicating authority that the statement was merely retracted is factually wrong. In absence of copy of statement, how a person can come to know what was written in typed copy of statement, how he can retract point wise, therefore it has been retracted in full;*

- *The learned adjudicating authority observed that appellant failed to produce relevant documents like invoices, LR etc. In this regard it is to submit that learned adjudicating authority may be correct in his perspective. But the facts are contradictory, Shri Girish Bhai Faljibhai Patel during recording of his statement has produce the copies of relevant documents as required by the investigating agency. Further all the*

purchase documents viz. Invoice, Challan, L.R. etc., were seized by the department vide Order of Seizure in the From GST INS02 dated 06/17.10.2019, from appellant premises. The Panchnama dated 16.10.2019 is relied upon for issuance of notice, however it has been not discussed in Show cause Notice. Document withdrawn under Panchnama and submitted during the recording of statement of Shri Girish Bhai Faljibhal Patel, are not relied upon, it can be verified from the list of relied upon documents, thus it is natural that these documents were not available with learned Adjudicating authority, in absence of above documents the learned Adjudicating authority has taken such erroneous view that appellant failed to produce relevant documents like invoices, LR etc;

- *That appellant has purchase only invoices without receipt of goods are baseless as all the purchases made by appellant are genuine and can be verified with all the relevant documents required under law. The appellant, with their due diligence, has verified the genuineness and identity of these suppliers. Both the suppliers were registered with department as taxable person and their names and GSTN were available at the Government portal showing their registrations as valid and existing at the time of transactions. Also, all the goods were received under cover of proper tax invoice, challan etc., therefore, the appellant has taken all the reasonable steps an their part in ascertaining the correctness and genuineness of the suppliers;*
- *The department has failed to give any evidences, from where appellant had received the inputs, which were used for manufacture of finished goods and supplied the same on payment of appropriate GST. There is no documentary evidence to prove that appellant had received any input from any other source except the supplier in dispute;*
- *The appellant has used the purchased goods for manufacturing of final goods/further supply on which applicable GST has been paid, which is not under challenge, therefore the appellant has completely fulfilled the said condition and therefore are eligible to avail ITC;*
- *The supplier has collected the tax from appellant and paid the GST to the department by filing the GSTR-1 & 3B Return and which is reflected in auto populated GSTR-2A. It has been accepted by the learned adjudicating authority in the impugned order. This itself is the proof that suppliers had made the payment by filing GSTR-3B and even if the department's case is that the supplier has made the payment by first availing wrong credit and then paying the tax from such credit in GSTR-3B and later on cancelled their registration, then also it will be case of wrong availment of ITC on the*

part of supplier and for such default if department want to raise the demand then also the same can be raised only against supplier and not against the appellant;

- *The information available on GST Portal, is itself a proof that the supplier viz. M/s Ham Alloys Exim Plot, Gandhidham Kachchh Gujarat 370240 (GSTIN 224BOCPR3165N1ZL) and M/s Prime trading Co., Plot no.73, Kumbharvada Bhavnagar Gujarat 364001 having GSTIN no.24ABUPH2633M1ZC was existed during the material period and has filed the statutory returns viz. GSTR-1, GSTR3B, GSTR-9 & 9C, the information available on GST Portal and the department has cancelled the supplier's registration Suo-motto with retrospective dates. Thus, it is clear that the department has denied the ITC by cancelling the registration of supplier Sue-Motto with retrospective effect;*
- *The appellant says and submits that learned adjudicating authority has wrongly interpreted the provisions of the Sale of Goods Act, 1930, and reached an erroneous conclusion that there was no contract, either oral or written, between the sellers (non-existent firms) and the buyer (Appellant). Appellant to say and submit it is not mandatory to contact the seller directly; the Appellant has conducted business through an agent. Regarding the verification of the suppliers' credentials, it is to submit that it is not mandatory to verify the suppliers' credentials by contacting them or visiting their premises. What further credentials of the suppliers need verification when the Government of India has issued GST registration numbers and authorised the suppliers to collect tax on behalf of the government and deposit it in the government's account. The government frames rules and policy with consciousness. Numerous officers examine the pros and cons of the policy before its implementation. After five years of implementing the GST Act, claiming that the GST registrations of these non-existent firms were fraudulently acquired by uploading bogus documents in the GSTN portal, exploiting the liberalised norms of registration allowed by the Government in the GST era, where physical verification of newly registered premises was not made mandatory by field officers and registration was granted merely by viewing and verifying the uploaded documents online, is nothing but the department shirking its responsibility;*
- *In the present case, the contract was oral with the agent of supplier, which was subsequently confirmed by the supplier by sending the goods along with relevant tax invoices. The appellant, as the buyer, confirmed the same by making payment for the goods through banking channels;*

- *With regards to view of investigation that appellant accepted and paid Rs. 7,00,484/towards alleged availment of ITC on the basis of such not existent/fake firms, the learned adjudicating authority without giving any findings the learned adjudicating authority adjusted the said payment against the demand, which is legally not sustainable. In this regard appellant say & submit that Appellant in in Part B of GST DRC-O1A, denied that payment was voluntary and mainly submitted that they do not agree to pay the interest and penalty and they paid the full amount of tax only for the mental peace, as they are hopeful of getting relief during adjudication/appeal process and requested for not to initiate any further recovery proceedings for interest and penalty;*
- *Appellant say & submit that the officers of Preventive section Gandhinagar Commissionerate have forcefully and under pressure asked the appellant to pay an amount of Rs. 7,00,484/-, which was paid by appellant vide DRC3 dated 01.112018 under pressure. This payment cannot be considered as voluntary payment or admission against the charges of the wrong availment of ITC on the basis of such not existent/fake firms. This amount therefore cannot be adjusted or appropriated towards the demand of Tax made in the SCN;*

Appellant prayed that the Learned Commissioner (Appeals) may be pleased to Set aside the impugned Order-in-Original No. 01/AR-II/HMT/2023-24 dated 30.05.2023.

Additional submissions:

4(ii). In further written submission submitted during the course of personal hearing on 27.09.2023, the appellant contended on the following points:-

(a) That department has already investigated the case against these suppliers and in one case of M/s. Prime Trading Co., they have recorded the statement of Shri Hamidani Sohif Mohmadyunus, proprietor of M/s. Prime Trading Co. stated that they have actually supplied actually physical goods to M/s. Sareneswar Alloys Pvt. Ltd.

(b) That the entire case has been booked only on oral evidence without corroborative with any documents; that appellant has full filled the entire condition of Section 16(1) of the Act; that no efforts were made by the department to recover the Tax from supplier; that they have made entire transaction through banking channel.

(c) The appellant made reliance on the following judgments:

(i) Hon'ble High court of Gujarat at Ahmedabad in the case of M/s Arshil Enterprise V/s State of Gujarat.

(ii) *Hon'ble High court of Madhya Pradesh at Indore in the case of M/s Agrawal and Brothers V/s Union of India, Western Railway and Superintendent, CGST & C.Ex., Ratlam.*

(iii) *Hon'ble High court of Calcutta at Jalpaiguri in the case of M/s Cargo Traders V/s Joint Commissioner, Commercial Taxes (State Tax) & Ors.*

Personal Hearing:

5. The appellant was granted personal hearing on 27.09.2023. Mr. Ashok Israni, Tax Consultant, appeared for hearing in the matter as authorized representative on behalf of the appellant. They submitted that the basic fact on which the Adjudicating Authority relied and confirmed demand that the M/s. Prime Trading was found to be non existent is for from the truth. In this regard he has submitted statement of son of the proprietor before another CGST Bhavnagar officer, there in he has categorically stated that they have supplied goods to M/s. Champeshvar Iron & Steel Pvt. Ltd. apart from above he has produced Hon'ble High Court decision in support of their defence. He further reiterated the additional submission and appeal memorandum.

Discussion and Findings:

6. I have carefully gone through the facts of the case available on record and grounds of appeal in the Appeal Memorandum as well as the oral submissions made by the appellant at the time of hearing. The issues to be decided in the present appeal are whether the appellant had correctly availed ineligible ITC during the period 2017-18 (from July 2017) and 2018-19 (upto 31.08.2018) amounting to Rs. 7,00,484/- or otherwise?

7(i). It is observed from the case records that an inquiry was carried out by the officers of CGST & C.Ex., Kutch, Gandhidham Commissionerate in respect of M/s. Global Enterprise Gandhidham Kutch, M/s. HAM Alloys, its proprietor Shjri MukeshPitti and other related firms operated by him and they were issuing fake invoices and passing ineligible GST credit to various assessee of Ahmedabad sector without movement of the goods. In this connection an inquiry was initiated on the appellant and issued summons dated 09.10.2018 to Shri Girisbhai Faljibhai Patel, Aauthorised Signatory of M/s. Sarneshvar Alloys Pvt Ltd, looking after all the affairs of the registered person firm.

7(ii). During the statement recorded on 23.10.2018, I find that Shri Girishbhai Fuljibhai Patel Authorised Signatory of M/s. Sharneshvar Alloys Pvt Ltd., had accepted that they were obtaining invoices without supply of goods through Shri Yunis bhai who is proprietor of M/s. Prime Trading Company Bhavnagar. Shri Girishbhai Fuljibhai Patel further stated that M/s. Ham Alloys Exim and M/s. Prime Trading Co. had never conducted any business, never supplied or received any goods in physical or services; however they received / issued goods less invoices to receive / supply fake input tax credit (ITC) in instant case. As per his statement I find that the said non-existent / fake invoice supplier firms were involved in only paper trading or the purpose of defrauding the government exchequer by way of passing of irregular and inadmissible Input Tax Credit. Further, I find that said non-existent firms had supplied invoices without supply of goods to many firms including the registered persons firm thereby passing fake ITC and the registered person had availed the fake ITC on the strength of the invoices issued by said fake firms.

7(iii). In his statement I find that Shri Girishbhai Faljibhai Patel told that consultation with Shri Yuneshbhai (proprietor of M/s. Prime Trading Co.) he decided to procure only bills/ invoices from him. In such transaction Shri Yuneshbhai supplied only bills/invoices showing purchase of MS Scrap or Waste & Scrap or Iron and Steel in name of M/s. Sharneshvar Alloys Pvt Ltd. and in return they procured the raw materials actually from nearby or Ahmedabad based scrap traders/suppliers. He further stated that Shri Yuneshbhai only supplied the bills/invoices, they used to first transfer the purchase amount shown in the Bills/Invoices (which were supplied by Shri Yunushbhai, without actual transfer or supply of materials) in the bank Accounts of Shri Yunushbhai of the bank accounts suggested by Shri Yunushbhai. He further stated that on basis of the supplied fake bills they availed the GST ITC fraudulently in their ITC ledger. Shri Girishbhai Faljibhai Patel further stated that after deducting his commission or charge Shri Yunushbhai returned the amount in cash or through Havala or they instructed him to give the amount to other suppliers from whom they actually procured the raw materials. He further stated that on their demand Shri Yunushbhai had supply only bills/invoices from M/s. Ham Alloys Exim, Gandhidham and also from his own firm M/s. Prime Trading Co. during the year 2017-18 (from July 2017) and 2018-19 (upto 31.08.2018). Shri Girishbhai Faljibhai Patel further stated that as the supply of goods were shown only on paper and no materials were procured, no delivery challan or E-way bills were supplied by Shri Yunushbhai. Also they didn't have any consignment notes / transport bills showing actual transport of goods/raw material shown to have procured

form M/s. Ham Alloys Exim, Gandhidham and also his own firm M/s. Prime Trading Co. during the year 2017-18 (from July 2017) and 2018-19 (upto 31.08.2018). Further I find that the appellant paid/reversed the said amount for Rs. 7,00,484/-(CGST Rs. 3,50,242/- and SGST Rs. 3,50,242/-).

8(i). In the instant case the main issue if of availed ineligible ITC by issuing fake invoices and passing ineligible GST credit to various assessee. Accordingly I refer to the relevant extract of Section 16 of the CGST Act, 2017 provides eligibility conditions for taking Input Tax Credit:-

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:

8(ii). As per the fact available on record and as per statement of Shri Girishbhai Faljibhai Patel, I find that the said non-existent / fake invoice supplier firms were involved in only paper trading or the purpose of defrauding

the government exchequer by way of passing of irregular and inadmissible Input Tax Credit. The supplies of goods were shown only on paper and no materials were procured, no delivery challan or E-way bills were supplied by Shri Yunushbhai. Also they didn't have any consignment notes / transport bills showing actual transport of goods/raw material shown to have procured form M/s. Ham Alloys Exim, Gandhidham and also his own firm M/s. Prime Trading Co. Further I find that as per Section 155 of CGST Act, 2017 the burden of proof, in case of eligibility of ITC, availed by the appellant, lies entirely on the appellant. In the instant case I find that the appellant has failed to satisfy all the mandatory conditions to make him eligible for ITC on supply of goods mentioned in invoices, as envisages in Section 16 of CGST Act, 2017. The appellant has also failed to establish "Supply" of goods, on which ITC was taken, as they are unable to produce the buyer with whom the contract for sale was made. The appellant not able to establish the genuineness of the invoices on which ITC was availed, as they were unable to prove the veracity of the signature reflected in the said invoices. The appellant also unable to prove the delivery of goods from the said supplier as the said supplier has been non-existent/fake invoice supplier firms as proved by department enquiry. Further I find that the tax on the said supply is also not actually paid to the government, as the supplier has paid it through spurious ITC.

8(ii). Further, I find that Shri Girishbhai Faljibhai Patel, in his statement recorded on 23.10.2018 stated that they paid the bill amount to account of Shri Yunusbhai or other accounts as directed by Shri Yunushbhai. Shri Yunusbhai returned the said amounts after deducting his commission in cash or through Havala or paid that amount to the actual suppliers who actually supplied goods to him. I find that the well thought modus operandi was going on just to generate and pass on fake ITC.

9(i). In the appeal memorandum, the appellant has contended that entire case has been made only on the basis of the statement of Shri Girish Bhai Faljibhai Patel, that too retracted immediately after the recording of statement and same has already been communicated to department well in time. In this regard, I find that the appellant had filed affidavit for retraction of the statement of Shri Girishbhai Faljibhai Patel. The statement was recorded on 23.10.2018 and he has retracted his statement on 29.10.2018. However I find that the retraction is quite late and has to be considered as an afterthought. Secondly, merely retracting a statement would not be enough as Shri Girishbhai Faljibhai Patel has not been able to prove that he had received the goods, had a contract with the buyer and the tax had indeed been paid by

the supplier of the goods. Mr. Patel has not been able to the genuiness of the firms from who he has stated to have bought goods. He has not been able to show correct and legal transport documents in order to establish the receipt of goods from the two suppliers. Therefore the other evidence is against the appellant to establish that they have not received the goods. Accordingly, I find that the retraction would not have evidentiary value and cannot be accepted.

9(ii). The appellant further contended that the officers of Preventive section Gandhinagar Commissionerate have recorded the statement under threat, pressure and duress and forcefully and under pressure asked the appellant to pay an amount of Rs. 7,00,484/-. In this regard, I find that there is no evidence available on the record that the statement was recorded under threat, pressure and duress and appellant had pay an amount under pressure.

9(iii). The appellant further contended that in another case, department has already investigated the case against these suppliers and in one case of M/s. Prime Trading Co., they have recorded the statement of Shri Hamidani Sohif Mohmadyunus, proprietor of M/s. Prime Trading Co., where they stated that they have actually supplied actually physical goods to M/s. Sareneswar Alloys Pvt. Ltd. In this regard, I find that in the instant case Shri Girishbhai Fulabhai Patel told in his statement dated 23.10.2018 that in consultation with Shri Hamidani Sohif Mohmadyunus (proprietor of M/s. Prime Trading Co.) he decided to procure only bills/ invoices from him. In such transaction Shri Yuneshbhai supplied only bills/invoices showing purchase of MS Scrap or Waste & Scrap or Iron and Steel in name of M/s. Sharneshvar Alloys Pvt Ltd. and in return they procured the raw materials actually from nearby or Ahmedabad based scrap traders/suppliers.

10. In the instant case, the appellant has referred various judgements in his written submission and in his additional submission. I have observed all the referred judgement were on different issue and no one is identical to the instant case. I find that the department stand and provisions of the CGST Act, 2017 read with the IGST Act, 2017 and the SGST Act, 2017 is pretty clear on the said issue of wrong availment and utilization of ITC. In the instant case I find that the appellant had deliberately availed such inadmissible ITC with sole intention to defraud the Government Exchequer. Had the departmental officers not initiated the enquiry, such wrong availment of ITC would have remained unnoticed and the appellant would have continued to enjoy the unlawful benefit.

11. In view of the above discussions, I do not find any merit in the contention of the appellant so as to intervene in the impugned order passed by the adjudicating authority. Accordingly, I find that the impugned order of the adjudicating authority is legal and proper and hence uphold and reject the present appeal of the appellant.

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.

29/09/2023

(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: 29.09.2023

Attested

(Sandheer Kumar)
Superintendent (Appeals)

By R.P.A.D.

To,
M/s. Sharneshvar Alloys Pvt Ltd.,
F-205, Damodar Complex, Behind Dena Bank,
Idar, Sabarkantha, Gujarat-383430.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Gandhinagar Commissionerate.
4. The Dy./Assistant Commissioner, CGST, Division-Himmatnagar, Gandhinagar, Gandhinagar Commissionerate.
5. The Superintendent, Range – II, CGST, Division- Himmatnagar, Gandhinagar Commissionerate.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad.
7. Guard File.
8. P.A. File